INTERNATIONAL OIL POLLUTION COMPENSATION REGIME: LEGAL AND POLITICAL ASPECTS[1]

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Introduction

Compensation for oil pollution damage caused by oil spills from tankers is governed by an international regime created under the auspices of the International Maritime Organization (IMO). The main features of this regime were originally laid down in the International Convention on Civil Liability for Oil Pollution Damage, 1969 (1969 Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (the 1971 Fund Convention). These Conventions were modified by two Protocols adopted in 1992, and the Conventions in their revised versions are normally referred to as the 1992 Civil Liability Convention and the 1992 Fund Convention.

The Civil Liability Conventions govern the liability of shipowners for oil pollution damage. The Conventions lay down the principle of strict liability for shipowners and create a system of compulsory liability insurance.

The 1971 and 1992 Fund Conventions establish a system proving additional compensation to victims when the compensation under the respective Civil Liability Convention is inadequate. .

A third tier of compensation in the form of a Supplementary Fund was established on 3 March 2005 by means of a Protocol adopted in 2003.

The 1971 Fund Convention, the 1992 Fund Convention and the Supplementary Fund Protocol each establish an intergovernmental organisation, the 1971 Fund, the 1992 Fund and the Supplementary Fund respectively, normally referred to together as the IOPC Funds. They have their Headquarters in London.

On 10 November 2006, 115 States had ratified the 1992 Civil Liability Convention, and 98 States had ratified the 1992 Fund Convention. The Supplementary Fund Protocol had been ratified by 20 States.

The 1971 Fund Convention ceased to be in force on 24 May 2004 and does not apply to incidents occurring after that date. However, before the 1971 Fund can be wound up, all pending claims resulting from incidents which occurred before that date in 1971 Fund Member States will have to be settled and any remaining assets distributed among the contributors to that Fund.

Italy has played an important role in the development of the international compensation regime, mainly as a result of several important oil spills having occurred in Italy, namely the *Patmos* in 1985 and the *Agip Abruzzo* and the *Haven* in 1991. In addition, the Italian oil industry is the second largest contributor to the Funds.

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[1] This article is based on a presentation by the author before the Italian Maritime Law Association on 13 November 2006.

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Main features of the international regime

The 1992 Conventions and the Supplementary Fund Protocol apply to pollution damage suffered in the territory (including the territorial sea) and the exclusive economic zone (EEZ) or equivalent area of a State party to the respective Conventions. 'Pollution damage' is defined as damage caused by contamination and includes the cost of 'preventive measures', i.e. measures to prevent or minimise pollution damage.

The treaties apply to ships which actually carry oil in bulk as cargo, i.e. generally laden tankers, as well as to spills of bunker oil from unladen tankers provided they have residues of a persistent oil cargo aboard.

The liability rests on the registered owner of the ship from which the oil originated. Shipowners have strict liability for pollution damage (with very limited defences) and are obliged to cover their liability by insurance. They are normally entitled to limit their liability to an amount which is calculated on the basis of the tonnage of the ship, and which - after increases by some 50% with effect from 1 November 2003 - ranges from 4.51 million SDR (€5.3million) for small ships to 89.77 million SDR (€105 million) for large tankers[2].

Shipowners are deprived of the right to limit their liability if it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Claims for pollution damage under the 1992 Civil Liability Convention can be made only against the registered owner of the ship concerned. This does not preclude victims from claiming compensation outside the Convention from persons other than the owner. However, the Convention prohibits claims against the servants or agents of the owner, the crew, the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures. The protection does not apply if the pollution damage resulted from the personal act or omission of the person concerned, committed with knowledge that such damage would probably result.

The compensation payable by the 1992 Fund in respect of an incident is limited to an aggregate amount which, with effect from 1 November 2003, was increased from 135 million SDR (€157 million) to 203 million SDR (€236 million), including the sum actually paid by the shipowner (or his insurer) under the 1992 Civil Liability Convention.

The Funds are financed by contributions levied on any entity which has received in one calendar year more than 150 000 tonnes of crude or heavy fuel oil (contributing oil) in a State party to the relevant treaty after sea transport. Member States are obliged to submit annually to the Funds reports on the quantities of contributing oil received.

