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National Sovereignty and Globalization

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Abstract

The research represents an analytical and conceptual approach to a complex issue, namely national sovereignty in context of globalization, a very topical problem in contemporary world. The informational material collected, studied and used is part of scientific works closely related to the issue addressed, being subsequently interpreted to argue the opinions expressed. The research methods used in this paper are: the documentation method, the comparative method, the analytical method, the logical method, the applied method. This paper captures the interaction between indivisible national sovereignty and the doctrine of divided sovereignty, the latter being seen as a possible solution to the negative effects of globalization. In the context of the globalization process, there is a tendency to consider the sovereignty of states as an obstacle to economic progress. Globalization implies the intensification of interdependence relations between states, whichcontradicts the principle of sovereignty. Thus, a conflict arises between the institution of sovereignty and the process of globalization, a conflict that can be resolved only by a divided sovereignty, respectively by creating supranational structures in which states jointly exercise certain responsibilities and carry out projects based on international cooperation. If until recently theissue of divided sovereignty was indisputable and unacceptable, in the currentconditions of the globalization process that characterizes international relations, the situation has changed significantly, as it is imperative to adapt notions and concepts to new configurations. According to the author, European integration has sought to create a strong regional structure capable of protecting national identity and the classical notion of a sovereign state in the context of the process of globalization on a global scale.

Keywords: Globalization, the principle of the national sovereignty, divided sovereignty, European Union, territorial internationalization.

From Sovereignty to the Division of Sovereignty

"For over a generation, the tendency of world politics has been to weaken statehood. In the twentieth century, many states were too powerful: they tyrannized the population and committed acts of aggression against neighbors. [...] For the period after September 11, 2001, the main problem of global policy will no longer be to find ways to restrict statehood, but to build it. For individual societies and for the global community, the withering of the state is not a prelude to utopia, but to disaster" (Fukuyama, 2004).

Sovereignty is an extremely complex legal notion interdependent with national authority, manifested on the legislative process and on the territorial space of a state.

Hegel wrote that "foreign political law derives from the relationship between independent states; what is found in and for itself in this report acquires the imperative form, because its reality in fact rests on distinct sovereign wills. (...). States are not private persons, but completely independent entities in themselves, and thus their relationship is presented differently from a moral and private law relationship. (…) The people, as a state, are the spirit in its substantial rationality and in its direct reality, therefore it is the absolute power on earth; one state is therefore sovereignly independent of another" (Hegel, 1969, 373).

In accordance with the provisions of international law, any state is its own master, having supreme authority over its territory and its citizens. In addition, with the collapse of the communism in Central and Eastern Europe, "the nation-state acquired a special political form - its main variant crystallized as a liberal or representative democracy" (Dahl, 1989, 221). Therefore, the interference of a supranational authority is considered unacceptable, according to the principle of sovereignty, a principle on the bases of which states are recognized as having absolute power. But, at the same time, the principle of sovereignty determines the states to be responsible to other sovereign states.

However, we must not regard sovereignty as being contradictory to the principle of legal constraint, because legal norms have not been developed to limit sovereignty, but to ensure its protection in the ongoing process of evolving international requirements to which it must adapt. The obligations assumed by each state based on the international documents to which it has acceded are not likely to limit sovereignty instead they can influence the quality of international relations. And these documents, which constitute the primary source of international law, do not emanate from a supranational power created with the role of affecting sovereignty, a power that imposes laws and measures with direct legal force on the states.

According to international law, between nations exist and develop relations based on coordination and collaboration, not on subordination, and the nations act from positions of equality, being about neither of subordination

to international law, nor of a state to another. And, if in accordance with the principle of sovereignty, there is equality between Somalia and the United States of America, yet, from an economic point of view, the difference between them is huge, Somalia being an underdeveloped country, and America, strong and flourishing. Therefore, we can speak of a de jure equality, which, however, is not valid de facto, a situation determined by the violation of sovereignty, not by respecting it.

His Holiness Pope John Paul II stated in a speech that "A presupposition of a nation's rights is certainly its right to exist: therefore no one - neither a State nor another nation, nor an international organization - is ever justified in asserting that an individual nation is not worthy of existence. This fundamental right to existence does not necessarily call for sovereignty as a state, since various forms of juridical aggregation between different nations are possible, as for example occurs in Federal States, in Confederations or in States characterized by broad regional autonomies..."[1].

But we must not ignore the fact that sovereignty involves certain limits and restrictions, which in the context of globalization, have the effect of slowing down the progress of economic relations, socio-cultural, informational and more, reason what for over the time certain tendencies contrary to this principle have begun to take shape. According to Hans J. Morgenthau, proponents of these tendencies note the existence of a conditioning between the doctrine of sovereignty and the decentralized system of international law (Morgenthau, 2007, 333).

If until recently the issue of divided sovereignty was indisputable and unacceptable, in the current conditions of the globalization process that characterizes international relations, the situation has changed significantly, as it is imperative to adapt notions and concepts to new configurations. However, "sovereignty over the same territory cannot be held simultaneously by two different authorities, as sovereignty is indivisible" (Morgenthau, 2007, 339). The possibility of such a hypothesis would contradict the logic of international relations, causing divergences between international politics andinternational law. Therefore, several supreme authorities cannot coexist in thesame period, exercising at the same time their sovereignty over the same territorial space, over the legislative system or over the government. It is truethat the doctrine of divided sovereignty has developed enormously in recent years, the most vivid proof being the very construction of the European Union,where nations retain their sovereignty, remaining equal and free in a context where humanity faces many real constraints. It cannot be said that the sovereignty of the states of the European Union is violated, but it also can not

1http://w2.vatican.va/content/john-paul-ii/en/speeches/1995/october/documents/hf_jp-ii_spe_05101995_address-to-uno.html

be said that it remains unaffected. Moreover, it might be said that at Union level, the issue of sovereignty generates major conflicts, an example in this regard being the conflict between the principle of sovereignty and the number of seats in the European Parliament allocated to each Member State. "Although individuals exercise or may exercise their right to vote, the power of this vote to shape public policies decreases with the decline of the state's internal sovereignty" (Reinicke, 1998).

The European Union and the Doctrine of Divided Sovereignty

"We refer to the past not to remain confined to it, but to discover its causality, factors and conditions that explain the requirements for the future of sovereignty in globalization" (Belli, 2004, 5).

Following the evolution of the construction of the European Union from its first steps to what it has become today we might be inclined to believe that the principle of national sovereignty is an outdated concept and to think about accepting a form of global governance imposed by globalization, a global governance based on certain forms of supranational authority and interstate cooperation. And it seems that the Treaty of Lisbon is essentially the primary form of regulation of what the author expressed earlier.

The creating of the European Union was determined by the globalizing processes, but also by the need of the old continent to reinvent itself, to create a new identity with an important role both in the field of ensuring global security and in the global political and economic sphere. The construction of the Union itself, since the appearance of the European Communities in 1951, has definitely been an extremely difficult and complex process, the creation of a unity in diversity knowing an extremely winding path throughout its evolutionary course. The Union is without a doubt an original construction between national and supranational, different from other transnational associative phenomena or apparently similar international organizations, from the past or from the present (Rosamond, 2000, 15-16), and during its evolution a tension between federalism and intergovernmentalism was permanently manifested. Perhaps the periods of stagnation of the integration process were precisely the expression of the reluctance of nations to divide sovereignty.

And yet it has managed to create and maintain a balance between maintaining national sovereignty and interstate cooperation for commonly decision-making, without the Union becoming a supra-state authority that dissolves national integrity. In one opinion it was stated that the Union is constituted as a "unitary political model, having a single institutional framework, but operating with two different methods" (Bărbulescu, 2005, 41).

As the author expressed before, the construction of the Union was also determined by globalization, a phenomenon that imperatively involves redefining the concept of sovereignty. The Union is also trying very hard to

address a policy in this regard, although whenever there has been the issue of Member States relinquishing their sovereignty, there have been failures.

We cannot anticipate the evolution of the Union, on the one hand because in history all the entities that sought to include several states have disintegrated, often generating conflicts and wars, and on the other hand, because in the Treaty of Lisbon it was provided for the first time a withdrawal clause, and in this context we have recently witnessed Great Britain's exit from the Union. However, we cannot deny that this construction can be an archetypal model for the creation of other political and economic systems globally, because "policies are needed to ensure sustainable economic growth, on a fair and democratic basis. (…) Being able to buy Gucci bags from a Moscow department store does not mean that a market economy has been created in that country. Development is about transforming societies, improving the lives of the poor, ensuring the chances of success for all people and access to health care and education" (Stiglitz, 2003, 383).

One thing is certain, namely that with the deepening of the integration process, the principle of sovereignty will be redefined, acquiring other valences, and Community competences will progress to the detriment of national ones, in accordance with the fundamental norms of international law. There are probably followers of a vision in which the European Union could become a sovereign state, but, in the author opinion, the loss of the sovereignty of all Member States in the favor of a meta-sovereignty is utopia, at least for the next 100 years.

The European Union could be seen as a living human body, constantly evolving and in which each people represents a segment of this body, and on the harmony of these segments (nations) depend the sense of development of Europe, its political and economic superiority, but also the internal non-contradictions of this body, which could collapse it. From here it can be appreciated the importance of each state, regardless of its political size and economic power, because this body can not survive without heart, brain, kidneys, liver, but can not evolve without hands, feet, or at least without fingers. Through this model of an organism that tends to perfection, as is the projection of its genome, we can realize the place that each nation occupies in this human model and the power given by the unity and harmony between them. The Union is the force for saving and extinguishing ancestral conflicts between the nations of Europe.

Implications of Globalization at Global Level

In author's opinion, today it can speak about the existence of the foundation for the creation of a world state, as long as the planet has common interests and values, while pursuing the fulfillment of a common destiny in a common world civilization. Perhaps the term "common" has become the most widely used term in the world, humanity oscillating between political globalization and economical globalization.

Globalization refers especially to the economic dimension, describing "a multi-causal process that results in events taking place in one part of the globe having wider repercussions on societies and problems in other parts of the globe"[2].

However, political globalization does not imply liberalization, but territorial internationalization, with the relief of social relations from the restrictions imposed by borders or, in other words, a renunciation of the conditioning of social relations by territorial affiliation. Basically, social relations are globalizing. However, globalization "refers to shrinking theworld and raising awareness of the world as a whole" (Roland Robertson)[3].

Globalization is a phenomenon that involves, through technological progress and the development of trade relations, the integration of economic systems. "Globalization is a trend that manifests itself in the world economy, a trend accelerated by the development of the informational society in which we are today. Globalization presupposes the existence of such close interdependence between nation states that no one can know exactly how much 'freedom of movement' national governments still have, especially in terms of economic problems, capital flows and foreign exchange that evades the control of central banks"(Schneider, 1999). Globalization "must be understood as the fast expansion, on a global scale, of the interactions between human activities. This growing interdependence does not take into account any kind of boundaries, no time, no space" (Schneider, 1999).

Globalization is a process or a set of processes, which embodies a transformation in the spatial organization of social relations and transactions - analyzed in terms of their extent, intensity, speed and impact – generating flows and transcontinental or inter-regional activity networks, interaction and exercise of power (Held et al., 2004, 40).

For the terminology used to define this phenomenon it can be attributed several meanings, namely geographical (since the sixteenth century, when Europe was in the early stages of colonial expansion), economic (as it aims at global economic growth by interconnecting cross-border production

2 https://ro.wikipedia.org/wiki/Globalizare

3 http://ro.wikipedia.org/w/index.php?title=Special%3AC%C4%83utare&search=Roland+Robertson

processes), policy (due to the overcoming of national competences through global economic development) and information technology (due to advances in computerization and information technology).

