

EXAMINING THE INTERNATIONAL LEGAL FRAMEWORK RESPONSIBLE FOR THE CONTROL OF OIL POLLUTION IN NIGERIA*

Abstract

Oil pollution is without a doubt a serious challenge in Nigeria today. Since Nigeria discovered crude in Oloibiri, the present day Bayelsa state in 1956 the environment has been wrought with oil spills which have caused the degradation of farmland and gradual destruction of aquatic life through the exploration and exploitation of crude oil. This is even more sickening considering that the general environment where these oil spills occur are where the livelihood of the local which is fishing and farming depend on. This has caused a halt in the people's occupation and more or less destroyed the local economy. This paper seeks to examining the various international legal framework that have been enacted by the international community ratified and domesticated by the Nigerian government with the view to control this impediment. It will also discuss the impact of these laws on oil pollution with the view of reviling if they have succeeded in addressing this burning issues.

Keywords: Environment, Petroleum, Pollution, Oil, Spill.

Introduction

Environmental degradation resulting from diverse oil pollution is a worldwide problem. It poses challenges to human existence which need to be tackled globally. Hence, necessitated the enactment of various international agreements and local legislations to nip these challenges in the bud. For the purpose of this research, some of the International Instruments and the municipal legislations on petroleum and environmental oil pollution which has impacted positively in the redress of oil pollution in Nigeria will be discussed in this chapter. It is the duty of the government, the various regulatory authorities to impose on these oil companies and deploy policies for the protection of the environment. There has been no want in the number of laws and regulations deployed by the government and the agencies in this regard. However, the environment is continually abused and degraded despite the existence of these laws or regulations. The aim of this chapter is to set out yardsticks

against which the international legal framework and the municipal laws and regulations will be measured. The legal framework shall be evaluated based on the principle of prevention of harm to the environment¹, the precautionary principle, the polluter pay principle the tool of strict or absolute liability.

United Nations Convention on the Law of the Sea 1982 (UNCLOS)

The United Nations Convention on the Law of the Sea also known as the Law of the Sea Convention or the Law of the Sea treaty, is an international agreement that resulted from the third United Nations Conference on the Law of the Sea, which took place between 1973 and 1982². The Law of the Sea Convention characterizes the rights and responsibilities of nations with respect to their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources. The Convention was concluded in 1982, replaced the 1958 Geneva Convention on the law of the Sea. Accordingly, the UNCLOS came into force on 16th November, 1994, a year after Guyana became the 60th nation to ratify the treaty.³ As of August, 2018, 167 countries inclusive Nigeria and others from all region of the world have joined in the Convention. It is uncertain as to what extent the Convention codifies customary international law. The United Nations Convention on the Law of the Sea lays down a comprehensive regime of law and order in the world's oceans and seas establishing rules governing all uses of the oceans and their resources. It enshrines the notion that all problems of ocean space are closely interrelated and need to be addressed as a whole.

At the time of its adoption, the Convention embodied in one instrument traditional rules for the uses of the oceans and at the same time introduced new legal concepts and regimes and addressed new concerns amongst which is pollution. The Convention comprises 320 articles and nine annexes, governing all aspects of ocean space, such as delimitation, environmental control, marine scientific research, economic and commercial

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¹ The principle of prevention of harm to the environment, otherwise called the preventive principle, along with the principle of sustainable development are twin pillars of customary international law. Countries are to refrain from acts that would endanger harm to the environment of another neighbour country. This was enunciated in the Trial Smelter Arbitration US v Canada 1931-1941, 3 UNRIAAA 1905.

² Ibid

³ United Nations (2016) The United Nations Convention on the Law of the Sea (A historical perspective). https://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm Accessed 27 June 2021.

activities, transfer of technology and the settlement of disputes relating to ocean matters. This exhaustive provisions of the treaty has made it the most globally recognized regime dealing with all matters relating to the law of the sea.⁴ The Conventions also reveals that the twin issues upon which most of them focused are the allocation and the use of natural resources and the responsibility and liability for oil pollution⁵. In this regard, the basis of the numerous environmental agreements on oil pollution has been the national sovereign rights to exploit resources within a country's jurisdiction or control, combined with rights to shared or common resources.

