PAJ Oil Spill Symposium '98

Part I

7 October 1998

S. OSANAI
IOPC Funds

1 Introduction

I was informed by PAJ that this symposium high lights the Pontoon 300 incident. However, as I was also informed that this is the first time to attend the PAJ symposium for most of you, who belong to oil companies. So at this opportunity, I would like to express the Funds' appreciation to oil companies in Japan and like to start what is the purpose of the IOPC Funds and what we are doing.

Compensation for pollution damage caused by spills from oil tankers is governed by an international regime elaborated under the auspices of the International Maritime Organization (IMO). The framework for the regime was originally the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 197 1 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (197 1 Fund Convention). This 'old' regime was amended in 1992 by two Protocols, and the amended Conventions are known as the 1992 Civil Liability Convention and the 1992 Fund Convention. The 1992 Conventions entered into force on 30 May 1996.

Since the 1969 Civil Liability Convention and the 1971 Fund Convention have been denounced by a number of States and will lose importance, this note deals primarily with the 'new regime', ie the 1992 Civil Liability Convention and the 1992 Fund Convention.

The **1992 Civil Liability Convention** governs the liability of shipowners for oil pollution damage. The Convention lays down the principle of strict liability for shipowners and creates a system of compulsory liability insurance. The shipowner is normally entitled to limit his liability to an amount which is linked to the tonnage of his ship.

The **1992 Fund Convention**, which is supplementary to the 1992 Civil Liability Convention, establishes a regime for compensating victims when the compensation under the applicable Civil Liability Convention is inadequate. The **International Oil Pollution Compensation Fund 1992 (IOPC Fund 1992 or 1992 Fund)** was set up under the 1992 Fund Convention. The 1992 Fund is a worldwide intergovernmental organization established for the purpose of administering the regime of compensation created by the 1992 Fund Convention. By becoming Party to the 1992 Fund Convention, a State becomes a Member of the 1 992 Fund. The Organization has its headquarters in London.

As at 20 August 1998, 38 States were Parties to the 1992 Civil Liability Convention, and 36 States were Parties to the 1992 Fund Convention.

2 1992 Civil Liability Convention

2. 1 Scope of application

The 1992 Civil Liability Convention applies to **oil pollution damage** resulting from spills of **persistent** oil from **tankers**.

The 1992 Civil Liability Convention covers pollution damage suffered in **the territory, territorial sea or exclusive economic zone (EEZ)** or equivalent area of a State Party to the Convention. The flag State of the tanker and the nationality of the shipowner are irrelevant for determining the scope of application.

'**Pollution damage**' is defined as loss or damage caused by contamination. For environmental damage (other than loss of profit from impairment of the environment) compensation is restricted, however, to costs actually incurred or to be incurred for reasonable measures to reinstate the contaminated environment. The notion of pollution damage includes measures, wherever taken, to prevent or minimize pollution damage in the territory, territorial sea or EEZ of a State Party to the Convention ("**preventive measures**"). Expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent threat of pollution damage.

The 1992 Civil Liability Convention covers spills of **cargo or bunker oil** from sea-going vessels constructed or adapted to carry oil in bulk as cargo, and applies thus to both **laden and unladen** tankers (but not to dry cargo ships).

Damage caused by **non-persistent oil** is not covered by the 1992 Civil Liability Convention. Spills of gasoline, light diesel oil, kerosene, etc, therefore do not fall within the scope of the Convention.

2.2 Strict liability

The owner of a tanker has strict liability (ie he is liable also in the absence of fault) for pollution damage caused by oil spilled from the tanker as a result of an incident. He is exempt from liability under the 1992 Civil Liability Convention only if he proves that:

(a) the damage resulted from an act of war or a grave natural disaster, or
(b) the damage was wholly caused by sabotage by a third party, or
(c) the damage was wholly caused by the negligence of public authorities in maintaining lights or other navigational aids.

