



## Marine Pollution Caused by Ships: The Role of International Legal for Controlling Marine Pollution in Vietnam

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### ABSTRACT

International laws of pollution caused by ships at sea is understood as the overall of international principles and legal norms to prevent and remedy the consequences when pollution occur. International conventions are one of the basic and important sources of modern international laws. International conventions are agreements between subjects, and mainly between countries, on a basis of voluntary, equal to impose, change or termination of rights and obligations to each other. The system of modern international law has formed the legal regulatory stipulates for prevention of oil pollution from ships at sea by a series of bilateral and multilateral treaties. Some treaties stipulate common legal framework for addressing the marine pollution issues, some treaties have specific provisions to regulate the issues related to marine pollution. Author would like to assess the role of international conventions on the prevention of marine pollution causing by ships in Vietnam, especially ship's oil pollution.

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### 1. International Convention for the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978.

#### 1.1. Main Provisions of MARPOL 73/78.

*International Convention for the Prevention of Pollution from Ships, 1973* was approved at the International Conference on marine pollution was organized by the IMCO from 8 October to 2 November 1973. Protocol I<sup>2</sup> and Protocol II<sup>3</sup> also adopted at this conference. This Convention was later modified by the Protocol concerning 1978, the Protocol was approved at the International Conference on Tanker Safety and Pollution Prevention (TSPP Conference) was organized by IMCO from 6 to 17 February 1978, and is known as the International Convention for the Prevention of Pollution from Ships 1973, modified by the Protocol of 1978 (MARPOL 73/78). The provisions referring to the various pollution sources from ships listed in five

annexes of the Convention. The Convention has also been modified by the 1997 Protocol and added the sixth annex.

This Convention replaced the OILPOL 1954 and added measures to prevent marine pollution caused by oil. The Convention mentioned to all sources of pollutants from ships<sup>4</sup>. This is one of the important conventions of the International Maritime Organization (IMO). The Convention sets out the provisions to preventing a pollution incident caused by accidents or during transportation of oil, dangerous goods, noxious by ships and pollution caused by sewage, garbage, air pollution from ships. The Convention also gives the requirements for storage, treatment, and disposal of such substances; as well as requirements for reporting procedures for oil spills, toxic substances and the provisions for the special areas<sup>5</sup> where a ship operates in which must comply with certain discharge standards. The Convention

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<sup>2</sup> Protocol I: Provisions concerning Reports on Incidents Involving Harmful Substances.

<sup>3</sup> Protocol II: Arbitration.

<sup>4</sup> Sources of pollutants from ships include oil, noxious liquid substances in Bulk, harmful substances carried by sea in packaged form, sewage, garbage, air pollution from ships.

<sup>5</sup> Special area means a sea area where for recognized technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic the adoption of special mandatory methods for the prevention of sea pollution by oil is required. See MARPOL 73/78, Annex I, Regulation 1(11).

has 20 articles and 6 annexes, includes regulations for the prevention of pollution caused by oil<sup>6</sup>; regulations for control of pollution caused by noxious liquid substances in Bulk<sup>7</sup>; regulations for prevention of pollution caused by harmful substances carried by sea in packaged form<sup>8</sup>; regulations for prevention of pollution caused by sewage from ships<sup>9</sup>; includes regulations for prevention of pollution caused by garbage from ships<sup>10</sup>; regulations for prevention of air pollution from ships<sup>11</sup>. Until now, the world has 150 countries approved the Annex III, 143 countries approved the annex IV, 154 countries approved the Annex V, 97 countries approved the Annex VI.<sup>12</sup>

*For provisions on construction and equipment of ships to prevention of oil pollution.*

At the request of the Convention, all ships operating along international routes must have enough tanks to store oil sludge arising from the operation of the machinery on board or from the cargo hold washing.

Construction of oil tankers must limit the escape of oil when aground or accident puncturing the hull. The structure of cargo tanks must be appropriate to limit the outflow of oil when an accident occurs. Besides, depending on the type and size of ships, the ships must be fitted with appropriate oil filtering equipment to filter oil residues from engine room or from the washing of tank before pumping out the sea. With the provisions on the structure of cargo tanks, it will limit the amount of oil escaping in case of incidents. Accordingly, cargo tanks of oil tankers must meet that, when an accident occurs, the hypothetical outflow does not exceed 40,000 cubic meters. The volume of any cargo oil tank does not exceed 50,000 cubic meters. The length of any cargo tank does not exceed 10 meters or does not to exceed 0.2 lengths of the ship.

To prevent oil of the tanks escapes out to causing pollution in the event of collision or stranding, the Convention requires the entire cargo tank length of oil tankers must be protected by ballast tanks or spaces other than cargo and fuel oil tanks.

With the aim of controlling the discharge of ships oil, oil tankers of 150 tons gross tonnage or more are required to be fitted the oil discharge monitoring and control systems. This system must be fitted with a recording device to a continuous record of total quantity discharged or the oil content and rate of discharge. This system shall operate when there is any discharge of effluent into the sea and must ensure that any discharge of oily mixture is automatically stopped when the instantaneous rate of oil exceeds that permitted, and any failure of this system shall stop the discharge. Besides, a ship with 400 tons gross tonnage or more but less than 10,000 tons gross tonnage must be fitted an oil filtering equipment, and this equipment must ensure that any oily mixture after passing through

this equipment has an oil content that not exceeding 15 parts per million. A ship with 10,000 tons gross tonnage or more, this equipment must have an alarm system and system for automatically stopping any discharge of oily mixture when the oil content exceeds 15 parts per million. Ships of less than 400 tons gross tonnage must be equipped tanks to retain on board oily mixtures or oil. With the devices as mentioned above, the Convention has helped to control the intentional or unintentional oil discharge from ships. And the discharge of oil from tankers is allowed only when all of the following conditions are met:

1. In any ballast voyages, the total volume of oil that a tanker can discharge not more than 1/15,000 of total cargo capacity of a ship.
2. The rate of oil discharge not more than 60 liters per mile.
3. Do not discharge any oil within 50 miles of nearest coastline.

Besides, in the 1973 Convention, with a new oil tanker, on the ballast voyage, the maximum volume of oil allowed to be discharged was reduced reduced to 1/30,000 of the quantity of cargo carried from 1/15,000 of cargo carrying capacity.

A new and important point of this Convention are the special area<sup>13</sup> concept. The special area is so vulnerable due to oil pollution, In this area, the discharge of oil is completely forbidden. This Convention determined the Baltic Sea, the Mediterranean Sea, the Black Sea, the Gulfs area, and the Red Sea are special areas. All oil ships are requested to have the mean to storing oily wastes on board or must be transferred to reception facilities on port.

*Enforcement.*

Any violation acts of the MARPOL 73/78 under the jurisdiction of any Member of this Convention will be punished either according to the law of that Member or according to the law of the flag State. In this respect, in this Convention, the term “jurisdiction” will be construed in accordance with international law in force at the time the Convention is interpreted or applied.

