

**INTERNATIONAL CONVENTIONS ON
LIABILITY AND COMPENSATION
FOR OIL POLLUTION DAMAGE**

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1 INTRODUCTION

The *Torrey Canyon* incident off the English coast in March 1967 resulted in a spill of oil causing pollution damage of an extent previously unknown. This incident made the world aware of the need for international regimes of liability and compensation for pollution damage caused by spills of oil from tankers. Following the *Torrey Canyon* disaster, the International Maritime Organization (IMO) convened a Diplomatic Conference in Brussels in 1969, which adopted the International Convention on Civil Liability for Oil Pollution Damage (Civil Liability Convention, CLC). This Convention lays down the principle of strict liability for shipowners and provides for a system of compulsory insurance.

The 1969 Conference noted, however, that the Civil Liability Convention regime was inadequate as it might not provide full compensation to victims of pollution damage and recognised the need for a scheme providing supplementary compensation. After further deliberations within IMO, a Diplomatic Conference was convened in Brussels in 1971. This Conference adopted the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention). The Fund Convention set up an international organisation, the International Oil Pollution Compensation Fund (IOPC Fund), to administer the system of compensation created by that Convention.

The Civil liability Convention entered into force in 1975 and the Fund Convention in 1978.

The International Oil Pollution Compensation Fund (IOPC Fund) was established in October 1978. It is the only worldwide inter-governmental organisation which pays compensation to victims who have suffered pollution damage. It also relieves the shipowners of part of the financial burden imposed on them by the Civil Liability Convention.

As at 5 February 1996, the Civil Liability Convention had 93 Contracting States, and the Fund Convention 68 Contracting States.

Both the Civil Liability Convention and the Fund Convention have been amended by Protocols in 1976, 1984 and 1992. The 1976 amendments were of a technical nature. The 1984 and 1992 Protocols imply fundamental amendments to the Conventions.

2 CIVIL LIABILITY CONVENTION

The Civil Liability Convention forms the basic structure on which the regimes of liability and compensation for oil pollution damage from ships are based. The following are the fundamental elements of the Civil Liability Convention regime.

2.1 Scope of application

The Civil Liability Convention applies to oil pollution damage resulting from spills from laden tankers and suffered in the territory (including the territorial sea) of a Contracting State. The only criterion for its applicability is, therefore, where the damage occurred. The flag State of the tanker and the nationality of the shipowner are irrelevant for determining the scope of application of the Civil Liability Convention.

The Civil Liability Convention also applies to measures, wherever taken, to prevent or minimise pollution damage in the territory (including the territorial sea) of a Contracting State ("preventive measures").

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

Only spills from a tanker which is actually carrying oil in bulk as cargo are covered by the Civil Liability Convention. Spills from a tanker during a ballast voyage are, therefore, not covered by the Civil Liability Convention, nor are spills of bunker oil from ships other than tankers.

The Civil Liability Convention applies only to damage caused or measures taken after an incident has occurred in which oil has escaped or been discharged. The Convention 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.

Compensation for oil pollution damage not covered by the Civil Liability Convention, ie damage caused by spills from unladen tankers or from ships other than tankers, costs of pure threat removal measures and damage caused by non-persistent oil, is governed by the applicable national law, normally the law of the State where the damage was sustained.

It should be noted that the Civil Liability Convention (and the Fund Convention) only deals with oil pollution from ships. Pollution resulting from off-shore operations fall outside the scope of the Conventions, and compensation for such pollution damage is governed by the applicable national law.

2.2 Strict liability

The owner of a tanker has strict liability (ie 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 may be exempted from liability only in a few particular cases, namely:

- (a) the damage resulted from an act of war or a grave natural disaster,
- (b) the damage was wholly caused by sabotage by a third party, or
- (c) the damage was wholly caused by the failure of authorities to maintain navigational aids.

The grounds for exemption are very limited, and the owner will, therefore, be liable for pollution damage in almost all incidents which occur under normal circumstances.

