THE INTERNATIONAL REGIME ON LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE
AN EQUITABLE SOLUTION

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"Moving forward together"
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OUTLINE OF PRESENTATION

- The international regime and the role of the IOPC Funds
- Additional voluntary industry arrangements (STOPIA & TOPIA)
- Brief analysis of the balance within the international regime

1992 CIVIL LIABILITY CONVENTION
- 122 States Parties

1992 FUND CONVENTION
- 102 Member States

2003 PROTOCOL TO 1992 FUND CONVENTION
- 24 Member States

1971 Fund Convention ceased to be in force on 24 May 2002

COMPENSATION REGIMES

Old regime:
1969 Civil Liability Convention/1971 Fund Convention
1971 Fund

New regime:
1992 Fund
2003 Supplementary Fund Protocol
Supplementary Fund

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THE THREE TIER SYSTEM

THIRD TIER
Oil receivers after sea transport

Supplementary Fund Protocol
Supplementary Fund

SECOND TIER
Oil receivers after sea transport

1992 Fund Convention
1992 Fund

FIRST TIER
Shipowners

1992 Civil Liability Convention
Insurers

RATIONALE OF THE INTERNATIONAL REGIME

➢ Provide compensation to victims of pollution damage caused by spills of persistent oil from tankers
➢ Compensation through amicable settlements; court involvement avoided
➢ Uniform application; equal treatment

1992 CONVENTIONS APPLY TO:

➢ Pollution damage
➢ Spills of persistent oil from tankers
➢ Territory, territorial waters and EEZ or equivalent
➢ Preventive measures
➢ Bunker spills from unladen tankers (unless clean)
➢ ‘Mystery spills’ from a tanker

1ST TIER
1992 CIVIL LIABILITY CONVENTION

➢ Strict liability of registered shipowner (no fault required; very few exceptions)
➢ Limitation of liability
➢ Shipowners may lose right of limitation
➢ Compulsory insurance
➢ Direct action against insurer

1992 CLC Limits of Shipowner’s Liability

<table>
<thead>
<tr>
<th>GT</th>
<th>SDR</th>
<th>US $</th>
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<tbody>
<tr>
<td>≤ 5000</td>
<td>4 510 000</td>
<td>7 158 412</td>
</tr>
<tr>
<td>Per additional GT up to 140 000</td>
<td>631</td>
<td>1002</td>
</tr>
<tr>
<td>GT ≥ 140 000</td>
<td>89 770 000</td>
<td>142 486 730</td>
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SHIPOWNER EXEMPT WHEN INCIDENT RESULTED FROM

➢ Act of war or a grave natural disaster
➢ Intentional act of a third party
➢ Negligence of public authorities in maintaining navigational aids
CLC - SHIPOWNER CANNOT LIMIT LIABILITY

...if it is proved that the damage resulted from the owner's personal act or omission, committed with the intent to cause damage or recklessly with the knowledge that such damage would probably result

2ND TIER
THE 1992 IOPC FUND CONVENTION

- Provides compensation for pollution damage to the extent that the compensation available under the 1992 CLC is inadequate
- Creates an intergovernmental organisation: the 1992 IOPC Fund

2ND TIER
FUND CONVENTION APPLIES WHEN

- Shipowner exempt
- Shipowner financially incapable of meeting obligations
- Damage exceeds the shipowner's liability

2ND TIER
FUND CONVENTION DOES NOT APPLY

- Damage in non-Member State
- Damage caused by an act of war or spill from warship
- Claimant cannot prove oil originated from a "ship" as defined in the Conventions ("mystery spills")

MAXIMUM AMOUNT OF COMPENSATION

- 1992 CLC/Fund Conventions
  - 203 million SDR
- 2003 Supplementary Fund
  - 750 million SDR

LIMITS LAID DOWN IN THE CONVENTIONS

- 1992 CLC
- 1992 Fund
- Supplementary Fund
**1992 FUND: GENERAL FUND CONTRIBUTIONS 2007**

- Japan 17%
- Italy 9%
- Singapore 5%
- Canada 5%
- United Kingdom 5%
- France 7%
- Netherlands 8%
- Others 24%