With exception of very small ships, all ships operation of international voyages must have valid international certificates, and this certificates can be accepted at the foreign ports as evidence such ship meets the provisions of this Convention.

However, if having clear grounds for a ship or its equipment does not met the particulars of the certificate, or if ships do not have the valid certificate, the competent inspection authorities can detain this ship until it is proved that the ship can carry out voyage to sea without having any unreasonable threats of harm to marine environment.

According to Article 17, the Member of the Convention accepts the obligation to consult, promote with other international agencies, support for the Members that have requirements for

<sup>6</sup> MARPOL 73/78, Annex I.

<sup>7</sup> MARPOL 73/78, Annex II.

<sup>8</sup> MARPOL 73/78, Annex III.

<sup>9</sup> MARPOL 73/78, Annex IV.

<sup>10</sup> MARPOL 73/78, Annex V.

<sup>11</sup> MARPOL 73/78, Annex VI.

<sup>12</sup> <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>, visiting date: January 21, 2023.

<sup>13</sup> Special area means a sea area where for recognized technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic the adoption of special mandatory methods for the prevention of sea pollution by oil is required. See MARPOL 73/78, Annex I, Regulation 1(11).

technical assistance such as the supply of equipment, research, training and anti-pollution.

*For the provisions on surveys and certification.*

Convention stipulates every oil tanker with 150 tons gross tonnage or more, and every other ship with 400 tons gross tonnage or more must be the initial survey before ships are put in operation, including survey of its fittings, systems, structure, equipment, materials and arrangements of ships that fitting fully requirements of Annex I, and not exceeding 5 years, must be renewal survey. After the initial survey or renewal survey under provisions of this Convention, the International Oil Pollution Prevention Certificate will be issued, and ships can carry out voyages to offshore terminals or ports according to the jurisdiction of other Member of Convention. Such certificates will be endorsed or issued either by Administration or an organization or any person who duly authorized by it. The International Oil Pollution Prevention Certificate will be drawn up in a form under provisions of this Convention.

*For provisions on receiving the oil residues (sludge).*

According to the provision of this Convention, every ship with 400 tons gross tonnage or more must have the tank that has adequate capacity to receive the oil residues (sludge) arising from the operation of machinery on board, such as oil leakages in the machinery spaces, the lubricating oils, etc. And, to enable the discharge pipeline of ships to connect with pipes of reception facilities, both pipeline systems must be fitted with standard discharge connection under the provision of this Convention. The Convention also stipulates the control of discharge of oil, prohibits any discharge of oily mixtures or oil into the sea from ships with 400 tons gross tonnage or more, except oil mixture is filtered by an oil filtering equipment that meets requirements of this Convention, namely, oil mixture discharge into the sea does not contain chemicals or other substances in concentrations or quantities that cause harmful to the marine environment or, other substances or chemicals were introduced with purpose of circumventing the discharge conditions that stipulated in this provision. The oil residues cannot be discharged into the sea must be retained on board for discharge to reception facilities on shore.

*For provisions on Oil Record Book.*

Under the regulation 17 of Annex I, every oil tanker with 150 tons gross tonnage or more, every other ship with 400 tons gross tonnage or more must be had an Oil Record Book Part I. The Oil Record Book will be drawn up in a form under provisions of this Convention. The Oil Record Book will be completed on each occasion, whenever any of following activities takes place, such as cleaning of oil fuel tanks or ballasting; cleaning water from oil fuel tanks or discharging dirty ballast; collection and treatment of oil residues; discharge overboard of bilge water that has accumulated in a machinery space; bunker bulk lubricating oil or fuel oil. Besides, any failure of the equipment of oil filtering must be recorded in the Oil Record Book.

*For provisions on Segregated Ballast Tanks.*

Every crude oil tanker with 20,000 tons or more, every product carrier with 30,000 tons or more must be provided the segregated ballast tanks, and the capacity of segregated ballast tanks will be determined that a ship can navigate safely on the ballast voyage without using the cargo tanks for water ballast. Besides, the segregated ballast tanks must be safe when the collision or grounding occurs under provisions of this Convention.

*For provisions on Shipboard oil pollution emergency plan.*

Shipboard oil pollution emergency plan is stipulated in Regulation 37 of Annex I of this Convention, under this regulation, every oil tanker with 150 tons gross tonnage or more, every other ship with 400 tons gross tonnage or more must have oil pollution emergency plan, and this plan is approved by an Administration. The plan must consist at least of the procedure that be obeyed for the captain or other persons who having responsibility to report the oil pollution accident, in according to requirements in Protocol I<sup>14</sup>, Article 8<sup>15</sup>; the list of persons, authorities to contact when the oil pollution accident occurs; detailed description of the action that be carried out immediately by all crews on board to control, reducing of the discharge of oil; the procedures, point of contact to coordinate with local, national authorities in the prevention of oil pollution. All oil tankers with 5,000 tons or more must have prompt access to computer and programs of residual structural strength calculation.

*For provisions on prevention of pollution by sewage from ships.*

Prevention of pollution caused by sewage from ships is stipulated in Annex IV, entered into force 27 September 2003, subsequent amendments have been adopted by the MEPC<sup>16</sup> and have entered into force. Annex IV includes requirements to control pollution at the sea caused by sewage. Under this Annex, prohibits the discharge of sewage into the sea, except when the ships operating a sewage treatment plant, or when the ships are discharging sewage that disinfected and comminuted by the using of the appropriate systems and at a distance of more than three nautical miles from the nearest coastline. The sewage isn't comminuted or disinfected must be discharged at distance of more than twelve nautical miles from the nearest coastline.

In one word, the MARPOL 73/78 is mainly based on regulations that have traditional nature, such as prevention of pollution during ship operation; prevention of pollution caused by accidents; technical requirements; provisions on reporting; requires for cooperation and prevention of violations, ensure implementation of the Convention; require states establish the waste reception system on the port to receive the waste of ships. The Convention is the international legal basis for the prevention of marine environment pollution, prevention of oil pollution from ships and, is the principal international convention on the prevention of the marine environment pollution caused by

<sup>14</sup> Protocol I: Provisions concerning Reports on Incidents Involving Harmful Substances.

<sup>15</sup> Article 8: Reports on incidents involving harmful substances.

<sup>16</sup> MEPC: The Marine Environment Protection Committee.

operation of ships or accidents.

