



**IMO**  
**INTERNATIONAL MARITIME LAW INSTITUTE**  
Established under the auspices of the International Maritime Organization  
A specialized agency of the United Nations



**An Act to Incorporate the International Oil Pollution  
Compensation Supplementary Fund, 2003 into the  
Merchant Shipping Act 1958**

**A Legislation Drafting Project submitted in partial fulfillment of the  
requirements for the award of the Degree of Master of Laws (LL.M.) at  
the IMO International Maritime Law Institute**

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**Academic Year 2009/2010**

DEDICATED

TO

“SAFE, SECURE AND EFFICIENT SHIPPING ON CLEAN OCEANS”<sup>1</sup>

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<sup>1</sup> IMO Moto

## ACKNOWLEDGEMENT

To do Masters in International Shipping Law, from the IMO International Maritime Law Institute, was a dream which I thought could never be fulfilled, but for the kind blessing, guidance and support of Mr. A.P.V.N Sarma (Ex Secretary, Ministry of Shipping, Government of India), Ms. Kiran Dhingra (Ex Director General of Shipping, Ministry of Shipping, Government of India), Ms. Lakshmi Venkatachalam (Director General of Shipping & Ex. Officio Additional Secretary to the Govt. of India) and Dr. C.B.S Venkataramana (Ex Joint Director General of Shipping, Ministry of Shipping, Government of India), Mr. Ajoy Chartejee (Ex. Chief Surveyor-cum-Addl. DG (Engineering), Captain M.M Saggi (Nautical Advisor to the Government of India), and Mr. A. Banerjee (Ex. Chief Surveyor-cum-Addl. DG (Engineering)).

When fulfilling your dream becomes a mission for anybody other than you, they are called family. I take this wonderful opportunity to thank my mom, ma and baba, brother and sister-in-law, for having faith in me, standing by me through life, unconditionally loving and supporting me.

When somebody other than your family, who, despite all your idiosyncrasies accept you just the way you are, for what ever you maybe and stretch an extra mile to see a smile on your face, are called friends. I thank Ram (Mr. A.R. Ramakrishnan), Jayu (Ms. G Jayshree), Krishna (Mr. S. Krishnan), Kumar (Mr. V. Subramanian), Prashant (Mr. P.S. Pratap), Fereshteh (Ms. Fereshteh Sethna), Captain (Captain C. Carvalho) and Vera (Ms. Verica Cole).

A 'Guru' is the one who illuminates your mind with the power of knowledge and helps you through the glowing process, starting from igniting the flame of knowledge and slowly brightening that flame, until he know that you are ready to keep it glowing, on your own. I shall be ever indebted to my Guru, Professor David J. Attard, for accepting me as his student.

Teachers are friends, philosophers and guides, without whom, your quest for seeking knowledge remains incomplete. I am grateful to Dr. Norman Martinez, Mr. Ruben Maceda, and Ms. Elda Belja for going through the process of helping me seek the knowledge I sought.

A good support system is the backbone for healthy growth. I would like to thank the non-teaching staff at IMLI for their support.

I would also like to thank my fellow classmates at IMLI for their support and friendship.

Thank you all for being a part of my life.

Lastly, I thank the most important power backing me - **GOD**

## LIST OF ABBREVIATIONS

CMI	Comite Maritime International
CSD	United Nations Committee for Sustainable Development
EEZ	Exclusive Economic Zone
E&P Forum	Exploration and Production Forum
ICJ	International Court of Justice
IOPC Fund	The International Oil Pollution Compensation Funds
IMO	International Maritime Organization
MARPOL 73/78	International Convention for the Prevention of Pollution from Ships, 1973, as amended.
STOPIA	Small Tanker Oil Pollution Indemnification Agreement
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea, 1982
TOPIA	Tanker Oil Pollution Indemnification Agreement

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## PURPOSE OF THIS LEGISLATIVE DRAFTING

Recommendation made to the Government of India to accede the International Oil Pollution Compensation Supplementary Fund, 2003 (The Supplementary Fund, 2003) and incorporation of the Supplementary Fund, 2003, in the Merchant Shipping Act, 1958.

## OVERVIEW OF THE INTERNATIONAL OIL COMPENSATION CONVENTIONS

### Glimpse of a few major oil spills and their effects

The World War II (1939-45) evidenced the first major oil spills, with the German U-boat attacks on tankers off the East Coast of the United States, spilling approximately 590,000 tons of oil. This disaster was followed by the first major commercial oil spill on March 18, 1967 from the tanker *Torrey Canyon*. The oil tanker ran aground on the Seven Stones Shoal off the coast of Cornwall, England and spilled about 830,000 barrels (119,000 tons) of oil into the sea. The Gulf War in 1991 witnessed almost 1.5 million tons of oil deliberately dumped from Sea Island into the Persian Gulf. In 1994, the Komi region of the Arctic in Russia, was polluted with about 2 million barrels (286,000 tons) of oil.<sup>2</sup>

In the year 1999, *Erika* broke into two, while she was carrying approximately 30 000 tonnes of heavy fuel oil, off the coast of Brittany, France and spilled about 19 800 tonnes of oil. Post the pollution, roughly about 400 km of the shoreline underwent clean up operations and over 250 000 tonnes of oily waste was collected, therefrom. In the year 2002, a Bahamas registered tanker *Prestige*, carrying 77 000 tonnes of heavy fuel oil, split in two and sank, off the coast of Galicia (Spain), once again spilling huge quantities of oil.

Due to the weather conditions, the oil spread to from Spain, France to the English coasts of the English Channel as far as the Dover Strait. Approximately about 141 000 tonnes of oily waste was collected in Spain and around 18 300 tonnes in France. In the Erika case, prosecutors have called for Total SA, which had chartered the tanker, to be fined €375,000 for maritime pollution, one year in jail and the maximum €75,000 fine each for tanker owner Giuseppe Savarese and manager Antonio Pollara, accused of causing pollution by

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<sup>2</sup> <http://www.enotes.com/science-fact-finder/environment/where-did-first-major-oil-spill-occur> (17th January 2010)

"recklessness and negligence" and for "putting other people's lives in danger". Erika's captain faces a €10,000 fine for pollution. Now around 110 plaintiffs in the case, seeking some €1 billion in damages, including €153 million for the French state and €150 million for the regions to cover the cost of the cleanup and recovery of the wreckage.<sup>3</sup>

“The *Exxon Valdez* oil spill occurred in the Prince William Sound, Alaska, on March 23, 1989. The vessel spilled 10.8 million U.S. gallons (about 40 million litres) of Prudhoe Bay crude oil into the sea, and the oil eventually covered 1,300 square miles (3,400 km<sup>2</sup>) of ocean. The region was a habitat for salmon, sea otters, seals and seabirds”.<sup>4</sup>

“On June 15 2009, Exxon Mobil Corp was ordered to pay **\$507.5 million in punitive damages for the Exxon Valdez Oil Spill** that occurred off the coast of Alaska in 1989. The \$507.5 million settlement is only "a fraction of the \$5 billion in punitive damages originally awarded to fisherman, Alaska natives, business owners and other litigants by a jury" in 1994. After the 1994 court ruling requiring a settlement of \$5 billion, Exxon launched a series of appeals. At a trial in 2006, the jury agreed to cut the settlement in half to \$2.5 billion. In June 2008, Justice David Souter ruled that punitive damages cannot exceed the approximately \$500 million Exxon has already paid to victims of the oil spill and their families. Interestingly, the **\$507.5 million settlement only amounts to about 1/5 of the \$2.5 billion cost of cleaning up the oil spill**, which flooded the Alaska coastline with 10.8 billion gallons of oil and is known as one of the most destructive man-made environmental disasters in history.”<sup>5</sup>

In 2007, Hong Kong registered tanker *Hebei Spirit* (146 848 GT), which was stationary, in its designated position, anchor about five miles off Taean on the west coast of the Republic of Korea, was hit by the crane barge *Samsung N<sup>o</sup> 1*. She was laden with about 209 000 tonnes of crude oil, out of which was about 10 500 tonnes of crude oil escaped into the sea. The oil contaminated about 375 kilometres of the shoreline and roughly around four provinces along the western coast of the Republic of Korea. The cost is still being estimated.

### **Historic background of the Compensation Conventions**

<sup>3</sup> <http://www.euractiv.com/en/transport/maximum-fines-requested-erika-oil-slick-trial/article-164264> (23rd Jan 2010)

<sup>4</sup> [http://en.wikipedia.org/wiki/Exxon\\_Valdez\\_oil\\_spill](http://en.wikipedia.org/wiki/Exxon_Valdez_oil_spill) (23rd Jan 2010)

<sup>5</sup> <http://www.nowpublic.com/environment/exxon-valdez-oil-spill-settlement-exxon-pay-507-5-million> (23rd Jan 2010)

Until 1969, there were no international conventions specifically addressing oil spill liability and compensation. Liability for oil pollution damage was limited to the vessel's liability tonnage with amounts limited under the International Convention Relating to the Limitation of Liability of Owners of Sea Going Ships for the contracting countries and liability was limited to the total value of ship and cargo for other countries.