2.3 Limitation of liability

The shipowner is, under certain conditions, entitled to limit his liability to an amount of 133 SDR (US\$205) per ton of the ship's tonnage or 14 million SDR (US\$21.7 million) whichever is the less. In order to be entitled to limit his liability, the owner must establish a limitation fund by depositing the limitation amount with a court or by furnishing a guarantee for that amount acceptable to the court.

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

2.4 Channelling of liability

Claims for pollution damage under the Civil Liability Convention can be made only

against the registered owner of the tanker concerned. This does not preclude victims from claiming compensation outside the Civil Liability Convention from persons other than the owner. No claim can, however, be made against the servants or agents of the owner. The owner is entitled to take recourse action against third parties in accordance with national law.

2.5 Compulsory insurance

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 Civil Liability Convention. Tankers must carry on board a certificate attesting the insurance cover of the ship. When entering or leaving a port or terminal installation of a State Party to the Civil Liability Convention, such a certificate is required also for ships flying the flag of a State which is not Party to the Civil Liability Convention.

The victims may bring legal actions directly against the insurer.

2.6 Competence of Courts

Actions for compensation against the owner or his insurer under the Civil Liability Convention may only be brought before the Courts of the Contracting State in the territory or territorial sea of which damage was caused.

3 FUND CONVENTION

The Fund Convention was elaborated as a supplementary convention to the Civil Liability Convention. Only those States which have become Parties to the Civil Liability Convention can become Members of the IOPC Fund. As already mentioned, the IOPC Fund has at present 68 Member States.

The main functions of the Fund Convention are to provide supplementary compensation to those who cannot obtain full and adequate compensation for oil pollution damage under the Civil Liability Convention, and to indemnify the owner for a portion of his liability under the Civil Liability Convention.

The IOPC Fund is financed by persons who receive crude oil and heavy fuel oil in Fund Member States.

3.1 Supplementary compensation

The IOPC Fund pays compensation to any person suffering oil pollution damage if that person is unable to obtain full and adequate compensation under the Civil Liability Convention for one of the following reasons:

- (a) No liability for pollution damage arises under the Civil Liability Convention, because the owner can invoke one of the exemptions under that Convention.
- (b) The owner is financially incapable of meeting his obligations under the Civil Liability Convention and his insurance is insufficient to satisfy the claims for compensation for pollution damage.
- (c) The damage exceeds the owner's liability under the Civil Liability Convention.

The experience of the IOPC Fund has shown that most incidents fall within category (c).

The IOPC Fund is relieved of its obligation to pay compensation if it proves that the pollution damage resulted from an act of war or if it was caused by a spill from a warship. In addition, the IOPC Fund has no obligation to pay compensation if the claimant cannot prove that the damage resulted from an incident involving one or more laden tankers. This latter case refers to spills of oil from an unidentified source.

3.2 Limit of Compensation

The compensation payable by the IOPC Fund in respect of an incident is limited to an aggregate amount of 60 million SDR (US\$89 million), including the sum actually paid by the owner (or his insurer) under the Civil Liability Convention^{<1>}.

Of the 79 incidents with which the IOPC Fund has dealt so far, only a few, (for example the Tanio incident) have given rise to claims in excess of the limit of compensation that applied to the incident. In such a case, compensation paid to claimants is reduced pro rata, so that the maximum amount of 60 million SDR is not exceeded. In all other incidents, the total amount of the claims arising out of each incident has been below the limit of compensation available.

The IOPC Fund had taken it for granted that the conversion of the (gold) franc into national currency should be made on the basis of the Special Drawing Right of the International Monetary Fund, and this had also been the interpretation which has been generally accepted internationally. The reasons were that the word "official" had been included in the text of the Civil Liability Convention to rule out the application of the free market value of gold, and that the unit of account in the two Conventions was the same. In the *Haven* case (Italy, 1991), however, it was maintained by some claimants that the conversion should be made by using the free market price of gold, since the 1976 Protocol to the Fund Convention which replaced the (gold) franc with the SDR was not in force.