Countries have then voluntarily agreed to constraints on their operational behaviour that affect these shared or common resources.⁶ The controversial issues in defining what is equitable amongst nations within the context of oil pollution control are numerous: what flexibility should be put in place to establish common or but differentiated pollution control standards; to what extent should the politics of sovereignty and recourse to economic rights be allowed in defining the compliance mechanisms of international environmental agreements; to what degree should a country be held responsible for activities that contributed to global environmental degradation in the past; and the question of the responsibility of the present generation regarding the effect of pollution to the environment.

In resolving these contentions, UNCLOS approached this situation from a notion of shared responsibility for the resources in question.

UNCLOS has represented perhaps the most concrete and extensive manifestation of the desire of states to realise the principles and recommendations of the Stockholm Conference and bring about more effective control of marine pollution. Whereas previously, states were to a large extent free to determine for themselves whether and to what degree to control and regulate marine pollution, they are bound under UNCLOS to do so on terms laid down by the Convention.

Article 192 of the UNLCOS provides that states have the obligation to protect and preserve the marine environment. The obligation on States as enshrined here clearly extends beyond that part of the environment

⁴ Ibid

⁵ It is supplemented by the 1994 Agreement relating to the implementation of Part XI of UNCLOS. Nigeria ratified it on August 15, 1986.

⁶ Boyle, A.E. 'Marine Pollution under the Law of the Sea Convention' (1997) (347) (351) *Journal of International Law* 79.

which lies within a State's jurisdiction. Article 193 represents the fundamental compromise between the interests of individual States in their quest for economic development and the universal interest in the protection and preservation of the marine environment. By Article 194, States are required to take individually or jointly all measures consistent with the Convention that are necessary to prevent, reduce and control pollution of the marine environment, from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities.

The measures taken pursuant to this part shall include inter-alia those designed to minimize to the fullest possible extent 'pollution from installations and devices used in exploration or exploitation of the natural resources of the sea-bed and sub-soil. Accordingly, Article 145 of the article states that protection of the marine environment Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities. To this end the Authority shall adopt appropriate rules, regulations and procedures for inter alia: the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities; the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment

Article 195 provides that in taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as not to transfer directly or indirectly, damage or hazards from one area to another or transform one form of pollution into another. Under Article 196 (1) States are required to take all steps necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control or the international and accidental introduction of species, alien or new, to a particular part of the marine environment which may cause significant and harmful changes thereto. By the provisions of Article 207 (1), States are required to adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land based sources, including rivers, estuaries,

pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.

Article 213 requires States to enforce their laws and regulations adopted under Article 207, while Article 237 deals with the obligations under other Conventions that protect and preserve the environment and states that the provisions of UNCLOS themselves are 'without prejudice to the specific obligations assumed by States under special Conventions and agreements concluded previously which relate to the protection and preservation of the marine environment and to agreements which may be conclude in furtherance of the general principles set forth in this Convention. In Article 293, it is declared that a UNCLOS tribunal shall apply this Convention and other rules of international law not incompatible with this Convention'. Which means, when Article 197 is read conjunctively with Article 237 and 293, the emerging scenario is that UNCLOS tribunals will be privilege to apply an array of environmental and environmental related treaties whose vision is to make for the progress of and to project international environmental protection.