2.3 Limitation of liability

Under certain conditions, the shipowner is entitled to limit his liability under the 1992 Civil Liability Convention. The limits are: (a) for a ship not exceeding S 000 units of gross tonnage, 3 million Special Drawing Rights (SDR) (US$4 million); (b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 3 million SDR (US$4 million) plus 420 SDR (US$557) for each additional unit of tonnage; and (c) for a ship of 140 000 units of tonnage or over, 59.7 million SDR (US$79.2 million)<1>. There is a simplified procedure under the 1992 Civil Liability Convention for increasing these limits.

If it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result, the shipowner is deprived of the right to limit his liability.

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[1]The unit of account in the 1992 Conventions is the Special Drawing Right (SDR) as defined by the International Monetary Fund. In this paper, the SDR has been converted into US dollars at the rate of exchange applicable on 20 August 1998, ie 1 SDR US$l.32732.

The owner of a tanker carrying more than 2 000 tonnes of persistent oil as cargo is obliged to maintain insurance to cover his liability under the 1992 Civil Liability Convention. Tankers must carry a certificate on board attesting the insurance coverage. When entering or leaving a port or terminal installation of a State Party to the 1992 Civil Liability Convention, such a certificate is required also for ships flying the flag of a State which is not Party to the 1992 Civil Liability Convention.

Claims for pollution damage under the 1992 Civil Liability Convention may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage.

3 1992 Fund Convention

3.1 Supplementary compensation

The 1992 Fund pays compensation to those suffering oil pollution damage in a State Party to the 1992 Fund Convention who do not obtain full compensation under the 1992 Civil Liability Convention in the following cases:

(a) the shipowner is exempt from liability under the 1992 Civil Liability Convention because he can invoke one of the exemptions under that Convention; or

(b) the shipowner is financially incapable of meeting his obligations under the 1992 Civil Liability Convention in full and his insurance is insufficient to satisfy' the claims for compensation for pollution damage; or

(c) the damage exceeds the shipowner's liability under the 1992 Civil Liability Convention.

The 1992 Fund does not pay compensation if:

(a) the damage occurred in a State which was not a Member of the 1992 Fund; or

(b) the pollution damage resulted from an act of war or was caused by a spill from a warship; or

(c) the claimant cannot prove that the damage resulted from an incident involving one or more ships as defined

(ie a sea-going vessel or seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo).

3.2 **Limit of compensation**

The maximum amount payable by the 1992 Fund in respect of an incident is 135 million SDR (US$179 million), including the sum actually paid by the shipowner (or his insurer) under the 1992 Civil Liability Convention. There is a simplified procedure under the 1992 Fund Convention for increasing the maximum amount payable by the 1992 Fund.

3.4 **Financing of the 1992 Fund**

The 1992 Fund is financed by contributions levied on any person who has received in one calendar year more than 150 000 tonnes of crude oil and heavy fuel oil (contributing oil) in a State Party to the 1992 Fund Convention.

Basis of Contributions

The levy of contributions is based on reports of oil receipts in respect of individual contributors. A State shall communicate every year to the 1992 Fund the name and address of any person in that State who is liable to contribute, as well as the quantity of contributing oil received by any such person. This applies whether the receiver of oil is a Government authority, a State-owned company or a private company.

Contributing oil is counted for contribution purposes each time it is received at ports or terminal installations in a Member State after carriage by sea. The term **received** refers to receipt into tankage or storage immediately after carriage by sea. The place of loading is irrelevant in this context; the oil may be imported from abroad, carried from another port in the same State or transported by ship from an off-shore production rig. Also oil received for transhipment to another port or received for further transport by pipeline is considered received for contribution purposes.

Payment of Contributions

Annual contributions are levied by the 1992 Fund to meet the anticipated payments of compensation and administrative expenses during the coming year. Each contributor pays a specified amount per tonne of contributing oil received. The amount levied is decided each year by the Assembly.

The Director issues an invoice to each contributor, following the decision taken by the Assembly to levy annual contributions. A system of deferred invoicing exists whereby the Assembly fixes the total amount to be levied in contributions for a given calendar year, but decides that only a specific lower total amount should be invoiced for payment by 1 February in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary.

The contributions are payable by the individual contributors directly to the 1992 Fund. A State is not responsible for the contributions levied on contributors in that State, unless it has voluntarily accepted such responsibility.