**WHO CONtributes TO THE FUND?**

- Person receiving > 150 000 tons of contributing oil/year after sea transport
- Contributing oil = crude oil and heavy fuel oil
- Contributions decided by Fund Assembly
- Oil receivers pay, not governments

**MAIN TYPES OF CLAIM**

- Property damage
- Clean-up operations and preventive measures
- Losses in fishery, mariculture and tourism sectors:
  - Consequential loss
  - Pure economic loss
- Environmental damage; limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken

**ADMISSIBILITY OF CLAIMS GENERAL CRITERIA**

- Loss or damage caused by contamination (link of causation between the contamination and the loss)
- Claimant must prove loss or damage
- Loss must be economically quantifiable
- Any expense or loss must have been incurred
- Any expense must be for measures which are reasonable and justifiable
Clean-up Operations

Main types of claims

Economic losses
Fishery, mariculture, tourism

Main types of claims

Environmental damage
Costs of reasonable measures of reinstatement actually undertaken or to be undertaken

3rd Tier Supplementary Fund

- Protocol establishing a Supplementary Fund in force in March 2005
- Maximum compensation 750 million SDR, including amounts payable under 1992 Conventions
- Contributions to Supplementary Fund payable by oil receivers in States Parties to Protocol (= identical to 1992 Fund)

Sharing of Financial Burden Between Shipowners and Oil Industry; Voluntary Industry Arrangements

- Cost study; showed imbalance for smaller ships under present regime
- Impact of Supplementary Fund; potential exposure for contributors
- STOPIA / TOPIA 2006

STOPIA 2006

- Basic concept is “Relevant Ship”:
  - 29 548 GT or less;
  - Entered in International Group P&I Club; and
  - Reinsured through International Group’s Pooling Arrangements
- Applies to pollution damage in 1992 Fund Member States
- Voluntary increase to 20 million SDR of limitation amount for relevant ships
- 1992 Fund remains liable to pay compensation to claimants over 4.51 million SDR
- 1992 Fund will be indemnified by the shipowner for difference between CLC limit and 20 million SDR
TOPIA 2006

- Basic concept is "Relevant Ship":
  - Entered in International Group P&I Club; and
  - Reinsured through International Group's pooling arrangements
- Applies to pollution damage in Supplementary Fund Member States
- Supplementary Fund will continue to pay compensation to claimants in accordance with Supplementary Fund Protocol
- Shipowner will indemnify the Supplementary Fund for 50% of the compensation it has paid to claimants

AN EQUITABLE SOLUTION?

The perspective of claimants:
The pro's:
- Registered owner has strict liability: liable person available
- Compulsory insurance with direct action: solvent liable person available
- Fund and Suppl. Fund offer added protection
- Preventive measures are promoted
The con's:
- Compensation available is limited
- Assessment process takes time, depending on the circumstances

The perspective of shipowners:
The pro's:
- Predictability by channelled, strict and limited liability
- Compulsory insurance with direct action: level playing field
- Shared liability/responsibility with oil receivers
- International uniformity for international business
- Criteria for admissibility well advanced and favourable: acceptance of the regime internationally
- Preventive measures are promoted
The con's:
- Strict liability and compulsory insurance come at a cost
- Sometimes problems relating to interplay between interim payments and limitation proceedings
- STOPIA and TOPIA come at a cost

The perspective of the oil industry:
The pro's:
- Predictability and protection by the international regime
- Level playing field
- Shared liability/responsibility with shipowners
- Criteria for admissibility well advanced and favourable: acceptance of the regime internationally
- Preventive measures are promoted
The con's:
- Contributions to the IOPC Funds

The perspective of (Member) States:
The pro's:
- Protection of Member State and its citizens and companies against pollution damage
- Level playing field for industries involved
- Shared liability/responsibility offers better protection
- Criteria for admissibility well advanced and favourable: acceptance of the regime (inter)nationally
- Preventive measures are promoted
- For some States: no cost to their industry
The con's:
- Compensation available is limited
- Claims handling process takes time, depending on the circumstances, sometimes leading to complaints nationally

Thank you for your attention!
For further information
www.iopcfund.org