International Convention for the Prevention of Pollution of the Sea by Oil 1954 (OILPOL 1954 LONDON)

The International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) was an International Treaty signed in London on 12 May 1954 (OILPOL 54). It was updated in 1962 (OILPOL 62), 1969 (OILPOL 69), and 1971 (OILPOL 71)⁷. The Convention only gave impetus to the control of oily water discharges from general shipping and oil tankers. The OILPOL was subsumed by the International Convention for the Prevention of Pollution from Ships (MARPOL) in 1973. However, since 1959, OILPOL is administered and promoted by the International Maritime Organization (IMO). The OILPOL Convention recognised that most oil pollution resulted from routine shipboard operations such as the cleaning of cargo tanks⁸. In the 1950s, the normal practice was simply to wash the tanks out with water and then pump the resulting mixture of oil and water into the sea. OILPOL 54 prohibited the dumping of oily wastes within a certain distance from land and

⁷ Ibid

⁸ International Convention for the Prevention of Pollution of the Sea by Oil, 1954". The Center for International Earth Science Information Network (CIESIN), Earth Institute, Columbia University. Retrieved 15 June 2021

in 'special areas' where the danger to the environment was especially acute.⁹ The ballast discharges have to be made in the permitted areas with a special record in an oil record book which was inspected at regular intervals. The enforcement of the convention had to be fulfilled by the flag state. The Convention became a significant achievement at that time. In the preamble of the later adopted MARPOL 1973 and subsequent amendment by MARPOL 1978 which superseded the OILPOL, stressed that OILPOL was the first multilateral instrument to be concluded with the prime objective of protecting the environment. It further appreciates the significant contribution, which the OILPOL has made in preserving the seas and coastal environment from pollution. However, the occurrence of the 18 March 1967 English Channel accident with the oil supertanker “Torrey Canyon” due to grounding of the vessel caused by human error led to the spilt of an entire cargo vessel of 120 000 tonnes of crude oil. As a result, 15 000 sea birds died because of the spill. Damage claims in Great Britain amounted to GBP 6 million and to FRF 40 million in France. States quickly recognized the danger of a major oil spill to the coastlines.

The “Torrey Canyon” incident demonstrated that there was no internationally agreed means of responding to accidents that had environmental implications. The regulation of compensation to be paid also did not exist on the international level as it was not provided for by the OILPOL.¹⁰ This incident was the first major oil pollution incident. Due to its strong impact on the development of the international law it became historical. This oil spill clearly demonstrated that the development of the marine environmental legislation is closely connected with the occurring incidents at sea. In response, the International Maritime Organization established a Legal Committee to deal with the deficiencies in the international system for assessing liability and compensation for oil-spill damage, and a new subcommittee of the Maritime Safety Committee (MSC) to deal with environmental issues¹¹ This incident accelerated the formation of MARPOL in 1973 with an amendment in 1978 to cover pollution by oil, chemicals, harmful substances in packaged form, sewage and garbage as well as compensation¹². Fundamentally, the convention which replaced OILPOL seeks to eliminate

⁹ Ibid

¹⁰ Anyanova, E. ‘Oil Pollution and International Marine Environmental Law’ (2011)

<https://www.intechopen.com/books/sustainable-development-authoritative-and-leading-edge-content-for-environmental-management/oil-pollution-and-international-marine-environmental-law>. Accessed 28 June 2021

¹¹ Ibid.

¹² Ibid.

international oil pollution of the marine environment by ships and other sources as well as and to minimize accidental discharge of oil. The Convention categorized ship-generated wastes which can pollute marine environment into four categories as follows; First is oil waste which is a mixture of oil with sea water, including fuel residues and sludge.¹³ Second are chemicals. These include noxious liquid substances carried in bulk in parcel tankers, dry bulk carriers on in portable containers.¹⁴ Third is sewage which is generated by passengers and crew.¹⁵ Fourth is garbage which originates from wastes generated by the crew and passengers in the course of the maintenance of the ship, of carriage of cargo by the ship and in the operation of fishing activities by trawlers.¹⁶

