Oil Pollution Liability Insurance in Marine Transport

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Abstract
Oil pollution derived from oil tankers and container ships as well as Fuel oil marine vessels is one of the important resources for marine pollution that imposes heavy damages. According to Conventions relating to oil pollution, Ship and marine vessel owners have been obliged to compensating damage, yet in most cases even if the victim who exposed to damage is sentenced in Liability claims, he will face insolvency. In this sense, Civil Liability Convention and its subsequent amendments and Bunker Convention have all exploited from liability insurance system to assure damages to the injured. According to this system, ship owners are obliged to obtain insurance policy or assure financing other reputable international insurers as much as possible. However, such insurance policies span dangers and deeds by ship owners and the agents and brokers who are in contact with them, but some losses relating to the cause of the event occurrence, geographical region, Tonnage of ships and so forth are not spanned in insurance policies. This study aims to address defining legal aspects, the conditions to assure insurance, dangers under coverage, commitments by insurer, exemption from liability insurance and compensatory damages.

Key words: liability insurance, oil pollution, ship owner responsibility, civil liability convention, International compensation fund

Introduction
Marine pollution is potentially a big threat, where can emerge in irreparable damages. The loss of plant communities affected by oil pollution in marines leads to reducing animals feeding from plants. Indeed, big changes might emerge in water cycle, and as air and water cycle are intertwined with each other in environment, humans as a part of environment will be put in danger (Henkin M. international low and Materials, American case book Series, west publish on, 2002, P.341). According to the expansion of marine transport, a major resource for arising pollution can be known as the pollutions from ships, where on oil pollution is emerged due to Fuel oil spills and discharges and outflow of water balance, or affected by reefs, and Ships collision, or Cargo fire and explosion, and each of all these factors has been discussed to end with finding the main cause of air pollution. The samples can be named horrific Oil Tanker collision in Spain, in which great amounts of crude oil were spilled to sea, and made 100 km of coasts in this country polluted, so that a large group of birds disappeared and coasts were seen with loss of Living organisms. Abundant damages entered to people's properties in adjacency with coast, where substantial amount was spent for this pollution .Of tangible features in oil pollution, it can refer to extension of losses to environment and humans, especially in cases the oil pollutions are emerged near to coasts, the effects from oil pollution will expose much damages and losses to the residents in adjacency with these coasts. As enormous losses incurred cause the faulty not to have ability to compensate loss, forecasting appropriate arrangements to minimize losses incurred and compensate losses to the injured, has been a big concern in government. In response to this, International Maritime Organization in completion of customary international law, acted to sign civil liability convention to compensate oil pollution losses and international intervention convention in high as exposed to oil pollution events,
and Subsequent to these plans, Convention of the International Fund for Oil Pollution Compensation and Bunker convention were prepared and issued (Boyle, alen and, Brinnie, Basic Document on international law and the Environmental, oxford univarcityprees,2005,P65-83). The conventions prepared aiming at avoiding Second Pollution, facilitating consideration of security claim and compensation of losses to victim, and the other main aim forecasted with civil liability convention and Bunker convention, stated, it can compensate enormous losses from oil pollution Within the territorial sea and the exclusive economic zone for the members who use such conventions. This study aims to examine issues relating to losses insurance derived From oil pollution. The general framework of this study includes mandatory property of Oil insurance, Individuals committed to getting this insurance, dangers under oil liability insurances, irreparable losses and the cases that are not under insurance. Compulsory liability Insurance of Ship owners for Maritime Claims Theoretically, civil liability seeks to achieve two aims: the first is support from assets of the person in charge, and the second support from the injured by facilitating compensation of losses. Today, liability Insurance has been compulsory in most cases. The necessity to protect environment against oil, gas and nuclear pollution has been addressed in different documents, and governments, ship owners, owners of refineries and coastal and marine equipment, have been found with liability to losses from oil pollution derived from their negligence to do the best in their liability. Further, importance and extension of oil losses and lack of ability to compensate losses for victims require losses insurance likewise the vehicle insurance becomes mandatory. The owner of a ship at the time of an incident, or, where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident. No liability for pollution damage shall attach to the owner if he proves that the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or, was wholly caused by an act or omission done with intent to cause damage by a third party, or, was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function. If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person. The owner of a ship shall be entitled to limit his liability under this Convention, or The owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. Compensation for oil pollution damage caused by spills from oil tankers is governed by an international regime; The framework for the regime was originally the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention). The 1992 Civil Liability Convention governs the liability of ship owners for oil pollution damage by laying down the principle of strict liability for ship-owners and creating a system of compulsory liability insurance. The ship-owner is normally entitled to limit his liability to an amount which is linked to the tonnage of his ship. In order to ensure being under coverage of insurance, ships oblige to get a license based on this fact that insurance or other financial guarantee exists in accordance with the provisions of this convention. Hence, followed by observing provisions of Compulsory liability Insurance as declared by competent authority of the Contracting State, a license will be issued for each ship. A ship that is registered in a Contracting State, this license will be issued or confirmed by competent authority of the Contracting State. A ship not registered in the Contracting State, that license can be issued or confirmed by competent authority of each Contracting States. Guarantee on no insurance and lack of getting license have lacked engaging in trade by contracting state and avoiding their coming and going in the waters under sovereignty of contracting states. Indeed, ships that carry