The *Torrey Canyon* incident of 1967 triggered the urgent need for combating oil spill liability and compensation. Therefore, an international regime under the auspices of IMO has been established to compensate for pollution damage caused by spills from oil tankers.<sup>6</sup>

The incident showed the world how unprepared they were with coping with the disasters caused due to the emerging tanker size of the super tankers. The other fundamental question which arose was about the rights of the coastal states under international law to secure their rights and interest from a pollution caused by a vessel in international waters, which either threatens or damages their marine environment. This opened the global eyes to the questions of containment, litigation and compensation related issues, which the world was completely unprepared to answer. In response to such incidents the framework for the compensation regime originated as the 1969 International Convention on Civil Liability for Oil Pollution Damage (Civil Liability Convention 1969) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention 1971).<sup>7</sup>

Before the world could adjust and digest the new compensation regimes, in 1978, the Amoco Cadiz, another Liberian registered tanker ran aground in the high seas on the Brittany coast, after her steering gear gave away. This caused a sleek of 210,000 tons of crude oil into the sea, affecting the entire coast and marine culture in Brittany coast. Thereafter there were a series of major tanker disasters and as a result of every disaster, the IMO considered a new convention and subsequently, this old compensation regime was amended by two protocols in 1992.

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<sup>6</sup> Turkey's Oil Spill Response Policy: Influences And Implementation-  
[http://www.un.org/Depts/los/nippon/unff\\_programme\\_home/fellows\\_pages/fellows\\_papers/turan\\_0809\\_turkey.pdf](http://www.un.org/Depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/turan_0809_turkey.pdf) (23rd Jan, 2010)

<sup>7</sup> Colin de la Rue and Charles B Anderson: Shipping and the Environment: Law and Practice-second edition (LLP 2009)

The amended Conventions are known as the Civil Liability Convention 1992 (CLC 92) and Fund Convention 1992 (FUND 92)<sup>8</sup>

### **Main Features of the 1992 Conventions and the 1992 Fund Convention**

The 1992 Conventions 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 in the 1992 Conventions as damage caused by contamination and includes the cost of 'preventive measures', i.e. measures to prevent or minimise pollution damage. The 1992 Conventions 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 in certain circumstances. The liability rests on the registered owner of the ship from which the oil originated. The shipowner has strict liability for pollution damage (with very limited defences) and is obliged to cover his liability by insurance. The shipowner is normally entitled to limit his liability to an amount which is calculated on the basis of the tonnage of the ship, and which ranges from US \$7 million for small ships to US \$136 million for large tankers.<sup>9</sup>

The shipowner is deprived of the right to limit his 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.<sup>10</sup>

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<sup>8</sup>        *ibid*

<sup>9</sup>        THE SIGNIFICANCE OF THE THIRD TIER SUPPLEMENTARY FUND AND THE ON-GOING REVIEW OF THE INTERNATIONAL COMPENSATION REGIME – By Måns Jacobsson Director International Oil Pollution Compensation Funds

<sup>10</sup>       *ibid*

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 US \$205 million to US \$310 million, including the sum actually paid by the shipowner (or his insurer) under the 1992 Civil Liability Convention. The 1992 Fund is 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 1992 Fund Convention after sea transport. Member States are obliged to submit annually to the Fund 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%).<sup>11</sup>

The 1992 Fund has an Assembly, which is composed of representatives of all member States. The Assembly is the supreme organ governing the 1992 Fund, and it holds regular sessions once a year. The 1992 Fund and the 1971 Fund have a joint Secretariat. The Secretariat is headed by a Director and has at present 27 staff members. The Director has been granted extensive authority to approve claims for compensation.<sup>12</sup>

### **Overview of the Civil Liability Convention 1992 (CLC 92)**

#### ***Scope of application***

The 1992 Civil Liability Convention applies to **oil pollution damage** resulting from spills of **persistent** oil from **tankers**. The 1992 Civil Liability Convention covers pollution damage suffered in the **territory, territorial sea or exclusive economic zone (EEZ)** or equivalent area of a State Party to the Convention. The flag State of the tanker and the nationality of the shipowner are irrelevant for determining the scope of application.<sup>13</sup>

**'Pollution damage** is defined as loss or damage caused by contamination. In the case of environmental damage (other than loss of profit from impairment of the environment)

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<sup>11</sup>       ibid

<sup>12</sup>       ibid

<sup>13</sup>       THE INTERNATIONAL REGIME FOR COMPENSATION FOR OIL- POLLUTION DAMAGE- Explanatory note prepared by the Secretariat of the International Oil Pollution Compensation Funds- *January 2010*

compensation is restricted to costs actually incurred or to be incurred for reasonable measures to reinstate the contaminated environment. The notion of pollution damage includes measures, wherever taken, to prevent or minimise pollution damage in the territory, territorial sea or EEZ or equivalent area of a State Party to the Convention ('preventive measures'). Expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent threat of pollution damage. The 1992 Civil Liability Convention covers spills of **cargo and/or bunker oil** from laden, and in some cases unladen sea-going vessels constructed or adapted to carry oil in bulk as cargo (but not to dry cargo ships). Damage caused by **non-persistent oil**, such as gasoline, light diesel oil, kerosene etc, is not covered by the 1992 Civil Liability Convention.

### ***Strict liability***

The owner of a tanker has strict liability (ie ship owner is liable also in the absence of fault) for pollution damage caused by oil spilled from his tanker as a result of an incident. He is exempt from liability under the 1992 Civil Liability Convention only if he proves that:

- a) the damage resulted from an act of war or a grave natural disaster, or
- b) the damage was wholly caused by sabotage by a third party, or
- c) the damage was wholly caused by the negligence of public authorities in maintaining lights or other navigational aids.<sup>14</sup>

### ***Limitation of liability***

The shipowner is normally entitled to limit his liability under the 1992 Civil Liability Convention. The limits were increased by some 50.37% on 1 November 2003 as follows. The increased limits apply to incidents occurring on or after that date:

- a) for a ship not exceeding 5 000 units of gross tonnage, 4 510 000 Special Drawing Rights (SDR) (US\$7.1 million)
- b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 4 510 000 SDR (US\$7.1 million) plus 631 SDR (US\$989) for each additional unit of tonnage; and
- c) for a ship of 140 000 units of tonnage or over, 89 770 000 SDR (US\$140.1 million).

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<sup>14</sup>

Ibid

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, the shipowner is deprived of the right to limit his liability.<sup>15</sup>

### ***Channelling of liability***

Claims for pollution damage under the 1992 Civil Liability Convention can be made only against the registered owner of the tanker concerned. This does not preclude victims from claiming compensation outside this Convention from persons other than the owner. However, the Convention prohibits claims against the servants or agents of the owner, members of the crew, the pilot, the charterer (including bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or preventive measures. The owner is entitled to take recourse action against third parties in accordance with national law.<sup>16</sup>

### ***Compulsory insurance***

The owner of a tanker carrying more than 2 000 tonnes of persistent oil as cargo is obliged to maintain insurance to cover his liability under the 1992 Civil Liability Convention. Tankers must carry a certificate on board attesting the insurance coverage. When entering or leaving a port or terminal installation of a State Party to the 1992 Civil Liability Convention, such a certificate is required also for ships flying the flag of a State which is not Party to the 1992 Civil Liability Convention. Claims for pollution damage under the 1992 Civil Liability Convention may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage.<sup>17</sup>

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15        *ibid*

16        *ibid*

17        *ibid*

### *Competence of courts*

Actions for compensation under the 1992 Civil Liability Convention against the shipowner or his insurer may only be brought before the Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred.<sup>18</sup>

### **Overview of the Fund Convention 1992 (Fund 92)**

The 1992 Fund Convention, which is supplementary to the 1992 Civil Liability Convention, set up an intergovernmental organisation, the International Oil Pollution Compensation Fund (1992 Fund), which provides additional compensation to victims when the compensation under the Civil Liability Convention is inadequate. By becoming party to the Fund Convention, a State becomes a member of the 1992 Fund. The Organisation has its headquarters in London. The 1992 Fund succeeds a previous Organisation, the 1971 Fund, which is at present being wound up.

### ***1992 Fund Convention***<sup>19</sup>

The 1992 Fund pays compensation to those suffering oil pollution damage in a State Party to the 1992 Fund Convention who do not obtain full compensation under the 1992 Civil Liability Convention for one of the following reasons:

- a) the shipowner is exempt from liability under the 1992 Civil Liability Convention because he can invoke one of the exemptions under that Convention; or
- b) the shipowner is financially incapable of meeting his obligations under the 1992 Civil Liability Convention in full and his insurance is insufficient to satisfy the claims for compensation for pollution damage; or
- c) the damage exceeds the shipowner's liability under the 1992 Civil Liability Convention.

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<sup>18</sup>       ibid

<sup>19</sup>       ibid



In order to become Parties to the 1992 Fund Convention, States must also become Parties to the 1992 Civil Liability Convention.

The 1992 Fund does not pay compensation if:

- a) the damage occurred in a State which was not a Member of the 1992 Fund; or
- b) the pollution damage resulted from an act of war or was caused by a spill from a warship; or
- c) the claimant cannot prove that the damage resulted from an incident involving one or more ships as defined (ie a sea-going vessel or seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo).

### *Limit of compensation*

The maximum amount payable by the 1992 Fund in respect of an incident occurring before 1 November 2003 was 135 million SDR (US\$212 million), including the sum actually paid by the shipowner (or his insurer) under the 1992 Civil Liability Convention. The limit was increased by some 50.37% to 203 million SDR (US\$318 million) on 1 November 2003. The increased limit applies only to incidents occurring on or after this date.

### *Competence of courts*

Actions for compensation under the 1992 Fund Convention against the 1992 Fund may only be brought before the Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred. Experience in past incidents has shown that most claims are settled out of court.

