

# The best way to the protection of the marine environment from oil spills impacts is the strengthening of available oil spill liability and compensation regimes or funding of oil spill preparedness and strengthening of oil spill combat capabilities

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## ABSTRACT

The total volume of oil spilled and the number of spills has declined significantly over the past forty years. However, oil spills are no longer considered as an unavoidable. The ship source oil pollution still remains a potential important risk to the local economies and the marine environment which can cause major economic loss and severe damages to the coastal and marine environment. The international regulatory framework to deal with liability and compensation in the event of ship source oil pollution has evolved over the past three decades. The available international legal regime for oil pollution liability and compensation is playing a great role in governing discharge of oil into the sea by ensuring liability for polluters and compensation for victims of pollution. Despite the fact that the total cost of the oil spill cannot be compensated through the available international civil liability regime and entire damages caused to the marine environment cannot be compensated or recovered. This paper examined the application and limitations of available liability and compensation mechanism for the protection marine pollution and compare the benefit of the establishment of a funding mechanism for the strengthening of the level of oil spill preparedness and the civil liability regime for the protection of the coastal and marine environment. In addition, this paper reviews the funding mechanism adopted by the countries to the strengthening the level of oil spill preparedness taken into account the polluter pays principle without a putting extra burden to general taxpayers. The establishment of a system for the funding of oil spill preparedness using the polluter pay principle has immensely helped to improve the oil spill response capabilities and protection of the marine environment of coastal states which adopted a unique funding mechanism by applying the polluter pay principle. This paper recommends the among other thing review the available compensation and liability regime for the protection of the marine environment and recommend to adopt and apply a uniform funding mechanism for the strengthening of the level of oil spill preparedness taken into account the polluter pay principle for the protection of the marine environment and improve the status quo.

Liability, compensation, Preparedness, Polluters pay principle

## Introduction

The available data shows that the total amount of oil spilled from ships significantly declined last two decades. However, oil spills are no longer considered as unavoidable. Any movement there can have a major oil spill at the marine environment as the amount of oil pass through the ships is still increasing. Presently the international civil liability conventions regime is the established regime that provides compensation for oil pollution damages. There are three liability related conventions, the Civil Liability Convention at the first stage, which provides liability and compensation regime for oil pollution at sea. The Fund Convention, which was designed to link closely with the CLC, to and its purpose is to pay compensation to victims of oil pollution damage at sea in cases where the amounts recoverable under the CLC are inadequate. The final step to provide a comprehensive compensation regime was taken by adoption of the Bunkers Convention whose purpose is to ensure that adequate compensation is available to the victims of damages caused by oil spills from tankers. These conventions provide compensation for victim of the oil pollution.

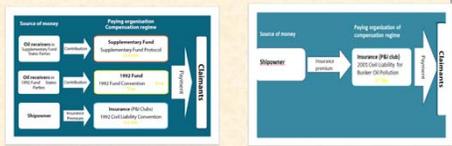
### Present problem

- the total amount of compensation for all the damages caused due to the oil spill can not be obtained from the existence compensation liability legal regime.
- The damage caused in the marine environment due to the oil spill cannot be fully compensated and damaged caused to the marine environment cannot be recovered using the available compensation mechanism.

## Objectives

- review the effectiveness of the present liability regime for protection of the marine environment
- evaluate the strengthen of oil spill preparedness level of countries to combat oil spill and to minimize the oil spill impact.
- examines the funding mechanism to increase the level of oil spill preparedness using a viable environment principle to minimize oil pollution impact
- recommend adoption of a uniform mechanism to curtail oil spill impacts and protection of the marine environment.

## Overview of International liability regime



## Is the compensation available under the present regulatory mechanism adequate ?

- No there are limitations- actual amount cannot be compensated.
- Most of spill related cost are not admissible - actual amount cannot be obtained.
- Preventive measures cost can be obtained if the preventive measures taken is technically feasible.
- There should be technical knowhow and oil spill equipment should be available to take technically feasible actions.
- Claims for pure economic loss are admissible only if they are for loss or damage caused by the contamination. When oil spill occur there are impact to deferent sectors with out contamination specially tourism sector.
- Compensation can be obtained only for the assessable and quantifiable and value calculated using economic valuation method is not admissible.
- Marine biodiversity and the environmental services supplied by the marine ecosystem can assessed and quantifiable using environment valuation technique but the present regime does not accept these methods. Ex Antonio Gramsci Case USSR Claim