Over two thousand tons of oil cargo will be refrained from engaging in transportation, if not be under coverage of financial guarantee or insurance. As stated, civil liability convention just supervises ships that transport oil in mass and as a cargo. Hence, provisions of convention include General cargo ships and the ones which do not transport oil in mass, and also the oil tankers. This convention does not encompass the durable oils, where found with the liability to compensate oil pollution in case of pollution. Indeed, as most of oil pollutions resulted from anything rather than oil cargo ships including marine pollution, transporting toxic hazardous materials through sea, or oil pollution emerging from general oil cargos, have not been under coverage of convention 1969, thus it was essential to adopt another convention to bring about absolute liability for any oil pollution and adopt Supplementary actions to assure sufficient and rapid compensation resulted from exit or discharge of oil from ship. Hence, United Nations has acted for organizing international convention on civil liability to compensate oil pollution in 2001. According to this convention, ship owners in case of an incident are obliged to compensate pollution loss from any fuel in the ship or the fuel came out of ship, provided that if an incident Encompasses a series of events with the same origin, liability will be put on shoulder of ship owners in case of appearing the first event. To assure sufficient compensation for losses, ship owners must insure their liability or get other financial guarantees, thus it can be convinced of the need to elaborate a compensation and indemnification system supplementary to the International Convention on Civil Liability for Oil Pollution Damage with a view to ensuring that full compensation will be available to victims of oil pollution incidents and that the ship owners are at the same time given relief in respect of the additional financial burdens imposed on them by the said Convention. Liability Convention means the International Convention on Civil Liability for Oil Pollution Damage. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the Liability Convention as amended by that Protocol. However, insurance is recalled obligatory, no definition has been defined for obligatory insurance and other financial guarantees to date. Hence, to have a full understanding on such concepts and provisions, it is required adhering to common concepts on Compulsory liability Insurance. As stated above, the owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability to cover his liability for pollution damage under this Convention. In this regard, in opinion of jurists given other provisions, it must state that provisions of Compulsory liability Insurance are not just required involvement by individuals in signing insurance contract to provide documents and evidences, but also required to specify the factors as follows: 1- type of liability, 2- Maximum obligations, 3- liability of the injured. An accurate analysis of liability insurance for the loss from oil pollution will be followed by the cases as follows:

- Limited liability regime for oil pollution
- The parties required to insurance contract
- challenges relating to protection and security groups as insurer
- request for compensation
- certification

**Insurer in liability insurances for oil losses**

Another topic proposed on insurances for oil loss is determining parties that are obliged to insure the losses. In early, it seems that anyone in charge of losses from oil pollution must be obliged to insure the losses. According to civil liability and bunker conventions, the Tenants of empty vessel and ship exploiter will be in charge of oil pollution, thus it is expected they adhere to insuring ship relating to liability from oil pollutions. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a Contracting State such certificate shall be issued or certified by the appropriate authority of the
State of the ship’s registry; with respect to a ship not registered in a Contracting State it may be issued or certified by the appropriate authority of any Contracting State. This certificate shall be in the form of the annexed model and shall contain name of ship and port of registration, name and principal place of business of owner, type of security, name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established, period of validity of certificate which shall not be longer than the period of validity of the insurance or other security. Further, article 7 of convention has known ship owner obliged to signing liability insurance contract or adopting financial decisions, that this is exercised in case capacity of ship be greater than one thousand or two thousand tons, and registered in a contracting state. Indeed, this convention exempts another one rather than ship owner with the capacity below two thousands to get compulsory insurance. On the other hand, liability insurance for registered ships has not been found covering liability of other individuals like exploiter and tenant as the ones in charge of liability in bunker convention. Where the owner, after an incident, has constituted a fund in accordance with the fact that The owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount, and is entitled to limit his liability, it can have the result in this way no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim, the Court or other competent authority of any Contracting State shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