The Court of first instance in Genoa in charge of the limitation proceedings has held, however, that the maximum amount payable by the IOPC Fund should be calculated by the application of the free market value of gold which gives an amount of LIt 771 397 947 400 (including the amount paid by the shipowner under the Civil liability Convention), instead of LIt 102 643 800 000, as maintained by the IOPC Fund, calculated on the basis of the SDR.

The IOPC Fund has appealed against this judgement. The Court of Appeal has not yet rendered its judgement on this issue.

The IOPC Fund will if necessary take the question to the Supreme Court of Cassation. If the decision of the Court of first instance in Genoa were to be confirmed, the maximum amount payable by the IOPC Fund would correspond to over US\$460 million instead of US\$93 million. This might in the IOPC Fund's view seriously jeopardise the future of the system of compensation established by the Conventions.

3.3 Organisation of the IOPC Fund

The IOPC Fund consists of an Assembly, an Executive Committee and a Secretariat.

The Assembly, which is composed of representatives of the Governments of all Member States, is the supreme organ governing the IOPC Fund and holds regular sessions once a year. The Executive Committee is elected by the Assembly. It is composed of 15 Member States. Its main function is to approve settlements of claims against the IOPC Fund.

<1> The limit was originally 30 million SDR (US\$46.45 million). It was increased in stages to 60 million SDR by the IOPC Fund Assembly.

The Secretariat is headed by a Director. At present it has in all twelve staff members at its headquarters in London.

3.4 Contributions

The payments of compensation and indemnification as well as the administrative expenses of the IOPC Fund are financed by contributions levied on any person who has received crude oil and heavy fuel oil ("contributing oil") in a quantity exceeding 150 000 tonnes in one calendar year in a Contracting State of the Fund Convention.

4 THE 1992 PROTOCOLS TO THE CIVIL LIABILITY CONVENTION AND THE FUND CONVENTION

4.1 Background

A Diplomatic Conference held in November 1992 under the auspices of IMO adopted two new Protocols amending the Civil Liability Convention and the Fund Convention, in order to provide higher limits of compensation and a wider scope of application, thereby ensuring the viability in the future of the system of compensation established by these Conventions. The 1992 Protocols superseded two Protocols adopted in 1984; they have the same substantive provisions, but with lower entry into force requirements for the 1992 Protocols.

4.2 Entry into force

The 1992 Protocols will enter into force on 30 May 1996 in respect of the following nine States which have deposited instruments of ratification, acceptance, approval or acceptance relating to both Protocols: Denmark, France, Germany, Japan, Mexico, Norway, Oman, Sweden and the United Kingdom. The Protocol to the Civil Liability Convention will also enter into force on that day in respect of Egypt. As at 1 December 1995, the following six States had also deposited instruments of ratification, acceptance, approval or accession relating to both Protocols: Australia, Finland, Greece, Liberia, Marshall Islands and Spain, which will bring the number of States Parties to the 1992 Protocol to the Fund Convention to 15 and the number of States Parties to the 1992 Protocol to the Civil Liability Convention to 16 (cf the Annex).

The 1992 Protocol to the Fund Convention provides a mechanism for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention, when the total quantity of contributing oil received in the States Parties to the Protocol to the Fund Convention reaches 750 million tonnes. In the light of information available to the Director concerning progress towards ratification in other States, it is expected that the requirements for the compulsory denunciation might be fulfilled during the summer of 1996. States Parties to the 1992 Protocol to the Fund Convention as well as States which have deposited their instruments of ratification in respect of that 1992 Protocol would then have to denounce the 1969 Civil Liability Convention and the 1971 Fund Convention within six months, with effect twelve months later.