The Japanese oil industry is the major contributor to the 1992 Fund, paying 18% of the total contributions. The Italian oil industry is the second largest contributor paying 10%, followed by the oil industries in the Republic of Korea (9%), the Netherlands (8%), France (7%), India (7%), United Kingdom (5%), Singapore (5%) and Spain (5%).

The Supplementary Fund has available an amount of 547 million SDR (€637 million), in addition to the amount of 203 million SDR (€236 million) available under the 1992

[2] The unit of currency in the 1992 Conventions and the Supplementary Fund Protocol the Special Drawing Right (SDR) as defined by the International Monetary Fund. In this article the SDR has been converted into euros at the rate applicable on 1 November 2006, ie 1 SDR = €1.164290).

Conventions. As a result, the total amount available for compensation for each incident for pollution damage in the States which are Members of the Supplementary Fund will be 750 million SDR (€873 million).

The Italian oil industry is the second largest contributor after the Japanese oil industry also as regards the Supplementary Fund, paying some 19% of the total amount levied.

The 1992 Fund has an Assembly, which is composed of representatives of all 1992 Fund Member States. The Assembly is the supreme organ governing the 1992 Fund, and it holds regular sessions once a year. The 1992 Fund also has an Executive Committee composed of 15 Member States elected by the Assembly. The main task of the Committee is to approve compensation claims to the extent that the Director has not been given the authority to do so. The Supplementary Fund has its own Assembly composed of representatives of its Member States. During the winding up of the 1971 Fund it is governed by an Administrative Council.

The 1992 Fund, the 1971 Fund and the Supplementary Fund have a joint Secretariat. The Secretariat is headed by a Director and has 27 staff members.

The governing bodies have given the Director extensive authority to settle and pay compensation claims against the Funds.

For further information on the international compensation regime reference is made to the IOPC Funds' website (http://www.iopcfund.org).

Claims settlement

Since their establishment, the 1971 and 1992 Funds have been involved in approximately 135 incidents and have made compensation payments totalling some €820 million. In the great majority of these incidents, all claims have been settled out of court. To date, court actions against the Funds have been taken in respect of only a very low number of incidents. The Supplementary Fund has so far not been involved in any incidents.

The cases involving the largest total payments are as follows:

Incident	***Payments to claimants***
Antonio Gramsci (Sweden, 1979)	€14 million
Tanio (France, 1986)	€28 million
Haven (Italy, 1991)	€45 million
Aegean Sea (Spain, 1992)	€51 million
Braer (United Kingdom, 1993)	€68 million
Keumdong N^{o} 5 (Republic of Korea, 1993)	€16 million
Sea Prince (Republic of Korea, 1995)	€31 million
Yuil N^{o} 1 (Republic of Korea, 1995)	€24 million
Sea Empress (United Kingdom, 1996)	€46 million
Nakhodka (Japan, 1997)	€164 million
Nissos Amorgos (Venezuela, 1997)	€16 million
Erika (France, 1999) (payments up to 10 November 2006)	€127 million
Prestige (Spain, France, Portugal, 2002) (payments up to 10 November 2006)	€118 million

A major oil spill can give rise to a large number of claims. The *Erika* incident resulted in more than 6 900 compensation claims, of which over 50% were presented by businesses in the tourism sector and 27% originated from the fishery and mariculture sectors.

The Funds have acquired considerable experience with regard to the admissibility of claims. In connection with the settlement of claims they have developed certain principles as regards the meaning of the definition of 'pollution damage', which is specified as 'damage caused by contamination'. As mentioned above, the concept of 'pollution damage' includes costs of 'preventive measures', i.e. measures to prevent or minimise pollution damage.

Oil spills give rise to mainly the following types of damage:

- Property damage
- Costs of clean up and preventive measures
- Economic losses in the fisheries, mariculture and tourism sectors
- Environmental damage

The 1992 Fund has published a Claims Manual which contains general information on how claims should be presented and sets out the general criteria for the admissibility of various types of claims. Decisions on the admissibility of claims which are of general interest are reported in the Funds' Annual Report.