### 1.2. The Implementation of MARPOL 73/78 in Vietnam.

Vietnam is now a Member of the Convention, to ensure strict enforcement of the provisions of the MARPOL 73/78, Vietnam has incorporated the provisions of this Convention into the national legal system. Such incorporating is done through the issuance of new legal documents on aspects of pollution prevention of the marine environment caused by ships, and modify legal documents are no longer consistent with current conditions. The result of the process of incorporating provisions of the Convention is expressed in the legal documents of Vietnam on maritime technical standards and provisions on prevention of marine pollution. Many legal documents conveyed international standards, the international maritime rules, and the technical standards that it was set out by the Convention. But there are still many provisions of the Convention have not been incorporated into national law. Therefore, it creates major constraints during the process of approaching, dissemination and application of the content of this Convention, namely:

Firstly, *Law on Environmental Protection of Vietnam 2014*, *Vietnam Maritime Code 2015* had provisions accordance with the MARPOL 73/78, but it has not yet concretized the regulations to ensure convenience for the implementation of marine pollution prevention, it is still indicative to the promulgation of more concretized by-laws. The contents on requirements for equipment have been concretized in the *Circular No. 23/2010/TT-BGTVT Promulgating National Technical Regulations on the Marine Pollution Prevention System of Ships - QCVN 26:2010/BGTVT*<sup>17</sup>. Circular incorporated the provisions of the MARPOL 73/78 into national law to apply the provisions on the prevention of marine pollution caused by ships in territorial waters of Vietnam. With the contents of regulations for construction and equipment to prevent pollution by oil (Circular No. 23/2010/TT-BGTVT, section 2, technical regulations), Circular has concretized the regulation 12A and regulation 20 in Annex I of the MARPOL 73/78. And the regulations on the structure and equipment to preventing pollution in case of collision or stranding that apply to oil tankers of 600 gross tonnages or more also accordance with Annex I of the MARPOL 73/78. In addition, the above provisions have also been expressed at the *Branch Standard No. 22 TCN 264-06 on Regulations on Prevention of Pollution Caused by Inland Waterway Ships*.<sup>18</sup>

Secondly, these provisions of the Convention was concretized by national law, many regulations and standards have not yet been expressed in the laws of Vietnam. Especially the environmental standards and regulations are still incomplete. Regulations on sewage discharge standards, the environmental quality standards of water are no longer consistent with the current

conditions, which have not been amended and supplemented to meet the requirements of practice and as a basis for control and reduce pollution. Standards for technical specifications and design of the equipment, vehicles have not yet been promulgated uniform. Besides, we also do not have standards for the discharge, the sinking of garbage and scrap.

Thirdly, the lack of such standards leads to the use of some foreign standards. Such as the licensing for operating the waterway transport facilities that have a total capacity of diesel engine less than 220 KW is based on Branch Standard No. 22 TCN 246-06<sup>19</sup>, in which, regulations for ships with a total capacity of diesel engine less than 220 KW do not need to install the oil residues treatment equipment, it only install tanks for storage of oil residues and oily mixtures. However, the MARPOL 73/78 stipulates that in ports and anchorage area must have facilities to receive, treat oil residues and oily mixtures of this ship, and such oil residues and oily mixtures are periodically pumped to shore without being discharged directly into the sea. But in fact, in all wharf, ports and anchorage areas throughout the territory of Vietnam still do not have reception facility and treatment of waste consistent with provisions of the Convention. Therefore, all ships of this type only equip to be licensed to operating, then directly discharge oily mixtures into the river and sea that we can't control, because the legal sanctions for this issue are still limited. Moreover, ballast water of ships is not closely monitored as the requirements of maritime pollution prevention. Specifically, Ba Ria - Vung Tau sea area of Vietnam, there are many oil tankers loading crude oil to exports, these ships before loading crude oil, it must discharge ballast water, but we have not the means to receiving the ship ballast water, so it is discharged directly into the sea. Vietnam also has issued many remedies to ensure the implementation of the Convention, however, main remedies are the sanction of administrative violations, but fines are still low<sup>20</sup>, the penalties are not effective.

Fourthly, Currently, Vietnam's shipping fleet is still of single-hull oil tankers, the ships do not fit the Annex I of the Convention. We need to have the sanction to remove such ships to reduce the risk of oil pollution. Such as we will issue the sanctions, in which requires the ports do not receive oil from the single-hull tanker. Besides, the ship washing is compulsive, for the tanks containing toxic liquid, after unloading cargo, must be washed in accordance with processes that consistent with Annex II of MARPOL 73/78 and then, such washing water will be discharged into the receiving devices of the arrival port.

Thus, joining of the Convention has created a legal framework to facilitate for Vietnam cooperates comprehensive with States and other subjects of international law in resolving the problems related to prevention of marine environment pollution

<sup>17</sup> Circular No. 23/2010/TT-BGTVT Promulgating National Technical Regulations on the Marine Pollution Prevention System of Ships - QCVN 26:2010/BGTVT was issued by the Vietnam Ministry of Transport on August 25, 2010.

<sup>18</sup> The Branch Standard No. 22 TCN 264-06 on Regulations on Prevent of Pollution Caused by Inland Waterway Ships was issued by the Vietnam Ministry of Transport on December 28, 2006.

<sup>19</sup> The Branch Standard No. 22 TCN 264-06 on Regulations on Prevent of Pollution Caused by Inland Waterway Ships was issued by the Vietnam Ministry of Transport on December 28, 2006.

<sup>20</sup> Decree No. 155/2016/ND-CP on Penalties for Administrative Violations in the Field of Environmental Protection was issued by the Prime Minister on November 18, 2016, Article 4: Fine imposed on one administrative violation in the field of environmental protection which is VND 1,000,000,000 for individuals and VND 2,000,000,000 for organizations maximally.

from ships oil. Although the implementation of the Convention of Vietnam is still limited, it has created positive factors, namely:

It helps raise awareness of the importance of the prevention of marine pollution caused by ships, including oil pollution from ships, from which will be the orientation and strategies to building and perfecting the legal provisions on anti-oil pollution caused by ships. The incorporation of the provisions of the Convention into national law or the direct application of the provisions of the Convention to govern the issues remained limited, inadequate and not yet stipulated in the Vietnam legal system, it will help Vietnam improving laws on anti-oil pollution caused by ships. Moreover, it helps Vietnam received the support of the Member States and international organizations for technology, personnel in the process of completing the legal framework as well as application and implementation of the Convention.

It creates mechanisms for Vietnam cooperates with international organizations, regions, Member States to preventing pollution of the marine environment, and also help Vietnam cooperates the implementation of programs and projects on surveying, the study of the marine environment as a basis for the implementation of the Convention.

It helps in Vietnam conducted reviews fleet, eliminate the unfit ships out of Vietnam fleet, require ships to install enough oil filter system, safety systems and the document reflects the process of oil discharge.

## **2. International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969.**

### *2.1. Main Provisions of the Convention.*

On March 1967, the oil tanker Torrey Canyon was grounded in the southeast coast of England, the consequence was 119,000 tons of crude oil spilled out around the coast of England and France, this is the largest oil spill in history until that time. This disaster showed certain concerns about the rights of nations under international law for incidents on the high seas. Especially request coastal states can implement the necessary measures to protect their territorial avoiding the oil pollution when accidents occur; measures affect the attention of all foreign shipowners, shippers, and the nations that a ship carries their flag. *International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 (INTERVENTION)* was adopted on 29 November 1969 and entered into force on 6 May 1975.