There is no definition of globalization in a universally accepted form and probably not definitive. The reason is that globalization includes a multitude of complex processes with variable dynamics reaching diverse areas of a society. It can be a phenomenon, an ideology, a strategy, or all atonce[4]. Globalization, having a technological and economic-financial substratum, is rather outlined as an innovative form of imperialism.

One thing is certain, namely that globalization is a dynamic phenomenon, manifested for a long time, which affects all mankind and which should create a peaceful dialogue between civilizations, representing a consequence of the process of modernization and post-modernization.

"We cannot stop when the whole world is moving around us ... The sovereign nations of the past are no longer the framework in which the problems of the present can be solved" (Bethoin, 2001, 123). "Once transformed by the third wave, national economies are forced to relinquish some of their sovereignty and accept the growing mutual economic and cultural intrusions" (Töffler, 1995, 284).

Globalization is the modern term used to describe changes in the societies and in the world economy, which result from extremely high international trade and cultural exchanges. It describes the growth of trade and investment due to falling barriers and interdependence between states.[5]

Anthony Giddens[6] emphasizes social and economic plans by defining globalization as a reference "to the development of social and economic relations that are expanding throughout the world. (...) A key aspect of the study of globalization is the emergence of a world system, which means that, to some extent, we must look at the world as forming a single social order."

But, unfortunately, in the context of globalization, it accentuates the gaps between the rich and the poor, the number of those with medium financial resources decreases enormously and the capital of those who already have large resources increases, a situation in which a state of increasing dependence on tycoons will be created. In the author's opinion, humanity in the context of globalization will be alienated at both the individual and societal levels.

Globalization is changing the human mindset and behavior of individuals, state government policies, redefining the concept of sovereignty

4 https://ro.wikipedia.org/wiki/Globalizare

5 https://ro.wikipedia.org/wiki/Globalizare

6English sociologist, author of 34 volumes and over 200 articles, including *Sociology, The Politics of Climate Change, The Global Third Way Debate, The New Egalitarianism, Europe In The Global Age etc.*

and fundamental human rights and freedoms; globalization acts on the social justice system, on human relations and on social organization as a whole, eroding traditional factors of societal cohesion. The development of international relations becomes also arbitrary, putting pressure on nation-states and shaking the principle of sovereignty, with catastrophic consequences for the economic sector and for the social stability. There is a denationalization of the state to be governed, the economy and trade brought out of national borders through cross-border transactions are likely to amplify international interdependence, the aim being to achieve a global single market through widespread globalization; the faithful expression of current reality is certainly "think globally and act locally" (Toffler, 1983).

If, years ago, Albert Einstein said that the discovery of the atomic bomb would change humanity, the same is true of globalization. Of course, the new economy created in the context of globalization also has advantages of scale, it also capitalizes efficiently on the geographical potential, but it also predisposes to huge risks. As it could be seen, the economic and financial crisis that occurred in 2007-2008 in the United States spread to the chain, affecting almost the entire planet. Globalization also means labor liberalization, but this is also risky as it can lead to rising unemployment in some regions. It is true that globalization is gaining ground through its advantages in the context in which the state-centered system is no longer ableto cope with problems such as pollution, overpopulation or the arms race.

Located at the opposite pole of economic nationalism, the process of globalization is based on neoliberalism and the free market economy, constituting a fundamental mutation in the history of the world. It might be said that globalization is the new historical stage of capitalism, in which the economic progress of the states is also influenced by their geostrategic position.

Dr. Orhan Güvenen argues “that if we do not consider the economic and social structure of society as a system, we will find - in mathematical terms - a chaotic and probabilistic structure in which virtual and infinite variables in number are interacting, "inputs" are interrupted from time to time, and the uncertainty and rate of mathematical complexity is high” (Orhan, 1999, 11).

“The developed world must fulfill its duty to reform the international institutions that govern globalization. We have created these institutions and we need to make them work again. If we want to dispel the legitimate concerns of those who have expressed their dissatisfaction with globalization, if we want it to bear fruit for the billions of people who have not enjoyed it, if we want globalization with human faces to succeed, we need to make our voices heard. We can't, we don't have to stand aside” (Stiglitz, 2003, 384).

This phenomenon has been called globalization, a term that hides more than is implied. As the field of human activities extends beyond the regulations of the nation-state, legality and rules have become too strict[7].

Globalization, a complex, even contradictory phenomenon, a real and living fact, can have harmful consequences such as the dehumanization of those overwhelmed by its devastating force, the creation of a barbaric society in which the meaning of life is lost and even such an educational collapse by transforming science into pseudo-science, as well as culturally through the disappearance of traditional national cultures and their reduction to a single standardized civilization. Globalized humanity will be concerned only with economic issues, completely disinterested in culture and unconscious. Atheism will also make its place in the mind of the globalized citizen. And although most of the people realize that this is probably the last stage in the evolution of mankind, no one can oppose globalization. The negative side of globalization is much stronger than the positive. States will remain intact only from a territorial point of view, their independence being diluted in the waves of rampant globalization.

The process of globalization will increase the economic and financial advantage of the great powers, which is where most transnational corporations come from. And the mechanism is simple, as international financial institutions such as the IMF, the World Bank under the domination of the great economic powers, contribute by providing advantageous loans to foreign direct investment of transnational institutions and companies that will make huge profits in favor of creditor states. In 2000, the United States had a Gross National Income of $ 9.602 billion, representing 30.7% of World Gross Income. It was followed by Japan with 14.4% of World Gross Income and Germany with 6.6% of the currency indicator[8]. Thus, 52% of the world economy is occupied by only 3 states. Also in 2000, England, France and Italy together held 12.7% of Gross World Income[9]. It should be noted that almost 2/3 of the world economy is concentrated in the hands of only 6 states, out of the total states existing globally. So the masters of the planet are few in number, but very rich (Belli, 2004).

Globalization does not contribute to the reconstruction and development of underdeveloped or developing countries, and the evidence is the area of Africa that remains most disadvantaged by the lack of economic cooperation in the context of this phenomenon. Only developed countries have really benefited from trade liberalization and financial investment, because

7 https://ro.wikipedia.org/wiki/Globalizare

8 http://documents.worldbank.org/curated/en/475281468159895302/World-development-indicators-2002

9 http://documents.worldbank.org/curated/en/475281468159895302/World-development-indicators-2002

only they have managed to keep up with the rapid pace of these processes. In addition, the commitments that developing countries have to make to international financial bodies are far beyond their possibilities, and appropriate sanctions are likely to throw them back into poverty.

Uprooting, migration, the fact that some regions have become poorer than before, are other negative facets of globalization, with extremely dramatic consequences.

In the opinion of some authors, globalization "is artificially maintained precisely by those who benefit from it and less by those who have suffered losses, or have simply been marginalized. The latter recognize that globalization is in many ways a new phenomenon, but one that operates according to old rules. Due to this fact, the world would not be dealing with a new economy, but with a kind of "casino economy", in which an enormous volume of money is involved in speculative operations. Following this line, some adopt an even harsher tone, considering that we are dealing with a kind of "corporate colonialism" that targets the poorest countries and the poor people from rich countries (Postelnicu, 2000, 301).

The author subscribes to the opinion expressed in the doctrine that, in fact, the advantages of globalization "are myths, propagated to justify unbridled greed and to mask the extent to which the global transformation of human institutions has become a consequence of the complicated, well-funded and deliberated interventions of an elite with financial means that give it the opportunity to live in a world of illusions, separate from the rest of humanity. (…) These forces have transformed once good corporations and financial institutions into instruments of a market tyranny that is spreading across the planet like a cancer, colonizing more and more of Earth's vital spaces, destroying ways of life, displacing people, making democratic institutions powerless and devouring life in the insatiable pursuit of money" (Korten, 1997, 22-23).

No one can deny that globalization has had and still has a number of beneficial effects, because there are several hundred million people who have come to live at a higher standard of living than before, and countries that have managed to take advantage of the effects, they registered essential economic growth, by creating new markets and by attracting foreign investment. "For millions of people, however, globalization has brought nothing. The situation of many even worsened, their jobs being abolished and living becoming more insecure. These people felt increasingly powerless in the face of forces they could not control. They saw their democracies undermined and their cultures eroded" (Stiglitz, 2003, 378).

The author thought to conclude with the opinions of a Romanian specialist who studied the problem of globalization, opinions that allow discussions, interpretations and conclusions of each of us: "On the billiard

table of the world, the straight movement of the balls, rectum of the countries, seems to take place according to precise rules. The tendency is now accelerating. Even if it is believed that chance gives substance to the game, today's reality refutes this. The routes of the balls are meticulously established and the event has no chance to change them either" (Marin, 2004, 287).

Conclusion

In the context of the current reality dominated by the process of globalization, the concept of state sovereignty has changed its valences,nation-states being forced to continuously cede prerogatives from their sovereignty to international structures, in order to adapt to the requirements ofmultilateral cooperation. National states in the traditional formula have become useless or even impossible in the global macroeconomic system, being unable to independently influence the activity of the economic sector orthe level of employment. It can be seen that the state force has been overwhelmed by the rampant evolution of globalization, foreshadowing the disappearance of the nation-state and borders and their replacement by regional states, governed by supra-state structures, the only ones able to resistthis phenomenon. In the author's opinion, European integration has sought tocreate a strong regional structure capable of protecting national identity and the classical notion of a sovereign state in the context of the process of globalization extended to the world level.

Thus, globalization creates a new world economic and political order, in which the concept of national sovereignty gradually disappears, with governments remaining mere pawns on the chessboard of world politics. This is not to say that this process will take place in the future, because it is already accompanying the present, taking the nation state by assault. Globalization involves all the states of the world, regardless of their geographical size or their economic power, while generating another system of values. Institutions and mechanisms of global governance are created and the national cultures merge to become a hybrid, the framework of human action is resized. And in this context, the nation-state melts as an effect of globalization, in a process in which its disappearance is inevitable and irreversible.

Globalization is an irreversible process, which means luxury and prosperity for the few and poverty for the majority. Speaking about globalization, the truth is it is not an option, but an imposition. Basically, humanity enters the administration of the transnational forces that will subdue it, will colonize it in a modern form, through the IMF or the World Bank, for example, or, if necessary, even in the form of military alliances.

The force of manifestation of the phenomenon of globalization has reached impressive levels, and the risk of triggering economic and financial

crises in the chain is commensurate, because no market can be forever characterized by stability.

The author concludes by saying that for some, few in number, globalization means freedom, progress, and for others it means poverty,misery and resignation in the face of a cruel destiny, in the context ofdeepening the economic, cultural, social chasm between the great powers andthe rest of the world, but also on the background of a deficit of democracy thatunderlies the process of globalization. We are actually experiencing the effectsof the effects.

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How Strategic Financial Controls Determines Success in Universities

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Abstract

The study examined how strategic financial controls determines success (organizational performance) in private universities in Kenya. The study was based on the strategic leadership theory and a correlational research design used a positivist philosophy paradigm. It involved a census technique whereby all the 17 private universities in Kenya accredited by Commission of University Education. The unit of analysis was board of directors, vice chancellors, heads of departments which was one hundred and thirty-six. A structured questionnaire was used to collect data from the respondents. Regression was used to determine whether there was significant linear relationships between the predictor and the outcome variables. The results of the study found that strategic financial controls explained a significant proportion of variance in success/organizational performance, R2= .659. The study found that strategic financial controls significantly predicted organizational performance, $\beta = .812$, $t(121) = 15.221$, $p = .000$. The findings from the study imply that for every one-unit change in strategic and financial controls, organizational performance increases by 0.760 hence implying a positive impact of strategic and financial controls on organizational performance. Therefore, based on the results the study recommends that university management should develop stronger policies that will encourage a strong and reliable internal control systems to encourage prudent resource management in private universities.