**Dangers under coverage**

Danger in the context of civil liability insurance is a legal danger where civil liability meant the civil liability on the shoulder of insurer, i.e. civil liability relates to loss compensation. In national legal system, article four of insurance states that subject of insurance might be any type of civil liability, cleared that criminal liability cannot go under insurance. In international civil liability convention and bunker convention, a danger under insurance is the ship owners’ liability to oil pollution resulted from incident including collision, explosion and leakage, where incident under liability spans a wide range of events. Indeed, insurer’s adherence is on liability by ship owners, mentioned important likewise the adherent’s liability. If exemption was supposed for ship owners, liability insurance will be changed and then get close to incident insurance. Hence, if a loss emerges due to fault by the injured and insurer, and as a result insurer obliges to pay half of the loss, the insurer will be obliged to pay half of the loss. Insurer, to oblige loss compensation, paying loss relating to this liability must be in charge of insurer. Hence, in case the conditions to guarantee insurer not provided or danger and loss found in exceptions, then insurer will not adhere to this. In the ship owners’ liability insurance, undoubtedly the liability based on fault resulted from negligence or disobservation of ship owners will be under coverage of compulsory insurance or financial guarantee. Liability insurance supposed by insurer’s intentional fault is not clear, as this goes true about Condition of lack of liability, so that lack of insurance in intentional fault is not the same as lack of liability. Condition of lack of liability in intentional faults is cancelled that devolves exercising commitment to adherent’s choice. The commitment undertaken by adherent is canceled based on general rules, yet this does not go true in liability insurance because fault is not by insurer, where it is by ship owner. The most important reason proposed for lack of insurance validity in supposition of intentional incident is that insurance will be probably cancelled in case of intentional fault. Danger is assumed as the fundamental element of insurance and an uncertain event that does not rely on insurer’s will, and if the danger relies on insurer’s will, the chance will not be likely and the event will be absolute for the one created it. Hence, intentional fault puts aside the chance and danger so that it cannot be under coverage of insurance(vienyet jourpain (Patrice), les effets de la responsabilite , 2ed, L.G.L 2001,n363,P.403; lambert faivre (Yvonne), Droit des assurance,unedition Dalazz,2003,P.511,No383; B. Beigniel , driot du contract
it can see a high criticism on this argument as believed intentional fault puts aside the chance, where on the incident will be likely and not definite in this case (Brids N.J., Hird, modern insurance law, 5ed, sweet maxwel, 2002, p.203-231; E.R.H. Ivamy, general principle of insurance law, 4th edition, Butteworths, 1979, pp.289, 285). If an incident occurs accidentally, it will not be under coverage of insurance because it does not span intentional event, as there is conflict between accidental incident and intentional incident. Hence, some authors have mentioned intentional incident out of scope to be discussed here. As discussed earlier considering incident, it can say where an incident has caused pollution damage in the territory, including the territorial sea of one or more Contracting States or preventive measures have been taken to prevent or minimize pollution damage in such territory including the territorial sea or area, actions for compensation may only be brought in the Courts of any such Contracting State or States. Reasonable notice of any such action shall be given to the defendant. According to common law, intentional incident has been mentioned out of scope to be discussed due to two reasons: first, parties’ will and the second public order. In any contract including liability insurance, it is supposed that compromise provisions have caused intentional incident by insurer to be an exception. In addition to this supposition, liability insurance validity considering intentional fault is against public order, and also in contrast with bunker convention, because insurer who is free to incur damage to life and finance of others, is in charge of liability. Further, extension and importance of environmental protection in marines oil pollution are taken into particular consideration, where all protection and security groups in their contracts with ship owners put aside this incident from insurance inclusion. In spite of this, international documents relating to civil liability on oil pollution compensation and international environmental protection fund inspired of common law system, have not known insurer obliged to compensating loss, but have discussed on liability of ship owners. In international claims, decree is given to exemption of insurer to pay compensation in intentional fault by ship owners, unless contractual conditions to be included in such dangers (American jurisprudence 2ended, v, 99, Insurance, n, 1912, p.260-261). Nonetheless, the rule going on, says, incident driven from intentional faulty by insurers will be under coverage of liability insurance. Influence of liability insurance does not mean allowing insurer free for loss in contrast with public order. According to this supposition, intentional fault is a real threat to insurer, thus if ship provider intentionally spills oil cargo to territorial sea and open waters, thereby the ship provider will exploit from insurance (Roy, insurance law, 5ed, covandish publishing ltd. 2003, p.331, 351). In Iran’s law given Legal Doctrine, it is assumed that just liability insurance comes true in supposition of intentional fault by ship owners, but insurer will be committed to ship owner’s deeds in case of intentional fault considering lack of accuracy in contract. As ship owners insure their liability to oil pollution referring to insurer, it seems that the liability of ship owners and their workers will be insured in this case. Indeed, such a way of thinking will not come true in insurers’ mind. In spite of this fact, article 14 of insurance law does not know insurer liable in intentional fault incurred by insurer and his representatives, but it is clear that representative act to exercise affairs. A particular representative undertakes to exercise legal affairs, but oil transport provider undertaken exercising contract or a worker engaged in discharging oil, will incur damage.

