The Regime for Liability and Compensation for Oil Pollution Damage from Ships

Alfred H. Popp, QC
Administrator of the
Ship-source Oil Pollution Fund

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Panel 7: Liability and Compensation

Purpose:

To identify uses, practices and lessons from other regimes concerning allocation of responsibility and related rules for apportionment of liability and procedures for compensation

The Regime for Liability and Compensation for Oil Pollution from Ships

Introduction:

The purpose of this presentation is to provide some background respecting the international regime of liability and compensation for oil pollution caused by ships

1967, the Torrey Canyon Incident

- Starting point of the international regime of liability and compensation was the grounding of the Liberian flagged oil tanker off the south west coast of the United Kingdom
- Extensive oil pollution damage both in the UK and France underscored the international nature of the incident
- 1969, the incident resulted in the adoption of the *Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties* and the *Convention on Civil Liability for Oil Pollution Damage* (CLC)
- 1971, the CLC was supplemented by the adoption of the *Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* ('71 Fund Convention)
- The essence of the regime set up by the adoption of the CLC and '71 Fund Convention is that it shares responsibility for providing compensation between the owner of the ship (tanker) and the cargo interests

Essential Elements of 1969 CLC

- Regime is confined to providing compensation in the case of oil pollution damage caused by tankers carrying cargoes of persistent oil in bulk
- Registered owner is directly liable up to a specified limit of liability calculated as a function of the tonnage of the ship
- Liability is strict, meaning it can only be avoided on the basis of a restricted number of narrowly defined defences
- The owner of the ship carrying over 2000 tons of oil in bulk as cargo is obliged to maintain insurance or other financial security to cover liability, with the right of direct access by claimants against the insurer or other guarantor

Essential Elements of the 1971 Fund Convention

- The International Oil Pollution Compensation Fund (IOPC Fund), set up under the Fund Convention, is available to pay compensation to the extent that compensation is not available from the owner of the ship

- The Fund has an overall limit, which includes any amounts recovered from the owner of the ship or from the insurers

- Compensation paid by the IOPC Fund is financed by contributions levied from receivers of "contributing oil" in contracting states

1978 Amoco Cadiz Incident

- The stranding of the VLCC, *Amoco Cadiz,* off the coast of France, resulting in the loss of 230,000 tons of oil, demonstrated the inadequacy of the 1969/71 regime, even before the ’71 Fund Convention had come into force
- French ratification in 1979 brought the Fund Convention into force, too late to benefit French claimants
- The incident resulted in extensive litigation in the United States and triggered a review by the *Comité Maritime International* (CMI) of the 1910 Salvage Convention
- The incident also triggered a review of the 1969/71 Conventions, resulting in the adoption of the 1984 Protocols to those conventions

1989 Exxon Valdez Incident

- The entry into force of the 1984 Protocols was predicated on the participation of the United States in those protocols
- In the wake of the *Exxon Valdez* incident the United States adopted the *Oil Pollution Act* of 1990 (OPA '90)
- The Act contained provisions inconsistent with the international regime, closing the door to United States participation in the 1984 Protocols
- Efforts renewed to bring the substance of the 1984 Protocols into force without United States participation

1992 Protocols

At a diplomatic conference in 1992 two protocols were adopted, identical to the 1984 Protocols, with two material changes:

- The aggregate amount of annual contributions payable in respect of contributing oil received in a single state was capped at 27.5% of total annual contributions payable by all contracting states

- Entry into force provisions for the protocol to the Fund Convention were modified by reducing the amount of "contributing" oil needed to be reported to the Secretary General of the IMO to trigger entry into force of the protocol (reduced from 600 million tons to 450 million tons)

2000 Legal Committee, IMO, Resolutions

Under the amendment procedures contained in the 1992 Protocols, the IMO Legal Committee in 2000 adopts two resolutions, increasing the amounts of compensation available, respectively, from the owner of a ship under the CLC, and the IOPC Fund under the Fund Convention

2003 Establishment of Supplementary Fund

- At a diplomatic conference in 2003 a Protocol to the 1992 Fund Convention is adopted, establishing a Supplementary Fund
- Participation in the Supplementary Fund is voluntary but the option to participate is only available to states party to the 1992 Fund Convention
- Compensation provided by the Supplementary Fund significantly increases compensation available under the 1992 CLC and Fund Convention