Keywords: Strategic, financial, internal controls, performance, organizational, education, universities, leadership.

Introduction

Upon accreditation universities are expected to use their resources prudently not only by executing the mandate of generating, transmitting, storage and retrieving knowledge but also to form persons of virtue and integrity the living standards of their employees and their immediate environment (World Bank, 2016). Some employees in various universities are often found guilty of diverting university resources for their personal use, (Lent, 2004). This often makes the management of many universities institute surprise forensic audits, which serves as a method of control to check mismanagement of funds (Anthony & Young, 2003). Good financial control practices demand that key management models and principles such as sustainability, accountability and transparency are employed to ensure resource administrative efficacy. A number of universities have also ensured that this administrative efficiency is realized, by fitting well organised internal control processes.

Todowede (2013) submits that the concept of financial management refers to planning, organising, directing and controlling the financial activities such as procurement and utilization of funds of the institution. That, financial management is the management of the finances of a business/organization in order to achieve financial objectives. In general terms, it means applying general management principles to catalysing and sustaining the financial resources of the institution. Management councils of most universities uses the internal control in a flexible way, in order to make the system check itselfand any irregularities herein the system, are being detected corrected and updated. For system efficacy, university management could consider implementing controls such as: segregations of duty, supervision of work and acknowledgement of performance.

The effective arrangement and implementation of this financial control system needs to ensure proper management on financial aspects of running universities and can be described as the application of planning and control to the finance function of a university. It benefits are in profit planning, measuring costs, and controlling inventories and accounts receivables. Additionally, it supports in monitoring the effective deployment of funds in non-current asset and in working capital which aims at ensuring that adequate cash is on hand, to meet the required current and capital expenditure. This ensures that significant capital is obtained at the minimum cost to maintain adequate cash on hand, and to meet any needs that may arise in the course of business (David, 2008). Prudent financial management aids in determining and managing not only current requirements but also future needs of a university (ACCA, 2014). Universities manage their finances by execution in an economic way, and strive to actualize their goals in the most effective efficient way.

Statement of the Problem

Umashankar and Dutta (2007) portends that organizational problems originates from lack of strategic planning, mediocre organization structure, poor recruitment and retention of staff, ineffective internal control, and poor budgeting and lack of prudent cash-flows which often cause organizational failure. The obligation for establishing strategic financial controls is basically that of the management. For institutions of higher education to achieve the anticipated goals and objectives, the strategic internal control must be strong and reliable. To achieve this, all the basic characteristic that guarantee effective running of the internal financial control must be readily available and policy enabled. These characteristics include: approvals, separation of duties, physical control, and system control enabled for accountability. However, recent happenings have exposed and demonstrated that where due diligence in terms of approvals or authorization have not been granted by suitable authorities (the university governing council) this often leads to wastages and mismanagement of resources. Private universities get good student enrolments and tuition is paid in time but challenges associated with segregation of duties, which is also a major characteristic weakness of internal control, has led to problem of collusion, fraud and misstatement (doctored) of financial records in many private universities in Kenya. Therefore, this study therefore examined how strategic financial controls determines success (organizational performance) in private universities in Kenya.

Relevant Literature

Strategic Leadership Theory

The study is grounded on the strategic leadership theory which states that organizations are reflections of their top managers, and that the specific knowledge, experience, values and preferences of top managers are reflected not only in their decisions, but in their assessments of decision environments (Ireland, Hoskisson & Hitt, 2013).

Organizations require stability for them to prosper and grow. Balanced organizational controls are a critical component to sustain strategic leaders to shape credibility, demonstrate the value of the strategies to the organization's stakeholders and encourage and support strategic change on one hand, but also to provide the parameters to implement strategies as well as the remedial actions to address related adjustments as required on the other (Ireland & Robert, 2016). This study examined systems set up to provide controls and feedback by the university leadership. It provided and determined measurements of success indicators in the universities.

Financial Management

The prime drive of financial management is (Todowede (2013)) concerned with procurement, allocation and control of financial resources of the institution. The critical focus of financial management specifically includes:

- ❖ Regular and adequate supply of funds
- ❖ Optimal funds utilization
- ❖ Safety on investment decisions.
- ❖ Overall control of resources
- ❖ Guidance to all departments in all financial matters, preparation and monitoring of budgets
- ❖ Accounting, reporting and internal control procedures
- ❖ Maintaining the financial information system
- ❖ Administration of pay-roll, loan and pension schemes
- ❖ Tax obligation administration
- ❖ Administration of insurance cover for the University's assets
- ❖ Ensuring that surplus funds are invested and managed prudently.

Universities must have an efficient internal audit system as an independent appraisal function within the institution with the aim of reviewing the system of control and enhancing the quality of service performance and compliance. This ensures strict adherence to stipulated work instructions and assist the management in effective running of the organisation‟s administration, control cost, and ensure maximum utilisation of capacity and benefit available for the organization (Unegbu & Obi, 2012).

Importance of Strategic Financial Controls

The existing volatile economic environment in Kenya and the attendant financial constraints in higher education landscape has caused unprecedented major challenges. The Government is not capable of ideally funding higher education effectively and efficiently due to lack of accurate baseline statistics, asymmetrical planning and prevalent economic circumstances (MoEST 2015). The sustainability of higher education finacing in the country is dependant on, all stakeholders, parents and guardian, the society in general, the private sector and nongovernmental agencies. The education sector can only approach the highest pinacle in provision and production when every stakeholder strives to do its part on the financing of higher education in Kenya (Balsam & Harris, 2014).

Strategic controls are basically subjective criteria intended to verify that the firm is using appropriate strategies for the conditions in the external environment and the company's competitive advantage. It examines the fit between what the firm might do and what it might not do. Effective strategic

controls help the firm to comprehend what it considers to be successful (Turner & Makhija, 2006). Strategic controls are used to evaluate the degree to which the firm focusses on the requirements to implement its strategies. Financial controls on the other hand, are objective criteria used to measure the firm's performance against previously established quantitative standards (Ireland, Hoskisson & Hitt, 2015). These measures comprise of return on investment (ROI) and return on assets (ROA) as well as economic value-added are just examples of financial controls.

Strategic controls require information-based exchanges among the chief executives, leadership team members, and employees. The exercise of effective strategic controls needs leaders to acquire conceptual understanding of the competitive conditions and dynamics of each of the units or divisions for which they are responsible. Information exchange occurs through both informal, unplanned meetings and interactions scheduled on a routine formal basis. The effectiveness of strategic controls is increased substantially when strategic leaders can integrate different sets of information to yield competitively relevant insights (Hitt, Ireland & Hoskisson, 2015). Financial controls focus on short-term financial outcome.

Balanced Scorecard

Kaplan and Norton (2001), developed a business framework used in tracking, monitoring and managing an organization's strategy called The Balanced Scorecard (BSC). The focus was on the fact that managers needed a balanced demonstration of both financial and operational measures, contained in four perspectives as the drivers of future financial performance. The drivers include: Customer perspective which is concerned with how do customers perceive the organization. Internal perspective which is concerned with what must the firm excel at. Innovation and learning perspective which is concerned with how the firm can continue to improve and create value. Financial perspective which is concerned with how do stakeholders perceive the organization.

The scorecard affords top managers with a comprehensive framework that translates a company's strategic objectives into a logical set of performance measures. It represents a fundamental change in the underlying assumptions about performance measurement and helps focus the strategic vision. Kaplan and Norton (2001), defines the balanced scorecard as a frame work which firms can use to verify what they have established both strategic and financial controls to access performance. This technique is most appropriate for use when dealing with business organizational level strategies, however it can also be used with the other strategy's firms may choose to implement.

In addition, maintaining high financial performance without competitive compensation is likely not sustainable as it could put an organization at risk of high turnover and potentially disrupt an organization's financial stability. Therefore, the impact of the combination of lower than median compensation and high financial performance can go either way. Lastly, if performance and compensation are both low, an organization may be able to garner donations in the short term as undesirable financial performance can be attributable to the lack of appropriate employee compensation and signify a need for additional private funding (Balsam & Harris, 2014).

There is a definite relationship among the leadership's characteristics, an organization's strategies, and its performance. When the board of directors and the leadership in the organization are involved in shaping anorganization's direction, the organization generally improves its performance which is a critical element of strategic leadership and organizational performance, and enhances the ability of leadership to manage and utilize theorganization's resource portfolio. This includes integrating resources to createcapabilities and leveraging those capabilities through strategies to build competitive advantages and high-performance organizations (Ireland, Hoskisson & Hitt, 2013).

Methodology

This study is a descriptive correlational research based on primary data obtained from all the 17 private universities in Kenya; Adventist University, University of Eastern Africa, Baraton, Catholic University of Eastern Africa (CUEA), Daystar University, Scott Christian University, United States International University, St. Paul's University, Pan Africa Christian University, KAG – East University, Africa International University, Kenya Highlands Evangelical University, Africa Nazarene University, Kenya Methodist University, Strathmore University, Kabarak University, Great Lakes University of Kisumu, KCA University and Mount Kenya University in Kenya by Commission of University Education (CUE, 2017). All these universities were selected using census technique. The questionnaires used for the research work were self designed. The data obtained was analyzed by use of descriptive statistics (percentages, means, and standard deviation) and inferential statistics (correlations and linear regression) which were used to determine whether there were significant association/linear relationships between the predictors and the outcome variable using SPSS. Prior to conducting inferential analysis assumptions for linear regression such as checking for normality of the data, homoscedasticity, multicollinearity and linearity were done.

Results

The study examined the how strategic financial controls determines success (organizational performance) in private universities in Kenya. Data was analyzed at two levels where the first level entailed determining strategic financial controls. The second part involved analyzing results on the effect of strategic financial controls on organizational performance.

Factor Analysis Results on Strategic Financial Controls

Factor analysis was conducted in the study to describe variability among items of strategic financial controls. Strategic financial controls construct was measured using ten (10) items thereby the construct was factor analyzed to come up with an appropriate measure. The study found that strategic financial controls had KMO value of 0.884 and Bartlett's test, $x2(45, N = 124) =, p = .000$. This was meritorious; therefore, the adequacy of the sample was acceptable. Therefore, sampling was adequate for strategic financial controls as given by the Kaiser-Meyer-Olkin Measure of Sampling Adequacy value.

The study also carried out the Eigen values for the factors under strategic financial controls. According to the findings, the first factor accounts for 58.677% of the variance in strategic financial controls. The results for scree plot indicated that one component had Eigen values for strategic financial controls that was greater than one. This finding corroborates total variance explained results for strategic financial controls.

The study sought to determine the factor loadings for strategic financial controls. The findings obtained indicated that "The University has clear objectives on how strategic financial control is done" had the highest factor loading in the first component with 0.873.

Mean and Standard Deviation for Strategic Financial Controls

The study also sought to analyze the views of respondents on strategic financial controls using a table of means and standard deviations. A Likert scale data was collected rating the views in a scale. The mean results are therefore given on a scale interval where a mean value of 1 is an indication of strongly disagree; 2 is disagree; 3 is neutral, 4 is agree and a mean value of 5 is an indication of strongly agree. Findings on strategic financial controls are shown in Table 4.69.