Developments in the regime over the years

Two major incidents in France, the *Amoco Cadiz* which occurred in 1978 before the entry into force of the international Conventions, and the *Tanio* which took place in 1980 showed that the international regime based on the 1969 and 1971 Conventions had shortcomings, in particular that the maximum amount available in compensation was too low. A Diplomatic Conference was therefore held in 1984 under the auspices of IMO that adopted two Protocols amending these Conventions. Unfortunately, the entry into force conditions had been drafted in such a way that the Protocols would not come into force without the ratification by Japan and the United States.

Following the *Exxon Valdez* incident in Alaska in 1989 and in the light of the adoption in the United States of the Oil Pollution Act 1990 (OPA 90) it became clear that the United States would not ratify the 1984 Protocols and that these Protocols would not therefore enter into force. However, a number of States considered it very important that the substantive content of the 1984 Protocols be brought into force as a matter of urgency, and a new Diplomatic Conference was held in 1992, which adopted two new Protocols, the substantive content of which was identical with that of the 1984 Protocols but with less strict entry into force conditions.

The 1992 Protocols entered into force in 1996, i.e. within four years of their adoption. The reason for this rapid entry into force was that several important oil spills (the *Haven* in Italy in 1991, the *Aegean Sea* in Spain in 1992 and the *Braer* in the United Kingdom in 1993) had made the entry into force of these Protocols a political priority in a number of States. The 1969 and 1971 Conventions as amended by the 1992 Protocols are referred to as the 1992 Conventions.

The adequacy of the international regime came again in the spotlight as a result of the *Nakhodka* incident in Japan in 1997 and the *Erika* incident in France in 1992, and the States parties to the 1992 Conventions decided to revisit the regime in the light of experience,

Increase in the limitation amounts available under the 1992 Conventions

When the 1992 Civil Liability and Fund Conventions were adopted, it was expected that the total amount available for compensation under these Conventions, at that time 135 million SDR (€157 million), would be sufficient to compensate all victims in full, even in the most serious incidents. However, it became evident already in relation to the first major incident which occurred after the entry into force of the 1992 Conventions, namely the *Nakhodka* incident in Japan in 1997, that this was not the case. The inadequacy of that amount was demonstrated even more clearly in the *Erika* incident in France in 1999.

In the light of this experience, a number of States took the view that it was necessary to increase significantly the amount of compensation available. A first step to this effect was taken in 2000 when the Legal Committee of IMO decided, under a special procedure provided for in the Conventions (the "tacit amendment" procedure), to increase the limits contained in 1992 Civil Liability Convention and the 1992 Fund Convention by some 50%. The amendment to the 1992 Fund Convention brought the total amount available under the 1992 Conventions to 203 million SDR (€236 million). The increases entered into force on 1 November 2003.

1992 Fund Working Group

Many States considered, however, that the increase in the maximum compensation amount decided by the IMO Legal Committee was insufficient, and the point was made that although the system had worked well in most cases, there were inadequacies in the system and it was therefore necessary to carry out a general revision of the 1992 Conventions. For this reason the 1992 Fund Assembly established in 2000 a Working Group open to all Member States to examine the adequacy of the international compensation regime established by these Conventions**.**

Supplementary Fund

The first issue addressed by the Working Group was whether the amount available for compensation under the 1992 Conventions, after the increases adopted by the Legal Committee of IMO, was sufficient. A number of States, mainly industrialised, developed countries members of OECD, considered that this was not the case, since in the view of these States, in order for the international regime to maintain credibility, the amount available under the Conventions should be sufficiently high to ensure that all claimants received full compensation even in the most serious incidents. A number of other States, among them a large number of developing countries, considered that from their perspective, the increased amounts were sufficient.

In order to reconcile these different positions it was decided to work towards the creation of an *optional* third tier of compensation and to prepare a Protocol to the 1992 Fund Convention providing for such a third tier by means of a Supplementary Fund. After difficult negotiations a Diplomatic Conference held under the auspices of the IMO in London in May 2003 adopted a Protocol to this effect. The Protocol entered into force on 3 March 2005, i.e. within less than two years of its adoption.