### *Organisation of the 1992 Fund*

The 1992 Fund has an **Assembly**, which is composed of representatives of all Member States. The Assembly is the supreme organ governing the 1992 Fund, and it holds regular sessions

once a year. The Assembly elects an **Executive Committee** comprising 15 Member States. The main function of this Committee is to approve settlements of claims. The 1992 Fund shares a Secretariat with the 1971 Fund and the Supplementary Fund. The joint Secretariat is headed by a Director, and has at present 27 staff members.

### *Financing of the 1992 Fund*

The 1992 Fund is financed by contributions levied on any person who has received in one calendar year more than 150 000 tonnes of crude oil and heavy fuel oil (**contributing oil**) in a State Party to the 1992 Fund Convention.

### *Basis of Contributions*

The levy of contributions is based on reports of oil receipts in respect of individual contributors. Member States are required to communicate every year to the 1992 Fund the name and address of any person in that State who is liable to contribute, as well as the quantity of contributing oil received by any such person. This applies whether the receiver of oil is a Government authority, a State-owned company or a private company. Except in the case of associated persons (subsidiaries and commonly controlled entities), only persons having received more than 150000 tonnes of contributing oil in the relevant year should be reported. Oil is counted for contribution purposes each time it is received at a port or terminal installation in a Member State after carriage by sea. The term **received** refers to receipt into tankage or storage immediately after carriage by sea. The place of loading is irrelevant in this context; the oil may be imported from abroad, carried from another port in the same State or transported by ship from an off-shore production rig. Also oil received for transshipment to another port or received for further transport by pipeline is considered received for contribution purposes.

### *Payment of Contributions*

Annual contributions are levied by the 1992 Fund to meet the anticipated payments of compensation and administrative expenses during the coming year. Each contributor pays a specified amount per tonne of contributing oil received. The amount levied is decided each

year by the Assembly. The Director issues an invoice to each contributor, following the decision taken by the Assembly to levy annual contributions. A system of deferred invoicing exists whereby the Assembly fixes the total amount to be levied in contributions for a given calendar year, but decides that only a specific lower total amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary.

The contributions are payable by the individual contributors directly to the 1992 Fund. A State is not responsible for the payment of contributions levied on contributors in that State, unless it has voluntarily accepted such responsibility.

## PART B

### THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND, 2003

#### *Background:*

The Secretary-General, of IMO, in the 90<sup>th</sup> Council Session, held on 17<sup>th</sup> June, 2003, introducing the Report on the 2003 International Conference on the establishment of a Supplementary Fund to the 1992 Fund Convention (C 90/10 and C 90/10/Add.1;LEG/CONF. 14/20, LEG/CONF. 14/21 and LEG/CONF. 14/22). The document C 90/10 informed the Council that the report on the outcome of the 2003 International Conference on the Establishment of a Supplementary Fund to the 1992 Fund Convention would be submitted after the conclusion of the Conference. Document C 90/10/Add.1 summarized the outcome of the Conference, which had been convened by decision of the Assembly upon the recommendation of the Council and had been held at IMO Headquarters from 12 to 16 May 2003.<sup>20</sup>

Since their establishment, the 1971 and 1992 Funds have been involved in approximately 135 incidents and have made compensation payments totalling some US\$860 million. In the great majority of these incidents, all claims have been settled out of court. So far, court actions against the Funds have been taken in respect of only a few incidents. The cases involving the largest total payments so far are as follows:<sup>21</sup>

<b>Incident</b>	<b>Payments to claimants</b>
Aegean Sea (Spain, 1992)	US \$64 million
Braer (United Kingdom, 1993)	US \$86 million
Keumdong No 5 (Republic of Korea, 1993)	US \$21 million
Sea Prince (Republic of Korea, 1995)	US \$40 million
Yuil No 1 (Republic of Korea, 1995)	US \$30 million
Sea Empress (United Kingdom, 1996)	US \$59 million
Nakhodka (Japan, 1997)	US \$209 million
Nissos Amorgos (Venezuela, 1997)	US \$21 million
Erika (France, 1999)	US \$106 million
Prestige (Spain, France, Portugal, 2002)	US \$75 million

<sup>20</sup> [http://www.imo.org/newsroom/mainframe.asp?topic\\_id=848&doc\\_id=4531](http://www.imo.org/newsroom/mainframe.asp?topic_id=848&doc_id=4531)

<sup>21</sup> The Significance Of The Third Tier Supplementary Fund And The On-Going Review Of The International Compensation Regime by Måns Jacobsson (Director International Oil Pollution Compensation Funds): Petroleum Association of Japan Oil Spill Symposium 2005 Tokyo, Japan 24-25 February 2005

The 1992 Fund compensates the claimant only to the extent of the claim that meets the criteria laid down in the 1992 Fund Convention. When the 1992 Civil Liability and Fund Conventions were adopted, it was expected that the total amount available under these Conventions, at that time US \$205 million would be sufficient to compensate all victims in full, even in the most serious incidents. Soon it became evident in light of the various pollution incidents since the fund was constituted that the fund was inadequate. Therefore, 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 US \$310 million. The increases entered into force on 1 November 2003.<sup>23</sup>

On 3 March 2005 a third tier of compensation was established by means of a Supplementary Fund under a Protocol adopted in 2003. The Supplementary Fund provides additional compensation over and above that available under the 1992 Fund Convention for pollution damage in the States that become Parties to the Protocol. As a result, the total amount available for compensation for each incident for pollution damage in the States which become Members of the Supplementary Fund is 750 million SDR (US\$1 175 million), including the amounts payable under the 1992 Civil Liability Convention and the 1992 Fund Convention, 203 million SDR (US\$318 million). The Supplementary Fund only pays compensation for pollution damage for incidents which occur after the Protocol has entered into force for the State concerned. Membership of the Supplementary Fund is optional and any State which is a Member of the 1992 Fund may join the Supplementary Fund.<sup>24</sup>

Annual contributions to the Supplementary Fund is made by each Member State, in any calendar year, who 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

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<sup>22</sup> ibid

<sup>23</sup> ibid

<sup>24</sup> The International Regime For Compensation For Oil- Pollution Damage- Explanatory note prepared by the Secretariat of the International Oil Pollution Compensation Funds- *January 2010*

for the Supplementary Fund differs from that of the 1992 Fund in that, for the purpose of paying contributions, at least 1 million tonnes of contributing oil will be deemed to have been received each year in each Member State. <sup>25</sup>

During the 90<sup>th</sup> Council Session, the Secretary-General also stated that the 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC), and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, (the Fund Convention, which established the IOPC Fund), ensure that compensation is available for victims of oil pollution from ships. The CLC places liability on the shipowner up to a set limit and requires the shipowner to take out insurance against such claims. If an accident at sea results in pollution damage which exceeds the compensation available under the CLC, additional compensation is available through the IOPC Fund, which is financed by contributions by oil receivers. The compensation regime as a whole thereby ensures that the burden of compensation is spread between shipowner and cargo interests. <sup>26</sup>

**1992 Regime for incidents occurring from 1 November 2003 and Supplementary Fund regime for incidents occurring from 3 March 2005**

**Source – IOPC Fund**

**Shipowner**

Ship up to 5 000 gross tons	4.5 million	4.4 million	7.1 million
Ship over 5 000 and up to 140 000 gross tons	4.5 million plus 631 for each extra ton	4.4 million plus 611 for each extra ton	7.1 million plus 989 for each extra ton
Ship over 140 000 gross tons	89.8 million	86.9 million	140.8 million

**1992 Fund**

Maximum (including shipowner's share)	203 million	196.5 million	318.2 million
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**Supplementary Fund**

Maximum (including amount paid by 1992 Fund)	750 million	726 million	1 175.8 million
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<sup>25</sup> ibid

<sup>26</sup> ibid

## Oil Industry and the P & I Clubs reservations and recommendations on Supplementary Fund 2003

### *The oil companies international marine forum (OCIMF)*

The OCIMF submitted their observations to the Diplomatic Conference, in their consideration of the draft protocol whereby supporting the proposed Fund 2003, but expressed their reservations stating that they remain concerned that, “laudable as it may be in terms of ensuring that the victims of pollution are adequately and quickly compensated, the Supplementary Fund will further insulate the ship owners/operators, who are after all, the individuals best placed to ensure there are no incidents, from the consequences of their actions. This disconnect, between tanker owners’ control and financial accountability, can only raise the risk of accidents in the future as operators, with no significant liability exposure, and protected by an almost unbreakable right to limit liability, look on as cargo receivers carry an ever larger portion of the compensation burden. The system levies charges on all registered cargo receivers worldwide; nearly all of whom usually have nothing whatsoever to do with the accident. While this might have been an expedient measure when the system was first devised decades ago, the sums now involved and being discussed are very significant and are becoming unacceptable” and hence requested for the CLC 1992 to be amended and in the interim suggested that the Supplementary fund to be supported for only five years. <sup>27</sup>

### *Further observations and recommendations are as under*

The Supplementary Fund will, by definition, only be available in those States that choose to accede to it. Setting the level at 600 million SDRs (the equivalent of one billion Euros) is not only unnecessary, but it will deter some countries from becoming signatories to the Protocol. As a consequence the scheme will then become the exclusive preserve of those States that can afford it and as a further consequence it will place an excessive burden on oil receivers in those States. There is a possibility that an excessive Fund may persuade some countries to leave the system altogether. <sup>28</sup>

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<sup>27</sup> IMO- LEG/CONF.14/13-6 May 2003