**A particular attention must be paid on points as follows:**

- If ship owners have colluded as insurer with their foremen, or satisfied with intentional Fault incurred by foreman, then insurer will not be liable to loss compensation because intentional fault will be attributed to insurer.

- In intentional fault, when insurer paid for losses incurred, he will have the right to compensate losses incurred to foreman who is in charge of liability to a Vicarial of the injured, because the only one with liability will be foreman not insurer (Lambrt. Faivrel Yvonne, Driot des assurances, 1ed, daloz, 2003, n0398, P.351).
Insurer is obliged to compensate all the losses incurred, unless the ones mentioned as exception in the contract, that he has to have a full understanding to the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships, for which he has required to adopt uniform international rules and procedures for determining questions of liability and providing adequate compensation. Compensation will be for loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken, considering the fact that insurer is obliged to compensating losses.

**Compensatory damages**

1969 Liability Convention regarded as the International Convention on Civil Liability for Oil Pollution Damage, has known Compensatory damages included of the financial losses incurred or costs relating to voiding oil pollutions. Paragraph 6 of article 1 in international civil liability convention defines pollution losses as follow: loss or damage incurred out of ship affected by pollution from oil discharge coming out of ship, for which rational acts are considered to compensate the losses, and another definition is the costs paid for preventive acts and loss from these preventive acts. As the article indicates, compensatory loss limits to damages and losses incurred to properties under sovereignty of government or Possession of third parties, that incurred in the territorial sea and the exclusive economic zone affected by pollution or preventive acts to minimize loss or avoid it. Article 2 has known loss including pollution losses in the territorial sea and the exclusive economic zone till 200 mile from origin line as the cost for preventive acts to avoid or minimize loss in any region and area. Hence, if the contracting state affected by pollution deprives from achieving a benefit in future like benefits from Customs duties of vessels entered into place or benefits lost due to decreasing export, The lack of benefit will not be devolved upon ship owners and insurer (Wu, Chao, ‘Liability and Compensation for Bunker Pollution’, 33 J. Mar. L. &Com. 553 (2002), note3.p.45). However, paragraph 6 of article 1 has excluded lack of benefit, where lack of benefit has been excluded of Indemnification measure that limited to Payment based on reasonable measures. In other words, it can deduce from this article that Indemnification for environmental damage except for evaluation measure for Indemnification from lack of benefit obtained of damage is limited to reasonable acts conducted to reform the status, where nothing has been mentioned for how to apply Indemnification. Hence, to receive Indemnification from lack of benefit, the injured will be obliged to ask for Indemnification based on Competent law in case losses from lack of benefit were known completely, proven lack of benefit provided with measures. Further, Physical and moral damages incurred to third parties in contracting state in territorial sea will not be accounted as commitments of ship owners and insurer, yet Providing compensation through international fund will be compensated(Ibid or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken, and(b) the cost of preventive measures and further loss or damage caused by preventive measures.”). Risks Out of inclusion of insurance Can the insurer refer to all the faults that an insurer can have against the insured, .e.g. if the insurer is not obliged or his liability is cancelled, will the insurer exempt from loss compensation against the injured with have recourse on no liability by the insurer? Here, the question is asked in another way, whether the losses from third party’s fault or fault by the injured or event during war can be compensated, also asked whether is under coverage of compulsory insurance or out of insurance contract. It is clear as the name of liability insurance indicates, insurer has insured civil liability of insurer, thus if the insurer was found without liability, or his liability removed, then insurer will not be in charge. In Civil Liability, the insurer is committed to insuring all the losses incurred, and the right of the injured on the insurer has
been derived from loss compensation on the insurer. The insurer’s liability might be cancelled due to lack of realizing civil liability or limited contractual or legal conditions.