In its instrument of ratification relating to the 1992 Protocol to the Fund Convention, Spain made a declaration pursuant to Article 30.4 of that Protocol, so that the instrument relating to the latter will not take effect until the end of the six-month period referred to in Article 31, ie six months after the total quantity of contributing oil has reached 750 million tonnes. No corresponding declaration was made pursuant to

Article 13.2 of the Protocol to the Civil liability Convention.

4.3 Main Amendments

The main differences between the Civil liability Convention and the Fund Convention in their original version and the Conventions as amended by the 1992 Protocols are the following.

- ◆ **Special liability limit for owners of small vessels and substantial increase of the limitation amounts.** The revised limits will be: (a) for a ship not exceeding 5 000 units of gross tonnage, 3 million Special Drawing Rights (SDRs) (US\$4.4 million); (b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 3 million SDRs (US\$4.4 million) plus 420 SDRs (US\$622) for each additional unit of tonnage; and (c) for a ship of 140 000 units of tonnage or over, 59.7 million SDRs (US\$88 million).
- ◆ **Increase in the limit of compensation payable by the IOPC Fund** to 135 million SDRs (US\$200 million), including the compensation payable by the shipowner under the 1992 Protocol to the Civil Liability Convention. This limitation figure would be increased automatically to 200 million SDRs (US\$296 million) if there were three Member States of the 1992 Fund (ie the Organisation which will be established under the 1992 Protocol to the Fund Convention) whose combined quantity of contributing oil received during a given year in their respective territories exceeds 600 million tonnes.
- ◆ A simplified procedure for **increasing the limitation amounts** in the two Conventions.
- ◆ **Extended geographical scope** of application of the Conventions to include the exclusive economic zone (EEZ), established under the United Nations Convention on the Law of the Sea.
- ◆ Pollution damage caused by spills of persistent oil from **unladen tankers** will be covered.
- ◆ Expenses incurred for preventive measures are recoverable even when **no spill of oil** occurs, provided that there was **a grave and imminent danger** of pollution damage.
- ◆ **New definition of pollution damage** retaining the basic wording of the present definition with the addition of a phrase to clarify that, for environmental damage, only costs incurred for reasonable measures to restore the contaminated environment are included in the concept of pollution damage.
- ◆ **No indemnification of the shipowner.**

The 1992 Protocol to the Fund Convention also introduces provisions setting a cap on contributions to the IOPC Fund payable by oil receivers in any given State. This cap was fixed by the Conference at 27.5% of the total annual contributions to the IOPC 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 new Fund set up under the 1992 Protocol exceeds 750 million tonnes, or at the expiry of a period of five years from the entry into force of the 1992 Protocol to the Fund Convention (ie 30 May 2001), whichever is the earlier.

5 THE VOLUNTARY INDUSTRY SCHEMES

At the same time as the 1969 Civil liability Convention and the 1971 Fund Convention were negotiated, two corresponding voluntary industry schemes were adopted. These two schemes were known as TOVALOP (Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution) and CRISTAL (Contract Regarding a Supplement to Tanker Liability for Oil Pollution). The purpose of these industry schemes was to provide benefits comparable to those available under the Civil Liability Convention and the Fund Convention in States which had not ratified these Conventions. Both TOVALOP and CRISTAL were intended to be interim solutions and to remain in operation only until the international conventions had worldwide application.

The voluntary schemes have been amended several times. In the case of TOVALOP, in 1987 a Supplement was added to the Agreement which was in force prior to that date (henceforth known as the TOVALOP Standing Agreement). The TOVALOP Supplement applies only to incidents where the tanker is carrying a cargo owned by a party to CRISTAL. In all other cases, only the TOVALOP Standing Agreement can apply. As regards CRISTAL, an extensively amended contract was adopted in 1987. The voluntary schemes are designed to have a duration up to 20 February 1997.