Level of contributions

The 1992 Fund Convention introduced a cap on contributions payable by oil receivers in any given State. This cap was set at 27.5% of any levy of contributions to the 1992 Fund The capping system will cease to apply when the total quantity of contributing oil received during a calendar year in all Member States of the 1992 Fund exceeds 750 million tonnes.

Payments made by the 1992 Fund in respect of claims for compensation for oil pollution damage may vary considerably from year to year, resulting in fluctuating levels of contributions. The following table sets out the contributions levied by the 1992 Fund during the period 1996-1997.

Annual Contributions	Total Contribution £	£	Contribution per Tonne £	Contribution for 1 million Tonnes £
1996	Due 1.2.97:	4 000 000	0.0110440	11 044
	Due 1.9.97:	10 000 000	0.0188066	18 807
1997	Due 1.2.98:	9 500 000	0.0114295	11 430
	Maximum deferred levy:	*30 000 000*	0.0000000 *(No deferred levy made)*	0

4 The 'old' regime: the 1969 Civil Liability Convention and the 1971 Fund Convention

4. 1 1969 Civil Liability Convention

The 1969 Civil Liability Convention entered into force in 1975. As at 20 August 1998, 76 States were Parties to the Convention.

The 1969 Civil Liability Convention was adopted to govern the liability of shipowners for oil pollution damage resulting from spills of persistent oil from laden tankers. The main features of the Convention are the same as those of the 1992 Civil Liability Convention, except on the following points.

Unlike the 1992 Civil Liability Convention, the 1969 Convention is limited to pollution damage suffered in the territory (including the territorial sea) of a State Party to the Convention. Furthermore, it applies only to damage caused or measures taken after an incident has occurred in which oil has escaped or been discharged. The Convention therefore does not apply to pure threat removal measures, ie preventive measures which are so successful that there is no actual spill of oil from the tanker involved.

The 1969 Civil Liability Convention applies only to ships which are actually carrying oil in bulk as cargo, ie normally laden tankers. Spills from tankers during ballast voyages are therefore not covered by the 1969 Convention, nor are spills of bunker oil from ships other than tankers.

'Pollution damage' is defined in the 1969 Civil Liability Convention as loss or damage caused by contamination, without any reference to reinstatement of the contaminated environment.

Under the 1969 Civil Liability Convention, the limits of the shipowner's liability are much lower than under the 1992 Civil Liability Convention, ie 133 SDR (US$177) per ton of the ship's tonnage or 14 million SDR (US$18.6 million), whichever is the lower.

Under the 1969 Civil Liability Convention, the shipowner may be deprived of the right to limit his liability if a claimant proves that the incident occurred as a result of the personal fault (the "actual fault or privity") of the owner.

Claims for pollution damage under the 1969 Civil Liability Convention can be made only against the registered owner of the tanker concerned. This does not preclude victims from claiming compensation outside this Convention from persons other than the owner. However, the Convention prohibits claims against the servants or agents of the owner. The owner is entitled to take recourse action against third parties in accordance with national law.

4.2 **1971 Fund Convention**

The International Oil Pollution Compensation Fund 1971 (IOPC Fund 197 1 or 1971 Fund) was set up under the 1971 Fund Convention, when the latter entered into force in 1978. As at 20 August 1998, 52 States were Parties to the 1971 Fund Convention.

The 1971 Fund pays compensation to those suffering oil pollution damage in a State Party to the 1971 Fund Convention who do not obtain full compensation under the 1969 Civil Liability Convention in cases corresponding to those set out above in respect of the 1992 Fund Convention (section 3.1).

The total amount of compensation payable by the 1971 Fund per incident is much lower than the maximum amount payable by the 1992 Fund, ie 60 million SDR (US$79.6 million), including the sum actually paid by the shipowner (or his insurer) under the 1969 Civil Liability Convention.

In the great majority of incidents dealt with by the 1971 Fund, all claims have been settled out of court. So far, court actions against the 1971 Fund have been taken in respect of only six incidents. In these cases, the aggregate amounts claimed greatly exceed the maximum amount payable under the 1969 Civil Liability Convention and

the 1971 Fund Convention.