**Lack of realization of civil liability conditions for ship owners**

The main rule goes true in the fact that Lack of realization of civil liability conditions for ship owners causes insurer free from compensation, that is, if a Causation relationship does not exist between ship owners and incident occurrence, or loss does not relate to incident in the ship or no loss does not incur to the victim, or an external factor cuts Causation relationship of loss to ship, or insurer’s fault does not prove in liability regarding fault, and if conditions of insurer’s civil liability are not provided, it is clear that the insurer can have a recourse to lack of insurer’s civil liability and to lack of Indemnification on government or third parties (Starch Boris, Roland Herri, and , boyer laurant, regime generale,6ed,par herri roland, litec,1999,no.678,p.712 ; corpus Juris secudum, a complet restatement of the entire American law,v.46,5th reprint w.p.c.1975, p.1191,1123; favir rochex an cortive, ibid,n090,p.55). Article 1 and 2 of civil liability convention,1969, and bunker convention do not know ship owner in charge in three cases: 1- if loss results from Actions or omissions of third party, 2- if loss results from Power Cairo, 3- if loss results from Negligence or mistake by government or official authority; in a plain language, No liability for pollution damage shall attach to the owner if he proves that the damage: resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or was wholly caused by an act or omission done with intent to cause damage by a third party, or was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function. Paragraph 8 of article 7 in civil liability convention about effect of these factors on decline of insurer’s commitments, declares, any claim for pollution loss compensation can be arisen against insurer or another person that is granted with compensating pollution loss for ship owner’s liability. According to what discussed above, the cases excluded of insurance inclusion are characterized in three categories:

**Loss from third party’s fault**

If third party causes oil pollution loss, that is, a causation relationship between incident occurrence and oil tanker stops, and all the loss turns back to the third party, then ship owner will not have any liability. It is obvious that the insurer will be exempted from liability due to Subordinated obligation of the insurer. British courts have interpreted the law for the right of the injured against insurer that the right of the injured does not go beyond insurer’s rights, and all the faults and exceptions derive from insurance contract against the injured. In most of marine insurances, the necessity for Indemnification by insurer to the injured for insurer’s commitment is regarded as a condition that liability of insurer to the third party is proven to pay for loss and pay the loss to the injured. House of Lords in two claims declared until the time insurer has not paid for loss, he has not the right to refer to insurer and direct claim by the injured due to Failure to fulfill the conditions and not providing right to refer for insurer is rejected (Firima c .trade s.a. v. Newcastle protection and indemnity association the faint socony oil oil co. inc. v. west of England ship owner mutual insurance association London Ltd , the padre island 1991,2 a .ci.). Paragraph 2 of article 3 of 1969 civil liability convention, states, no pollution loss liability will be caused by owner unless derived from act or omission of third party with the intention of any loss. If fault by third party be a reason for loss, that is, if loss relates to the third party and oil tanker, in this case loss will bring about due to two reasons, and commonality in causation will lead to commonality in liability. In such a situation, insurer can be exempted to pay half of loss to the injured exactly like the situation for the insurer that must pay the loss to the third party. Although some authors have had a criticism on this point, and have known justice required in cases that the injured committed to fault and insurance can be provided for the injured, the injured can refer to the insurer to compensate all losses. This view has been rejected in bunker convention and 1969 civil liability convention. This meant in case the ship owner proves pollution loss has been in part or complete stemmed from act or omission of the injured i.e. the injured has caused loss, the ship owner can exempt him in part or complete against the injured. As agreed on this article on fault by the third part in causation
relationship, the principle proposed for it can be exercised because no characteristic in the fault by the injured is seen that justify canceling insurer's liability.