In November 1995, the Directors of the Boards of the International Tanker Owners Pollution Federation Limited (ITOPF - the company which administers TOVALOP) and Cristal Limited (the company which administers CRISTAL) decided that the voluntary agreements would not be renewed when their present terms ended in February 1997. The Directors believed that the relevance of the interim TOVALOP and CRISTAL agreements had eroded over the years, as more States had become Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention. Their decision to discontinue TOVALOP and CRISTAL reflected the rapid growth in the acceptance by maritime States of these two Conventions and of the 1992 Protocols thereto, which offer significant advantages over the voluntary agreements for those claiming compensation for oil pollution damage. The Directors considered that the continued existence of the voluntary agreements could slow progress by acting as a disincentive to States which had not yet ratified these Protocols.

7 CONCLUSIONS

In the light of sixteen years of experience of the IOPC Fund, it is fair to say that the system of compensation established by the Civil liability Convention and the Fund Convention has worked remarkably well. This is due to a large extent to the spirit of co-operation shown by Governments of Member States as well as by shipowners, P & I Clubs and the oil industry.

At the International Conference, held in London in November 1990, which adopted the International Convention on Oil Pollution Preparedness, Response and Co-operation, a number of delegations stated that an efficient system of compensation was of great importance for ensuring rapid response and assistance between States, since such a system would make it easier for the States involved to recover costs incurred for the assistance given. The Conference inserted in the preamble to the Convention a statement emphasising the importance of the Civil Liability Convention and the Fund Convention.

The present international framework for liability and compensation for oil pollution damage had its origins in a maritime disaster in 1967. With the entry into force of the 1992 Protocols next May, a major step will be made towards ensuring that it continues to meet the needs of society in respect of compensation for victims of oil pollution damage.

ANNEX

IOPC Fund Member Stats

*ie States Parties to Both the Civil Liability Convention
and the Fund Convention*

as at 1 February 1996

Albania	Greece	Papua New Guinea
Algeria	Iceland	Poland
Australia	India	Portugal
Bahamas	Indonesia	Qatar
Barbados	Ireland	Republic of Korea
Belgium	Italy	Russian Federation
Benin	Japan	Saint Kitts and Nevis
Brunei Darussalam	Kenya	Seychelles
Cameroon	Kuwait	Sierra Leone
Canada	Liberia	Slovenia
Côte d'Ivoire	Malaysia	Spain
Croatia	Maldives	Sri Lanka
Cyprus	Malta	Sweden
Denmark	Marshall Islands	Syrian Arab Republic
Djibouti	Mauritania	Tonga
Estonia	Mauritius	Tunisia
Fiji	Mexico	Tuvalu
Finland	Monaco	United Arab Emirates
France	Morocco	United Kingdom
Gabon	Netherlands	Vanuatu
Gambia	Nigeria	Venezuela
Germany	Norway	Yugoslavia
Ghana	Oman	

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

(and therefore not Member of the IOPC Fund)

as at 1 February 1996

Belize	Georgia	Saint Vincent and the Grenadines
Brazil	Guatemala	Saudi Arabia
Cambodia	Kazakhstan	Senegal
Chile	Latvia	Singapore
China	Lebanon	South Africa
Colombia	Luxembourg	Switzerland
Dominican Republic	New Zealand	Yemen
Ecuador	Panama	
Egypt	Peru	

**States Parties to the 1992 Protocols to the
Civil Liability Convention and the Fund Convention**

(to enter into force on 30 May 1996)

as at 1 February 1996

Australia Denmark Finland France Germany	Greece Japan Liberia Marshall Islands Mexico	Norway Oman Spain ^{<1>} Sweden United Kingdom
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<1> In accordance with a declaration made in Spain's instrument of accession, the Protocol to the Fund Convention will not enter into force for Spain until 18 months after the total quantity of contributing oil has reached 750 million tonnes.

**State Party to the
1992 Protocol to the Civil Liability Convention
but not to the 1992 Protocol to the Fund Convention**

(to enter into force on 30 May 1996)

as at 1 February 1996

Egypt
