Recent developments within the international compensation regime

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Jose Maura
Director
International Oil Pollution Compensation Funds

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**The IOPC Funds**

Introduction

- The International Oil Pollution Compensation Funds are two intergovernmental organisations
  - 1992 Fund
  - Supplementary Fund
- Provide compensation for oil pollution damage resulting from spills of persistent oil from tankers.
- 1992 Fund has 114 Member States.
- It has been involved in some 150 oil spills worldwide since 1978.

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**Why do we need a compensation regime?**

**Incidents do happen**

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**The oil pollution compensation regime**

General principles

- Provides compensation to victims of pollution damage caused by spills of persistent oil from tankers
- Compensation through amicable settlement
- Establishes a three-tier regime for compensation
  - First tier paid for by the shipowner’s insurer
    - 1992 Civil Liability Convention
    - Strict liability of the shipowner
    - Right to limit its liability
    - Compulsory insurance
  - Second tier paid for by the 1992 Fund
    - 1992 Fund Convention
    - Funded by receivers of persistent oil in States Parties
  - Third tier paid for by the Supplementary Fund
    - 2003 Supplementary Fund Protocol
    - Funded by receivers of persistent oil in Supplementary Fund States Parties
- Uniform and consistent application of compensation regime
- Equal treatment of all claimants

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**How the compensation regime works**

**Three tier system**

<table>
<thead>
<tr>
<th>Source of money</th>
<th>Paying organisation</th>
<th>Compensation regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oil receivers in Supplementary Fund States Parties</td>
<td>Contribution</td>
<td>Supplementary Fund</td>
</tr>
<tr>
<td>Shipowner</td>
<td>Insurance Premium</td>
<td>1992 Civil Liability Convention</td>
</tr>
</tbody>
</table>

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**Compensation limits**

![Graph showing compensation limits](image)
The IOPC Funds Secretariat

**Its role**

- Administer Fund Conventions
- Consist of Assembly, Executive Committee and Secretariat
- Establish criteria for admissibility of claims
- Assess claims and pay compensation to victims when applicable
- Maintain cooperation between the parties:
  - Insurer (P&I Club)
  - 1992 Fund/Supplementary Fund
  - Government (both central and local)
  - Oil industry/Contributors

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The Member States

April 2016

- 1992 Fund Convention (114 Member States)
- 1992 Civil Liability Convention (133)
- Supplementary Fund (31)
- 1969 Civil Liability Convention (35)

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How does the IOPC Funds work?

**Organigram**

**IOPC Funds Governing Bodies**

- 1992 Fund Executive Committee
- 1992 Fund Assembly
- Supplementary Fund Assembly

**Director & Secretariat**

- Fund Lawyers
- Technical Experts
- Local Claims Handling Office
- Investment Advisory Body
- Audit Body

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Main types of claims

**Definition under the CLC**

- Clean-up operations and preventive measures
- Property damage
- Economic losses in fishery, mariculture and tourism sectors:
  - Consequential loss
  - Pure economic loss
- Environmental damage
  - Reasonable costs for reinstatement of the environment

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Admissibility Criteria

**General criteria**

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

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How the Funds are financed

**Contributions from the oil industry**

- Oil receivers: "persons" who receive more than 150,000 tonnes of contributing oil (crude oil and heavy fuel oil) per year after sea transport
- The Fund Assembly decides the amount of contributions to be levied each year, based on amounts required to meet claims
- The cost of financing the IOPC Fund is divided fairly. The levy per tonne is based on the total of the oil reports for the relevant year
- Oil receivers (not governments) pay
Contributions
From Member States' oil industry (2015)

1992 Fund
Supplementary Fund

10 States represent 74% of contributions
10 States represent 95% of contributions

What we have paid
1978 - 2015

• No incident • No compensation paid

Supplementary Fund
• Has been involved in 42 incidents • Paid about £237 million in compensation

The 1992 Fund
• Was involved in 107 incidents • Paid about £331 million in compensation and/or indemnification

The 1971 Fund
• Incidents: 149 • Compensation paid: £567 million

Total

Major incidents and compensation
Amount paid (and to be paid) in claims including shipowner’s contribution under 1992 CLC


Engagement with Member States
Importance of maintaining good contacts

• In the event of an incident, good lines of communication are essential between the affected State and the Secretariat
• Contacts must be established long before a spill to ensure Conventions are implemented and victims are protected
  – Support is available from the IOPC Funds in matters of training and assistance with implementation, oil reporting and claims submission, including an in-house short course.