According to the findings, the respondents agreed to the following statements: The university has control measures which have enabled the university to meet its financial goals ($M = 3.77$, $SD = 0.878$); the control measures have contributed significantly to the university's financial growth ($M = 3.73$, $SD = 1.065$); the university has a plan on how resource mobilization is done ($M = 3.70$, $SD = 1.038$); the university has multiple sources of finances

(*M* = 3.19, *SD* = 1.192); the university always encourage knowledge sharing (*M* = 3.61, *SD* = 1.048); the university has clear objectives on how strategic financial control is done (*M* = 3.67, *SD* = 1.071); the university communicates internally on how the strategy of the organization will be implemented (*M* = 3.71, *SD* = 1.109); communication in the university clearly shows how integration and coordination of activities will be done (*M* = 3.57, *SD* = 1.059); I am always given clear directions concerning my work (*M* = 3.80, *SD* = 0.993); and all channels of communication available in the university are exploited (*M* = 3.72, *SD* = 0.964) as detailed I in Table 1.

Table 1: Means and Standard Deviations on Strategic Financial Controls

	N	Mean	Std. Deviation
The university has control measures which have enabled the university to meet its financial goals	122	3.7705	.89799
The control measures have contributed significantly to the university's financial growth	121	3.7273	1.06458
The university has a plan on how resource mobilization is done	121	3.7025	1.03798
The university has multiple sources of finances	121	3.1901	1.19243
The university always encourage knowledge sharing	122	3.6148	1.04799
The university has clear objectives on how strategic and financial control is done	122	3.6721	1.07136
The university communicates internally on how the strategy of the organization will be implemented	122	3.7131	1.10953
Communication in the university clearly shows how integration and coordination of activities will be done	122	3.5738	1.05953
I am always given clear directions concerning my work	122	3.8033	.99286
All channels of communication available in the university are exploited	122	3.7213	.96434

Correlation between Strategic Financial Controls and Organizational Performance

The study sought to determine the relationship between strategic financial controls index and organizational performance using correlation analysis and found that the two variables were strongly correlated $r(122) = .812$, $p = .000$. The results are as shown in Table 2.

Table 2: Correlation Analysis on Strategic Financial Controls Index

		Organizational Performance
Strategic Financial Controls	Pearson Correlation	.812**
	Sig. (2-tailed)	.000
	N	122

**. Correlation is significant at the 0.01 level (2-tailed)

Table 3: Model Summary for Strategic Financial Controls

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.812[a]	.659	.656	.43394

a. Predictors: (Constant), Strategic Financial Controls

The findings indicated that the significance value in testing the reliability of the model for the relationship between strategic financial controls and organizational performance was $F(1, 121) = 231.693$, $p = 0.00$. Therefore, the model is statistically significant in predicting the relationship between strategic financial controls and organizational performance. Results are as presented in Table 4.

Table 4: ANOVA for Strategic Financial Controls

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	43.628	1	43.628	231.693	.000[b]
	Residual	22.596	120	.188		
	Total	66.224	121			

a. Dependent Variable: Organizational Performance
b. Predictors: (Constant), Strategic Financial Controls

The study found that strategic financial controls significantly predicted organizational performance, $\beta = .812$, $t(121) = 15.221$, $p = .000$. The study therefore concluded that strategic financial controls significantly influence organizational performance in private universities in Kenya. The results are presented in Table 5.

Table 5: Regression Coefficients for Strategic Financial Controls

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	1.067	.186		5.726	.000
	Strategic and Financial Controls	.760	.050	.812	15.221	.000

a. Dependent Variable: Organizational Performance

The findings obtained in the study imply that for every one-unit change in strategic financial controls, organizational performance increases by 0.760 hence implying a positive impact of strategic financial controls on organizational performance.

Conclusion

This study focused on how strategic financial controls determines success (organizational performance) in higher education particularly in private universities in Kenya and the consequences of internal finanacial controls in service delivery. It emphasises that effective internal control helps in attainment of the organisation goals and objectives. The findings of this study show that properly established and implemented financial internal control has significant relationship with the prudent management of organisation resources in the private universities in Kenya. In summary:

- A properly established and implemented internal financial control will significantly enhance prudent management of organisation resources.
- Ensuring employees work done are acknowledged and effective supervision contributes

significantly to the attainment of university goals and objectives.

- Weakness in the internal control can cause gradual and systematic collapse of the universities.

Recommendations

The study recommends the following measures: The management council of the universities should have a well-developed system (strategy) that will ensure the submission of the internal control department is always implemented because this contributes to the prudent management of the university's resources. The attainment of university goal and objectives can be enhanced if the staff are regularly trained. Therefore, management should include some selected internal control personnel in the planning process in the universities, so that the goal of the organisation can be easily achieved with the available resources. Lastly, that internal audit department should be regularly monitored to reduce bias judgement and prevent gradual or systematic collapse of the universities.

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RETRACTED: An Overview of International Laws and Vietnamese Laws to Prevent and Compensate for Damage Causedby Offshore Oil Pollution

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Abstract

Pollution caused by offshore oil can cause severe damage and have lasting effects. It is recognized that preventing, treating, and compensating for damage caused by offshore oil pollution is a matter of great concern to all countries. As a result, international laws and regulations on the prevention and compensation of oil pollution have been promulgated one after another. Vietnam is a large maritime country that has been improving its own policies and laws on preventing, combating, and demanding compensation for damage caused by oil pollution, while studying international law on prevention and compensation of damage as a guideline. These improvements to pollution laws and policies are urgent because of the prevalence of and damage done by offshore oil. This study, therefore, focuses on the major international treaties to prevent, control, and compensate for damage caused by offshore oil pollution. Vietnam's policy formation and legislative process is particularly relevant in this area. Arguments to support Vietnam's policy formulation and legislative process is particularly important in joining the international treaties of Vietnam (International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, 1996).

Keywords: Marine Pollution, Civil Liability, Oil Pollution Damage.

Introduction

The protection of the marine environment is one of the issues that the international community pays special attention to because the sea plays a significant role in human life. Marine pollution is one of the most ominous disasters of environmental destruction. The sea is very susceptible to pollution, and the causes of pollution include various sources such as the mainland, activities of boats, oil exploitation, natural leaks, radiation, etc. It can be said that the largest and most dangerous source of pollution is shipped operations, especially tankers. In the world, from 1967 up to now, there have been many big oil spills. This has resulted to severe damage to the marine environment as

well as economic damage to humans. When the sea is polluted, it will significantly affect the lives of people, affect all the creatures under the sea, and significantly impact the entire operation of seaports and the maritime industry worldwide. This is an activity considered to be the backbone of international trade today. The immediate and long-term damage to marine environment pollution and the losses that people directly suffer from include maritime, fishing, aquaculture, agriculture, fishery, tourism, etc. This is huge and requires a lot of time, wealth, and effort to prevent, limit, and overcome the marine environment as well as calculate damages for adequate compensation.

Vietnam is a coastal state whose territorial waters are three times larger than the land area, and the coast is longer than 3260 km. Vietnam's sea is located on the arterial sea transport route connecting the Pacific - Indian Ocean, Europe - Asia, and Middle East - Asia. Five of the ten most extensive trade routes in the world are related to Vietnam's seas. This is considered the second busiest international transport route in the world. Every day, there are about 150-200 ships of all kinds going to the East Sea, and about 50% are shipped with a tonnage of over 5,000 tons. Also, more than 10% are shipped with a tonnage of 30,000 tons or more. Therefore, this has led to the need for the study of marine pollution caused by oil and the study of the laws' provisions. Combating oil pollution from ships has been and is still an issue that many scholars in the countries of the world are concerned about. It is both a matter of urgent theory and practice today, and this is also an urgent issue that needs to be addressed. Therefore, understanding the provisions of international law plays an essential role in the development and improvement of Vietnamese law.

1. The State of World Oil Pollution

In modern history, humans have witnessed large-scale oil spills, which have had serious consequences for the marine environment. From 1967 to 2010, some typical oil pollution cases in the world are as follows (Staff, 2017):

The following list includes major oil spills since 1967. The circumstances surrounding the spill, amount of oil spilled, and the attendant environmental damage is also given.

March 18th, 1967, Cornwall, Eng.: Torrey Canyon ran aground, spilling 38 million gallons of crude oil off the Scilly Islands.

December 15th, 1976, Buzzards Bay, Mass.: Argo Merchant ran aground and broke apart southeast of Nantucket Island, spilling its entire cargo of 7.7 million gallons of fuel oil.

April, 1977, North Sea: blowout of well in Ekofisk oil field leaked 81 million gallons.

March 16th, 1978, off Portsall, France: wrecked supertanker Amoco Cadiz spilled 68 million gallons, causing widespread environmental damage over 100 mi of Brittany coast.

June 3rd, 1979, Gulf of Mexico: exploratory oil well Ixtoc 1 blew out, spilling an estimated 140 million gallons of crude oil into the open sea. Although it is one of the largest known oil spills, it had a low environmental impact.

July 19th, Tobago: the Atlantic Empress and the Aegean Captain collided, spilling 46 million gallons of crude. While being towed, the Atlantic Empress spilled an additional 41 million gallons off Barbados on August 2nd.

March 30th, 1980, Stavanger, Norway: floating hotel in North Sea collapsed, killing 123 oil workers.

February 4th, 1983, Persian Gulf, Iran: Nowruz Field platform spilled 80 million gallons of oil. August 6th, Cape Town, South Africa: the Spanish tanker Castillo de Bellver caught fire, spilling 78 million gallons of oil off the coast.

July 6th, 1988, North Sea off Scotland: 166 workers killed in explosion and fire on Occidental Petroleum's Piper Alpha rig in North Sea; 64 survivors. It is the world's worst offshore oil disaster.

November 10th, Saint John's, Newfoundland: Odyssey spilled 43 million gallons of oil.

March 24th, 1989, Prince William Sound, Alaska: tanker Exxon Valdez hit an undersea reef and spilled 10 million-plus gallons of oil into the water.

December 19th, off Las Palmas, the Canary Islands: explosion in Iranian supertanker, the Kharg-5, caused 19 million gallons of crude oil to spill into Atlantic Ocean about 400 mi north of Las Palmas, forming a 100-square-mile oil slick.

June 8th, 1990, off Galveston, Tex.: Mega Borg released 5.1 million gallons of oil some 60 nautical miles south-southeast of Galveston as a result of an explosion and subsequent fire in the pump room.

January 23rd-27th, 1991, southern Kuwait: during the Persian Gulf War, Iraq deliberately released 240-460 million gallons of crude oil into the Persian Gulf from tankers 10 mi off Kuwait. Spill had little military significance. On January 27th, U.S. warplanes bombed pipe systems to stop the flow of oil.

April 11th, Genoa, Italy: Haven spilled 42 million gallons of oil in Genoa port.

May 28th, Angola: ABT Summer exploded and leaked 15-78 million gallons of oil off the coast of Angola. It's not clear how much sank or burned.

March 2nd, 1992, Fergana Valley, Uzbekistan: 88 million gallons of oil spilled from an oil well.

August 10th, 1993, Tampa Bay, Fla.: three ships collided, the barge Bouchard B155, the freighter Balsa 37, and the barge Ocean 255. The Bouchard spilled an estimated 336,000 gallons of No. 6 fuel oil into Tampa Bay.

September 8th, 1994, Russia: dam built to contain oil burst and spilled oil into Kolva River tributary. U.S. Energy Department estimated spill at 2 million barrels. Russian state-owned oil company claimed spill was only 102,000 barrels.

February 15th, 1996, off Welsh coast: supertanker Sea Empress ran aground at port of Milford Haven, Wales, spewed out 70,000 tons of crude oil, and created a 25-mile slick.