The 1971 Fund is financed in the same way as the 1992 Fund, although there is no capping mechanism. In addition to annual contributions, however, the 1971 Fund (unlike the 1992 Fund) levies initial contributions which are payable when a State becomes a Member of the 1971 Fund.

5 Conclusions

The advantages for a State of being a Member of the 1992 Fund can be summarised as follows. If a pollution incident occurs involving a tanker, compensation is available to governments or other authorities which have incurred costs for clean-up operations or preventive measures and to private bodies or individuals who have suffered damage as a result of the pollution. For example, fishermen whose nets have become polluted are entitled to compensation, and compensation for loss of income is payable to fishermen and to hoteliers at seaside resorts. This is independent of the flag of the tanker, the ownership of the oil or the place where the incident occurred, provided that the damage is suffered within a 1992 Fund Member State.

As a number of States has left the 1969 Civil Liability Convention and the 1971 Fund Convention, the 'old' regime will therefore lose its importance. Moreover, the 1992 Civil Liability Convention and the 1992 Fund Convention provide a wider scope of application on several points than the Conventions in their original versions, and much higher limits of compensation. For these reasons, it is suggested that Governments might wish to accede to the 1992 Protocols to the Civil Liability Convention and the Fund Convention (and not to the 1969 and 197 1 Conventions) and thereby become Parties to the Conventions as amended by the Protocols (the 1992 Conventions). The Protocols would enter into force for the State in question 12 months after the deposit of its instrument(s) of accession.

States which are already Parties to the 1969 Civil Liability Convention are advised to denounce that Convention at the same time as they deposit their instrument(s) in respect of the 1992 Protocol thereto, so that the denunciation of that Convention would take effect on the same day as the Protocols enter into force for that State.

* * *

ANNEX

States Parties to both the 1992 Protocol to the Civil Liability Convention and the 1992 Protocol to the Fund Convention

as at 20 August 1998

States for which Protocol is in force (and therefore Members of the 1992 Fund)	
Australia	Marshall Islands
Bahamas	Mexico
Bahrain	Monaco
Cyprus	Netherlands
Denmark	Norway
Finland	Oman
France	Philippines
Germany	Republic of Korea
Greece	Spain
Ireland	Sweden
Jamaica	Tunisia
Japan	United Kingdom
Liberia	Uruguay

States which have deposited instruments of ratification, but for which the Protocol does not enter into force until date indicated	
United Arab Emirates	19 November 1998
Singapore	31 December 1998
Grenada	7 January 1999
Croatia	12 January 1999
Latvia	6 April 1999
Canada	29 May 1999
Algeria	11 June 1999
New Zealand	25 June 1999
Barbados	7 July 1999
Venezuela	22 July 1999

States Parties to the 1992 Protocol to the Civil Liability Convention but not to the 1992 Protocol to the Fund Convention

as at 20 August 1998

(and therefore not Members of the 1992 Fund)

States for which Protocol is in force	
Egypt	Switzerland

State which has deposited instrument of ratification, but for which the Protocol does not enter into force until date indicated	
Singapore*	18 September 1998

* Singapore will become a Member of the 1992 Fund on 31 December 1998 (see table above)

States Parties to both the 1969 Civil Liability Convention and the 1971 Fund Convention

as at 20 August 1998

(and therefore Members of the 1971 Fund)

States which have ratified the 1971 Fund Convention		
Albania	Guyana	Poland
Antigua and Barbuda	Iceland	Portugal
Belgium	India	Qatar
Benin	Italy	Russian Federation
Brunei Darussalam	Kenya	Saint Kitts and Nevis
Cameroon	Kuwait	Seychelles
China*	Malaysia	Sierra Leone
Colombia	Maldives	Slovenia
Côte d'Ivoire	Malta	Sri Lanka
Djibouti	Mauritania	Syrian Arab Republic
Estonia	Mauritius	Tonga
Fiji	Morocco	Tuvalu
Gabon	Mozambique	United Arab Emirates
Gambia	Nigeria	Vanuatu
Ghana	Papua New Guinea	Yugoslavia