Article 1 of the Convention stipulates that a member of this Convention can carry out necessary measures on the high seas to prevention, elimination, mitigation of grave and imminent danger to relevant interests or their coastline from pollution or threat of sea pollution caused by oil, following upon maritime accidents or acts concerning such accidents, which can cause serious harmful consequence. However, Article 3 of this Convention stipulates that before carrying out any measures, coastal country shall consult with other countries that affected by the maritime accident, especially with the flag State or States; the

coastal country shall promptly notify the intended intervention measures to apply to those persons or agencies whose have interests may be affected by the application of these measures. Coastal countries will have to consider any views which they can submit. This case can understand as coastal countries only have the right to do these actions when necessary and after consulted with the appropriate organizations, especially flag states, states have ships or relevant ships, shipowner or shipper when request, and a circumstance are permitted by the experts has been appointed. Coastal countries implement measures beyond the allowable limit under this Convention are responsible for compensation for any damage which these measures causing. The Convention also stipulates the settlement of disputes arising in connection with the application of this Convention. Besides Article 3(e) of this Convention stipulates a coastal country before using such measures as well as during their course, must use their best endeavors to avoid the risk to life of human, and to assist people when they may need, and in suitable cases, to facilitate the crews of ships repatriate.

In addition to the main content of the Convention, there is an appendix consist of two parts: Part 1 stipulates conciliation procedures, whereby a Conciliation Commission will be established according to a member's proposal to send another member. The conciliation proposal of a member shall include a statement of case and attached the relevant supporting documents. A Conciliation Commission has three members, one member is nominated by the coastal country that has intervention measures, one member is nominated by a country that their nationals or their property were affected by this intervention, and member three is the President of Commission and is nominated by the agreement of two members. In case conciliation fails, arbitration may be submitted within 180 days after conciliation failed. Arbitration Tribunal has three members, one arbitrator is nominated by the coastal country that has intervention measures, one arbitrator is nominated by country that their nationals or their property were affected by this intervention and the other arbitrator is nominated by agreement between the two arbitrators and is the president. The decision of the arbitrators shall be the final decision and the parties can't appeal. The parties must abide by this decision immediately.

We can see that, through regulations such as parties of the Convention can take measures on the high seas when necessary, this Convention has created favorable conditions as well as contribute importantly to the anti-oil pollution caused by ships. Besides, with the provisions on conciliation procedures, the arbitration, the Convention is also one of the legal basis in the settlement of disputes related to oil pollution.

### *2.2. The Role of the Convention in Vietnam.*

Unlike the provisions of UNCLOS 1982 mentioned pollution of marine environment from many different sources, the provisions of INTERVENTION 1969 stipulated directly about oil pollution at high seas. These are issues that Vietnam is very interested. Currently, Vietnam is not a member of the Convention. On the other hand, the national law of Vietnam lacks provisions on intervention on the high seas in cases of oil pollution. Especially the intervention measures related to the surrounding

nations, and the intervention measures caused the damage are still a gap in national law of Vietnam. Even in the Law on Environmental Protection of Vietnam, there are not any provisions on necessary intervention measures in cases of oil pollution occurs at high seas. Besides, the *Decision No. 12/2021/QĐ-TTg to Promulgate the Regulation on Oil Spill Response*<sup>21</sup> has stipulated on the scope of oil spill incidents and the professional organization responsible for managing oil spill incidents, that is the National Committee for Search and Rescue, and three centers for oil spill response in the Northern region, Central region and the Southern region of Vietnam. The Decision stipulates the National Oil Spill Response System is divided into three levels<sup>22</sup>, those are grassroots level, regional level, and national level, and each level with specific responsibilities, corresponding to three resources-provincial, governmental and private industry resources. The Decision also divided oil spill incidents into three tiers<sup>23</sup>. Although the regulations provided a plan on oil spill response, responsibilities of the agencies in the plan on oil spill response, but there are still some restrictions: It has not anticipated the oil spill incidents occurred in the overlapping area between the provinces or in the seas beyond Vietnam's sea areas but is actually capable of damage to the marine environment of Vietnam. According to the provisions of the Decision, Provincial People's Committee is responsible for oil spill response, implementing the provincial plan, approving the plan at grassroots level and inspecting the implementation of the plan, directing the organization of training course in oil spill response in "their provincial regional". So with the overlapping area, especially the sea areas beyond sea areas of Vietnam have not been clearly stipulated. Moreover, The Decision has not yet concretized powers and responsibilities of the forces participating in the response (port authorities, coast guard, waterway traffic police, border guard. . .), will cause difficulties in the practical implementation of this Regulation in Oil Spill Response.

From the provisions of INTERVENTION 1969, Vietnam will find out problems that are still lacking, limited in Vietnam laws on prevention of oil pollution caused by ships. It creates a legal basis for Vietnam supplements and perfecting law system on prevention of oil pollution caused by ships.

### 3. United Nations Convention on the Law of the Sea 1982.

#### 3.1. Main Provisions of UNCLOS 1982.

*The United Nations Convention on the Law of the Sea (UNCLOS)*, 1982 was adopted on 30 April 1982, the Convention stipulates direct obligations of countries concerning protecting

and preserve the marine environment, marine resources. The Convention requires countries to do all necessary measures to prevent, reduce and control the marine environment pollution from any pollution sources.

Concerning sources of pollution caused by ships, the Convention requests countries to apply the laws, regulations and implement all possible measures to prevent and reduce the marine environment pollution caused by ships are registered or carried flag by their country; have the right to give the special conditions for foreign ships enter the ports or inland waters with the purpose to prevent and reduce the marine environment pollution caused by foreign ships, including a ship is exercising the right of innocent passage in the territorial sea, as well as in the exclusive economic zone.

Provisions of UNCLOS on the protection and conservation of the marine environment are applied for countries, by stipulating the obligations and responsibilities as well as rights that countries implement for the area inside or outside their jurisdiction to prevent, reduce and control the marine environment pollution from land-based sources; from or through the atmosphere; from ships; from constructions, machinery exploit or probe the resource under the sea; from other constructions, machinery operate in the marine environment.

Part XII of the Convention stipulates for the protection and preservation of the marine environment (from Article 192 to Article 237). Article 192 of UNCLOS 1982 stipulates that countries have the obligation to preservation and protection of the marine environment, at the same time, countries must depend on the situation to together or separately implement all the necessary measures appropriate with the Convention to prevention, limitation, and control of the marine environment pollution, use the most appropriate possible means, and try to harmonize their policy in this field. Countries implement all necessary measures to the activity under their jurisdiction or control don't harm for other countries and their environment due to pollution; and to keep pollution don't spread beyond the areas where they enforce sovereign rights under the Convention.

Article 194(3) stipulates that countries need to use measures to limit to the fullest extent of pollution caused by ships, in particular measures for prevention of accidents and addressing an emergency, prevention of unintentional and intentional discharges, ensure the safety of activities at sea, and stipulate the design, equipment, construction, manning and operation of a ship.