December 12th, 1999, French Atlantic coast: Maltese-registered tanker Erika broke apart and sank off Britanny, spilling 3 million gallons of heavy oil into the sea.

January 18th, 2000, off Rio de Janeiro: ruptured pipeline owned by government oil company, Petrobras, spewed 343,200 gallons of heavy oil into Guanabara Bay.

November 28th, Mississippi River south of New Orleans: oil tanker Westchester lost power and ran aground near Port Sulphur, La., dumping 567,000 gallons of crude oil into lower Mississippi. Spill was largest in U.S. waters since Exxon Valdez disaster in March, 1989.

November 13th, 2002, Spain: Prestige suffered a damaged hull and was towed to sea and sank. Much of the 20 million gallons of oil remains underwater.

July 28th, 2003, Pakistan: The Tasman Spirit, a tanker, ran aground near the Karachi port, and eventually cracked into two pieces. One of its four oil tanks burst open, leaking 28,000 tons of crude oil into the sea.

December 7th, 2004, Unalaska, Aleutian Islands, Alaska: A major storm pushed the M/V Selendang Ayu up onto a rocky shore, breaking it in two. 337,000 gallons of oil were released, most of which was driven onto the shoreline of Makushin and Skan Bays.

August-September 2005, New Orleans, Louisiana: The Coast Guard estimated that more than 7 million gallons of oil were spilled during Hurricane Katrina from various sources, including pipelines, storage tanks and industrial plants.

June 19th, 2006, Calcasieu River, Louisiana: An estimated 71,000 barrels of waste oil were released from a tank at the CITGO Refinery on the Calcasieu River during a violent rain storm.

July 15th, Beirut, Lebanon: The Israeli navy bombs the Jieh coast power station, and between three million and ten million gallons of oil leaks into the sea, affecting nearly 100 miles of coastline. A coastal blockade, a result of the war, greatly hampers outside clean-up efforts.

August 11th, Guimaras island, The Philippines: A tanker carrying 530,000 gallons of oil sinks off the coast of the Philippines, putting the country's fishing and tourism industries at great risk. The ship sinks in deep water, making it virtually unrecoverable, and it continues to emit oil into the ocean as other nations are called in to assist in the massive clean-up effort.

December 7th, 2007, South Korea: Oil spill causes environmental disaster, destroying beaches, coating birds and oysters with oil, and driving away tourists with its stench. The Hebei Spirit collides with a steel wire connecting a tug boat and barge five miles off South Korea's west coast, spilling 2.8 million gallons of crude oil. Seven thousand people are trying to clean up 12 miles of oil-coated coast.

July 25th, 2008, New Orleans, Louisiana: A 61-foot barge, carrying 419,000 gallons of heavy fuel, collides with a 600-foot tanker ship in the Mississippi River near New Orleans. Hundreds of thousands of gallons of fuel leak from the barge, causing a halt to all river traffic while cleanup efforts commence to limit the environmental fallout on local wildlife.

March 11th, 2009, Queensland, Australia: During Cyclone Hamish, unsecured cargo aboard the container ship MV Pacific Adventurer came loose on deck and caused the release of 52,000 gallons of heavy fuel and 620 tons of ammonium nitrate, a fertilizer, into the Coral Sea. About 60 km of the Sunshine Coast was covered in oil, prompting the closure of half the area's beaches.

January 23rd, 2010, Port Arthur, Texas: The oil tanker Eagle Otome and a barge collide in the Sabine-Neches Waterway, causing the release of about 462,000 gallons of crude oil. Environmental damage was minimal as about 46,000 gallons were recovered and 175,000 gallons were dispersed or evaporated, according to the U.S. Coast Guard.

April 24th, Gulf of Mexico: The Deepwater Horizon, a semi-submersible drilling rig, sank on April 22nd, after an April 20th explosion on the vessel. Eleven people died in the blast. When the rig sank, the riser—the 5,000-foot-long pipe that connects the wellhead to the rig—became detached and began leaking oil. In addition, U.S. Coast Guard investigators discovered a leak in the wellhead itself. As much as 60,000 barrels of oil per day were leaking into the water, threatening wildlife along the Louisiana Coast. Homeland Security Secretary Janet Napolitano declared it a "spill of national significance." BP (British Petroleum), which leased the Deepwater Horizon, is responsible for the cleanup, but the U.S. Navy supplied the company with resources to help contain the slick. Oil reached the Louisiana shore on April 30th, affected about 125 miles of coast. By early June, oil had also reached Florida, Alabama, and Mississippi. It is the largest oil spill in U.S. history.

It is well known that around 90% of world trade is carried out through international shipping (Shipping and World Trade, 2019). Through the above

data, it is easily seen that the pollution problem caused by oil leakage is dangerous and may be a very high risk to today's environment. Therefore, it is very important to provide a clear and detailed legal framework to regulate the relationships that arise in the environmental field, especially for developing countries when they have to face between economic development and environmental protection (El-Ashry, 1993). This is extremely difficult for developing countries, and Vietnam is a good example.

The consequences of oil pollution and the losses they bring are not limited to the waters of specific countries or regions but often exceed the capabilities of each individual, organization, and sometimes the capabilities of a country. In order to mitigate and reduce damage, the international community needs to formulate legally binding common technical standards and provide human resources in the field of preventing oil pollution. Therefore, under the auspices of IMO, many international conventions on ship standards and crew standards have been established. These include: Convention on the Prevention of Marine Pollution from Ships MARPOL 73/78 (International Convention for the Prevention of Pollution from Ships (MARPOL), 2019); International Convention on the Intervention of International Oil Pollution Accidents in 1969 (Intervention) (International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, 1996); 1990 International Convention on Response to Oil Pollution (OPRC) (International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, 1996); Protocol on Response and Cooperation to Pollution by Hazardous and Toxic Substances (HNS Protocol) (Protocol on Preparedness, Response, and Co-operation to pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol), 2000).

Along with the International Oil Pollution and Cooperation Treaty, an international treaty to address damage caused by oil pollution from ships has also been established, namely: Civil Liability Convention 1969, 1992 Damage to oil pollution (CLC); International Convention on the Establishment of an International Oil Pollution Damage Compensation Fund; International Convention on Civil Liability and Compensation for the Transport of Dangerous and Toxic Substances by Sea (HNS), 1996; 2001 International Convention on Civil Liability for Compensation for Oil Pollution Damage.

2. Main International Conventions on Preventing, Combating, and Compensating for Damage Caused by Offshore Oil Pollution

2.1. Convention Group Proposes General Principles

In this group of conventions, the most important international treaty is the International Convention on the Law of the Sea. The Convention was adopted in 1982 (UNLOCS 82) and entered into force on November 16th, 1994. As "Human Ocean Charter", the Convention stipulates comprehensive legal principles in the marine field. Although it does not elaborate on the issue of offshore oil pollution, the Convention contains basic provisions on the protection of the marine environment, which is the basis for the guidance of international legal provisions on environmental protection. This includes regulations to prevent oil pollution. In Article X192 of Article 192 on the protection and maintenance of the marine environment, the Convention reiterates a general rule: "States are obliged to protect and maintain the marine environment".

In addition, in accordance with the provisions of Article 225.3, in order to ensure prompt and appropriate compensation for all damage caused by marine pollution, the 1982 UNCLOS clearly states: “States need to cooperate for a certain period”. This is to ensure the application and development of damage compensation in regard to the International law of liability for assessment, compensation, and dispute settlement, and where possible ensure appropriate standards and procedures for compensation such as the determination of compulsory insurance or compensation.

Countries have an obligation to cooperate with relevant countries and international organizations to the possible extent of eliminating the effects of pollution as well as preventing and minimizing pollution damage (Article 199 Contingency plans against pollution in Unlocs 82. Section 2. Global And Regional Cooperation, n.d.). The Convention also requires “global or regional cooperation in the formulation and drafting of rules and regulations and recommended international practices and procedures consistent with it. The Convention on the Protection and Maintenance of the Marine Environment also takes into account regional characteristics (Article 197 Cooperation on a global or regional basis in Unlocs 82. Section 2. Global And Regional Cooperation, N.D.). Therefore, countries are required to cooperate with each other directly or through intermediaries of competent international organizations to promote research, implement marine scientific research programs, and exchange information and general marine environmental data, especially marine environmental pollution data (Article 200 Studies, research programmes and exchange of information and data in Unlocs 82. Section 2.Global And Regional Cooperation, N.D.).

The serious marine pollution problem is beyond the control of the country and requires close cooperation between countries in solving problems related to the marine environment and in construction. This is a common international legal framework for the protection of the marine environment. Prevention of marine pollution is now an urgent issue that needs to be addressed, not only for the benefit of a country, but also for the entire international community. By recognizing the importance of oceans to humans and the increasing pollution of oceans today, countries have and will continue to make greater efforts to protect and maintain the marine environment.

Therefore, according to the 1982 United Nations Convention on the Law of the Sea, the responsibility for paying for damages, including oil pollution and settlement plans, between polluting countries and organizations should be borne by the person responsible for the marine environment to countries.

2.2. Convention Group for the Prevention and Control of Marine Oil Pollution

(1) International Oil Pollution Prevention Convention (OILPOL 54)

On May 12, 1954, the first international conference on petroleum pollution was held in the United Kingdom. The meeting adopted the first convention on preventing marine pollution caused by oil, called OILPOL 54/69 (Nguyen Hong Thao, 2003). The purpose of the Convention is to control the activities of oil spill operations. As a result, tankers must dispose of oil in permitted areas, and all unloading and loading operations must be recorded in an oil diary. In 1962, 1969 and 1971, the Convention was revised and supplemented, and its focus was mainly on expanding the areas where oil spills are prohibited. The OILPOL 69 Amendment from the Torrey Canyon Great Ship Disaster revealed the weaknesses of OILPOL 54.

The 1971 amendment decided to expand the scope of application to small tankers, on the grounds that the small oil tanker usually causes less damage, especially in the event of collision and stranding. The oil and gas industry encountered strong opposition, so it never took effect (Vietnam Register, 2002).

A weakness of OILPOL 54 is that it does not specify the shipowner ’s civil liability and the compensation mechanism for oil pollution damage. According to the provisions of this Convention, ships that violate the provisions of this Convention shall be dealt with in accordance with the laws of the country where the ship is registered. This happens if the ship does not comply with the regulations regarding the unloading and loading of oil within the permitted area. If pollution is caused within the permitted area, the damage will be compensated for in accordance with the laws of the ship's country of registration.

In response to the practice of preventing oil pollution, the OILPOL 54 Convention has been replaced by the MARPOL 73/78 Convention. However, when MARPOL officially entered into force in 1983, the OILPOL 54 Convention continued to be applied in certain countries until those countries declared its abolition.

(2) **The 1969 International Convention on the Intervention of Offshore Oil Pollution Accidents (Intervention)**

The Convention stipulates that coastal states may take necessary measures at sea to prevent, limit or eliminate the harm of oil pollution or pollution threats to coastal areas. There is also a need to refuel after the marine accident. However, coastal states only allow refueling after accidents when necessary and after consulting with relevant organizations, especially in the flag state or in the country where the shipowner or cargo owner is located and where circumstances permit.

(3) The 1973 International Convention for the Prevention of Marine Pollution from Ships, revised and supplemented by the 1978 Protocol (MARPOL 73/78)

MARPOL 73/78 was adopted by the International Maritime Organization in 1973, revised and supplemented in 1978, and entered into force on January 2, 1983. The 73/78 Anti-Pollution Convention stipulates that accidents, including the accidental dumping of oil, hazardous substances, waste water, and waste in any form from water transport vehicles into the sea, are considered acts of Marine environmental pollution. At the same time, the ultimate goal of MAPOL 73/78 is to eliminate all intentional marine pollution by controlling, domesticating, and reducing the discharge of harmful substances. MARPOL 73/78 is also considered to be a comprehensive document which is the most effective tool for specifying all the contents of section 12 "Protection and Maintenance of the Marine Environment" of the 1982 United Nations Convention on the Law of the Sea.