The main elements of the Supplementary Fund Protocol are:

- The Protocol established a new intergovernmental organisation, the International Oil Pollution Compensation Supplementary Fund 2003.

- Any State which is a Party to the 1992 Fund Convention may become Party to the Protocol and thereby become a Member of the Supplementary Fund.

- The Protocol applies to pollution damage in the territory, including the territorial sea, of a State Party to the Protocol and in the exclusive economic zone (EEZ) or equivalent area of such a State.

- The total amount of compensation payable for any one incident is 750 million SDR (€873 million), including the amount payable under the 1992 Civil Liability and Fund Conventions, 203 million SDR (€236 million).

- Annual contributions to the Supplementary Fund are to be made in respect of each Member State by any person who, in any calendar year, has received total quantities of oil exceeding 150 000 tonnes after sea transport in ports and terminal installations in that State. However, the contribution system for the Supplementary Fund differs from that of the 1992 Fund in that at least 1 million tonnes of contributing oil will be deemed to have been received each year in each Member State for the purpose of paying contributions. That means that if the total quantity of contributing oil actually received in a Member State is less than 1 million tonnes, that Member State will itself be liable to pay contributions for a quantity of contributing oil corresponding to the difference between 1 million tonnes and the aggregate quantity of actual oil receipts reported in respect of that State.

Difficulties have arisen in some incidents involving the 1971 and 1992 Funds where the total amount of the claims arising from a given incident exceeded the total amount available for compensation or where there was a risk that this might occur. Under the Fund Conventions and the Supplementary Fund Protocol, the Funds are obliged to ensure that all claimants are given equal treatment. In a number of cases, the 1971 and 1992 Funds therefore have had to limit (pro-rate) payments to victims to a percentage of the agreed amount of their claims. In most cases it eventually became possible to increase the level of payments to 100% once it had been established that the total amount of admissible claims would not exceed the amount available for compensation, but in many cases the delay in payment of part of the compensation nevertheless caused financial hardship to victims, for example fishermen and small businesses in the tourism sector. The 2003 Protocol will greatly improve the situation for victims in States becoming parties to it, since in view of the very high amount available for compensation of pollution damage in these States, it should in practically all cases be possible to pay all established claims in full from the outset.

When the Working Group commenced its examination of the international compensation regime there was a serious risk that the global character of the regime could be compromised because of an initiative of the European Commission to create a European Fund that would provide compensation for oil spills from tankers. Fortunately all Fund Member States, including those which were members of the European Union, took the view that issues of liability and compensation for oil spills should be dealt with on a global and not on a regional basis. As a result of the adoption of the Supplementary Fund Protocol and its rapid entry into force in 2005, this initiative did not proceed.

Consideration of a revision of the 1992 Conventions

In October 2005 the 1992 Fund Assembly considered the Working Group's final report on the question of whether the 1992 Conventions should be revised. The Working Group had been divided on the issue and had not been in a position to make a recommendation to the 1992 Assembly. It was therefore for the Assembly to take a decision at that session on whether the revision should go ahead. The Assembly discussions reflected the continued division among Member States with one group supporting limited revision, and the other -- holding a slight majority -- being strongly against revision. The Assembly acknowledged that there was insufficient support to move forward with revision of the Conventions -- even if limited -- and therefore decided that the Working Group should be disbanded and that the revision of the Conventions should be removed from its agenda.

The deliberations in the Working Group had, in addition to the adoption of the 2003 Supplementary Fund Protocol, resulted in amendments to the 1992 Fund's Claims Manual in respect of the admissibility of claims for costs of reinstatement of the environment and costs of post spill studies.

The Working Group had also considered several proposals for dealing with the substandard transportation of oil. The intention of these proposals was to provide disincentives to shipowners to use substandard ships by imposing higher limits of liability on such ships. Under one proposal, there would also be a liability on the cargo owner for pollution damage caused by such ships. Another proposal would have deprived the shipowners of their right to limit their liability if the incident had resulted from structural defects of the ships, (i.e. defects due to decay or lack of maintenance). No decision was taken on any of these proposals. Some States considered, however, that the issue of substandard shipping was not within the field of competence of the 1992 Fund but fell within the exclusive competence of the IMO and should be dealt with in the relevant IMO Conventions (SOLAS and MARPOL).