Article 211 of the Convention stipulates that States, acting through general diplomatic conference or the authorized international organization to establish the international provisions and standards to control, prevention, and reduction of the marine environment pollution caused by ships, systems of routing are designed to minimize the threat of accidents that can cause the marine environment pollution, including the coastline, pollution damage to the relevant interests of coastal countries. Such standards and provisions shall be re-examined when necessary.

Countries establish particular requirements to prevent, control and reduce the marine environment pollution as a condition for the foreign ship enters their ports or internal waters, these

<sup>21</sup> Decision No. 12/2021/QĐ-TTg to Promulgate the Regulation on Oil Spill Response was issued on March 24, 2021 by Prime Minister, and amended on May 10, 2021.

<sup>22</sup> Decision No. 12/2021/QĐ-TTg to Promulgate the Regulation on Oil Spill Response, Article 5.

<sup>23</sup> Three tiers: Tier I (Quantities of oil spilled less than 20 tons), tier II (Quantities of oil spilled between 20 - 500 tons), tier III (Quantities of oil spilled over 500 tons). Decision No. 02/2013/QĐ-TTg to Promulgate the Regulation on Oil Spill Response, Article 6.

requirements shall give due publicity and shall notify to the authorized international organization. Such laws and provisions must not be less efficient than the international laws, international provisions. In the implementation of sovereignty over its territorial sea, the coastal countries may adopt laws and provisions to prevent, control and limit the marine environment pollution caused by foreign ships including ships exercise its right of innocent passage.

Article 218 of Convention stipulates right of counties with port: When ships are voluntarily within ports of a country, such country can investigate, and if there is the proof, such country carries out proceedings in respect of the discharge from that ships into the territorial sea, internal waters, or exclusive economic zone of such country in violation of provisions and standards that are applied and established by general diplomatic conference or the authorized international organization.

The Convention also stipulates the responsibilities of countries to implement international obligations to protect the marine environment, and if the countries do not complete responsibilities, they must be responsible under international law.

However, the Convention does not only anticipate the remedies and traditional sanctions in the liability<sup>24</sup> of counties. Under the Convention, a country may be responsible for losses or damages caused by the marine environment pollution, and be prosecuted for responsibility due to not implement the international responsibility to preserve and protect the marine environment under Article 235, countries also can be responsible for activities outside the jurisdiction that this Convention allow. Article 232 of the Convention stipulates that countries shall be responsible for losses or damages that arising from measures carried out according to Section six when that measures exceed those reasonable requests or are unlawful.

The Convention also recognizes that damage to the marine environment may also arise from the activities of non-state entities. Under the general provision, damage caused by such entities will not be the subject of complaints under international law, except such damage occur entirely or in part caused by countries that do not implement international obligations. In that case, the party complain is the country concerned, not the non-state entity. To ensure to have appropriate mechanisms to resolve liability and compensation for damage to the marine environment caused by the activities of non-state entities, the Convention stipulates the obligation of Member States must issue provisions of such liability in the national legal system: Countries shall ensure that recourse is available consistent with their law systems for prompt and adequate compensation or other relief for damage caused by the marine environment pollution from natural or juridical persons according to their jurisdiction. With the objective of ensuring prompt and adequate compensation for all damage caused by the marine environment pollution, countries shall cooperate in the implementation of current international law and further development of international law concerning responsibilities and liabilities for the assessment, compensation for damage and the addressing of relevant disputes, as well as, when appropriate, develop criteria and

procedures for pay adequate compensation, such as compensation funds, compulsory insurance, etc.

Thus, we can say that UNCLOS 1982 expresses the global agreement, taking into the interests of all countries in the world, including industrial development countries and developing countries. It is the general legal basis for the protection and conservation of marine environment, marine resources and settlement of issues related to marine pollution.

### 3.2. The Implementation of UNCLOS 1982 in Vietnam.

From the provisions mentioned above, we can see that provisions of UNCLOS 1982 provided pollution of marine environment caused by many different sources, including oil pollution caused by ships. It creates a legal basis on anti-oil pollution for the Member States, including the Vietnam. Vietnam is one of 107 firstly countries signed the Convention in Montego Bay-Jamaica, and Vietnam issued a resolution to approve this Convention on 14 July 1994. Since joining of the Convention, Vietnam has actively modified and issued legal documents to conform the provisions of the Convention. Besides, Vietnam has actively incorporated the provisions of the Convention into national law. And after 18 years since joining of the Convention, on 21 June 2012, Vietnam adopted *Law of the Sea of Vietnam* - A Law incorporated relatively complete provisions of the Convention into national law. However, the provisions on the protection of marine environment and anti-pollution caused by ships have not yet incorporated into this Law. This Law has only one Article stipulates the marine environment pollution - Article 35. In addition to the *Law of the Sea of Vietnam*, the Prime Minister also issued a *Decree No. 58/2017/ND-CP of May 10, 2017, on Management of maritime activities*, but also do not fully reflect the content of marine pollution of the Convention, namely:

Firstly, the design of systems of routing to minimize the threat of accidents which might cause the marine environment pollution has not been clearly stipulated in the *Law of the Sea of Vietnam*. This Law only stipulates the layout of sea lanes and traffic separation in the territorial sea for innocent passage<sup>25</sup>, while other maritime routes are not mentioned. Even the *Vietnam Maritime Code* only stipulates navigational channel and route<sup>26</sup> in general terms. The *Decree No. 58/2017/ND-CP* also only stipulates State management responsibilities for seaports and navigable channels<sup>27</sup>, there are not clear regulations on the design of systems of routing to minimize the threat of accidents which might cause the marine environment pollution.

Secondly, the provisions of the UNCLOS 1982 on measures for prevention of environmental incidents and dealing with environmental emergencies absolutely unmentioned in the *Law*

<sup>25</sup> The 2012 Law of the Sea of Vietnam, Article 25 - Sea lanes and traffic separation in the territorial sea for innocent passage: The Government establishes and publicizes sea lanes and traffic separation in the territorial sea for innocent passage for the purpose of ensuring safety of navigation.

<sup>26</sup> The Vietnam Maritime Code, Article 84 - Nautical chart of port water area, navigational channel and route.

<sup>27</sup> Decree No. 58/2017/ND-CP of May 10, 2017, on Management of maritime activities, Article 7.

<sup>24</sup> United Nations Convention on the Law of the Sea, Part XII, Article 232.

of the Sea of Vietnam, provisions on the design, equipment, construction, manning and operation of a ship to ensure the safety of operations at sea is not stipulated in the *Law of the Sea of Vietnam* as well. In the *Law on Environmental Protection of Vietnam*, there is only the concept of “environmental incidents”, there is not the concept of “environmental emergencies”. In *Circular No. 2262/1995/TT-MTG of Ministry of Science, Technology, and Environment on Remediating of Oil Spill Incident* - it is the first legal document guiding the remedy and dealing with oil spill incident, only identified the cases are considered “oil spill incident”, while “environmental emergencies” are not mentioned. Moreover, in *Decree No. 58/2017/ND-CP* only mentions the measures to ensure the safety of oil tankers and other dangerous cargo ships<sup>28</sup>, while general cargo ships, other ships are not mentioned, that these ships are non-small risk of pollution.