<sup>28</sup> *ibid*

### ***Total Compensation available***

Requested for the total compensation available including the Supplementary Fund to be 400 million SDRs (circa \$500 million), though striking a reasonable balance between making the benefits of the scheme available to as many States as possible could also pose acute hardship for those receivers in the contracting States, which likely would have no involvement in the incident requiring funding.<sup>29</sup>

### ***Amendment procedure***

To ensure adequate and speedy compensation to be achieved through time, request was placed to improve the mechanism for adjusting the compensation levels. And support the proposal to introduce a new amendment procedure to allow more frequent reviews of the various compensation levels in the conventions.<sup>30</sup>

### ***Membership fee***

Considered that mechanism is necessary to ensure an adequate balance between contribution and risk, for the Supplementary Fund to achieve any significant measure of adoption outside of Europe and consented to the membership fee. However, it was propose that the threshold for participation be set *at 4 million tones* rather than 1 million proposed by some. This higher threshold strikes a necessary balance between mutualising the risk, on an equitable basis, between the signatories to the new Protocol, and making the Supplementary Fund available to as many States as possible.<sup>31</sup>

### ***Elimination of Threshold***

Proposed for the elimination of the 150,000 ton threshold for reporting by oil receivers to ensure that all those receivers that benefit from the Supplementary Fund also contribute. If the administrative burden is excessive consider a minimum “licence” fee for all receivers similar to the membership fee for States. This concept should also be considered for the Fund Convention.<sup>32</sup>

### ***Entry into Force***

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<sup>29</sup>        *ibid*

<sup>30</sup>        *ibid*

<sup>31</sup>        *ibid*

<sup>32</sup>        *ibid*



Since participation in the Supplementary Fund is voluntary, there was consensus that the entry into force conditions should be lowered and that 8 States with a total contributing oil of 450 million tons is realistic and supported the proposal of three months prior to entry into force.<sup>33</sup>

### *Duration*

Recommend the Supplementary Fund be limited to five years, either with a mandatory review at the end of that period, or with an automatic denunciation.<sup>34</sup>

### **The International Group of P & I Clubs**

The P & I Clubs submitted on October 2001 session of the Assembly of the International Oil Pollution Compensation Fund 1992 (92FUND/A.6/4/3) and the April 2002 session of the 1992 Fund Third Intersessional Working Group (92FUND/WGR.3/11/1) outline of the proposed voluntary scheme whereby shipowners would agree, subject to certain conditions, to a substantial voluntary increase in the minimum limit of liability applicable under 1992 CLC to smaller tankers. The STOPIA scheme was proposed to be implemented by two agreements. The International Group of P&I Clubs submitted to the April 2002 session of the 1992 Fund Third Working Group (1992 Fund/WGR3/11/1) that the voluntary scheme should be reviewed in due course after the entry into force of the Supplementary Fund.<sup>35</sup>

The principal elements of the STOPIA proposed by Club Boards are as follows<sup>36</sup>:

- (i) Under STOPIA the owners of relevant tankers of 29,548 GT or less would contract with the 1992 Fund to reimburse claims paid in excess of the relevant limit of liability under 1992 CLC up to SDR 20 million per incident. All contributors to the 1992 Fund would therefore benefit in circumstances where the scheme applied;

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<sup>33</sup>        *ibid*

<sup>34</sup>        *ibid*

<sup>35</sup>        IMO- LEG/CONF.14/12-6 May 2003

<sup>36</sup>        *ibid*

- (ii) The scheme would apply to approximately 6,000 tank vessels, representing about 75% of the world fleet of tankers falling within the 1992 CLC definition of “ship”;
- (iii) The scheme would only apply in the event of a tanker spill affecting a State party to the Supplementary Fund when liability was imposed under 1992 CLC;
- (iv) The scheme would come into effect at the same time as the entry into force of the Supplementary Fund;
- (v) The flag of the vessel or the ownership of the cargo would not be relevant;
- (vi) The 1992 CLC limit (including the increases which come into effect in November 2003) would have to be exceeded, but the scheme would operate even if claims did not reach the third tier Supplementary Fund;
- (vii) A tanker owner’s liability under the scheme would not exceed the 1992 CLC limit plus the voluntary tranche.
- (viii) Under an amendment to the Memorandum of Understanding between the 1992 Fund and the International Group of P&I Clubs, the Clubs would guarantee a tanker owner’s contractual liability to the 1992 Fund, subject only to the defences available to shipowners and insurers under 1992 CLC; and
- (ix) Shipowners and Clubs would reserve the right to withdraw from the voluntary scheme if any essential element of the 1992 Conventions affecting tanker owner liabilities were to be amended.

### **Effect of the Industries reaction to the Supplementary Fund 2003**

At the request of the Working Group, the Director out an independent study of the costs of oil spills in relation to past, current and future limitation amounts of the relevant Conventions (1969 Civil Liability Convention and 1971 Fund Convention and 1992 Civil Liability and Fund Conventions) and the voluntary industry schemes. The study, reveled to the Working Group in May 2004, that on the basis of the financial limits of the applicable compensation regime the shipping industry had contributed 45% and oil cargo interests 55% of the total costs of 5 802 incidents that had occurred world-wide (except in the United States of America) in the 25-year period 1978–2002. The study also reveled that the sharing of the financial burden varied considerably with different size ranges of ships, with oil cargo interests contributing considerably more to the costs of incidents involving ships up to 20 000 gross tonnes, an equal sharing of the costs between oil cargo interests and the

shipping industry in respect of incidents involving ships between 20 000 and 80 000 gross tonnes, and the shipping industry contributing considerably more to the costs of incidents involving ships greater than 80 000 gross tonnes. When the costs of past incidents were inflated to 2002 and predicted 2012 monetary values the relative contribution of oil cargo interests to the costs of oil spills increased considerably.<sup>37</sup>

The Working Group considered a proposal by the delegations of France and Spain, which had approached the issue of promoting quality shipping by focusing on incidents that had resulted from structural defects of ships, which they had defined as a 'defect due to decay or lack of maintenance of a ship, which in part or in whole had contributed to an incident'. The sponsoring delegations had put forward two options regarding the application of Article V.2 of the 1992 Civil Liability Convention governing the shipowner's right to limit liability, one based on the current text of the Convention whereby the burden of proof that an incident was due to a structural defect lay with the claimant, and an alternative text in which the burden of proof that an incident was not due to a structural defect was placed on the shipowner. The sponsoring delegations had also proposed an amendment to Article VII.8 of the 1992 Civil Liability Convention, which would prevent an insurer from limiting his liability when an incident was caused by a structural defect of the insured vessel.<sup>38</sup>

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<sup>37</sup> The Significance Of The Third Tier Supplementary Fund And The On-Going Review Of The International Compensation Regime by Måns Jacobsson (Director International Oil Pollution Compensation Funds): Petroleum Association of Japan Oil Spill Symposium 2005 Tokyo, Japan 24-25 February 2005

<sup>38</sup> *ibid*

## SALIENT FEATURES OF THE SUPPLEMENTARY FUND 2003

The International Maritime Organization adopted the Supplementary Fund Protocol in 2003 because the levels of compensation available from the existing international oil pollution compensation regime were not always sufficient. The Fund is titled “The International Oil Pollution Compensation Supplementary Fund, 2003” (hereinafter “the Supplementary Fund”). The said fund is constituted and administered like the IOPC Fund. The fund recognizes “Established claim” which means a claim that has been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund not subject to ordinary forms of review and which would have been fully compensated if the limit set out in article 4, paragraph 4, of the 1992 Fund Convention had not been applied to that incident;

The existing international regime is based on two Conventions, the International Convention on Civil Liability for Oil Pollution Damage 1992 (“the Liability Convention”) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (“the Fund Convention”). India ratified these Conventions and they entered into force in 2002. The implementing legislation is contained at Part X-B and Part X-C of the Merchant Shipping Act, 1958. The Fund 2003 shall apply to pollution damage caused in the territory, including the territorial sea, of a Contracting State, and in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured. To preventive measures, wherever taken, to prevent or minimize such damage.

The purpose of the regime is to provide compensation for pollution damage caused by persistent mineral oil spilled from a sea-going vessel constructed or adapted to carry oil in bulk as cargo (normally a tanker). Pollution damage is defined under the Liability Convention and covers loss or damage caused outside the ship by contamination resulting from the discharge of oil from the ship. Preventive measures taken to prevent or minimise the pollution are also covered by the regime.

Under the Liability Convention the owner of such a ship has strict liability for any pollution damage caused by the oil. The shipowner can limit his liability to an amount established in accordance with the tonnage of the ship. The shipowner must maintain insurance to cover his liability.

The Fund Convention established "the Fund" which provides additional compensation when the amount payable by the shipowner (and insurer) does not cover all of the damage. The Fund is financed by contributions from persons who receive more than 150,000 tonnes of crude or heavy fuel oil each year.

The shipowner's limit of liability ranges from 4.5 million SDR<sup>2</sup> to 89.8 million SDR (£3.7 million - £74 million). The maximum amount of compensation available through both the shipowner and the Fund is 203 million SDR (£166 million). 98 States have ratified the Civil Liability and Fund Conventions. The Supplementary Fund Protocol established the Supplementary Fund which is also financed by oil receivers and increases the amount of compensation available under the regime to 750 million SDR (£614 million). The Supplementary Fund Protocol entered into force in May 2004. So far, 17 States have ratified the Supplementary Fund Protocol. The Fund provides for capping provisions stating which states that the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 20% of the total amount of annual contributions pursuant to this Protocol in respect of that calendar year, subject to other relevant articles of the convention.