It was also proposed that the Conventions should be amended so as to extend the concept of 'pollution damage' to include damage to the marine ecosystem and its resources, but this proposal was supported by only a few delegations.

STOPIA 2006 and TOPIA 2006

The two-tier international compensation regime created by the 1992 Civil Liability and Fund Conventions was intended to ensure an equitable sharing of the economic consequences of marine oil spills from tankers between the shipping and oil industries. In order to address the imbalance created by the establishment of the Supplementary Fund, which is financed by the oil industry, the International Group of P&I Clubs (a group of 13 mutual insurers that between them provide liability insurance for about 98% of the world's tanker tonnage) introduced, on a voluntary basis, a compensation package consisting of two agreements, the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006, and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006. These voluntary but contractually binding agreements entered into force on 20 February 2006.

Under STOPIA 2006, the limitation amount applicable to small ships, ie those up to 29 548 gross tonnage, is increased on a voluntary basis to 20 million SDR (€23 million) for damage in 1992 Fund Member States. The 1992 Fund will continue to be liable under the 1992 Fund Convention to compensate the victims, but will be reimbursed by the shipowner/P&I Club for the difference between the limitation amount applicable to the ship under the 1992 Civil Liability Convention and 20 million SDR. Under TOPIA 2006, the Supplementary Fund is entitled to indemnification by the shipowner of 50% of the compensation payments it has made

to claimants if the incident involved a ship covered by the agreement, but the Supplementary Fund's obligation to compensate the victims remains.

It is likely that the offers made by the International Group of P&I Clubs in the form of STOPIA 2006 and TOPIA 2006 had a considerable influence on a number of States which took the view that the 1992 Conventions should not be revised.

Disappointment of a number of States

Although recognising the considerable improvement in the international compensation regime resulting from the creation of the Supplementary Fund, a number of States expressed their disappointment that the revision of the 1992 Conventions would not proceed. They considered that issues relating to liability and compensation for oil spills were matters of legislative policy which should be governed by legislation and not by means of voluntary industry agreements such as STOPIA and TOPIA. They also considered that the regime should also be modernised on issues other than those relating to limitation amounts and distribution of the financial burden between the industries concerned.

Admissibility of claims for costs for removing oil from sunken vessels

Measures taken to prevent or minimise pollution damage ('preventive measures') are compensated under the 1992 Conventions and the Supplementary Fund Protocol. Measures may be taken to prevent oil which has escaped from a ship from reaching the coast, eg by placing booms along the coast which is threatened. Dispersants may be used at sea to combat the oil. Oil may be removed from a sunken vessel. Costs for such operations are in principle considered as costs of preventive measures. It must be emphasised, however, that the definition laid down in the Conventions only covers costs of *reasonable* measures.

The admissibility of claims for preventive measures is decided by the Funds on the basis of objective criteria. The fact that a government or other public body decides to take certain measures does not in itself mean that the measures are reasonable for the purpose of the Conventions. The technical reasonableness is assessed on the basis of the facts available at the time of the decision to take the measures. However, those in charge of the operations should continually reappraise their decisions in the light of developments and further technical advice. The costs incurred, and the relationship between those costs and the benefits derived or expected, should be reasonable.

The meaning of the criterion of *reasonableness* was considered by the 1992 Fund Executive Committee in March 2006 when considering a claim by the Spanish Government for the costs of the operation to remove the oil from the wreck of the *Prestige*, originally for €109.2 million, later reduced to €24.2 million after deduction of grants from the European Commission. The *Prestige* broke into two sections and sank at some 3 800 metres depth approximately 260 kilometres off the Spanish Atlantic coast. After extensive studies the Spanish Government decided that the cargo remaining in the wreck should be removed, using aluminium shuttle containers filled by gravity, through holes cut in the tanks. The removal was carried out during the period May – September 2004. Some 13 000 tonnes of oil cargo were removed from the forepart of the wreck which was treated with biological agents aimed at accelerating the degradation of the oil. No attempt was made to remove the 700 tonnes of oil in the aft section which was not treated with biological agents.