Among the six annexes of MARPOL 73/78, Appendix I Regulations to Prevent Oil Pollution is the most mandatory and important. This annex sets new and stricter standards on ships to prevent the release of oil into the ocean. This annex requires some large tankers to have independent ballast water tanks and crude oil flushing systems. In addition, the annex requires that national ports establish adequate reception facilities to treat sludge and other wastes.

It can be said that since the birth of the 73/78 Anti-Pollution Convention, the amount of oil discharged into the ocean has greatly reduced. MARPOL 73/78 and its appendix have made important contributions to the protection of the marine environment, limiting activities that may cause high pollution.

(4) International Petroleum Response and Cooperation Convention (OPRC-London, November 30, 1990)

Like MARPOL, OPRC requires member states to establish an effective and timely response system in the event of a pollution incident. It stipulates that the agency is responsible for oil pollution prevention and response as well as sending oil pollution notices. The agency also has the right to seek help on its behalf or decide to seek help when requested. A national emergency plan must be developed and coordinated with other relevant agencies. The agency must also organize drills and conduct oil pollution emergency training.

2.3. Convention Group on Civil Liability and Compensation for Damage Caused by Marine Oil Pollution

(1) 1996 International Convention on Liability and Compensation for Loss of Maritime Dangerous and Toxic Substances (HNS) (International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), n.d.).

HNS provides a liability and compensation system based on a two-level sanctions system such as the oil pollution sanction in the CLC and FUND conventions. The first and second compensation is the shipowner's responsibility. Two payments are made by the HNS fund which is provided by commodity stakeholders. The convention covers not only pollution but also other risks such as fires and explosions caused by dangerous and toxic substances. Compensation is not only for pollution damage in the territory and territorial waters, but also for the exclusive economic zone. The compensation limit is calculated based on the limits of the International Monetary Fund. The HNS Convention outlines the stipulates strict liabilities of shipowners, which is higher than the liability limit of the general liability system and mandatory insurance system and certificates.

The Convention does not apply to radioactive materials, coal, and other smaller cargos. However, it only applies to the following: Annex I, barrel oil listed in Annex I; Annex II, Annex II lists toxic liquid transport barrels, and substances classified in accordance with Article 3 (4) of Annex II of the Marlborough Convention; dangerous liquids specified in Chapter 17 of the IBC Code; dangerous and toxic substances specified in the IMDG Code; liquefied Liquor in 1983 Chapter 19 of the "Container Structure and Equipment Regulations" which mentions liquefied gas; liquids in barrels with a combustion temperature not exceeding 600°C; and residues of these substances. According to the total tonnage of the ship, the first compensation limit will not exceed 100 million SDRs, while the maximum compensation limit specified in the HNS Convention is 250 million SDRs (International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), n.d.).

(2) The 1992 International Convention on Civil Liability for Oil Pollution Damage (CLC 1992)

CLC (International Convention on Civil Liability for Oil Pollution Damage) (INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS 'Liability and compensation for oil pollution damage', n.d.)

The International Convention on Civil Liability for Oil Pollution Damage came into place in 1969 and is based on two standards that ensure safety at sea for those working and the entire environment. Subsequently, the Convention was amended twice in 1992 (entry into force on May 30, 1996) and in 2000 before entry into force on January 1, 2003. The Convention initially established a procedure for claiming compensation in the event of an oil pollution. The steps are as follows:

Step 1- Collect Evidence and Assess Loss

The 1992 CLC Convention did not specify the target for evidence collection and damage assessment. However, in practice, when the shipowner purchases insurance, the insurance agency is the competent authority to assess the loss and pay compensation to the complainant on this basis.

The Convention provided for the damage to the environment will be limited to restoring it regardless of the location of the spill and damage to the ship or outside the ship. The loss of income will not be compensated for regardless of the location of the oil spill or oil discharge. This is because of the damage caused outside the ship due to the pollution caused by the oil spill or the pollutants released from the ship. More so, except for loss of income, the compensation for the affected environment will be limited to restoration. This includes the actual cost of reasonable measures taken in the environment that has been or will be adopted.

Therefore, the cost of all measures (preventive measures) will also be included in the compensation package (Article 6, paragraph 6, of the 1992 CLC Convention).

Step 2- Claim for Compensation
Right to Appeal Liability Compensation

The victim has the right to claim compensation. This includes individuals, organizations, associations, companies, private or public entities, and national and local governments.

Party Responsible for Compensation

The organization/individual is responsible for compensation, i.e., damage to the shipowner (according to Article 3, paragraph 1 of CLC 1992). However, under the conditions stipulated in Article 3, paragraphs 2 and 3 of

the 1992 CLC Convention, the shipowner shall not bear any responsibility or exemption from liability.

If the owner proves the following facts, he will not be liable for pollution damage:

a) Caused by war, hostilities, civil war, violence or due to special, inevitable and irresistible natural phenomena.

b) Damage attributable entirely to the actions or omissions of third parties, or

c) If the damage is entirely caused by obstruction or misconduct caused by any government or agency responsible for maintaining beacons or assisted navigation functions. If the shipowner proves that the damage caused by the pollution is partly or wholly due to an act that deliberately caused damage to the person or due to his carelessness, the ship may be exempted from part or all of its liability to that person.

d) If the shipowner maintains insurance or financial security (participating in the transportation of more than 2,000 tons of bulk oil, the shipowner is required to participate in insurance or financial security).

Determine the Scope of the Claim

The injured party only gets compensated based on the shipowner's limited liability in the following three levels: (1) For ships with a tonnage of 5,000 tons or less, the liability limit is 4.51 million SDRs, which is approximately US $ 5.78 million; (2) For ships with a tonnage exceeding 5,000 tons and 140,000 tons, an additional weight of 631 SDR/GT should be added per unit ton (US $ 80); (3) For ships above 140,000 tons, the limit is 89.77 million SDR (special drawing rights) ($ 11.5 million) (International Convention on Civil Liability for Oil Pollution Damage (CLC), n.d.).

Identify the Solution and the Competent Authority

When an incident causes pollution damage in the territory (including territorial sea or area) of one or more member states (including Article 2 of the CLC 1992 Convention) or when preventive measures have been taken to prevent or minimize the damage caused by pollution within the territories (including territorial seas and regions), compensation can only be claimed in the courts of a member country or state. The defendant must also receive appropriate notice of the complaint (Article IX of the 1992 CLC Convention). The procedures for claiming compensation include the following:

The Plaintiff Filed a Complaint

In the event of an oil pollution incident causing damage in its territory, territorial sea or exclusive economic zone, the claimant may file a complaint with the court of the party’s state (Article IX.1).

The Defendant Set Up a Compensation Fund

In order to limit the liability, the shipowner must establish a fund in the court or the competent authority of any member country that has the liability for an amount corresponding to the limit of liability. If compensation is required or no request is made, the fund shall be established in the court or competent authority of the Member State that may bring the trial (Article 5, paragraph 3).

If the shipowner has insurance or financial guarantee, the insurance or financial guarantor is the defendant in the lawsuit. The insurer or financial guarantor also has the right to set up a limited liability fund as a shipowner. If the shipowner is not entitled to the limitation of liability, the insurer or financial guarantor may limit his liability. In all cases, the defendant has the right to require the shipowner to participate in the litigation (Article 7, paragraph 8).

Court proceedings

The Statute of Limitations for Filing a Lawsuit

Within three years after the damage occurred, a statute of limitations should be filed in court. If an event, including a series of events, occurs, the limitation period for filing a lawsuit is 6 years from the date of the first occurrence (Article VIII of the 1992 CLC Convention).

Identify the Courts that have the Power to Allocate Funds

After the defendant establishes the fund, the court of the country that established the fund will be the only court that has the power to decide all matters related to the distribution of the fund (Article IX, Item 3 of the 1992 CLC Convention).

Take Temporary Emergency Measures

Only when the defendant fails to establish a fund after the damage is done, in accordance with Article 5 of the Convention, can the court take temporary emergency measures.

If the shipowner has established a fund, then: (a) the claimant shall not exercise any rights against the shipowner's other properties in such claims, and (b) the court or any competent state party has the power to order the release of the ship or any of the shipowner's other previously detained properties to claim compensation and release any monetary guarantee or other guarantee (Article VI, paragraph 1).

Recognize and Enforce Court Decisions

Any decision made by the competent court that is enforceable in the country where the judgment is located is no longer subject to any other form of joint appeal and should be recognized in another Member State. However, this is subject to change if: (a) a court decision is made through fraud, or (b) the defendant has not received proper notice and has no equal opportunity to defend (Article 10). These judgments will take effect in each state party as soon as the state party has completed the required procedures.

(3) International Convention on the Establishment of the International Oil Pollution Damage Compensation Fund in 1992 (FUND 1992)

The 1992 Fund is a supplement to the 1992 CLC Convention, which aims to establish a compensation system because the compensation provided by the 1992 CLC is incomplete. The International Oil Pollution Compensation Fund 1992 (IOPC 1992) entered into force on May 30, 1996, in accordance with the 1996 Fund Convention. The 1992 Foundation is a global intergovernmental organization whose operations are compensated in accordance with the Fund Foundation's 1992 agreement. The process of claiming compensation under FUND in 1992 is as follows:

Step 1: The Injured Party makes a Complaint

Subject Claims Compensation

Anyone who has suffered a loss in a State party to the Convention has the right to file a claim and claim damages (Article 4 of the 1992 Fund Convention). Claimants for damages can be individuals, organizations, associations, companies, private or public entities, including national and local governments. If a group of plaintiffs suffer the same damage, they may seek more favorable conditions to cooperate with each other to file a complaint (2008 Claims Manual, Section 2.1.2).

Who made a Complaint to the Victim?

When damage occurred in 1992, the FUND Foundation cooperated with the shipowner's insurer and the Maritime Guarantee and Insurance Association (P & I club) and guaranteed the ship's third-party liability, including responsibility for damage caused by oil pollution.

When the incident caused a large number of complaints, the FUND 1992 Foundation and the P & I Club jointly set up a local complaint office to handle complaints more easily. This means that any plaintiff would have to complain to the office (Claims Manual. As adopted by the 1992 Fund Assembly in April 1998 and amended, most recently in April 2018, by the 1992 Fund Administrative Council, n.d.) An example is given in the case of "Hebei Spirit" in South Korea. In January 2008, when receiving a large number of complaints, FUND and Skuld Club (P & I Club) opened the

Complaint Office (Hebei Spirit Center) to assist the plaintiff in filing a claim in Seoul (International Convention on the Establishment of an Oil Pollution Compensation Fund, Guidelines for Claims in 2008 (IOPC Fund, 2008 Claims Manual), n.d.).

How to File a Complaint from the Plaintiff

Complaints should be in writing (fax or e-mail is also possible). If possible, P & I and/or FUND will issue a complaint form to assist the plaintiff in filing a complaint.

Complaints must be clear and provide complete information. Each item of the complaint must be supported by invoices, documents or other relevant documents provided such as working documents, explanatory documents, calculation results, and pictures. The plaintiff is obliged to provide sufficient evidence to support his claim (International Convention on the Establishment of an Oil Pollution Compensation Fund, Guidelines for Claims in 2008 (IOPC Fund, 2008 Claims Manual), n.d.).