States which hav deposited instruments of denunciation which will enter into force on date indicated	
Canada	29 May 1999
New Zealand	25 June 1999
Indonesia	26 June 1999
Barbados	7 July 1999
Venezuela	22 July 1999
Croatia	30 July 1999
Algeria	3 August 1999

* The 1971 Fund Convention applies only to the Hong Kong Special Administrative Region

States Parties to the 1969 Civil Liability Convention but not to the 1971 Fund Convention

as at 20 August 1998

(and therefore not Members of the 1971 Fund)

States which have ratified the 1969 Civil Liability Convention		
Belize	Georgia	Peru
Brazil	Guatemala	Saint Vincent and the Grenadines
Cambodia	Kazakhstan	Saudi Arabia
Chile	Latvia	Senegal
Costa Rica	Lebanon	Singapore*
Dominican Republic	Luxembourg	South Africa
Ecuador	Nicaragua	Yemen
Egypt	Panama	
Equatorial Guinea		

* Singapore has denounced the 1969 Civil Liability Convention with effect from 31 December 1998

PAJ OIL Spill Symposium '98

S OSANAI
IOPC Funds

Part II

PONTOON N° 300

1 The incident

1.1 On 7 January 1 998, intermediate fuel oil was spilled from the barge *Pontoon N° 300* (4 233 GRT), which was being towed by the tug Falcon 1 off Hamriyah in Sharjah, United Arab Emirates. The barge had reportedly become swamped during high seas and strong north-westerly winds and had taken on water whilst losing oil. During the course of the night of 8 January, the barge sank and settled on the seabed at a depth of 21 metres, six nautical miles off Hamriyah.

1.2 The *Pontoon N° 300* was registered in Saint Vincent and the Grenadines and was owned by a Liberian Company. The tug Falcon I is registered in Abu Dhabi and owned by a citizen of that Emirate.

1 .3 The *Pontoon N° 300* is a flat-top barge of 4 233 gross tons and 9 885 tons loaded displacement. The deadweight tonnage for the *Pontoon N° 300* is 8 037 tons. The barge is constructed with 24 buoyancy tanks in six rows of four tanks each, and a double centre bulkhead. Divers have also reported signs of diesel oil having been loaded in fore and aft ballast tanks in the barge.

1.4 The Executive Committee of the IOPC Fund considered whether the *Pontoon N° 300* fell within the definition of 'ship' laid down in Article 1.1 of the 1969 Civil Liability Convention, ie "any seagoing vessel and any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo". The Committee took the view that it was the factual situation which was of primary importance, and noted that it had been established that the barge was actually transporting oil in bulk as cargo from one place to another. The Committee decided that the *Pontoon N° 300* fell within the definition of 'ship' in the I 969 Civil Liability Convention.

1.5 At the Executive Committee of the IOPC Fund, a number of delegations observed that the circumstances of the case (such as the apparent absence of an insurance certificate and the use of buoyancy tanks for cargo) merited close scrutiny. It was stressed, however, that the I 971 Fund's priority should be the payment of compensation to claimants.

2 Clean-up operations

2.1 The spilt oil spread over 40 kilometres of coastline, affecting four Emirates, namely Sharjah, Ajman, Umm Al Quwain and Ras Al Khaymah. The worst affected Emirate was Umm Al Quwain, where there is a beach hotel and a fishing harbour at Al Naqaa.

2.2 For the first six days after the initial spill oil drifted off the coast. On I 3 January strong onshore winds drove the drifting oil ashore and deposited it on sandy beaches and in the adjoining vegetation. The only oil remaining offshore was the small continuous release from the sunken wreck.

2.3 Intermediate fuel oil is naturally dispersible, and natural dispersion in the surf zone significantly reduced the quantity of oil deposited on the shorelines.

2.4 Initially, very little was done to deal with the spilt oil and there was uncertainty as to who was in charge. At a meeting on 9 January 1 998 chaired by the Minister of Health, in his capacity as Chairman of the Federal Environment Agency (FEA), it was clarified that FEA was to co-ordinate spill response activity, with support from the Frontier and Coast Guard Service (FCGS) and municipal authorities. However, co-ordination and control of clean-up activity by FEA was hampered by a lack of resources and funding. Onshore clean-up operations were carried out by the Abu Dhabi National Oil Company (ADNOC), the Dubai Petroleum Company, Lamnalco (a local contractor) and Fairdeal under the co-ordination of FEA. Collected oily waste was transported to an inland disposal site. All shoreline clean-up operations were suspended on 24 January, when government funds allocated for the task had been exhausted.