In a document presented to the Executive Committee the author, in his capacity as Director of the Funds, expressed the view that the costs of the secondary sealing of oil leaks from the wreck in 2003 were proportionate and therefore admissible in principle. He considered that the costs

of a number of studies and surveys carried out were admissible in principle to the extent that the studies and surveys assisted in the assessment of the pollution threat posed by the wreck. He considered, on the other hand, that the other costs incurred in 2003 were not admissible, since they were incurred after the very high costs of the operation in relation to the potential economic and environmental effects of leaving the oil in the wreck had been known. In his view the costs incurred in 2004, totalling €76.1 million, relating to the actual oil removal operations and the application of nutrients to the tanks in the forepart of the wreck after the bulk oil had been removed, were inadmissible in principle, since these costs were disproportionate to any potential economic and environmental consequences of leaving the oil in the wreck

Some delegations stated that they did not share the Director's view that the cost of the oil removal operation was disproportionate on the grounds that had the oil not been removed from the wreck pollution would have continued year on year. The point was made that it had not been possible to predict with any certainty what the outcome of leaving the oil in the wreck would have been and that it would therefore be difficult for any government to resist pressure from the public to ensure that the risk was eliminated. The point was also made that there was a very clear link between the costs incurred in 2003 and 2004 in that the operation could not have proceeded in 2004 without the necessary studies and preparatory work in 2003.

Most delegations that intervened expressed the view that, on the basis of the Funds' existing admissibility criteria and in the interest of applying those criteria in a uniform way, the claim for the costs incurred by the Spanish Government in 2004 for the removal of the oil from the wreck was inadmissible. However, some delegations considered that it was important that the Funds were prepared to deal with similar claims in the future in a more flexible manner.

The Executive Committee decided, as proposed by the author, that some of the costs incurred in 2003 in respect of sealing the oil leaking from the wreck and various surveys and studies were admissible in principle, but that the claim for costs incurred in 2004 relating to the removal of oil from the wreck was inadmissible.

The Committee instructed the Director to carry out an examination of the admissibility criteria relating to claims for costs of preventive measures, in particular for the extraction of oil from sunken vessels, with a view to enabling the 1992 Fund Assembly to consider possible alternatives for the existing criteria for admissibility within the framework of the 1992 Conventions.

Court cases involving the funds relating to pure economic loss claims

An important group of claims comprises those relating to *pure economic loss*, ie loss of earnings sustained by persons whose property has not been polluted. A fisherman whose boat and nets have not been contaminated may be prevented from fishing because the area of the sea where he normally fishes is polluted and he cannot fish elsewhere. Similarly, an hotelier or restaurateur whose premises are close to a contaminated public beach may suffer loss of profit because the number of guests falls during the period of pollution.

As with all other claims, claims for pure economic loss under the 1992 Conventions are admissible only if they are for loss or damage caused by contamination. The starting point is the pollution, not the incident itself.

The governing bodies of the Funds have decided that in order for a claim for pure economic loss to qualify for compensation the basic criterion is that a sufficiently close link of causation exists between the contamination and the loss or damage sustained by the claimant. A claim is not admissible on the sole criterion that the loss or damage would not have occurred but for the oil

spill in question. When considering whether the criterion of a sufficiently close link of causation is fulfilled, the following elements are taken into account by the Funds:

- the geographic proximity between the claimant's activity and the contamination
- the degree to which a claimant is economically dependent on an affected resource
- the extent to which a claimant has alternative sources of supply or business opportunities
- the extent to which a claimant's business forms an integral part of the economic activity within the area affected by the spill

The *Braer* incident (Shetland, United Kingdom, 1997) gave rise to a number of court actions relating to pure economic loss and the *Sea Empress* incident (Wales, 1996) to one court action relating to such losses. The Scottish and English courts upheld the 1971 Fund's rejection of the claims although the courts did not apply the Fund's admissibility criteria but rejected the claims on the basis of common law jurisprudence under which claims for pure economic loss are in general not admissible.