Content in the Claimant's Complaint

Each complaint should include the following basic information: (1) the name and address of the claimant and any representative; (2) identify the ship involved in the incident; (3) if the claimant knows the date, location, and special circumstances of the incident, this should be provided, unless this information can be used by the 1992 FUND Foundation; (4) types of pollution damage suffered; (5) payment for claims.

When Should I Complain?

After the damage occurred, the plaintiff should file an appeal as soon as possible. If a formal complaint cannot be filed as soon as possible after the incident, the 1992 FUND Foundation will conduct an assessment and notify the plaintiff as soon as possible of the intention to file a complaint at the time of the incident. The plaintiff will provide the above details if possible.

Furthermore, the plaintiffs will estimate the loss of their right to compensation under the 1992 Fund Convention unless they file a lawsuit or give notice to the fund within 3 years from the date of the damage. Notice to file a lawsuit against the shipowner or shipowner's insurer according to the 1992 fund of the court is possible within three years (UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT. Liability and Compensation for Ship-Source Oil Pollution: An Overview of the International Legal Framework for Oil Pollution Damage from Tankers, n.d.).

Step 2: Assess Damage

The authorities are in charge of evaluating the damage with the IOPC FUND 1992. Although the 1992 FUND Convention does not have specific provisions on damage assessment, according to FUND 's guidance documents, organizations that can participate in damage assessment include INTERTANKO, OGP, ICS, IOPCF, ITOPF, UNNEP, P & I clubs, etc. When the incident occurs, FUND 1992 works with the shipowner's insurance company to appoint experts to guide the cleaning process. Researchers also check for the compatibility of the technology and conduct independent assessment of loss and damage.

The Types of Damages and Methods of Assessing Damages Based on IOPC FUND 1992

The 1992 Fund Convention provides for pollution compensation, which is discussed in Article 1, paragraph 2:

"Losses that occur outside the ship are due to oil spills or pollutants released from the ship. No matter where the oil leaks or releases, compensation will be paid. In addition to such loss of income, compensation for the affected environment will be limited to the actual cost of the measures taken to restore the environment, as well as the cost of taking preventive measures and the loss or damage caused by these measures.

Shipowners voluntarily make reasonable expenditures or reasonable sacrifices to prevent or limit damage caused by pollution.

More specifically, in FUND's Complaint Guide, the losses considered and assessed include: the cost of cleaning and pollution prevention measures; property losses; pure economic losses; economic losses in fisheries, marine animal, plant breeding, and fishing areas; economic losses in tourist areas; damage and environmental and oil spill lessons; and use by consultants (Zhang, 2008).

In each type of damage compensation, FUND provides guidelines for the scope of compensation in the plaintiff 's claim.

Notify the Plaintiff of the Damage Assessment Result

Once the fund and the P & I Association make a decision on the complaint, the plaintiff is usually notified in writing to explain the basis of the evaluation. If the plaintiff decides to accept the claim, the plaintiff will be required to sign the receipt for the payment. If the plaintiff does not agree with the evaluation of the complaint, the plaintiff may provide additional information and demand higher value.

Step 3: Decide on Compensation

The Ability to Determine Compensation

In 1992, FUND usually cooperated with the shipowner's insurance company and appointed experts to independently guide the process of cleaning, investigating, and evaluating damage. Although the foundation and P & I relied on experts to assist in evaluating complaints in 1992, the decision to accept or reject specific complaints is still up to the federation and the foundation. If it is not possible to agree on an evaluation complaint, the plaintiff has the right to submit his complaint to the competent court of the country or region where the damage was caused.

Compensation Limit

The injured party is compensated by the FUND foundation 1992 only within the scope of the fund's liability. More specifically, this involves events that occurred on or after November 1, 2003, and are over 203 million SDRs, regardless of the size of the ship (including the amount paid in accordance with the 1992 Liability Convention). Also, this includes events that occurred before November 1, 2003, that have amounted to SDR 135 million (including the amount paid under the 1992 Liability Convention).

Step 4: File a Lawsuit in the Competent Court

Terms of Limitation for Filing Claims

The right to claim is only valid for three years from the date of the damage in the case of a claim or notification under Article 7, paragraph 6, of the Convention. If a complaint is filed six years after the incident caused damage, the complaint will not be considered (Article 6 of the 1992 Fund Convention).

Identify the Competent Court

The general principle for determining jurisdiction in oil pollution cases is "the competent court of the country where the damage occurred". However, when a claim for compensation for oil pollution damage is filed with the competent court under Article IX of the 1992 Liability Convention, the court shall be directed against the shipowner or the shipowner’s guarantor, and the court shall be responsible if any claim has sole jurisdiction.

If claims for oil pollution compensation under the 1992 Liability Convention have been submitted to the 1992 Liability Convention member courts and not the 1992 Fund Convention member states, any claim against the Fund under the Convention shall be at the discretion of the complainant. Thereafter, it shall be submitted to the court in the country where the fund's headquarters is located or any court in a country. The parties to this Convention have jurisdiction over Article 9 of the 1992 Liability Convention.

Recognize and Enforce the Court's Judgment

On the premise of making any decision on the appropriation, any judgment on the fund made by the competent court that is valid in the country of review and does not need to be appealed should be considered. Such actions shall be effective and enforceable in each State Party.

(4) The 2001 International Convention on Civil Liability and Compensation, covering oil pollution from ship fuel depots (Bunker, 2001)(Civil liability for oil pollution damage: Bunkers Convention. It authorises EU countries to sign, ratify or accede to the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention, 2001)

From January 1, 2001, to September 30, 2002, the Bunker 2001 Convention was opened for ratification and acceptance. The scope of this Convention applies to any type of hydrocarbon mineral oil used or intended to be used in the operation or propulsion of ships. This also includes lubricants and its residues causing pollution damage in the territory, not exceeding 200 nautical miles from the baseline, the territorial sea, Tablet PC in an exclusive economic zone or a contiguous zone (if there is no exclusive economic zone and is determined in accordance with international law). The Convention stipulates that ships with a gross tonnage of 1,000 tons gross or more must have insurance certificates or other financial guarantees issued by member states. The Convention is a supplement to CLC and FC systems, and it covers marine pollution caused by other oils which are not covered by CLC and FC. Reports show that currently 52 countries have joined the Convention, and the fleet capacity accounts for approximately 84.57% of the total capacity of the world trade fleet. The fact that Vietnam officially acceded to the Bunker Convention is important. This has not only helped Vietnam have a sufficient legal basis to resolve oil pollution claims, but it has also enhanced Vietnam ’s reputation (Dang, 2012).

3. Vietnam laws on Prevention and Remediation for Marine

In the process of innovation and international economic integration, global issues and environmental pollution have become an important survival issue for Vietnam. Since Vietnam is a country that exports crude oil and imports finished products, it is located at an international crossroads to the ocean. Therefore, the problem of oil pollution in Vietnam’s waters to the ocean is an important problem that needs to be solved. Vietnam has formulated and completed a set of laws and regulations to prevent and overcome marine pollution. Vietnam’s general and special legal documents also recognize this (PVN ‘How the proper understanding of the petroleum market’, n.d.).

The 2013 Constitution of the Socialist Republic of Vietnam stipulates the highest legal and political ideology that everyone has the right to live in a

clean and meaningful environment (The National Assembly, 2013). There is also provision for Environmental Protection in the constitution (Article 43) which states that; organizations and individuals that cause environmental pollution, consume natural resources, and reduce biodiversity must be strictly dealt with and be held responsible for overcoming and compensating for damage. These are important provisions recorded in the Constitution and they form the basis of environmental protection laws and regulations.

In 2014, the Environmental Protection Law (Pursuant to the Constitution of the Socialist Republic of Vietnam, 2014) (Pursuant to the Constitution of the Socialist Republic of Vietnam, 2015) was brought into effect, which established a chapter specifically on "Environmental Protection of Oceans and Islands", and it includes provisions on principles of marine environmental protection, rational use of marine resources, and pollution control. When compared with the provisions of the 2005 Environmental Protection Law (marine environmental protection is defined as one), the provisions of the 2014 Environmental Protection Law on marine environmental protection clearly shows the importance of control, prevention, and overcoming. Incidents that pollute the marine environment include incidents that involve contaminated water with oil and other wastes. When exploring, developing, transporting, storing and processing oil and natural gas, all organizations and individuals must apply appropriate technologies, fully implement the necessary environmental protection measures, and formulate preventive measures to avoid oil leakage.

Regarding pollution remediation, Vietnam's environmental law recognizes the following principle: "Polluters must compensate for losses and take remedial measures". This special principle is based on the general legal principle which states that: "If damage is caused, compensation must be made".

Vietnam's Maritime Law 2015 (Pursuant to the Constitution of the Socialist Republic of Vietnam, 2015) confirms that the protection, renewal, and sustainable development of the marine environment related to economic guarantees are an important principle, and it is reflected in the 6 articles of the law on marine environmental protection. The Maritime Law has many provisions, which specifies the provisions of the MARPOL 73/78 Convention on pollution prevention certificates; inspection, control and prohibition of ships and ports that are not capable of preventing pollution; Ship port; and compulsory civil liability insurance obligation for environmental pollution caused by oil tankers (Article 300). The law specifically stipulates that marine pollution activities are not limited to civil liability. When ships cause oil spills, civil liability will be investigated in accordance with the Convention. If the vessel that caused the oil leakage is an oil tanker, and the oil leaked is heavy oil that is difficult to decompose, then civil liability is assumed for damage

caused by oil pollution (CLC 69/72). The Maritime Law also emphasizes that environmental complaints are the basis for the right to arrest ships (Chapter VI, Chapter II, Article 139) to ensure the management and timely handling of pollution-causing activities.

The 2013 Vietnam Petroleum Law (Pursuant to the Law on Government Organization dated December 25, 2013) stipulates that entities involved in oil and gas activities must use advanced technologies and comply with the provisions of Vietnamese law on the protection of natural resources, environmental protection, and personal and property safety (Article 4). In addition, the owner must have environmental protection recommendations and measures (Article 5). These entities are legally responsible for damage caused to people, property, and the environment. In particular, the status quo must be restored before any activities resume that directly or indirectly affect the environment and cause damage.

Vietnam's 2015 Civil Code (Vietnam, 2015) stipulates that individuals, legal entities, and other entities that pollute the environment causing damage must compensate for the damage according to regulations, including cases that cause environmental pollution. Thus, there is no error in this field. If the owner wishes to waive such ownership that may pollute the environment, such waiver must also abide by the law (Article 249). The owner must abide by the Environmental Protection Law when using, saving,or giving up property, stop acts that cause pollution, and take appropriate measures. Therefore, in regard to the pollution of the marine environment, in the case of the use of dangerous sources (including damage caused by oil), the liability for compensation shall be The Vietnam Criminal Code 2015 which has more specific provisions on environmental crime. Specifically, Chapter 19 makes 12 provisions on environmental crimes, including environmental pollution crimes (Article 235) and crimes that violate regulations on prevention, response, and overcoming environmental events (Article 237). According to Article 237, depending on the seriousness of violations of prevention, response and overcoming environmental incidents, individuals and legal persons can be fined 50%, which can be between one million or even ten billion Vietnamese dong. The term of imprisonment ranges from 6 months to a maximum of 7 years for individuals and legal entities (LÊ VĂN SUA, 2015). The imprisonment ranges from 5 to 10 years, depending on the degree of damage and the nature of the illegal act. Other punishments include prohibiting holding positions, and prohibiting practices related to the environment and environmental protection. A new feature of the provisions on environmental pollution in the 2015 Criminal Code states that the document provides quantitative figures to determine the extent of violations and the corresponding penalties (Article 235). Such regulations will ensure the specificity and clarity in determining the pollution level, and thus determine the penalty framework suitable for the

subject of environmental pollution. Therefore, Vietnam's legislative point of view has shown that in accordance with the provisions of the International Environmental Protection Law, Vietnam has made progress in ensuring severe penalties for acts that pollute nature and the legal person's environment in Vietnam.