Thirdly, Article 35 of the *Law of the Sea of Vietnam* only stipulates on the loading or unloading goods or equipment that may cause damage to marine resources and human life, or may pollute the marine environment, there is not regulation on the ship’s oil. Concerning the discharge, this Article only stipulates that “may not discharge, sink or dump industrial waste, nuclear waste or other toxic waste”, it does not mention the oil, the oil residues (sludge) of the ships.

In conclusion, the provisions of the UNCLOS 1982 on the protection of marine environment, particularly pollution caused by ships have not yet been fully researched for incorporate into Vietnam national law, the Vietnam law on marine pollution is still inadequate. However, it has created a legal basis for Vietnam in the oil pollution prevention, and supplements to perfecting Vietnam law on prevention of oil pollution caused by ships, especially the issue that has not been stipulated in the laws system of Vietnam is very necessary.

#### 4. The International Conventions Related to Human Factors.

As we all know, besides the reason of technical factors, most marine accidents, including accidents causing marine pollution are caused by mistakes or carelessness of human. If a ship wanted to navigate well to minimize maritime accidents, including accidents causing oil pollution, the crew should have been trained and complied with the clear rules. In this respect, we can mention *International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW)*, and *International Convention for the Safety of Life at Sea (SOLAS)*.

##### 4.1. Main Provisions of the International Conventions Related to Human Factors.

###### 4.1.1. International convention for the safety of life at sea.

The *International Convention for Safety of Life at Sea 1974*, as modified by the Protocol of 1978 (SOLAS 74/78) was adopted on 1 November 1974. The primary purpose of this Convention

is to issue minimum standards of structure, equipment and ship operation to protect the safety of life for everyone on board, including passengers; minimize the risk of maritime accidents from which reducing oil pollution for the marine environment. The Convention issued general provisions on exemption procedures, test procedures and certification for a ship to verify that the ship meets the requirements according to this Convention.

The SOLAS 74/78 does not apply to ships of war; ships are not propelled by mechanical; cargo ships with less than 500 tons gross tonnage; pleasure yachts do not engage in trade; a ship is built primitive by wooden; fishing ships.

For the provisions of surveying and certificate, the Convention stipulates ships<sup>29</sup> must have a safety certificate. For cargo ships with a gross tonnage less than 500 GT, if meet the requirements of the Convention, safety equipment certificate shall be issued for a period not exceeding 5 years.

Besides the requirements of the structure, equipment, the SOLAS also has some requirements for a Party must prevent and limit the marine environment pollution. At the 18th session in 1993, IMO adopted the *International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships* (INF Code). This is the first international Code stipulated that all ships carrying INF cargo shall comply with the requirements relating to fire control, temperature control in the cargo area, structure, power, radiation protection equipment, management, training and emergency plan on board. INF Code is a Code belong Chapter VII of SOLAS and compulsory implement for Parties of this Convention.

*International Safety Management (ISM) Code* is mandatory after became Chapter IX of SOLAS and entered into force on 1 July 1998. ISM Code issued the guidance on the management of ship safety operating, prevention of pollution and from 1 July 2002 became mandatory for all kinds of ships apply SOLAS Convention. The verification of the ship’s safety-management system is made when the initial verification, periodic, intermediaries and when reissued the DOC<sup>30</sup> certificate, SMC<sup>31</sup> certificate to determine the safety management system of the company has met the standards as required by this Code or not. Maritime administrations or organizations recognized just issued DOC certificate, SMC certificate for company or ships are revoked a certificate when seeing that all major inconsistencies have been corrected or remedied with level can’t cause a serious threat to human, the safety of the ship or can’t cause serious harm to the marine environment.

From the above analysis, we can see that SOLAS 74/78 with the provisions dealing with maritime safety to minimize the risk of maritime accidents from which reducing oil pollution for the marine environment caused by maritime accidents at sea.

<sup>29</sup> Including cargo ships and passenger ships.

<sup>30</sup> DOC: Document of Compliance.

<sup>31</sup> SMC: Safety Management Certificate.

<sup>28</sup> Decree No. 58/2017/ND-CP of May 10, 2017, on Management of maritime activities, Article 85.



#### 4.1.2. *International convention on standards of training, certification and watch keeping for seafarers.*

*International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW)* was drafted and issued in July 1978 and entered into force in 1984 after more than 25 countries with a total registered tonnage of their merchant fleets not less than 50% of the total registration tonnage of world's merchant fleets (is calculated with the ships of 100 register tonnage and above).

The Convention will apply to crews on board, with ships fly the flag of a Member, except to those serving on fishing ship, warship, pleasure yachts do not engage in trade, a ship is built primitive by wooden, or non-commercial ship.

The certificates for an officer, rating or captain will be issued to those candidates who meet the requests for age, service, medical fitness, qualification, training and examinations under the appropriate regulations of this Convention. Certificates for officer and captain will be endorsed by the Administration in a form that is stipulated in regulation I/2 of the annex. A ship while in the ports of a Member State, Administration of that Member State will control to verify that all crews are certificated appropriate, or hold the appropriate dispensation. Such certificates will be accepted unless having a proof for believing that the certificates are obtained by fraudulently way, or that the holders are not persons who were certificated by that certificates. Before 1 February 2002, Member State of this Convention can continue to innovate and recognize the value of certificates under provisions of the Convention, the Convention also stipulates seafarers must continually be updated and trained to meet the rapid changes of technology.

Mandatory minimum requests for the certification of officers of ships with 500 tons gross tonnages and above are as follows: Be not less than 18 years of age; worked on board of not less than one year as part of the training program that meet requests of section A-II/1, and it is recorded in the training record book, or otherwise have proved that worked on board of not less than 3 years; have carried out bridge watchkeeping duties according to the supervision of officer or captain for a time of not less than 6 months; meet the requests of provisions in Chapter IV for carry out designated radio duties under the Radio Regulations; have completed appropriate training, education and meet the provisions of the Convention. And mandatory minimum requests for certification of chief mates, captain on ships with 500 tons gross tonnage and above are as follows: Meet the requests of certification as an officer in charge of the watch keeping on the ships with 500 tons gross tonnage and above; have completed appropriate training, education and meet standard of competence that stipulated in section A-II/2 of this Convention.

From the above analysis, the convention has strict regulations on standards of seafarers serving on board. These strict standards require the seafarers must constantly learn, be trained to improve their qualifications, from which helping the operation of a ship is efficient and the safest; reduce the maritime accidents, minimize the marine environment pollution caused by maritime accidents.