2006 STOPIA and TOPIA Industry Agreements

- In 2006 the International Group of P&I Clubs (IG) concluded two voluntary agreements to indemnify the Supplementary Fund
- The Small Tanker Oil Pollution Indemnification Agreement (STOPIA) between the owners of small tankers (up to 29,548 GT) and their insurers increases the minimum limit of liability for those tankers to 20 million SDR for pollution damage caused in states parties to the Supplementary Fund
- The Tanker Oil Pollution Indemnification Agreement (TOPIA) tanker owners agree to indemnify the Supplementary Fund for 50% of compensation paid by the Fund in respect of tankers entered in the agreement

Compensation Package

The total amount of compensation available under the international regime, described above, expressed in Canadian dollars, is as follows:

- $137.86 million payable by the tanker owner under the 1992 CLC
- $311.74 million payable by the 1992 IOPC Fund, including any amounts recoverable from the tanker owner under the 1992 CLC
- $840.02 million payable by the Supplementary Fund, including any amounts recoverable from the tanker owner under the 1992 CLC and the 1992 IOPC Fund
- Grand total recoverable under the international regime is therefore $1,151,76 million

Under the 1992 CLC the amount payable by the owner of the tanker is calculated as a function of its tonnage. The maximum of $137.86 million, mentioed above, is reached when the vessel is at 140,000 tons or more.

Dispute Resolution

- Any disputes arising under the international regime are resolved by the courts of contracting states affected by the incident giving rise to pollution damage
- Once the owner of the tanker constitutes a limitation fund, the courts of that state acquires exclusive competence to resolve disputes
- Final judgement of the court having exclusive competence is enforceable in all contracting states

The Canadian Experience

- 1970 Canada establishes its own regime of liability and compensation for ship-source pollution in response to
    - The passage of the US tanker, the *Manhattan*, 1969, through the Canadian Arctic
    - The *Arrow* incident, 1970, off the coast of Nova Scotia
- Parliament adopts two pieces of legislation, the *Arctic Waters Pollution Prevention Act* (AWPPA), 1970, and Part XX to the *Canada Shipping Act* (CSA), 1971
- The regime in the AWPPA applied and continues to apply north of the 60th parallel, the regime in the CSA, at least initially, applied south of the 60th parallel

The Canadian Experience *(cont'd)*

- The CSA provided for the establishment of a fund, the Maritime Pollution Claims Fund (MPCF)
- By a series of amendments to the CSA, the scope of the Canadian Fund was modified, renamed as the Ship-source Oil Pollution Fund (SOPF) and transferred to the *Marine Liability Act* (MLA)
- Initially, the Canadian regime, though closely modelled on the international regime embodied in the CLC and Fund Convention, was a purely domestic regime
- In 1989, Canada joins the international regime by accession to the 1969 CLC and the 1971 Fund Convention
- 1999 Canada accedes to the 1992 CLC and Fund Convention and denounces the 1969 CLC and 1971 Fund Convention
- 2010 Canada accedes to the Supplementary Fund

The Canadian Experience *(cont'd)*

- Today the SOPF plays a dual role:
  - First, as an additional layer of compensation ($159,854,965) on top of what is available from the international regime in respect of tanker spills
  - Secondly as a back-up for oil spills of any kind not covered by the international regime
- The SOPF has both a "first resort" function and a "last resort" function

Conclusions

- The IOPC Fund regime has been very successful in paying out compensation to claimants, operating on the principle that claims should be assessed and paid as quickly as possible
- The vast majority of claims have been settled amicably, without recourse to the courts
- Where assessments of claims have been referred to the courts, in most cases the assessments made by the IOPC Fund have been upheld
- Since its creation in 1979, the IOPC Funds have paid out in compensation some £ 567,587,621 (CA$ 899,966,932)

Conclusions (cont'd)

- The IOPC Fund model has been copied in the HNS Convention
- The success of the regime, however, very much depends on the uniform application of the conventions governing the regime in contracting states
- Canada started out with a unilateral regime, back in the 1970s and 1980s, but, on balance, opted for the international regime available for tanker spills.