The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in article 4, paragraph 4, of the 1992 Fund Convention in respect of any one incident. Implementation of the Protocol will considerably improve the financial security of Indian victims of pollution damage from persistent oil carried as cargo by tankers. Delays in payment of compensation can arise under the existing regime, even where the overall costs of an incident do not exceed the limit available. This is because full payment of claims

cannot be made until the extent of the damage is known and the final costs of an incident can be accurately assessed. Depending on the incident this process can take months or even years.

Implementation of the Supplementary Fund Protocol should ensure that even in major oil spills, claims can be paid quickly and in full. The Supplementary Fund shall pay compensation when the Assembly of the 1992 Fund has considered that the total amount of the established claims exceeds, or there is a risk that the total amount of established claims will exceed the aggregate amount of compensation available under article 4, paragraph 4, of the 1992 Fund Convention and that as a consequence the Assembly of the 1992 Fund has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Assembly of the Supplementary Fund shall then decide whether and to what extent the Supplementary Fund shall pay the proportion of any established claim not paid under the 1992 Liability Convention and the 1992 Fund Convention. The Supplementary Fund will provide compensation only when a claim which would have been admissible under the Fund is not paid, or not paid in full, because the total claims arising from an incident exceed the amount payable by that Fund.

The Supplementary Fund acquires by subrogation the victim's rights under the CLC 1992 against the owner or his insurer and under the Fund 1992 against the fund. Where a Contracting state or agency has paid compensation for oil pollution in accordance with obligations arising under their national laws, the state or agency is subrogated to the rights against the Supplementary fund of the person compensated.

Under the Supplementary Fund, any action for compensation for pollution damage brought before a court competent under article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Supplementary Fund for compensation under the provisions of article 4 of this Protocol in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a Contracting State to the 1992 Liability Convention but not to this Protocol, any action against the Supplementary Fund under article 4 of this Protocol shall at the option of the claimant be brought either before a court of the State where the

Supplementary Fund has its headquarters or before any court of a Contracting State to this Protocol competent under article IX of the 1992 Liability Convention.

Where an action for compensation for pollution damage against the 1992 Fund has been brought before a court in a Contracting State to the 1992 Fund Convention but not to this Protocol, any related action against the Supplementary Fund shall, at the option of the claimant, be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State competent under paragraph 7.1 of the said Convention.

The rights to compensation against the Supplementary Fund shall be extinguished only if they are extinguished against the 1992 Fund under article 6 of the 1992 Fund Convention. A claim made against the 1992 Fund shall be regarded as a claim made by the same claimant against the Supplementary Fund.

OVERVIEW OF THE OIL TRADE IN INDIA

Indian Coast Line

India is a part of the Asian subcontinent and is one of the most gifted countries, with the great Himalayan mountain ranges running from the north to the east of India and a coastline (including the coastlines of Andaman and Nicobar Islands in the Bay of Bengal and Lakshwadweep Islands in the Arabian Sea) of 7517 km. The length of the coastline of Indian mainland is 6100 km.

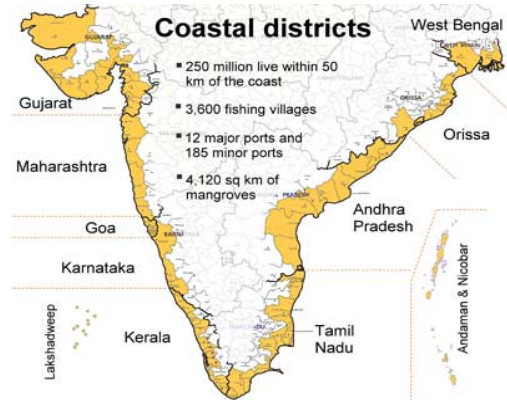


Fig -1<sup>39</sup>

Further, the of Indian mainland is surrounded by Arabian Sea in the west, Bay of Bengal in the east, and Indian Ocean in the south. The length of the coastline of Indian mainland is 6100 km. Further, the of Indian mainland is surrounded by Arabian Sea in the west, Bay of Bengal in the east, and Indian Ocean in the south. The long coast line of India is dotted with several major ports such as Kandla, Mumbai, Navasheva, Mangalore, Cochin, Chennai, Tuticorin, Vishakapatnam, and Paradip.<sup>40</sup>

Minor Ports in India

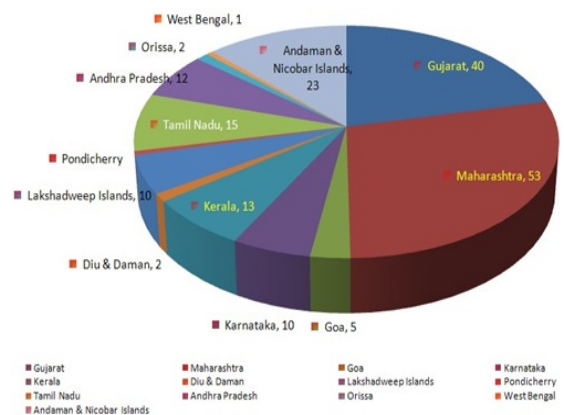


Fig- 2<sup>41</sup>

India presently has about 12 major and 187 minor ports (attached hereto- Annex 2) <sup>42</sup>.

39 [http://infochangeindia.org/images/stories/india\\_coastal\\_distjpg.jpg](http://infochangeindia.org/images/stories/india_coastal_distjpg.jpg)

40 <http://www.thecolorsofindia.com/interesting-facts/geography/length-of-coastline-of-india.html>

41 [http://www.marinebuzz.com/marinebuzzuploads/MinorPortsInIndia\\_B5C7/Minor\\_Ports\\_India.jpg](http://www.marinebuzz.com/marinebuzzuploads/MinorPortsInIndia_B5C7/Minor_Ports_India.jpg)

42 [http://www.marinebuzz.com/marinebuzzuploads/MinorPortsInIndia\\_B5C7/Minor\\_Ports\\_India.jpg](http://www.marinebuzz.com/marinebuzzuploads/MinorPortsInIndia_B5C7/Minor_Ports_India.jpg)



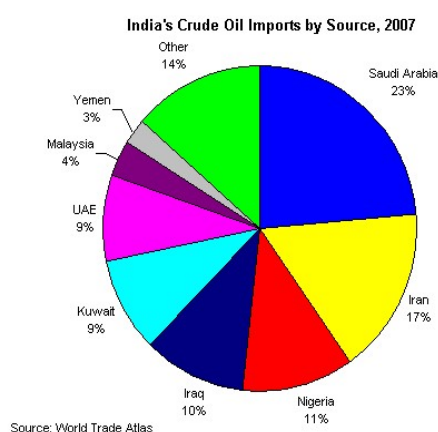
## India's Economic Projections of Oil Import

As per the Advance Estimates of GDP for 2008-09 released by the Central Statistical Organization on 9<sup>th</sup> February, 2009, the growth of GDP at factor cost (at constant 99-2000 prices) is estimated to grow at 7.1% during the year 2009-2009.<sup>43</sup> The various sectors of the Indian economy are seen to be progressing well and in particular the manufacturing sector as well as the Power sector. Continued well-being of the Indian economy is expected to keep the demand for crude and petroleum products in line with earlier projections. India appears to have weathered the global financial storm much better than most countries and the stability of growth is seen to be quite probable. Against this backdrop, the demand for crude and petroleum products in India will be sustained over a period of time.

If India were to reach Thailand's level of per capita consumption, then India will be consuming an additional 10 million barrels per day (mill bpd) based on existing populations. The crude oil imports into India rose from a level of 1.93 mill bpd in 2004 to a level of 2.1 mill bpd in 2008, registering a growth of approximately 32% over this 4 year period. This is approx 6% of the world crude oil imports and hence is a substantial element to be recognized. <sup>44</sup> This level of import is projected to go higher, with the sustained economic growth in India over the next few years.

## India's Crude Oil Projections and Oil Tanker overview

India presently imports almost 70% of its crude oil requirement, with very minimal increase in domestic production expected in the short term. While the privatization of the oilfields exploration has been in vogue over the last few years, the production from the state owned company ONGC's fields have remained stagnant. It is therefore estimated that the quantum of crude imports in India will grow higher, with



<sup>43</sup> [http://www.equitybulls.com/admin/news2006/news\\_detmysql.asp?id=45696](http://www.equitybulls.com/admin/news2006/news_detmysql.asp?id=45696)

<sup>44</sup> [http://import-export.suite101.com/article.cfm/countries\\_dependent\\_on\\_oil\\_imports](http://import-export.suite101.com/article.cfm/countries_dependent_on_oil_imports)

demand growing at a pace ahead of increase in domestic production. <sup>45</sup>

Indian imports of crude are essentially from three geographies (1) The Arabian Gulf areas (2) West Africa and (3) South America. The imports from Arabian Gulf areas will be spread across the parcel sizes of VLCCs (2mill barrels shipments), Suezmaxes (1mill barrels shipments) and Aframaxes (700k barrels shipments). The long-haul imports from West Africa and South America will predominantly be on VLCCs, given the cost competitiveness of larger parcels on the long routes. <sup>46</sup>