Article 1 of MARPOL 73/78 lays down the general obligation of parties to the Convention. It provides that parties shall take all necessary measures to prevent the pollution of the marine environment either through the discharge of harmful substances or effluents containing such substances.¹⁷ It also defines harmful substances as any substance which, if introduced into the sea, is liable to create hazard to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea.¹⁸ Article 3 (1) (a) of the Convention provides that the Convention shall apply to ships entitled to fly the flag of a party to the Convention (the flag state), or ships not entitled to fly the flag of a party but which operate under the authority of a party.¹⁹ These provisions are important in that they determine who can be the subject of an enforcement action under the MARPOL. The Convention does not apply to any warship, naval auxiliary or other ship owned or operated by State and used, for the time being on government non-commercial services.²⁰ Regulation 10 allows the discharge of oil in certain areas and regulates the amount of oil that may be discharged.²¹ The regulation also provides that tankers of over 5000 dead weight ton (dwt) are to be fitted with double hulls or an alternative design approved by the IMO so as to reduce the risk of oil spillage in the event of an accident.²² The major shortcomings of MARPOL 73/78 in the redress of oil pollution is that it lacks a

¹³ Annex I of the Convention deals with this.

¹⁴ Annexes II and III deal with this and contain regulations for their carriage.

¹⁵ Annex IV deals with this.

¹⁶ Annexes IV and V, which are optional, deal with this.

¹⁷ Art 1 (1) MARPOL 73/78.

¹⁸ Art 2 (2).

¹⁹ Art 3 (1) (b).

²⁰ Art 3 (3).

²¹ Regulation 10 of the Protocol to MARPOL 73/78

²² Reg 13.

self-enforcing mechanism. This is because ‘the primary responsibility for the effective application of vessel safety and environmental standards laid down in international instruments rest with flag states.’²³ The flag state have an obligation to ensure that their flag vessels comply with the applicable international rules and standards relating to vessel safety and pollution control.²⁴

Flag states are those states having the jurisdiction over the ship. The primary basis for the regulation of ships is the jurisdiction enjoyed by the State in which the vessel is registered or whose flag it is entitled to fly (‘the flag state’).²⁵ There are ships flying ‘flags of convenience’.²⁶ The flag of convenience states are more content with the money they get from the registration of these ships in their registry and the annual renewals and they bother less about the conditions under which these ships operate. However, they do not pay due regard to regulations on pollution and other guidelines. For the successful operation of MARPOL and all other Convention dealing with oil pollution and safety at sea, there is a need for strict compliance with the Conventions and regulations. The flag of convenience states are the Third World countries like Liberia, Panama and Honduras. The coastal states on the other hand have the responsibility under UNCLOS to regulate shipping and other activities taking place on their coasts. It is the duty of the coastal state to ensure that all vessels calling on its ports comply with the standards of the coastal state.

In the enforcement of this duty, the coastal state is empowered to enter and undertake physical inspection of the vessel to determine any violation of the international rules and obligations and even of the regulation of the coastal state.²⁷ UNCLOS also extends the enforcement power of coastal and port states, at the expense of the state’s exclusive authority by redefining and strengthening the latter’s obligation towards the protection of the marine environment.²⁸ This balance is contained in the UNCLOS and the MARPOL 73/78 has certainly led to improvements but eliminated vessel- source oil pollution.²⁹ One of the advantage that MARPOL has over the OILPOL is that it extends regulation beyond the 50 nautical miles prohibition zone

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Flag of convenience is a term under shipping law and practice which refers to the practice of registering ships under conditions that allow for minimal cost to the operation of the ships. The ships registered in this way do not operate under strict guidelines of the flag states, are not expected to pay tax to the authorities of the flag states.

²⁷ Art 220 UNCLOS 1982.

²⁸ Ibid.