2.5 After a standstill of seven weeks, beach cleaning was resumed on I 2 March 1 998 with a labour force of 1 00 men provided by Lamnalco. Six different clean-up sites

have been identified.

3 Affected resources

3.1 Marine resources research centre

3.1.1 A marine resources research centre located at Umm al Quwain, run by the Ministry of Agriculture and Fisheries, cultivates commercially important species of fish and prawns, conducts scientific surveys and research, and provides training and promotion in the field of aquaculture. The Centre operates four large outdoor tanks, numerous smaller tanks and an educational aquarium stocked with local marine life. The presence of oil in the entrance channel to Khawr Umm al Quwain on 8 January prompted the complete closure of the sea water intake to the centre. The facility then relied on re-circulation pumps and additional aeration to maintain water quality in its tanks. On 1 0 January pumping from the sea water well was resumed at times of high water during the day when the sea water intake site could be confirmed to be free of drifting oil. It is possible, however, that suspended oil droplets entered the facility with the sea water.

3.1.2 The interruption of the continuous sea water pumping led to a mangrove lagoon and ditch becoming partially drained. Two temporary barriers were constructed on 10 January to prevent more oil from entering the lagoon and to maintain water levels in the lagoon. However, during spring high tides of I 3-1 4 January the whole mangrove area was inundated by floating oil, causing extensive contamination of mangrove roots. As it was generally recognised that oiled mangroves would probably recover naturally, no attempts were made to clean individual mangrove trees.

3.2 Traditional fishing

There are a number of fishing villages in the area affected by the oil pollution. Fishing is carried out from small boats using nets and traps. There are also numerous floating pens for storing or rearing fish that have been captured live in traps. There are two main fish markets in the Umm Al Quwain area.

3.3 Desalination and power plants

3.3.1 Drifting oil near sea water intakes caused a desalination plant in Sharjah to

be closed from 12 to 14 January. A water bottling company in Sharjah which is supplied from the desalination plant was reportedly also closed for one or two days.

3.3.2 A desalination plant in Ajman was closed on 7 January and re-opened on 10 January after booms had been deployed at the intakes and protective screens had been fitted. The plant was again closed from 12 to 19 January. Judging from newspaper reports, the two closures did not cause any serious shortage of drinking water in the Emirate. Most of the water for Ajman City is supplied through wells, and the desalination plant is reported to be a supplementary source when demand is high, ie during the summer.

3.3.3 There have not been any reports of disrupted sea water supplies to power stations and other industrial facilities.

3.4 Tourism

The sandy beach in front of an hotel in Umm al Quwain was heavily oiled. It is reported that bookings at the hotel have been severely affected.

4 Claims for compensation

4.1 As at I October 1 998, ten claims for compensation had been received. These claims, totalling Dhs 7 370 1 58.95 (approx. \300 million), relate to clean-up operations. They are being examined by the I 971 Fund's experts.

4.2 Seven of ten claims have been presented by the FEA totalling Dhs 5 21 5 71 7.1 8 (approx. \210 million).

4.3 Lamnalco has submitted three claims totalling Dhs 2 1 54 441 .77 (approx. \86 million) in respect of work carried out between I 2 March and I 0 June 1 998. These claims have been settled at Dhs 2 1 53 230.89 and paid at 75 % of the agreed amount following the decision of the Executive Committee to raise the level of payment from 50 % to 75 %.

5 Level of the 1971 Fund's payments

5.1 In view of the uncertainty as to whether the total amount of the claims might exceed the total amount available under the I 969 Civil Liability Convention and the 1 971 Fund Convention (60 million SOR, corresponding to approximately ⌟48 million),

the Executive Committee, on its February 1998 session, decided that, for the time being, the 1971 Fund's payments should be limited to 50% of the loss or damage actually suffered by each claimant, as assessed by the experts of the Fund at the time the payment was made.