Currently there are Suezmax shipments happening on these routes to India, but this will slowly transform into VLCC parcels as India enters into more long term contracts for these crudes.<sup>47</sup> The newer refineries in India are being built with the capability to crack more complex and dirty crudes and hence the South American crudes for e.g. from Venezuela etc is likely to play a larger role in imports into India. This in turn would mean an increase in the number of VLCCs arriving into India with crude oil. At current level of crude imports of approx 130mill tonnes in a year, this translates into almost 480 VLCCs equivalent of shipments. However, since all crude imports are not in VLCCs, the number of ships calling at Indian ports for discharge of imported crude is much higher.<sup>48</sup>

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<sup>45</sup> ICAP SHIPPING TANKER MARKET OUTLOOK; The Tanker Market Outlook; Prepared by:Simon Chattrabuthi | Head of Tanker Research Simon Newman | Tanker Analyst Angela Fang | Tanker Analyst Stavroula Betsakou | Tanker Analyst- 2009  
- OPEC- OIL AND GAS DATA – World Imports of Crude Oil by Country, 2004-2008  
- Middle East’s Fuel Hub to Ban Single-Hull Oil Tankers (Update3)  
- Steam Ship Mutual- note on- Regulations of the People’s Republic of China on the Prevention and Control of Marine Pollution from Ships

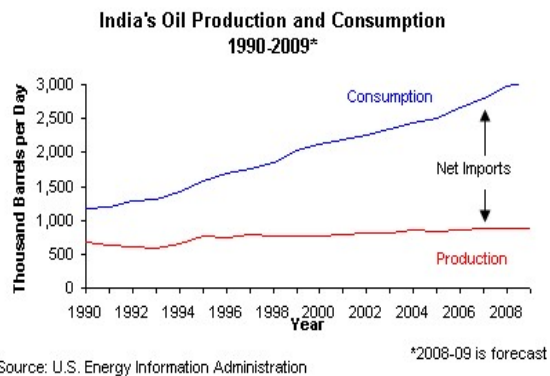
<sup>46</sup> ibid

<sup>47</sup> ibid.

<sup>48</sup> ibid

## Overview of India's Crude Oil Importing Companies

“India’s state-owned Oil and Natural Gas Corporation (ONGC) is the largest oil company. ONGC is the dominant player in India’s upstream sector, accounting for roughly 71 percent of the country’s oil production in 2007, according to Indian government estimates.



To accommodate Panamax and Aframax carriers, Kandla Port Trust (KPT) has embarked on deepening and widening over 27 kilometre long navigational channel at the Kandla port with a project cost of Rs 86.5 crore. <sup>49</sup>The setting up of huge refineries by Reliance and Essar in Jamnagar, together with the expansion plans (almost doubling of the capacities) is bound to see a surge in number of crude tankers calling at these terminals. Reliance is expected to have a final refining capacity of 60mill tonnes per annum while Essar is said to be targeting 32 mill tonnes per annum.<sup>50</sup> Reliance Petroleum Limited (Reliance Petroleum) in its SEZ refinery has processed 3.6 million tonnes of crude during the quarter ended March 31, 2009 and commenced production and despatch of products from its refinery to the quality conscious markets of US and Europe.<sup>51</sup>

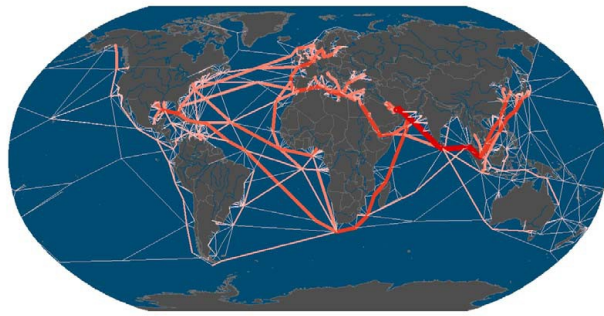
The State owned refiner IOC is also a big importer of crude through this Kandla channel. It is therefore easy to visualize the tremendous traffic on this particular channel, with millions of barrels of crude transiting the channel through the year. India is also emerging as a significant producer of petroleum products, meeting with the latest International and European standards for fuels. The enhanced capacity, with the ongoing expansion plans of existing Indian refineries as well as Greenfield projects, is set to take India to the position of being a sizeable exporter of petroleum products. Besides, domestic consumption is also on the increase with the added numbers of automobiles and manufacturing sector growth.

<sup>49</sup> ibid

<sup>50</sup> <http://jamnagar-news.blogspot.com/2009/03/essar-oil-refinery-expansion-plans.html>

<sup>51</sup> [http://oilgasrefining.energy-business-review.com/news/reliance\\_petroleum\\_processes\\_36\\_million\\_tonnes\\_of\\_crude\\_at\\_jamnagar\\_refinery\\_in\\_q4\\_fiscal\\_2009\\_090423/](http://oilgasrefining.energy-business-review.com/news/reliance_petroleum_processes_36_million_tonnes_of_crude_at_jamnagar_refinery_in_q4_fiscal_2009_090423/)

Put together, the projected substantial growth in movement of crude oil and petroleum products to and from Indian ports is leading to a situation of India being a significant import/export zone in the world map.



Schematic showing routes along which there is a significant increase in amount of oil transported by sea 2001 – 2005.<sup>52</sup>

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Use of GIS for assessing the changing risk of oil spills from tankers. - Colleen O'Hagan\*, The International Tanker Owners Pollution Federation Limited, 1 Oliver's Yard, 55 City Road, London EC1Y 1HQ, UK

## PART D

### INTERNATIONAL REGIMES FOR PREVENTING, CONTAINING AND COMPENSATING OIL POLLUTION RATIFIED BY INDIA

- Convention on Interventional on high seas 1969 (HIGH SEAS) – Pollution preventive measures at high seas.
- Convention on oil pollution preparedness, response & co-operation 1990(OPRC) – Oil Pollution Preparedness.
- Convention for prevention of pollution for MARPOL 1973 / 78 – Equipments, control and certification for ships to protect marine environment
- Convention on Search & Rescue 1979(SAR) – To save lives at sea.
- Convention on Salvage 1989 – Salvage of ships, cargo.
- Convention on Dumping of Waste (LDC 1989) – Prevention of pollution by dumping of wastes
- Convention on limitation of liability on 1976 (LLMC) –Maritimes Claims.
- Convention on civil liability for oil pollution damage on 1992 (CLC)- Oil Pollution Damage Claims.
- Convention on fund for oil pollution damage 1992 (FUND)-Pollution claims d including & CLC limits.
- Convention on Salvage 1989 – Salvage of ships, cargo.

### NATIONAL LEGISLATIONS ON OIL POLLUTION COMPENSATION

- The Merchant Shipping Act 1958
- The Coast Guard Act 1978
- The Environment Protection Act
- The Major port Trust Act 1962
- The Indian Ports Act 1908
- National Oil Spill Disaster Contingencies Plan (NOS – DCP) as per OPRC
- Disaster Management Plan by Maritime Board & Ports as per Indian Coast Act
- Oil Pollution Contingencies plan for offshore platform operation as per Petroleum Act
- Shipboard Oil Pollution Emergency Plan.

## INDIA'S REQUIREMENT TO ACCEDE TO THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND, 2003

### Can India afford a disaster like *Erika*, *Exxon Valdez* or a *Hebei Spirit* on its coast?

The potential threat from operational or accidental oil spills from tankers and other oil related activities could lead to largescale destruction of marine life and property of the coastal region. Oil spills in marine waters can damage social and economic systems as well as the natural environment of surrounding seas which support valuable fishing grounds, coastal ecosystems, Protected Marine National Park areas, long recreational and tourist beaches. Protection of marine life, environmental resources and property, prevention of loss of resources against oil spills damages is a priority concern for oil spill management in India.<sup>53</sup>

The Gulf of Kachchh is a semi-enclosed body of water with a length of 170 km, covering an area of 7300 km<sup>2</sup>. It is a rapidly developing area of Gujarat state, particularly in the oil and port sectors. The coastal zone of the gulf is host to a wide range of activities, such as human settlement, industries, ports, salt production, harbors, navigation, fishing, tourism, *etc.*, and features various types of coastal habitats, such as mangroves, coral reefs, seagrass beds, beaches, lagoons, tidal flats, salt marshes, *etc.* The mangroves of the gulf are the largest along the west coast of India, and the gulf is one of the few sites along the Indian coast where corals occur. Vast intertidal mudflats make the Gulf of Kachchh one of the richest zones for propagation of many marine organisms. The presence of such sensitive natural resources makes the Gulf of Kachchh a critical habitat (ICMAM-PD, 2002).<sup>54</sup>

When MV *Ocean Seraya* ran aground off the Oyster Rocks in Karwar, spilling 650 tonnes of fuel oil, the spill started spreading towards the Goa coast due to the rough SW monsoon winds. About two million tourists (both domestic and foreign) visit the Goan beaches every year, which accounts for 12% of all the tourist arrivals in India. There are around 439

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<sup>53</sup> Oil Spill Modelling and Mapping of Oil Spill Risk Areas- by Department of Science and Technology India- [http://www.dst.gov.in/whats\\_new/press-release06/oil-spill.htm](http://www.dst.gov.in/whats_new/press-release06/oil-spill.htm)

<sup>54</sup> Oil Spill Sensitivity Analysis and Risk Assessment for Gulf of Kachchh, India, using Integrated Modeling- Article by R.S. Kankara and B.R. Subramanian- ICMAM Project Directorate Department of Ocean Development

medium and 11 five-star hotels in Goa. Oil spills not only affect ambience of the beaches, but are also known to affect the coastal ecology and fishery on a long-term basis.<sup>55</sup>

