

The International Regime on Liability and Compensation for Oil Pollution Damage

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Abstract

The existing international regime on compensation for oil pollution damage caused by spills from tankers is based on a three-tier structure consisting of the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol adopted in 2003.

Under the 1992 Civil Liability Convention, the owner of a tanker is obligated to maintain insurance to cover his liability according to the gross tonnage of the ship and have strict liability for pollution damage caused by oil spilled from his ship as a result of an incident.

In the event of oil pollution damage in the territorial sea or the Exclusive Economic Zone of a member state to the Convention, if the shipowner is financially incapable of meeting his obligations or if the damage exceeds the shipowner's liability, compensation is paid by the International Oil Pollution Compensation Funds (hereinafter referred to as "the Fund"). As regards a Member State to the Supplementary Fund Protocol, additional compensation is provided under the Third Tier of the system.

Compensation paid by the Fund is funded by contributions from the Member States. The persons who receive Persistent Oil after sea transport (Contributing Oil Receivers) must pay the contributions directly upon request from the Fund.

Under the Convention, Member States are obligated to report every year to the Fund Secretariat the name of the contributing oil receiver and the amount of contributing oil received.

The amount of compensation is assessed according to the global standard adopted in the Fund Assembly.

Good record-keeping and documentary evidence of reasonableness are useful in facilitating smooth compensation.

One of the current challenges for the Fund is how to conduct the compensation assessment efficiently and smoothly in the event of a major oil spill incident.

In case of the Hebei Spirit incident, which occurred in Korea in 2007, 18,000 claims have been filed and even now being assessed. This incident is expected to be the largest since the establishment of the Fund.

Prompted by this incident, a working group has been set up in the Fund Assembly to review how the compensation system of the Fund should work in case of major incidents. The point of discussions is how to improve both confirmation of the situation and the amount of damage, and the efficiency of assessment work.

Previously, the floating storage units have not been considered “Ships”, which are covered by the Fund Convention. Following a ruling by the supreme court of a Member State that FSUs should be included in “Ships”, discussions are now under way on whether or not the interpretation should be changed.