In the *Erika* case in France a number of legal actions have been brought against the 1992 Fund in the French courts. So far, some 85 judgements have been rendered, the great majority of these relating to pure economic loss claims, and the judgements have for the most part gone in the Fund's favour. Some courts applied the Fund's admissibility criteria, some made the point that these criteria were not binding on the courts but provided a useful reference ('une reference d'ordre indicatif'), and others ignored the criteria but generally reached the same conclusions that would have been reached on the basis of the criteria. In four cases where the Court of first instance had gone against the Fund and had accepted claims which the Fund had rejected, the Court of Appeal overturned these judgements and agreed with the Fund that the claims were not admissible.

Uniform application of the Conventions

As has been repeatedly emphasized by the governing bodies of the 1971 and 1992 Funds, a uniform application of the Conventions is crucial, and this for two reasons. It is important from the point of view of equity that claimants are treated in the same manner independent of the State where the pollution damage was sustained. In addition, the oil industry in one Fund Member State pays for the cost of clean-up operations incurred and economic losses suffered in other Member States. Unless a reasonably high degree of uniformity and consistency is achieved in the application of the Conventions, there is a serious risk of great tensions arising between Member States which could compromise the proper functioning of the international regime.

In May 2003, the 1992 Fund Administrative Council (acting on behalf of the Assembly) adopted a Resolution on the interpretation and application of the 1992 Civil Liability and Fund Conventions. In the Resolution attention was drawn to the importance for the proper and equitable functioning of the regime established by the 1992 Conventions that these Conventions were applied uniformly in all States Parties and that claimants for oil pollution damage were given equal treatment as regards compensation in all States Parties. The Resolution emphasised the importance that national courts in States Parties gave due consideration to the decisions by the governing bodies of the Funds on such matters.

It should be noted that the definition of 'pollution damage' is the same in the 1992 Civil Liability Convention and the 1992 Fund Convention. For this reason, the concept of 'pollution damage' should be interpreted in the same way independent of whether the claim is against the

shipowner/the insurer under the 1992 Civil Liability Convention or against the shipowner/the insurer and the 1992 Fund under both 1992 Conventions. Similarly, the concept should also be interpreted in the same way by the national courts whether the claim under consideration is under only the 1992 Civil Liability Convention or under both 1992 Conventions.

Development of international law

Under Article 235 of the United Nations Convention of the Law, States undertake to co-operate in the development of international law relating to liability and compensation for pollution damage and of criteria and procedures to ensure adequate compensation for such damage. In that Article reference is made to "compensation funds".

Through decisions taken by Member States in the Fund governing bodies on matters of principle relating to the admissibility of compensation claims and the adoption of admissibility criteria, the Funds contributes to the development of international law.

Concluding remarks

It is not suggested that the international compensation regime established by the Civil Liability and Fund Conventions is in any way perfect. Nevertheless the author believes it is fair to say that this regime has over the years functioned reasonably well in most cases and that it is one of the most successful compensation schemes in existence. It is particularly important that the great majority of all compensation claims have been settled amicably as a result of negotiations.

When the 1971 Fund was set up in 1978 it had only 14 Member States. Over the years the number of 1992 Fund Member States has increased to 98. It is expected that a number of States will ratify the 1992 Conventions in the near future. This increase in the number of Member States appears to indicate that the Governments have in general considered the international compensation regime to be working well. This explains why the regime based on the 1992 Conventions has served as a model for the creation of liability and compensation systems in other fields, such as the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention).

As mentioned above, the 1992 Fund Assembly decided in 2005 not to revise the 1992 Civil Liability and Fund Conventions. However, it is likely that a revision will take place, sooner or later. Law is not static, cast in stone. The law changes, and should change, in the light of the developments in society and to take into account changes in political, social and economic priorities. This applies not only to domestic legislation but also to international treaties.

In order for the international compensation regime to continue to be attractive to States, it must be ensured that it meets the needs of society and the aspirations of Member States and their citizens in the 21st century. Only if this is done will it be possible to maintain a global compensation regime and avoid the regionalisation of the liability and compensation regime which, in the author's view, would be detrimental to international shipping, to the international community at large and in particular to victims of oil pollution damage. It will fall upon Governments of interested States to take the necessary steps to ensure the continued viability of the international compensation regime.