**Loss from force majeure**

According to the first part in second paragraph of article 3 in 1992 civil liability conventions and article 2 of bunker convention, loss from force majeure is out of scope. No liability for pollution damage shall attach to the owner if he proves that the damage: resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or was wholly caused by an act or omission done with intent to cause damage by a third party, or was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function. Article 28 of Iran's insurance law, states, the insurer will not be in charge of loss from war and hostilities unless mentioned in the insurance documents. Removing loss from force majeure regarding liability inclusion and insurance has been in consistent with legal terms and conditions, because force majeure in legal perspective puts aside the causation relationship between the act by the injured and loss as one of the important pillars for making civil liability true, thus in this case no liability will emerge. Further, no one can be included in the incidents derived from natural forces or irregularity. Indeed, to end with ship owner's liability, coverage by insurance supports will be cancelled. War and hostilities by people include demonstrations by a group of people against properties and people with political, social, economic or religious incentives against representatives. Further, any group with disorder developed due to the incentives mentioned above is called tumult. Loss due to person's criminal act is not considered of tumult characteristics, and can be under coverage of insurance. This belief is the same as article 327 in Islamic penal code through which liability due to force majeure has been totally removed.

**Fault by the injured**

In cases the injured can prevent danger and loss and underestimates it, civil liability and rules will not be with a clear principle for irreparable loss. Just article 4 of civil liability has been found with forgiveness to Magistrate Act, yet it must believe that the fault by the injured cuts the causation relationship between act by the injured and loss, or does not decrease his liability. To see the impact of underestimation by the injured on liability by the injured, it can refer to the provisions of article 15, which states, the insurer must care about insurance to prevent loss and considers some acts if getting close to event or incident. Referred to this principle, It can deduce that the injured must strive to avoid danger and expanding loss, where his negligence cannot be put on others' shoulder, the other caused loss though. There is a principle in common law through which the injured who intervened in loss due to his fault, then cannot ask for loss compensation. The provision of this rule also exists in roman law and its effects are clear in European law(Winfielded,Ibid,P.303,prasserWilliaml,Ibid ,P.426). Because this has been found with direct relationship with causation in loss occurrence, and has limited concept in fault, as referred to the case in which the fault by the injured is the only reason for incident, but this has not been welcomed in most of countries as effect of faults has not been considered(Honre A,m,Ibid,No145,Ripert 488eorge ,la regle morale dans les obligations civile,4ed,paris,1949,www.amazono.com/book, at 2003,2,17,no,130.). The most important criticism on commonality rule in fault lies on a fact that why the fault by the injured must be the reason for his exemption from liability. The 1992 Civil Liability Convention governs the liability of ship owners for oil pollution damage by laying down the principle of strict liability for ship owners and creating a system of compulsory liability insurance. The ship owner is normally entitled to limit his liability to an amount which is linked to the tonnage of his ship. Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or, where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident. If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the
negligence of that person, the owner may be exonerated wholly or partially from his liability to such person. No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against: the servants or agents of the owner or the members of the crew; the pilot or any other person who, without being a member of the crew, performs services for the ship; any charterer (how so ever described, including a bareboat charterer), manager or operator of the ship; any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority; any person taking preventive measures. The insurer providing financial security shall be entitled to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner. As mentioned in bunker convention and civil liability convention, paying charge has been accounted as preventive acts by the government to prevent pollution and minimize loss incurred the ship owners, accounted as insurer’s commitments(M. Fontaine, Droits des assurances, Bruxelles, 1975, N.8, P.40 Veaux fernery, Assurance de damage, regles particuliéres, a lassurance, conditions de la grant(risques couvertss), 1996/fasc11.95,44.P.73-76.). Nonetheless, magistrates can reduce some of the costs recklessly or avoid granting them (les codes belges, T.I: métiers civil et commerciaux, Brulant, bruxelles, p.410).

Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner’s liability for pollution damage. The Fund shall, in respect of any amount of compensation for pollution damage paid by the Fund in accordance with Article 4, paragraph 1, of this Convention, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor. Nothing in this Convention shall prejudice any right of recourse or subrogation of the Fund against persons other than those referred to in the preceding paragraph. In any event the right of the Fund to subrogation against such person shall not be less favorable than that of an insurer of the person to whom compensation has been paid. In Iran’s law, article 15 of insurance law has considered two liabilities for the injured: 1- it obliges the injured avoiding loss extends, 2- it obliges the injured to inform the insurer in the early 5 days, otherwise the insurer will not be liable. In view of jurists, the decree “the insurer will not be liable” does not mean lack of liability by insurance against loss that emerged due to negligence by insurer, rather that emerged due to incident, because insurer is obliged to his own deed and promise. In an assumption that incident occurred without intervention by government can be accounted as an incident derived from two causes, thus it can say that loss attributes to two causes and the injured is not deprived from asking all losses. In most legal systems, it is intended to consider liability on shoulder of the injured and the one who caused loss. Hence, all the ones caused loss and damage will share in compensating liability. Paragraph 3 of article 3 in civil liability convention has known this decree in liability of ship owners in oil pollution loss followed by legal systems. In this sense, if ship owner proves pollution loss appeared in part or in complete due to act or omission of the injured, aiming at any loss occurrence, thereby the ship owner can be exempted from liability. If insurer undertakes half of loss in case of any loss and fault by the injured, the insurer can share the fault with the injured, and to be exempted from paying half of loss. As said above, some authors have not believed in this way and known justice required in case the fault found by the injured, yet any loss in insurance requires liability, in order that the injured could refer to insurer to compensate loss. Yet, there are exceptions in this case, e.g. Act of 5 July 1985, France on driving events has known insurer liable to compensate loss incurred to the injured, So that any incidence in which a vehicle involved and loss incurred to the injured will be sufficient for liability, and will not require other civil liability conditions including fault and causation relationship, but, as discussed, this does not mean that this law has set a direct insurance system instead of liability insurance, because the insurer is liable in such a situation, and civil liability. Yet, this does not mean that this law has set direct
insurance system instead of liability insurance, because the insurer is liable in such a situation, considering the fact that civil liability has remained far away rather liability insurance. In Iran’s legal system, a new reform of compulsory law has sentenced insurer in case any damage entered to the injured. It is believed that insurance has changed liability and transformed it to events. It seems that this rule has not derived from bunker convention and civil liability convention, because convention in this assumption has known ship owners exempted from this liability, and the rule here goes true in this way that insurer is liable. In other words, imposing such losses on insurer is not required for legal declaration, which such declaration has not seen in any convention and international documents. Unavoidably, it must adhere to international fund for oil pollution compensation.

Legal limitations

International transport conventions in marine and air contexts have considered certain rules for provider’s responsibility against loss imposed to passengers and other third parties and oil pollution losses. It seems that insurer undertaken transport provider’s responsibility can refer to this, as undertaken to compensate the loss incurred to the injured. In oil pollution loss, international conventions including bunker convention, civil liability convention and 1969 oil pollution convention and international fund convention to compensate loss have determined a certain term for responsibility of ship owners. Paragraph 1 of article 5 states, the ship owner has the right to limit his responsibility regarding this convention relating to each incident provided that all the value must not exceed $59.7 million. Undoubtedly, the insurer can spend utmost 5 million for financial guarantee for transport provider’s liability, where this right has been forecasted in article 6 of convention, through which the insurer can utilize advantages mentioned in paragraph 1 of article 5, even if the ship owner is not provided of the right to limit his liability. Hence, despite losses incurred to passengers and other third parties in transport that legal doctrine has invented the right to refer to liability for insurer with difficulty, no ambiguity exists in pollution loss. According convention, liability insurers are provided with the right to refer to liability.