The "Vietnamese Coast Guard Regulations of 2008" stipulates that one of the important tasks of this force is to protect the country 's natural resources and environment, as well as to prevent and treat it. Therefore, environmental pollution (including oil pollution from the oceans within the jurisdiction of Vietnam) mitigation measures include a Vietnamese law and the International exclusive economic zone membership.

In addition to the above laws, the prevention and overcoming of general marine pollution, especially the oil pollution of ships, are also subject to different jurisdictions of the 2003 Fisheries Law, the 2012 Vietnam Ocean Law, and cargo. This includes a series of other decrees, notices, and related directives.

From a legislative point of view, it can be asserted that Vietnam has a system of legal regulations on the prevention and remediation of marine pollution. However, the regulations on umbrella protection and remediation are is of particular concern because marine pollution from ships is the most dangerous. It must be emphasized that the rules and regulations are recognized in Vietnam's specific laws, rather than concentrated in specific legal documents, and their implementation is based on laws and regulations. There are accompanying instructions to ensure effective implementation and compliance with the law. In the actual application process, the results are encouraging. Nonetheless, there are certain shortcomings and deficiencies.

In the case of dumping waste oil into the Da River water source, the People's Court of Hoa Binh City sentenced Ly Dinh Vu to 5 years in prison, Hoang Van Tham 4 years, and Nguyen Chuong Dai 3 years and six months in prison. At the trial as well as at the investigation agency, the three subjects, i.e., Ly Dinh Vu (born 1982), Nguyen Chuong Dai (residing in Thuan Thanh district (Bac Ninh province) and was born in 1994), and Hoang Van Tham (born in the year 1994 and residing in Van Quan district (Lang Son province) sincerely confessed to the criminal acts. After comprehensively reviewing the case content, based on the nature, severity and criminal acts of each defendant, the Trial Panel of the People's Court of Hoa Binh City sentenced Ly Dinh Vu to 5 years in prison. On the other hand, Hoang Van Tham was detained for 4 years in prison while Nguyen Chuong Dai spent 3 years and six months in prison for the same crime of "causing environmental pollution". Regarding civil liability, Da river Clean Water Investment Joint Stock Company requested the defendants and CTH Ceramics Joint Stock Company to reimburse the costs of incident response and handling oil pollution into the

water source with a total amount of more than 5.6 billion Vietnam Dong (TTXVN, n.d.) However, the process of investigation and additional investigation at the request of the Court has not clarified the level of damage. Considering that compensation for damage and reimbursement does not affect the resolution of the case, it needs to be separated for settlement by another civil case so that the Trial Panel does not mention settlement. According to the case content, on the morning of October 9, 2019, the staff of Song Da Clean Water Investment Joint Stock Company discovered a streak of the oil slick, stinking on the stream leading water to Dam Bai lake, and it poured into the factory. The company reported to the police about the incident to find the source of the dumping. Through the investigation, Hoa Binh Provincial Police determined that, in early October 2019, Ly Dinh Vu and Nguyen Thi Huyen Trang had exchanged telephone conversations about Vu's treatment of waste oil for CTH Ceramics Joint Stock Company for 1,000 VND/liter. On October 6, 2019, Vu directed Nguyen Chuong Dai and Hoang Van Tham to drive with ten plastic containers of 1,000 liters/barrel from Thuan Thanh (Bac Ninh) to CTH Ceramics Joint Stock Company in Phu Tho town (Phu Tho province) to absorb waste oil with a total weight of 8,830kg. After that, Dai and Tham transported the oil to Van Lam district (Hung Yen) for Vu to find a place to dump the waste. At 4:00 on October 8, 2019, Ly Dinh Vu called Nguyen Chuong Dai and Hoang Van Tham to drive the above waste oil to the Phuc Tien - Phu Minh inter-commune road to dump. In the process of sampling, investigation, and inspection conclusions of the authorities, it was indicated that in the waste samples collected at the dumping site, the most dangerous ingredient was benzene (PV, n.d.).

Therefore, it is necessary to perfect the legal system of marine environmental protection in Vietnam. In addition, the law allows the use of a non-contractual compensation system to investigate liability for environmental pollution caused by emissions, discharges, or oil spills.

4. Some Comments and Suggestions on Joining the International Convention on Preventing, Combating, and Compensating the Damage Caused by Oil Pollution in Vietnam's Seas

With the joint efforts of countries and international organizations, a series of international treaties on marine environmental protection, especially the prevention and control of oil pollution damage was born. This was done in order to establish an international legal framework for global marine environmental protection activities. The above-mentioned international conventions elaborate on human environmental protection policies in the field of oil pollution (25 years of implementation of UNCLOS in Vietnam, n.d.):

(1) The ocean is a common resource for mankind. Therefore, protecting the marine environment is the responsibility of all mankind and the

responsibility of the country and users as well. This international convention clearly stipulates this principle as seen through UNLOCS 82, the Convention on the Prevention of Marine Pollution from Ships (MARPOL 73/78), the Convention on the Limitation of Shipowners' Civil Rights, and the establishment of an international compensation fund for damage caused by ship pollution.

(2) Shipowners' Rights Protection Policy: This policy is reflected in the limitation of shipowners' civil liability for environmental damage. In other words, the shipowner is only liable for compensation for pollution damage caused by the ship based on the tonnage limit of the ship. The 1992 CLC Convention, the 1996 HNS Convention, and the 2001 Bunker Convention all clearly show this.

(3) The policy states that cargo ship is responsible for damage caused by oil pollution. Cargo transported by sea is one of the main sources of marine pollution. Therefore, this means that the owner of cargo transported by sea must also bear all the liability. This policy supports the shipowner's protection policy, and it is clearly stipulated in the FUND Convention that the convention is a user of oil. In other words, oil importers are jointly responsible for damage to marine pollution because there is oil on board.

(4) More Preventative Policy: MARPOL 73/78 Convention expresses this policy very clearly. The Convention outlines the measures taken to prevent marine pollution from ships, including the design and equipment requirements for ships. Furthermore, the owner and captain of the ship are responsible for the implementation of waste discharge regulations arising from the ship's activities. Ships and ports are responsible for organizing the reception of these wastes through the shore waste reception system.

(5) A Policy to Protect the Rights of Marine Users: This policy is reflected in the compensation regulations for marine users who have suffered damage due to marine pollution. Damage that can be compensated includes not only direct damage, but also indirect damage. In particular, the compensation costs include not only the damage to the marine products caused by cleaning up the marine environment and the costs immediately after pollution, but also the damage caused by the effects of post-pollution. Loss of income from tourism, hotels, fisheries, and aquaculture decreased. Hence, these indirect damages may have consequences in the next few years such as the absence of tourists, fisheries, etc.

It can be seen that international conventions have established a complete international legal framework to protect the marine environment as a whole, as well as to prevent and respond to oil pollution incidents. From the perspective of a comprehensive assessment of the international convention system for oil pollution, and based on a series of conventions (1) that Vietnam has signed and acceded to, it can be said that Vietnam is still outside many

conventions on oil pollution. In order to create the necessary legal foundation, Vietnam must urgently promote participation in other important international oil pollution treaties in the near future such as the Convention on Readiness for International Cooperation and Response (Petroleum Pollution (OPRC, 1990), International Convention on Intervention in Oil Pollution Accidents at Sea (1969), Protocol on Response and Cooperation on Accidental Pollution by Hazardous and Toxic Substances (HNS Protocol 2000), and International Convention on Civil Liability and Compensation for the Transport of Dangerous and Toxic Substances by Sea (HNS 1996)). Vietnam needs to develop a road map to accede to the 1992 FUND Convention as a way to conduct the legal basis for claims for damage caused by pollution. Therefore, joining the 1992 fund will bring the following benefits to Vietnam:

After becoming a party to the 1992 FUND Convention, any tanker in any country, whether or not it is a part the FUND Convention, only needs to pollute the waters of Vietnam, and Vietnam will have the right to appeal. The claim from IOPC 1992 is particularly meaningful for Vietnam. As predicted in the near future, the number of tankers entering and leaving Vietnam's waters will rapidly increase mined crude products and imported petroleum products from Vietnamese water. In addition, due to the status of the Vietnam Sea on international maritime routes and the demand for energy products from the North and Southeast Asian economies, the number of foreign vessels going to Vietnam is increasing. This means that the Vietnamese waters are in danger of being polluted by oil. Oil pollution on board often causes severe damage. If it is not a member of the 1992 Fund, Vietnam will not be compensated by the 1992 International IOPC.

According to the 1992 FUND Convention, crude oil importers must pay the IOPC 1992 annual dues based on the amount of oil imported and the fees that IOPC 1992 must pay that year. This means that when Vietnam becomes a party to the 1992 FUND Convention, Vietnam must fulfill its annual obligation to pay the IOPC 1992 like other members. However, Vietnam is still an exporter and has not yet contributed to the 1992 Fund Convention. In the future, they have to make their own contribution to the fund so that oil imported from Vietnam can be relied upon according to forecasts. Vietnam's oil imports are small compared to their exports, especially the amount of sustainable oil (crude oil, heavy oil) in the oil list provided by the 1992 CLC Convention. Vietnam will benefit from paying into the IOPC 1992 fund because the cost will be small, but in return, they will receive full sponsorship from IOPC 1992.

Petroleum importers and organizations will donate directly to IOPC 1992 instead of donating to IOPC 1992 through the Vietnamese government. Therefore, the Vietnamese government does not have to face any difficulties in collecting and paying IOPC 1992. The Vietnamese government is only

focused on ensuring that organizations and individuals importing oil fulfill their obligations to IOPC. The management of Vietnamese's resources will improve through their participation in these international agreements.

As a member of the 1992 FUND Convention, other member states will consider the effective decisions and judgments of the competent Vietnamese court on compensation for damage caused by oil pollution from ships.

In addition, joining the 1992 Fund helps to establish and improve regulations on compensation for the marine environment in accordance with regional and international standards. It also creates a legal basis for promoting international cooperation to protect the marine environment to meet integration requirements.

Conclusion

With the development of the marine economy, Vietnam faces the risk of serious marine pollution and degradation due to oil spills. At the same time, Vietnam is still outside many international conventions related to environmental protection and shipping activities (including activities of ships, ports, shipbuilding and repair facilities, etc.). They are also outside many international treaties to prevent oil pollution and oil spills response. Delaying accession to these international conventions not only reduces the competitiveness of Vietnamese flag ship registration, but it also negatively affects Vietnam's maritime safety and environment.

Hence, by singing and acceding to many treaties, Vietnam puts into effect both effective and safe oil pollution protection measures and ensures national rights and interests. In the case of protecting the marine environment and preventing and responding to oil spills throughout the sea, Vietnam needs to implement simultaneous solutions, including solutions to establish and improve the legal system for compensation. Damage caused by oil pollution according to specific routes suitable for Vietnam's national conditions, and in compliance with international regulations and practices, needs to be compensated. With the determination of the political system and the efforts of relevant agencies, organizations and individuals, it is hoped that Vietnam will not deviate from many international environmental protection conventions in the near future. Offshore schools to prevent oil pollution are established for a comprehensive, scientific, and modern environmental protection legal system. Thus, this prevents, sanctions, and demands compensation for oil pollution damage.

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