²⁹ Ibid.

and also regulates the amount of oil that can be discharged.³⁰ As to the provision concerning tanker size, the protocol to MARPOL 73 provides that tankers of over 5000 dead weight are to be fitted with double hulls or an alternative design approved by the IMO so as to reduce the risk of oil spillages in the event of an accident.³¹ This provision was originally contained in OILPOL but could not be enforced immediately because it would hurt commercial interests. By an IMO resolution, the enforcement of the regulation by parties was eventually adopted on 15 May 2015 as Resolution MEPC. 265 (68).³² In spite of these efforts, the enforcement of the provisions of the convention remains skeletal with adverse implications on environmental and human safety.

International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1969) The “Torrey Canyon” incident demonstrated that in case of the oil pollution of the ocean there were no rules of international law making the polluter liable. OILPOL '54 left the issue of liability for pollution to the national law. It was decided to develop an international legal scheme with the liability regime for oil spills. Thus, it was decided to develop an international legal scheme with the liability regime for oil spills. Thus, the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1969) was enacted. The convention which was signed on 29 November 1969 in Brussels was elaborated within the Inter-Governmental Maritime Consultative Organization. The general principle provided in the convention is that those causing oil pollution should pay compensation. The convention aims to ensure adequate compensation to victims of oil pollution damage resulting from maritime casualties involving oil-carrying ships.³³ The convention applies to the pollution damage caused on the territory of the Member States to the Convention and related preventive measures (Art. II). The CLC 1969 does not apply to ships or vessels owned or operated by a State and used for non-commercial service. The CLC applies to State-owned merchant fleets.

Article III of Art. III of the Convention makes the owner of a ship strictly liable for the pollution damage caused by the discharge from the ship. The shipowner is liable even in the absence of any fault, for

³⁰ Art 1 (1) MARPOL 73/78.

³¹ Reg 9 MARPOL Protocol 73/78.

³² Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973. Accepted by parties on 1 July 2016, which entered into force on 1 July 2017.

³³ Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration and Exploitation of Seabed Mineral Resources, 1977. <http://www.dipublico.com.ar/english/convention-on-civil-liability-for-oil-pollution-damage-resulting-from-exploration-and-exploitation-of-seabed-mineral-resources/> Accessed 29 June, 2021

any damage by pollution caused by the oil. However, the shipowner can normally limit his financial liability up to an amount established according to the tonnage of the ship. This amount is guaranteed by his liability insurer. The liability insurance is compulsory. Traditional liability exemption concept of fault and negligence did not apply under the CLC. The admissible exceptions out of “strict liability”-rule are damage resulting from an act of war or grave natural disaster or damage wholly attributable to sabotage by a third party or wholly caused by the failure of authorities to maintain navigational aids. In 1992, the convention was reviewed to provide for a uniform set of international rules and procedures for determining liability and compensation. In general, the introduction of the CLC convention was widely accepted and enforced amongst states which led to significant facilitation of the recovery of compensation for oil pollution damage. However, the US refused to adopt the CLC. The CLC’s provisions do not apply to the waters of states who did not accept the CLC. In such a way, oil spills in the waters of the non-CLC states, such as the United States, remain uncovered.

To provide for compensation for the circumstances not covered by this convention, an international fund was established under the terms of the 1971 Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage amended in 2001 to administer this compensation system³⁴. Details and some of the provisions of the International Fund for Compensation for Oil Pollution Damage 1992 are discussed in the next subsection.

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992

From 5 to 16 June 1972, the United Nations Conference on Human Environment (UNCHE) was held in Stockholm. This Convention was subsequently referred to as the International Fund for Compensation for Oil Pollution Damage 1992.³⁵ During this Conference, the environment was addressed as a major international issue for the first time. On this occasion, the need to better manage non-renewable resources, to protect the environment and to implement national and international governance mechanisms for the environment was

³⁴ Ibid

³⁵ Stockholm Declaration on the Human Environment Report to the United Nations Conference on the Human Environment UN Doc A/Conf 48/14/Rev (1972).