## Is the compensation available under the present regulatory mechanism adequate ?

- ❖ Compensation is not adequate to cover the cost the most expensive ever oil spill in terms of dollars per barrel was set by the 43,000 dwt wood chip carrier *Kure* Humboldt Bay, California, in November 1997. final cost - \$47m.
- ❖ Compensation is not available in following conditions
- ❖ damage resulted from an act of war, hostilities, civil war, insurrection or natural phenomenon of an exceptional, inevitable and irresistible character;
- ❖ damage wholly caused by an act or omission done with the intent to cause damage by a third party;
- ❖ damage wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

### Compensation is not available for victims- CLC and Fund

- if the pollution damage was caused either by a natural disaster, by a third party intentionally, or as a result of the negligence of public authorities in maintaining lights or other navigational aids.
- if the pollution damage resulted from an act of war, hostilities, civil war or insurrection, or was caused by a release from a warship owners.
- As with the 1992 CLC, the 1992 Fund does not pay compensation if the pollution damage resulted from an act of war, hostilities, civil war or insurrection, was caused by a release from a warship, or if the release of oil cannot be proved to have originated from a tanker.

**No compensation but damages same as other incident which applies CLC and Fund**

## why preparedness ?

- existence CLC regime is cannot adequately provide compensation to cover all cost related to the marine environment damages.
- most of oil spill event the above regime cannot be applied.
- Prevention of occurrence of oil spill is the best way to protect the marine environment.
- However it is unavoidable, hence when oil spills occurs effective oil spill response system should be implemented to prevent of reduce the impact the marine environment and socio economic impact.
- ❖ The Polluter Pay Principle is used only for the recover cost of oil spill not for the preparedness for oil spills.
  - ❖ It is very clear that the cost of oil spill preparedness cannot be recovered through the present International Liability regime.
  - ❖ In addition to that, if the deployed clean-up method is not technically feasible, the clean-up costs also may not be recovered

## Polluter pay and potential polluter pay principle for strengthening of level of oil spill preparedness ?

International law accepts not only a PPP but also Potential Polluter Pay Principle for activities leading to pollution preparedness. There are many countries which are already used this mechanism for funding oil preparedness measures. However, the use of PPP varies from country to country because of the risk of oil pollution and the required levels of preparedness which also varies from one country to another.

## Countries which use the PPP utilized different model to collect funds from all potential polluters

- Australia**  
Australia uses PPP to potential polluters for funding of their National Plan. The fund for preparedness to combat the oil spill is enriched by using the Protection of the Sea Levy. The levy is used the fund for ongoing development, maintenance and administration of the National Plan, acquisition, storage, maintenance of the equipment and the training program. the levy provides funds to cover oil spill clean-up costs where the polluters cannot be found and costs cannot be recovered
- New Zealand**  
The fund provides funds for preparations for the marine oil spill response and pays the costs incurred when responding to spills. The Pollution Levy is collected from the risk contributing sectors namely, shipping, fishing, oil exploration, and oil production industries along with the oil pipeline at a rate proportional to the risk created by various activities .
- Finland**  
Finland has established a special funding mechanism to fund oil spill preparedness activities. Oil Pollution Fund was established using the levy on oil imported or transported through Finland. This fund is used for acquisition and maintenance of municipal oil combating equipment and is also available for other agencies to combat oil spill and engage in response activities
- Canada**  
Canada also applies the PPP to potential polluters. However, this method is different from what has been discussed earlier with regard to funding mechanisms. Oil spill preparedness and response in Canada is funded and operated by the private sector. The private organizations maintain respond capability to response oil spill up to 10000 tons.
- Malaysia**  
The contributions for the fund come from several sources and one of the major sources are those involved in the extraction, extraction, refining, production, bulk movement, distribution, or storage of oil. This contribution comes through the levy imposed on industry. The rate of levy depends on formula that based on the particular risk of a spill from their operation.

## Recommendations

- The CLC regime provide compensation for oil spill damages, However the present system cannot provide adequate compensation to cover all cost related to oil spill damages, including environmental damages.
- The present system should be further improved to provide adequate and compensation to victim of the oil spill and environmental damages.
- However hence it is very difficult to cover all spill related cost and damages to the environment cannot be fully recovered attention should be focused on the strengthen of level of oil spill preparedness and oil spill combat capabilities.
- For this purposes funds should be obtained from the polluter using the Polluter pay principle and potential polluter pay principle. Taken into account the funding system adopted by the several countries, the international uniform system should be introduced using the above principle through the OPRC convention to enforce levy system on vessel which arrives to member countries ports and other polluters based on the risk factor.
- Fund collection system adopted by fund convention can be adopted to establish a international fund to provide required fund to strengthen level of oil spill preparedness and fund should be allocated to each member countries to strengthen level of oil spill preparedness.

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