5.2 The Executive Committee raised the level of payment to 75 % in its April 1 998 session.

CIVIL LIABILITY CONVENTION (CLC)

Scope for Application

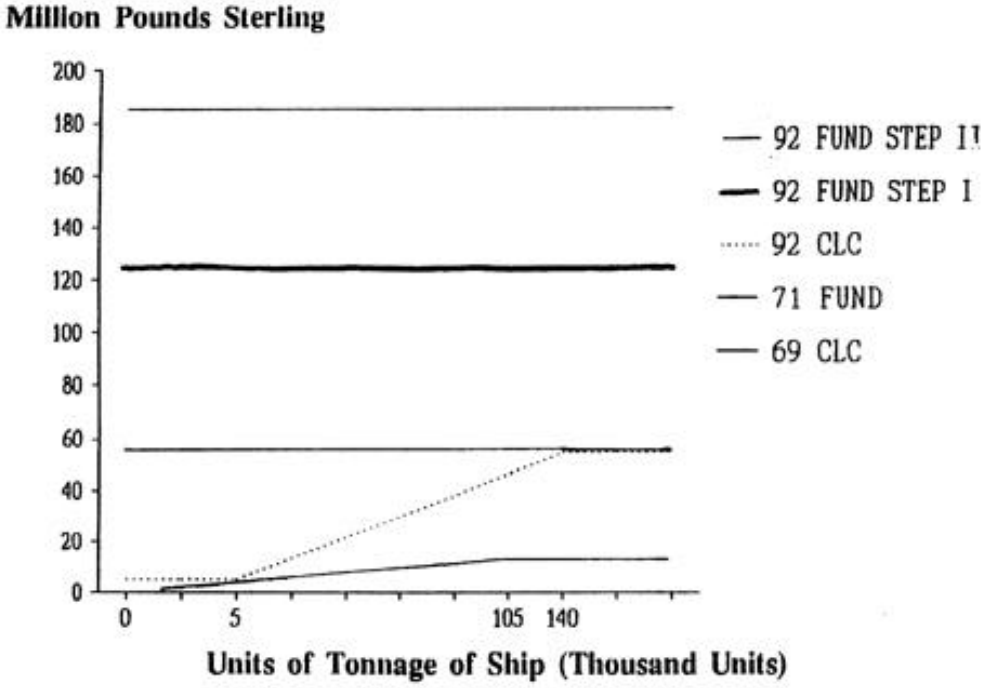
oil pollution damage*, persistent oil,
laden tankers*****

*** oil pollution damage suffered in the territory of a State Party**
oil pollution damage includes preventive measures

**** persistent oil -- crude oil, fuel oil,**
heavy diesel oil, lubricating oil
non persistent oil -- gasoline, light diesel oil, kerosine

***** ballast voyage not c (but covered by 92 Protocol)**
bankers from non-t nkers not covered

LIMITS LAID DOWN IN THE CONVENTIONS



Limitation of Liability

133 SDR (US$207) per ton of the ships tonnage

or

14 million SDR (US$22mlliion), whichever 18 the less

If a claimant proves that the Incident occurred as a result of the personal fault (the "actual fault or privity"), the owner will be deprived of the right to limit his liability

92 PROTOCOLS

SPECIAL LIABILITY LIMIT FOR OWNERS OF SMALL VESSELS

SUBSTANTIVE INCREASE OF THE UMITATION AMOUNT

<5 000 units of gross tonnage	**3 million SDR**
5 000< <14 000 units	**3 million SDR + 420 SDR for each additional tonnage**
14 000 units<	**59.7 million SDR**

WIDER APPLICATIONS

Extended geographical scope - - EEZ

Unladen tankers

Pure threat removal measures

NEW DEFINITION OF POLLUTION DAMAGE

CAPPING OF CONTRIBUTIONS IN ANY GIVEN STATE (27.5%)

ORGANISATION OF THE IOPC FUND

ASSEMBLY (all Member States)

EXECUTIVE COMMITTEE (15 Member States)