As we all know, the maritime accidents can cause major oil pollution incidents at sea. Maritime accidents, in addition to the cause by the objective conditions, the main cause is due to the seafarers operating the ships. Thus, this Convention is also the basis for the anti-oil pollution, the effective implementation of this Convention will help to reduce oil pollution at sea.

#### 4.2. *The Implementation of SOLAS 74/78 and STCW in Vietnam.*

After our country joined these Conventions, the Ministry of Transport immediately directed the Vietnam Register Administration and the Vietnam Maritime Administration actively to study and propose plans on the application of the provisions of these Conventions for Vietnam fleets which operating on international routes. At the same time, the Minister of Transport has issued Decision No. 2922/QĐ-PC, this Decision with the content of the application of Conventions for companies and seagoing ships of Vietnam on international voyages. So far, the legal basis for the implementation of these Conventions in Vietnam is added increasingly, including Decision No.1701/2001/QĐ-BGTVT; Decision No.51/2005/QĐ-BGTVT; Decision No.26/2008/QĐ-BGTVT; Circular No.32/-2011/TT-BGTVT; Circular No.40/2016/TT-BGTVT; Circular No.16/2022/TT-BGTVT. And the State management bodies on maritime completed the following works:

A relatively complete system of legal basis, including the Maritime Code, decrees, circulars and decisions related to the evaluation of fleets in accordance with the provisions of these Conventions have been built.

Vietnam has built a system of procedures and instructions, forms for evaluation and certification meet the requirements of these Conventions; the process of evaluation and certification is managed by specialized software that can be accessed and remote controlled, contribute to reducing mistakes of a human. Vietnam has built standards for assessment experts and has trained 25 experts that meet international standards and the requirements of the job.

In addition, Vietnam has expanded maintaining cooperation and learnt the experience of the world's registry organizations in the dissemination, guidance, and implementation of the Convention as well as the training of assessment experts; and also organized many conferences for companies to disseminate, guide the implementation, updated regularly the amendments and supplementations of these Conventions.

However, there are still limitations, Vietnam has not yet built an effective policy mechanism to gradually attract the labor force of high quality for the maritime industry, especially lack the mechanisms for protecting the rights of seafarers and necessary sanctions for crew members when violating the regulations on maritime safety.

### 5. **International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990.**

#### 5.1. *Main Provisions of the Convention.*

*The International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC 1990)* was adopted

by the International Maritime Organization in November 1990 and entered into force in May 1995. The Convention stipulates the necessary to prepare for cooperation and response to oil pollution incidents not only from the ships but also from the oil exploration sector, oil pipeline system at the sea and ports. The Convention has the “polluter pays” as a general principle of international environment law. The Convention stipulates the Parties of this Convention carry out individual or joint all appropriate and necessary measures to prepare and respond to the oil pollution accidents.

The Convention stipulates Parties of this Convention must have a plan for responding to oil spills, the procedures for oil pollution reporting, and specific actions when an oil spill occurs. Moreover, the Parties must establish a national and regional warning system to international co-operation in the response, research, development, and technical co-operation when an oil spill occurs. Article 3 of the Convention stipulates that each Party of this Convention will require a ship that fly its flag must carry on board an oil pollution emergency plan appropriate with regulations that were stipulated by Organization for this purpose. The Convention also have mandatory provisions on reporting procedures of oil pollution when an oil spill occurs: Captain or other persons who have charge of ships must report immediate any event on their ship concerning the discharge of oil or probable discharge of oil to the nearest coastal State, at the same time require persons who have charge of sea ports belong its jurisdiction to report timely any event related to probable discharge of oil, discharge of oil or presence of oil to the competent authority. The maritime inspection ships, other appropriate services or officials, aircraft must report timely any observed event related to the presence of oil or discharge of oil to competent authority, or nearest coastal State.

When an oil spill occur, Article 5 of this Convention stipulates about actions after received an oil pollution report: When a Party of this Convention receives a report about pollution information, this Party shall assess to determine it is the oil pollution accident or not; assess the extent, nature of the oil pollution accident, also it's possible consequences; then, inform timely to countries whose interests likely to be affected or are affected by this oil pollution accident, with details of assessments, any action intends to carry out or has carried out to address this accident, and other information until the responding actions have been ended, or joint actions have been carried out by such countries.

Article 6 of the Convention stipulates on regional and national systems for preparedness and response: Each Party of this Convention must have the national system for responding effectively and promptly to the oil spills. This system must designate the competent authorities that are responsibility for preparedness and response to oil pollution, or must designate the address of national authority that is responsible for receipt and transfer an oil pollution report. Besides, each Party built a general national plan on addressing and prevention of oil pollution. Moreover, within its capabilities, individually or through cooperation, the Party shall cooperate with the port authority, maritime and oil industries, other relevant bodies to establish a minimum level of standby equipment for oil spill handling ac-

cordance with danger level. Detailed plans for responding to the oil pollution accidents and agreements or mechanism to the cooperation of the response to the oil pollution accidents are also established.

The Convention also has provisions on international cooperation in pollution response: Depending on their capabilities and the related resources, Parties of this Convention shall cooperate to provide equipment, advisory services, and technical support to responding to the oil pollution accidents when any Party of this Convention that likely to be affected or affected request. In addition, the Convention also stipulates for the strengthening of bilateral and multilateralism cooperation in the prevention and treatment of pollution.

Therefore, the OPRC 1990 has an important role in international cooperation for pollution response, when oil pollution occurs on wide areas, from two countries and more. The OPRC 1990 issued regulations to respond and address promptly when oil pollution not only occurs caused by ships but also caused by the oil exploration sector, oil pipeline system at the sea and ports; and avoid misunderstanding, lack of information to delays in the responding to an oil pollution incidents and may cause serious unnecessary consequences to the marine environment. With regulations such as each Party of the Convention will establish the national system for responding effectively and promptly to the oil spills; must have an authority is responsible for receiving and transmitting information on the oil pollution, and request assistance or assist when requested. Such information must be notified to the IMO, so, will assist Parties of this Convention quick to have information when need to know; help the anti-oil pollution more effectively.

## 5.2. The Role of OPRC 1990 in Vietnam.

The oil spill incidents occurred many times in Vietnam's sea and will certainly increase in the future along with the development of the transport industry, the oil and gas industry, etc. Vietnam has gradually built and perfected the system of legal documents to manage marine pollution and respond oil spill incidents. However, the relevant laws only have regulations about environment protection in general, while the regulations of oil pollution are still limited, especially measures to responding to oil spill incidents. Such as *Law on Environmental Protection of Vietnam 2014* only stipulates the prevention and response to “marine environment incidents” in general<sup>32</sup>, there are not regulations on response to “oil pollution”. There are not provisions related to the offshore device operators, such as provisions require the offshore device operators to have an emergency plan in responding to oil pollution accidents, and this emergency plan must be combined with a national plan to deal promptly and effectively with pollution accidents. The provisions on international cooperation to responding of oil pollution are still limited. *Law on Environmental Protection of Vietnam 2014* does not have specific provisions on international cooperation in marine environment pollution<sup>33</sup>, it is only the general rules.