The Western part of Indian Exclusive Economic Zone (EEZ), Lakshadweep and the Nicobar Islands lie close to one of the major oil tanker routes originating from the Gulf countries going to South East Asia. Nearly 500 million tones of crude oil are carried by about 3500 tankers along this route. Any major oil spill occurring in the Arabian Sea and Bay of Bengal will lead to large scale damage to marine environment. The country has several ecologically sensitive areas like Coral Reefs, mangroves and areas of unique biodiversity like turtle nesting grounds, etc. To protect these areas against oil spill damages, the country has a spill management programme since 1980. The important aspects include R&D in oil spill detection, management, combating and legal aspects. <sup>56</sup>

However, compared to the decrease in oil spills incidents globally, the number of tanker spills/accidents has increased along the Indian coast. Of the total observed spills, 70% were reported from the west coast of India. Since 1970 until Aug 2006, approximately 70 oil spills have been recorded. Moreover, the data also revealed that majority of the spills occurred during the SW monsoon period. Model studies, based on historical data of winds and surface currents indicate that during the SW monsoon, the along shore surface currents developed an easterly shoreward component resulting in rough weather conditions. This makes the west coast vulnerable to any oil spills in the Arabian Sea during the SW monsoon. It is also vital to note that the marine fish landing for the year 2004 was 635,094 tonnes along the west coast contributing to about 73% of the total marine fish catch of the country. <sup>57</sup>

India has had only relatively minor oil spills its coastal waters, primarily from tanker accidents. The possibility however of a major oil spill occurring along the Indian coast is considerably higher today, as there has been a significant increase in all types of oil tankers/bulk carriers/container ships passing through the Indian Ocean. Further, India also

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<sup>55</sup> How vulnerable is Indian coast to oil spills? Impact of MV *Ocean Seraya* oil spill- Article by S. Sivadas, A. Gregory and B. Ingole\*Biological Oceanography Division, National Institute of Oceanography

<sup>56</sup> Oil Spill Modelling and Mapping of Oil Spill Risk Areas- by Department of Science and Technology India- [http://www.dst.gov.in/whats\\_new/press-release06/oil-spill.htm](http://www.dst.gov.in/whats_new/press-release06/oil-spill.htm)

<sup>57</sup> ibid

depends on sea transport for majority of its trade. Coastal areas all over the world have been reported to be damaged from pollution, thus having a significant effect on the marine ecosystem, on particular fisheries. <sup>58</sup>

## CONCLUSION

India's growth of crude oil and petroleum products import necessarily calls for an urgent review of all facets of crude shipping and receiving at the Indian ports and terminals. Various aspects need to be reviewed and measures put into place to mitigate any risks associated with the tremendous volumes of hydrocarbons that will be handled by India in the waters around its coast. Whilst vessel traffic management will be a key focus area, especially in restricted channels such as Kandla etc, the Government of India needs to look at other areas to ensure that pollution and related risks are safely mitigated.

The Government of India will need to look at various policies including but not limited to the quality of ships that carry the crude and products in its waters. This will also encompass policies on age of ships, single hull versus double hull, ports state control inspections, rules for mandatory insurance including cover for oil pollution and wreck removal etc..

As an added measure, the Government of India whilst instituting rules and regulations on the aspects mentioned above, will also need to put in place an appropriate mechanism and Fund for meeting the consequences of any pollution incident.

The Government of India has to set up such Fund as it is imperative to be prepared for any eventualities. The consequences of pollution by crude oil and persistent products are only too well known. As evidenced by the incidents of Exxon Valdez to the recent Hebei Spirit case.

A few of the examples are mass mortality of lobsters, loss on lively hood of fishermen, impact on marine ecology & socio-economy, effect on atomic power plants-cooling systems, effects on thermal power plants-cooling system, seawater cooling system of ships, freshwater generation, ballasting operations, fire hazards-sparks from the funnel, hull of crafts to be

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<sup>58</sup> ibid



cleaned, disturbances to traffic-diversion to other ports, shortage of essential imported goods may cause hardships to economy, fire hazard to vessels in ports, cleaning operations aftermaths, claims by effected parties etc. <sup>59</sup>

If the Indian coastline was to experience a Prestige, Erika and Hebei Spirit, would the shipowners, oil importer and the Government be adequately covered to recover and/or mitigate substantial amount of the claims, would be required to be reviewed!

It is in this context that the setting up of a Fund with a larger limit becomes essential and critical, together with the implementation of associated legal framework and processes.

Preventing oil pollutions is as much essential as containing them and in the event of an unfortunate incident India should be economically prepared and geared to restore the effected.

Hence, it recommended that India should consider acceding to the International Oil Pollution Compensation Supplementary Fund, 2003.

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<sup>59</sup> Oil Spill Management, presentation by Mr. Deepak Kapoor NS, DGS, India

**INCORPORATION OF THE INTERNATIONAL OIL POLLUTION  
COMPENSATION SUPPLEMENTARY FUND, 2003 IN THE MERCHANT SHIPPING ACT 1958**

**Summary**

Once an international treaty is signed, it would require to be incorporated into the legal system by suitable legislation.

In according to article 253 of the Constitution of India, the Parliament of India has the authority to make law for the whole or any part of the territory of India for the implementation of any treaty, agreement or convention with any other country or for decisions taken at international conferences.

The first draft Bill is prepared by the respective ministries and sent for approval of the Cabinet, after which it is introduced along with the statement of objects and reasons in either house of Parliament.

A Bill is the draft of a legislative proposal. It has to pass through various stages before it becomes an Act of Parliament.

**First Reading of the Bill**

The legislative process starts with the introduction of a Bill in either House of Parliament-Lok Sabha (the Lower House or House of People) or Rajya Sabha (Upper House or House of Representatives). It is necessary for a member-in-charge of the Bill to ask for leave to introduce the Bill. If leave is granted by the House, the Bill is introduced. This stage is known as the First Reading of the Bill. If the motion for leave to introduce a Bill is opposed, the Speaker may, in his discretion, allow brief explanatory statement to be made by the member who opposes the motion and the member-in-charge who moved the motion. Where a motion for leave to introduce a Bill is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon. Thereafter, the question is put to the vote of the House. However, the

motion for leave to introduce a Finance Bill or an Appropriation Bill is forthwith put to the vote of the House.

### **Publication in Gazette**

After a Bill has been introduced, it is published in the Official Gazette. Even before introduction, a Bill might, with the permission of the Speaker, be published in the Gazette.

In such cases, leave to introduce the Bill in the House is not asked for and the Bill is straightaway introduced.

### **Reference of Bill to Standing Committee**

After a Bill has been introduced, the Presiding Officer of the concerned House can refer the Bill to the concerned Standing Committee for examination and make report thereon.

If a Bill is referred to Standing Committee, the Committee shall consider the general principles and clauses of the Bill referred to them and make reports thereon. The Committee can also take expert opinion or the public opinion of those who are interested in the matter. After the Bill has thus been considered, the Committee submits its report to the House. The report of the Committee, being of persuasive value shall be treated as considered advice given by the Committees.

### **Second Reading**

The Second Reading consists of consideration of the Bill which is in two stages.

*First Stage:* The first stage consists of general discussion on the Bill as a whole when the principle underlying the Bill is discussed. At this stage it is open to the House to refer the Bill to a Select Committee of the House or a Joint Committee of the two Houses or to circulate it for the purpose of eliciting opinion thereon or to straightaway take it into consideration. If a Bill is referred to a Select/Joint Committee, the Committee considers the Bill clause-by-clause just as the House does. Amendments can be moved to the various clauses by members of the Committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House which considers the Bill again as reported by the Committee. If a Bill is circulated for the purpose of eliciting public opinion thereon, such

opinions are obtained through the Governments of the States and Union Territories. Opinions so received are laid on the Table of the House and the next motion in regard to the Bill must be for its reference to a Select/Joint Committee. It is not ordinarily permissible at this stage to move the motion for consideration of the Bill.

*Second Stage:* The second stage of the Second Reading consists of clause-by-clause consideration of the Bill as introduced or as reported by Select/Joint Committee.

Discussion takes place on each clause of the Bill and amendments to clauses can be moved at this stage. Amendments to a clause have been moved but not withdrawn are put to the vote of the House before the relevant clause is disposed of by the House. The amendments become part of the Bill if they are accepted by a majority of members present and voting. After the clauses have been adopted by the House, the Second Reading is deemed to be over.

### **Third Reading**

Thereafter, the member-in-charge can move that the Bill be passed. This stage is known as the Third Reading of the Bill. At this stage the debate is confined to arguments either in support or rejection of the Bill without referring to the details thereof further than that are absolutely necessary. Only formal, verbal or consequential amendments are allowed to be moved at this stage. In passing an ordinary Bill, a simple majority of members present and voting is necessary. But in the case of a Bill to amend the Constitution, a majority of the total membership of the House and a majority of not less than two-thirds of the members present and voting is required in each House of Parliament.

### **Bill in the other House**

After the Bill is passed by one House, it is sent to the other House for concurrence with a message to that effect, and there also it goes through the stages described above except the introduction stage.