IOPC Funds work besides compensation
Engagement and public information

General Public Information
Printed and online publications – www.iopcfunds.org
Recent developments

Overview

1. Hebei Spirit incident
2. Emphasis on implementation
3. HNS Convention

Hebei Spirit

The incident

Incident date: 7/12/2007
Cause of spill: Collision
Oil cargo: 264,000 tonnes
Oil spilled: 10,800 tonnes

- 345km of coastline affected in three provinces
- Massive impacts on economic activities
- 21 clean-up contractors used
- Unprecedented public participation
  - 2 million man-days of work in the first 3 months
  - 1 million man-days volunteers and military
- Clean-up operations finalised by summer 2008

Hebei Spirit Fund’s involvement

- Good cooperation between 1992 Fund and P&I Club
  - Set-up of a joint Claims Handling Office
  - Joint experts
  - Joint assessments
  - Joint costs
- Meetings with authorities, the public and the media
- Meetings with claimants
- Regular site visits

Implementation of the Conventions

Need for adequate legislation in place

Legislation relating to compensation

Outdated liability limits in Russian legislation (CLC and fund limits increased by 50% in 2003)
Shipowner’s insurance cover limited to SDR5M as a limitation
Created an insurance gap at SDR5-9 million
1992 Fund engaged with authorities to close the gap

Legislation relating to contributions

Lack of adequate contributions to CLC and fund provisions in place due to inadequate legislation
1992 Fund engaged with authorities to close the gap
Outstanding contributions: CLC and fund
1992 Fund engaged with authorities to close the gap

Interpretation of the Conventions by national courts

Prestige incident

- Shipowner’s insurer had civil liability up to its total insurance policy ($1,000M)
- “Unlimited” liability of insurer is a breach of Art. V.11 of CLC
- Awarded “moral damages” to be quantified
- Supreme Court applied domestic law instead of CLC

Domestic legislations vs international conventions

Slops incident

- Incident involving a Floating Storage Unit (FSO)
- Converted from an oil tanker
- 1992 Fund Executive Committee decided that Slops was not a “ship” under CLC
- Greece Supreme Court eventually ruled that Slops was covered under the Convention
- 1992 Fund had to accept Court decision and pay €4M in compensation

Hebei Spirit

Current claims and payment situation

Number of claims: 127,483
Types of claims: 127,483

<table>
<thead>
<tr>
<th>Type of Claim</th>
<th>Number of Claims</th>
<th>Amount (in US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992 Conventions (CLC &amp; Fund)</td>
<td>322,000,000</td>
<td>Available</td>
</tr>
<tr>
<td>Limiaiton Court Claimed</td>
<td>4,000,000,000</td>
<td>Claimed</td>
</tr>
<tr>
<td>Hebei Spirit Centre Claimed</td>
<td>2,700,000,000</td>
<td>Claimed</td>
</tr>
<tr>
<td>Limiaiton Court Awarded</td>
<td>738,000,000</td>
<td>Awarded</td>
</tr>
</tbody>
</table>

Current situation

- 1992 Fund Assembly agreed to raise level of payment
  - From 35% to 50% in October 2015
- Ongoing discussions with Korean Government for 1992 Fund to reach an agreement to pay its limit
Key points on International Compensation Regime

- Make sure adequate level of protection is available:
  - 1992 CLC
  - 1992 Fund
  - Supplementary Fund
- Make sure Conventions are implemented correctly
- Governments should be proactive and work with claimants & compensation regime
- Cooperation between the parties:
  - Insurer (P&I Club)
  - 1992 Fund & Supplementary Fund
  - Government (both central and local)

The HNS Convention

Fills a gap in the maritime liability & compensation regime

- Based on the Civil Liability and Fund Conventions for tankers
- Two-tier regime for compensation
  - First tier paid for by the shipowner and insurer
  - Right to limit liability
  - Compulsory insurance
  - Second tier paid for by the HNS Fund
  - Funded by receivers of bulk HNS in States Parties
- Provides compensation for loss or damage to persons, property and the environment arising from the carriage of HNS by sea
- Covers both pollution damage and damage caused by other risks (e.g. fire and explosion)

Role of the IOPC Funds

What has been done?

- Administrative tasks to help set up the HNS Fund
  - March 2013, IMO formally endorsed the HNS reporting guidelines developed by IOPC Funds
- Updated list of substances covered by the HNS Protocol
  - HNS Finder
- Production and dissemination of information material
  - HNS Website
  - HNS Brochure (2014 edition)
  - Joint IMO, IOPC, ITOPF Brochure (2016)
- Engagement with stakeholders to raise awareness

Engagement with stakeholders

Momentum towards entry into force

- 2014, Rome, HNS Workshop
  - Under Italy’s EU presidency, meeting to assess further support requirements for States and the industry to facilitate implementation
- 2015, Brussels, Presentation at EU Council Shipping working party meeting
  - Engagement with EU Member States on ratification and implementation
- 2016, Montreal, HNS Workshop
  - Coordinated by Transport Canada and HNS correspondence group Chair
  - Sharing of experience among States preparing for ratification
  - Agreement on additional tools to promote the Convention and facilitate implementation
- 2016, Adoption of EU Council Decision on the HNS Convention
  - Authorises EU States to ratify within four years
  - Pending approval by European Parliament
  - Not mandatory but considered as key step towards ratification by EU States

Next step is entry into force…

For States:

- BE PROACTIVE in ensuring adequate compensation is available in the event of an HNS incident
- ACCED TO the HNS Convention

For States that have ratified:

- BE PROACTIVE in ensuring adequate compensation is available in the event of an HNS incident
- ACCED TO the HNS Convention

HOW TO DO IT?

- FIND OUT MORE and VISIT www.hnsconvention.org
- CONTACT the IMO and IOPC Funds' Secretariats

Assistance from the IMO and IOPC Funds is available to States and the industry for implementing the Convention nationally.

www.iopcfunds.org

Jose Maura
Director