<sup>32</sup> Law on Environmental Protection of Vietnam 2014, Article 51: Prevention of and response to marine and island environmental.

<sup>33</sup> Law on Environmental Protection of Vietnam 2014, there are only two articles related to international cooperation on environmental protection, and it is

Currently, Vietnam only has Decision No. 12/2021/QĐ-TTg<sup>34</sup> stipulates the regulation on oil spill response, but it still has many shortcomings as a partition to rescue, decentralization in approving the plan on oil spill response. The current oil spill response resources can only meet the oil spill that the volume of oil spilled is about 500 tons, equivalent to Level 2<sup>35</sup> as decentralization of the plan on oil spill response. In general, the specialized port, the anchorage area have the plan on oil spill response, however, this plan on oil spill response is only grassroots level.

In addition, the organizational structure of the management bodies of environmental protection is not yet complete, there are many agencies involved in environmental protection in general and anti-oil pollution in particular<sup>36</sup>. However, there has not been agency as “commander in chief” on this issue. A “commander in chief” would help coordinate closely between agencies in protecting the environment and anti-oil pollution, it is necessary because the issue of the marine environment is a global issue, Vietnam needs the cooperation and supporting the experience of other countries and international organizations in the prevention of pollution, especially the oil spill incidents at higher levels. If there is not a “commander in chief”, such cooperation will face many difficulties. The cooperation between countries is absolutely necessary to exchange and share experiences on the management of the marine environment, financial assistance and technology equipment in the issue of management, supervision and protection of the environment.

Prevention and remediation of oil spills are essential to working, but it is also extremely complex and difficult, requiring rapid cooperation, and applied appropriate specialized technical measures. Most of the problems related to this field require a unified standardization of law, organizational, professional technical within the national scope as well as within the region and the international scope. Therefore, over the past period, Vietnam has actively joined some international conventions on the prevention of marine pollution in general, and oil pollution prevention in particular. The joining of such Conventions in the past time has created favorable conditions for improving the system laws of Vietnam. Besides, Vietnam is studying, considering the joining of other important conventions on oil pollution, including the OPRC 1990. The OPRC 1990 is an international convention on cooperation related to oil spills, it identifies the importance of mutual assistance and international cooperation on issues related to oil spill response at sea. And if Vietnam joins OPRC 1990, Vietnam will have the basis to make good such shortcomings.

only nature-oriented, non-specific. Article 157: Environmental protection during international economic integration and Article 158: Expanding international cooperation on environmental protection.

<sup>34</sup> Decision No. 12/2021/QĐ-TTg to Promulgate the Regulation on Oil Spill Response was issued on March 24, 2021 by Prime Minister, and amended on May 10, 2021.

<sup>35</sup> Decision No. 12/2021/QĐ-TTg to Promulgate the Regulation on Oil Spill Response, Article 6.

<sup>36</sup> Now, agencies involved in environmental protection of Vietnam including Ministry of Transport, Maritime Administration, Ministry of Environment, Vietnam Coast Guard, Vietnam Border Defence Force, etc.

Moreover, on 14 August 2009, the Prime Minister issued Decision No. 1278 / QĐ-TTg approving the implementation plan of joint Statement and framework program between Vietnam, Cambodia and Thailand on cooperation, preparedness, the response to oil spills in the Gulf of Thailand. The content of this Decision emphasizes provisions of the OPRC 1990, CLC 92, FUND 71 and 92, but now Vietnam is not a Member State of OPRC 1990.

Vietnam will join the OPRC 1990 Convention in the future, along with the implementation of other international conventions related to marine pollution prevention is also Vietnam's obligation on international cooperation to be prepared and respond to oil spills timely and effective. And that is also the national responsibility for the protection of the marine environment of the region, consistent with the objective of strengthening international cooperation in the context of globalization. This is an activity to help Vietnam strengthen and improve surveillance systems, detection, response, remedy and addressing of the consequences of oil pollution at present.

In conclusion, the joining of this Convention contributes to improving the legal system of Vietnam on the prevention and remedy, addressing the consequences of oil pollution. And it also helps accelerate the process of incorporating the provisions of the Convention into national laws, consistent with the real situation of Vietnam, contributing actively to the protection of the marine environment in Vietnam as well as the marine environment in regional and global.

## Conclusions.

With the efforts of States and international organizations, a series of international conventions on the prevention of marine pollution (which is mainly caused by oil pollution from ships) were issued, and it establishes an international legal framework for the protection of marine environment worldwide. The above-mentioned conventions have reflected policies on the protection of the marine environment.

Firstly, the sea is the common resources of human, thus the protection of the marine environment is the responsibility of all humanity, States, subjects that use and exploit the sea. This principle is clearly stipulated in the UNCLOS 1982, MARPOL 73/78, etc.

Secondly, the policy of “prevention is better than cure”. MARPOL 73/78 stipulates measures to preventing marine pollution from ships with the requirements for the design, equipment of ships, responsibilities of shipowners and captains in the implementation of regulations on the waste treatment of ships, and the responsibility of the ports in receiving this waste through a waste-receiving system of the shore.

Thirdly, with the human policy, we are aware of the role of human factors in maritime safety and the prevention of marine pollution. The seafarers comply with the requirements and are trained according to international standards will contribute actively in the protection of the marine environment. This policy is reflected in STCW 78/95, SOLAS 74/78.

With the studying, analyzing, deeply evaluating of provisions of the international conventions on oil pollution caused

by ships, it helped us have a better overview of the documents system of international law on pollution oil caused by ships. Each convention has the different rules, but all the international conventions were issued with purpose to create a legal framework and the international legal norms to States enforce and incorporate the content into their national law, to prevent and limit to the minimum negative impact on the marine environment, remedy and deal with the consequences of oil pollution for the marine environment, humans, and animals.

The purposes of international conventions related to prevention of oil pollution caused by ships are protection of marine environment. Marpol 73/78 is the most important convention, because it mentioned sources of pollution caused by ships, such as oil, noxious liquid substances in bulk, harmful substances carried by sea in packaged form, sewage, garbage, air pollution.

We can see, although the IMO issued documents stipulate civil liability for oil pollution damage caused by ships, compensation for oil pollution damage, the international conventions continuously are modified in order to more suitable for reality, but in fact, the oil pollution incidents still occurred, therefore, we have a question, are the provisions of international conventions concerning oil pollution caused by ships really implemented well by States? From the opinion of the author, we should have stricter regulations to request States implement the regulations. The international conventions are really effective if the subject of international laws implements them seriously, such implementation is shown by the countries whether they enforce strictly the provisions of international conventions or not. The provisions of international conventions of oil pollution caused by ships can implement well or not depends very much on the implementation and incorporation of the Member States of international conventions.

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