also recognised. The Stockholm Conference resulted in a Declaration of 26 principles.³⁶ In order to examine the importance of the Conference to the creation of international environmental law; it is pertinent firstly to explore the extent to which international environmental law have developed before the Conference. Prior to the Stockholm, the earliest treaties made among states concerning environmental matters generally resulted from issues very specific to countries in close geographical proximity to one another. For this reason, such treaties were bilateral or regional in their scope.³⁷

Environmental treaties were and still are predominantly anthropocentric since they were mainly to secure the interests, (be that financial or otherwise), of the participant countries. Furthermore, international environmental jurisprudence preceding Stockholm demonstrates also that pollution and environmental degradation were only of issues so far as it directly affected the wellbeing of people. A good illustration of this is the decision in the 1941 *Trail Smelter Arbitration*,³⁸ where the United States was only compensated for damage to people and property resulting from the trans-boundary sulphur emission polluted but not for the pure environmental damage that occurred.³⁹

During this period in the development of international environmental law, scientific advancement had not progressed to a point where widespread threats to the environment e.g (climate change) were as apparent as they are now. States were more inclined to be satisfied with civil or national rules concerning their immediate environment and the natural resources available to them. Industrialisation had, however, contributed more to regional treaties being made on an ad hoc basis to address or manage environmental concerns.⁴⁰ Two Arbitral awards that demonstrated the inevitability of international laws being developed for environmental protection are the *Trail Smelter Arbitration* case and the *Bering Sea Fur Fisheries Arbitration*.⁴¹ In deciding the case, the tribunal's ratio or reasoning was that international law permits: 'no state the right to use or permit the use of its territory in such a manner as to cause injury by Fumes/Flaring in or to the territory

³⁶ Ibid.

³⁷ International Convention for the protection of Birds useful to Agriculture (Paris) 19 March 1902 4 IPE 1615.

³⁸ Trail smelter case (United States Canada) (16 April 1938 and 11 March 1941) Vol 3 p.1905-1941

³⁹ *Trail Smelter Arbitration Sea Fur Seals Fisheries Arbitration Great Britain v United States (Moore's Arbitration 1893)*.

⁴⁰ P Sands, Principles of International Environmental Law (2nd edn 2003) 27.

⁴¹ Trail Smelter Arbitration Untied States v Canada (16 April 1938).

of another or the properties or persons therein, when the case is of serious consequences and injury is established by clear and convincing evidence.⁴²

The principle set out this decision (now forming the basis of principle 21 of the Stockholm Declaration and also principle 2 of the Rio Declaration which are core to international environmental law as it since essentially recognises the sovereignty of states over activities that take place within their territory but balances that sovereignty against the need to refrain from causing damage to the territory or the people of another state through any activities so undertaken.⁴³ This is an obvious qualification on state sovereignty since it requires countries to avoid activities that are likely to cause trans-boundary damage to neighbouring Countries/regions to enjoy their territory free from interference of other states. The *Trail Smelter* case is the first indicator in the history of international environmental law of the need for international rules to govern environmental matters, it is in essence a reaffirmation of the decision in *the 1928 Palmas* case where it was decided that states are obligated to protect within their territory the rights of other states.⁴⁴

Before the Stockholm Conference therefore, the need for development of international environmental law norms had been realised. It was becoming progressively a more apparent on a year to year basis that a body of international law providing for effective management and protection of human environment was necessary. The Stockholm Conference is the first point in history at which the international community met and formed agreement on taking World action on an array of environmental concerns.⁴⁵ The Stockholm Action plan is the first instance of an agreement being made on a global scale regarding environmental protection and management; The Declaration on Human environment also sets precedent with regards to an international consensus of principles relating to environmental concerns and the rights and duties of states as we shall be examining later in this research.

Although I beg to disagree that the Stockholm Conference established international environmental law since there were globally applicable rules of environmental law in existence before the conference was held, Stockholm nonetheless provided the impetus for more laws to be made at an international level within this

⁴³ Ibid.