Liabilities undertaken by insurer

If insurer is not obliged to compensate all losses, he must compensate all in case of lacking opposite conditions. In other words, all the losses must be compensated by the insurer. Less happens the insurer does not consider any limitation for his liability. Insurers use two different types of limitations in insurance contracts. Setting maximum guarantee determines maximum liability for insurer. Further, insurer also faces two types of limitations that might lead to misuse of insurer and the outcome that must be avoided. In oil pollution loss, the maximum guarantee in limiting liability of ship owner and insurer has been used. Maximum guarantee represents maximum liability by insurer. Hence, it must not assume that a certain value is paid like the value registered in people's insurances that must be paid. Vice versa if loss value be less than the given value, insurer must pay for the value determined and owed, and if the value be higher than given value, the insurer must pay for that certain value. Determining maximum value is not compulsory but insurance contract might be unlimited to parties’ will or decree of law. Less happens the insurer determines the liability undertaken by him only with registering a certain value. Generally, insurance includes liability of insurer to a person or incident and sometimes the insurer limits his liability to a certain value, and in such a situation the events occurring during the time insurance works, do not cause the liability be insurer decreases. Ten incidents might occur in a year, but the insurer is committed to each by a certain value. The registered owner of a ship having a gross tonnage greater than 1000 registered in a State Party shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended. Rights to compensation under this Convention shall be extinguished unless an action is brought there.
under within three years from the date when the damage occurred. However, in no case shall an action be brought more than six years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the sixyear period shall run from the date of the first such occurrence. Firstly, civil liability on Frank Gold, where the liability undertaken in pollution loss in each incident has been in maximum 210 million frank gold, but, now the liability is determined and calculated based on protocol to the international convention on civil liability for oil pollution protocol 1996. According to article 5 of convention reformed through protocol 1976, liability limits equivalent to the right to utilize for each ton from ship provided that over 14 million must not be used. Yet, if pollution derives from serious negligence, liability of ship owner cannot be limited to this value, where insurer has the right to refer to this value. Liability of insurer and ship owner in protocol 1992 has changed and increased in a large value. According to paragraph 1 of article 5 of civil liability convention, maximum insurance for liability changes regarding the ship capacity. For instance, if ship capacity is three thousand ton and loss incurred be about 10 million, the ship owner and insurer ultimately will be obliged to compensate loss for 3 million. Yet, if ship capacity be six thousand tons, liability of insurer will not exceed from three million and 420 thousand, loss incurred is more than value though. If loss incurred in a ship incident is calculated 70 million, the ship owner and insurer will be obliged to pay about 59.7 million. According to paragraph 2 of article 5 in convention, any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner’s liability for pollution damage. In such a case the defendant may invoke the defense (other than bankruptcy or winding up of the ship owner) which the ship owner would have been entitled to invoke, including limitation pursuant to article 6. Furthermore, even if the ship owner is not entitled to limitation of liability according to article 6, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defense that the pollution damage resulted from the willful misconduct of the ship owner, but the defendant shall not invoke any other defense which the defendant might have been entitled to invoke in proceedings brought by the ship owner against the defendant. The defendant shall in any event have the right to require the ship owner to be joined in the proceedings.

Conclusion

Extension of losses from oil pollution requires applying the best and most effective way to compensate losses to victims. This comes to realize by applying different approaches. Civil Liability is one way to compensate losses. It is believed to the need to elaborate a compensation and indemnification system supplementary to the International Convention on Civil Liability for Oil Pollution Damage with a view to ensuring that full compensation will be available to victims of oil pollution incidents and that the ship owners are at the same time given relief in respect of the additional financial burdens imposed on them by the said Convention. the owner liable for the damage under the 1992 Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the 1992 Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him; Legal regime of oil pollution liability in form of conventions for oil pollution liability and bunker are the best samples attempting to provide a new model. Adopting proper insurance orders to ship owners is a provision that causes oil pollution compensation to the injured is carried out in sufficient, leading to avoiding negligence by the ones who are liable. Today, incidents that cause oil pollution in marine transport are decreasing, and this is a reason for new arrangements in insurances. Adopting a new approach including compulsory insurance is a way to compensate loss in international conventions, through which it can compensate loss incurred to the injured. On one hand benefits for countries involved in marine transport and financial capability of
insurance companies cause to expect different limitations on compulsory insurance by content of compulsory insurance registered in international conventions. Where an action for compensation for pollution damage has been brought before a court competent under Article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Fund for compensation under the provisions of Article 4 of this Convention in respect of the same damage. In case an action under the 1992 Liability Convention for compensation for pollution damage has been brought against an owner or his guarantor before a competent court in a Contracting State, each party to the proceedings shall be entitled under the national law of that State to notify the Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgment rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgment was given, become binding upon the Fund in the sense that the facts and findings in that judgment may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

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