SECRETARIAT - DIRECTOR

Financing of the IOPC Fund

Contributions -

levied on any person who has received more than
150 000 tonnes
of contributing oil (crude oil and heavy fuel oil)
in one calendar year
after sea transport in a State Party

Levy of Contributions -

based on reports on oil receipts of individual contributor

reports are submitted by Government to the IOPC Fund

contributions are paid by Individual contributor directly to the IOPC Fund

Contributing oil is counted for contribution purposes

each time it is received
at ports or terminal installations in a Fund Member State
after carriage by sea

*** received - - physically received**

IOPC Fund pays compensation, when

1. **shipowner is exempt from liability**
2. **shipowner is financially incapable of meeting his obligation In full and his insurance is insufficient**
3. **damage exceeds shipowner's liabIlity**

Fund does not pay compensation

1. **damage In non-member State**
2. **damage resulted from act of war**
3. **the claimant cannot prove that the damage resulted from an incident involving one or more ships**

The IOPC Fund is not obliged to a Indemnification when

the damage resulted from the wilful misconduct of the owner,

or

a result of the personal fault of the ship's non-compliance with the requirements laid down in certain Conventions

(SOLAS, MARPOL, LL, COLREG)

Claims Settlement

The IOPC Fund's function Is to provide compensation for victims of oil pollution damage as quickly as possible.

Co-operation with P & I clubs such as joint assessment of claims

Delegation of power to the Director to settle claims

arising out of a small incident
(not exceeding 2.5 million SDR, US$3.9miiilon)
from individuals and small businesses
up to an amount of 0.667 million SDR (US$1mlliion)

without prior approval of the Executive Committee

Admissibility of claims

Acceptable claims - those that fall within the definition of

POLLUTION DAMAGE and PREVENTIVE MEASURES

A uniform Interpretation of the definition is essential for the function of the system

Fund's policy on the admissibility of claims has been established by the Member States.

Each claim has its own characteristics, and It is necessary to consider It on the basis of ITS OWN MERITS.

A claim is admissible ONLY TO THE EXTENT that the AMOUNT of the loss or damage IS ACTUALLY DEMONSTRATED.

EVIDENCE must give the IOPC Fund the possibility of forming its OWN OPINION.

Certain flexibility Is exercised in respect of the requirements of documents, taking account of the particular circumstances.

DAMAGE TO PROPERTY

Cost of cleaning polluted property

Cost of replacement subject to deduction for wear and tear

CONSEQUENTIAL LOSS

Loss of earnings suffered by the owners or users of property polluted

CLEAN-UP OPERATIONS

on shore and
off shore

In most cases considered as PREVENTIVE MEASURES

Cost of REASONABLE MEASURES are accepted.
Loss or damage caused by preventive measures are accepted.

Assessments are made on the basis of OBJECTIVE CRITERIA.

The technical reasonableness is assessed on the basis of the facts available at the time of the decision to take the measures.

Cost of personal and hire or purchase of equipment and materials

Cost of cleaning and repairing clean - up equipment

Replacing materials consumed during operation

Deduction of residual value is made.

FIXED COSTS

A REASONABLE PROPORTION of FIXED COSTS admissible

If

such costs correspond closely to the clean-up period in question
and

do not include REMOTE OVERHEAD charges

PURE ECONOMIC LOSS

Loss of earnings sustained by persons whose property has not been polluted

Admissible only if caused by CONTAMINATION, eg fishermen, hotelier

There must be a REASONABLE DEGREE OF PROXIMITY between the contamination and the loss

CRITERIA

GEOGRAPHICAL PROXIMITY OF ACTIVITY AND CONTAMINATION

DEGREE OF ECONOMIC DEPENDENCY OF THE RESOURCE

AVAILABILITY OF ALTERNATIVE SOURCES OF SUPPLY OR BUSINESS OPPORTUNITIES

DEGREE OF INTEGRATION OF THE ECONOMIC ACTIVITY OF THE AFFECTED AREA

MEASURES TAKEN TO REINSTATE THE_MARINE_ENVIRONMENT
May be accepted

Cost of the measures should be reasonable

Cost of the measures should not be disproportionate to the results achieved or the results which could reasonably be expected

The measures should be appropriate and offer a reasonable prospect of success