⁴⁴ The Palmas Island Arbitration 22 AMJ Int'l 735 (1928) PCA 2HCR 84 at 93.

⁴⁵ Malanezuk, and Akehurst, *Modern Introduction to International Law* (Seventh edn Routledge 1997)242.

field and for international environmental management to be approached as a global effort for instance, the interrelation between environmental issues and that of development may be said to have been built on at the Rio Conference, since the concept of sustainable development was expressly mentioned at Rio, and international environmental matters are now frequently encompassed in a wider form which is enshrined in principle 7 of the Rio Declaration, and is in some ways an expansion on some of the ideas that evolved from those shared at the Stockholm, regarding environmental damage being caused more by industrialization and technology and so, those responsible needing mainly to be held accountable for damage caused through payment of compensation as provided by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

The FUND Convention is expertly administered by the International Oil Pollution Compensation Fund Secretariat in London. This fund is an intergovernmental organization established by States. Any state which accepts the FUND Convention automatically becomes a member of the International Oil Pollution Compensation (IOPC) Fund. The FUND is financed by a levy applied to individuals and corporations dealing with the import and export of oil in contracting states.

The convention also introduced a compulsory liability insurance requirement for ship owners. Only oil (cargo or bunkers) carried in bulk by vessels is covered. Parties to the FUND must also be parties to the CLC, and the flag state of the vessel, which caused the damage, must also be a party to the FUND, if the shipowner is also seeking compensation. The IOPC Fund becomes involved by providing supplementary compensation when the amount payable by the shipowner and his insurer is insufficient to cover all of the damage. Any person or company, which has suffered pollution damage in a Member State of the IOPC Fund 1992 caused by oil transported by ship can claim compensation from the shipowner, his insurer and the Fund. This applies to individuals, business, local communities or States.

To be entitled to compensation, the damage must result from pollution and have caused a quantifiable economic loss. The claimant must substantiate the amount of his loss or damage by producing accounting records or other appropriate evidence. Compensation may be claimed for property damage, clean-up operations, economic losses of fishermen or those engaged in agriculture and tourism sector (ITOPF, 2002).

Since its establishment the IOPC Fund has been involved in some 120 incidents of different graveness in around 20 countries. Over US\$ 630 million were paid as a compensation. The compensation were paid to any claimant who has suffered pollution damage in cases where no liability arises under the CLC as the shipowner is protected by one of the CLC exemptions; or the shipowner is financially unable to meet the CLC obligations and the available insurance coverage is insufficient; or the damage exceeds the shipowner's CLC liability. Most cases fall within the third category. Notably, claims for the compensation shall be brought in the applicable courts of contracting states. Though, during the 1984 Diplomatic Conference at the International Maritime Organization, it was decided to revise completely both the CLC and the FUND instruments. This decision was strongly lobbied by the USA. After the "Amoco Cadiz"⁴⁶ incident. It was obvious that the CLC and FUND limits were not sufficient. These were some sort of the compromise between oil and shipping industries and coastal states for the protection of the marine and coastal environment as enshrined in the instrument which has hampered sufficient compensation of environmental damages from oil spills.

Conclusion

It can be decipher that the various international legal framework responsible for the control of oil pollution in Nigeria have had both negative and positive impacts. Even though the negative impact superseded the positive impacts. What is needed is for the Nigerian government to take a stringent measures against oil pollution by sanctioning both the polluters most especially the oil companies and the vandals who contribute to this grave environmental challenge. The government also needs to strengthen the existing bodies/agencies concerned with the control of oil pollution management and prevention to ensure the adherence and enforcement of the ratified international framework. Lack of enforcement of which is the most fundamental cause of the inability of these laws to protect the environment from oil pollution.

⁴⁶ The oil tanker Amoco Cadiz ran aground on Portail Rocks, 2 km from the coast of Brittany, France, on 16 March 1978, and ultimately spilt in three and sank, all together resulting in the largest oil spill of it kind in history of that date.

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