### **Money Bills**

Bills which exclusively contain provisions for imposition and abolition of taxes, for appropriation of moneys out of the Consolidated Fund, etc., are certified as Money Bills. Money Bills can be introduced *only* in Lok Sabha. Rajya Sabha cannot *make* amendments in a Money Bill passed by Lok Sabha and transmitted to it. It can, however, recommend amendments in a Money Bill, but must return all Money Bills to Lok Sabha within fourteen days from the date of their receipt. It is open to Lok Sabha to accept or reject any or all of the recommendations of Rajya Sabha with regard to a Money Bill. If Lok Sabha accepts any of the recommendations of Rajya Sabha, the Money Bill is deemed to have been passed by both Houses with amendments recommended by Rajya Sabha and accepted by Lok Sabha and if Lok Sabha does not accept any of the recommendations of Rajya Sabha, Money Bill is deemed to have been passed by both Houses in the form in which it was passed by Lok Sabha without any of the amendments recommended by Rajya Sabha. If a Money Bill passed by Lok Sabha and transmitted to Rajya Sabha for its recommendations is not returned to Lok Sabha within the said period of fourteen days, it is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha.

### **Incorporation Of The International Oil Pollution Compensation Supplementary Fund, 2003 In The Merchant Shipping Act 1958**

In India, all matters relating to administration and formulation of policy relating to shipping and ports are dealt with by the Ministry of Shipping, headed by the Cabinet Minister for Shipping. Under the Minister is the Shipping Secretary, assisted by Additional Secretary, Joint Secretaries, Deputy Secretaries etc and the Secretariat of the Ministry of Shipping.

All major policy decisions are taken at the level of the Shipping Minister. Important matters will need to be discussed by the Cabinet, which is chaired by the Prime Minister. Policy decisions regarding enactment of new laws are invariably discussed in the Cabinet and approved, before being tabled in the Parliament. Under the Ministry of Shipping, is the Directorate General of Shipping, which is a Statutory Authority constituted under Merchant Shipping Act, 1958.

The Director General of Shipping (DGS) is usually the authority to move the Government of India to enact the legislation relating to shipping matters. The DGS would prepare a paper on the context in which the International Convention has been conceived, its purported advantages and how it is sought to be incorporated into Indian Law. After obtaining the administrative approval of the Secretary Shipping, the DGS, through its technical and legal experts, would prepare a draft legislative bill and a statement of objectives and submit it to the Ministry of Shipping. The Ministry of Shipping would refer the draft bill together with the statement of objectives to the Ministry of Law, Justice and Company Affairs for their vetting. The Law Ministry in turn is expected to ensure that the proposed draft is fully in consonance with and not ultra vires of the Constitution of India. It may be mentioned here that the Supreme Court of India has the powers to invoke the Doctrine of Judicial Review and if any legislation is found to be discordant with any provision of the Constitution, such law would be struck down.

After the vetting of the draft Bill by the Law Ministry, it is forwarded by the Shipping Ministry to the Cabinet Secretariat, for consideration of the Cabinet. Once the Cabinet nod is received, the Bill is to sent to the Parliament Secretariat for inclusion in the Schedule of Business of both Houses of Parliament, as discussed above. The bill will be accompanied by a statement of objects and reasons.

## **THE MERCHANT SHIPPING (AMENDMENT) BILL, 2010**

### **STATEMENT OF OBJECTS AND REASONS**

The Merchant Shipping Act, 1958 governs matters relating to shipping in India. The main objective of the Act is to ensure development and efficient maintenance of the Indian mercantile marine. The Act has been amended from time to time in the light of experience gained in its implementation and also to give effect to the provisions of various International Conventions to which India has acceded.

As an active member of the International Maritime Organization (IMO), India has acceded to a number of International Conventions and Protocols adopted by the IMO. Suitable

provisions are required to be made in the Merchant Shipping Act, 1958 to enable the Government of India or its agencies to give effect to those Conventions and Protocols. Besides, amendments of certain provisions of the Act are also required to enable the maritime administration to meet its operational requirements.

With reference to the oil pollution compensation regimes, the Civil Liability Convention (CLC), 1992 and the Fund Convention, 1992, which provide for the 1<sup>st</sup> and 2<sup>nd</sup> tier of the compensation regimes have been acceded to by India and the Merchant Shipping act has been amended accordingly, by the incorporation of Part X-B and X-C, for pollution damages caused by any ship in the Indian waters up to limits of exclusive economic zone and by any Indian ship abroad;

**The Convention and Protocol for implementation of which provisions are required to be made in the Merchant Shipping Act, 1958 are outlined as under:-**

The International Oil Pollution Compensation Supplementary Fund, 2003 (“the Supplementary Fund”), is the third tier of the compensation regime and mainly deals with payment for oil pollution damages by any ship in the Indian waters up to limits of exclusive economic zone and by any Indian ship abroad, if the limits have exceeded or there is a risk for the limits to exceed the first two tires of the compensation regime, provided for under Part X-B and X-C of the Merchant Shipping Act, 1958.

**The Bill seeks to amend various provisions of the Act, which, *inter alia*, include the following, namely:-**

- (1) New sections 352-ZB to 352-ZJ are being inserted for implementation of the provisions of the International Oil Pollution Compensation Supplementary Fund, 2003 (“the Supplementary Fund”)
- (2) Section 436 is being amended to impose Penalties and Procedures in the event of any person contravenes the provisions of sections 352 ZB to 352 ZJ.

**THE MERCHANT SHIPPING (AMENDMENT)  
BILL, 2010**

A

Bill

further to amend the Merchant Shipping Act, 1958

BE it enacted by Parliament in the sixty-first year of the Republic of India as follows:-

**Short title and commencement**

1. (1) This Act may be called the Merchant Shipping (Amendment) Act, 2010.

(2) It shall come into force on such date as the Central Government may, by notification, specify.

**Insertion of new PART XD.**

In the principle Act, after Part XC, the following Part shall be inserted, namely:-

PART XD

The International Oil Pollution Compensation Supplementary Fund, 2003 (hereinafter "the Supplementary Fund")

**352ZB.** (1) This Part applies to. -- Any person suffering pollution damage, if such person has been unable to obtain full and adequate compensation for such damage established under Part X-B and Part X-C, because the total damage exceeds or

**Application**



there is a risk that it will exceed the applicable limit of compensation laid down under the said Parts. In such event, a claim shall be made under this Part, in accordance with the rules framed hereunder from time to time and shall be read together along with the Part X B and X C and the rules framed thereunder, from time to time.

**352ZC.** In this Part, unless the context otherwise requires, -

#### Definition

(a) “1992 Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992;

(b) “1992 Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;

(c) “1992 Fund” means the International Oil Pollution Compensation Fund, 1992, established under the 1992 Fund Convention;

(d) “Contracting State” means a Contracting State to this Protocol, unless stated otherwise;

(e) “Central Government” means the Ministry of Shipping, Government of India;

(f) “Supplementary Fund” means the International Oil Pollution Compensation Supplementary Fund,

2003 established pursuant to the Supplementary Fund Protocol;

(g) "Supplementary Fund Protocol" means the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and any amendments thereto accepted by the Government of India, from time to time;

(h) "Ship", has the same meaning as stated in section 352-H (h), unless stated otherwise;

(i) "Person", has the same meaning as stated in section 352-H (e), unless stated otherwise;

(j) "Owner", has the same meaning as stated in section 352-H (d), unless stated otherwise;

(k) "Oil", has the same meaning as stated in section 352-H (c), unless stated otherwise;

(l) "Pollution Damage", has the same meaning as stated in section 352-H (f), unless stated otherwise;

(m) "Preventive Measures" has the same meaning as stated in section 352-H (g), unless stated otherwise;

(n) "Incident" has the same meaning as stated in section 352-H (a), unless stated otherwise;

(o) "Contributing Oil", has the same meaning as

stated in section 352-S (a), unless stated otherwise;

(p) “Ton”, has the same meaning as stated in section 352-S (h), unless stated otherwise;

(q) “Guarantor” has the same meaning as stated in section 352-S (f), unless stated otherwise;

(r) “Terminal installation” has the same meaning as stated in section 352-S (g), unless stated otherwise;

(s) "Established claim" means a claim which has been recognised by the 1992 Fund or been accepted as admissible by decision of the High Court under section 352- X binding upon the 1992 Fund and shall not be subject to ordinary forms of review and which would have been fully compensated if the limit set out as stated in section 352- X had not been applied to that incident;

(t) “Assembly” means the Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003, unless otherwise indicated;

(u) “Organization” means the International Maritime Organization;

(v) “Secretary-General” means the Secretary-General of the Organization.

**352-ZD.** (1) Without prejudice to Part X-B and X- **Contribution to the**  
C, the Contributions made in accordance with the **Supplementary Fund**

rules prescribed under this Part, to the Fund in respect of Contributing Oil carried by sea to ports or terminal installations in India, shall be payable in accordance with Articles 10, 11 and 12 of the Supplementary Fund Protocol 2003;

(2) The person liable to pay contributions to the Fund shall be,-

(a) in case of contributing oil which is being imported into India, the importer; or

(b) in any other case, the person by whom the oil is received in India.

(2) The Central Government may require such persons, who are or may be liable to pay contributions to the Fund to give financial security for payment of contributions to the Central Government, as per rules prescribed from time to time.

**352-ZE.** Without prejudice to Part X-B and X-C (1) the Central Government may, for the purpose of transmitting to the Supplementary Fund the names and addresses of the persons who are liable to make contributions to the Fund every year and the quantity of contributing oil in respect of which they are so liable, by notice require any such person to furnish such information as may be specified therein.

**Power to call for information**

(2) A notice under this section may require a person to give such information as may be

required to ascertain whether he is liable to contribute to the Supplementary Fund.

(3) A notice under this section may specify the manner in which, and the time within which, it is to be complied with.

(4) In proceedings by the Supplementary Fund against any person to recover any amount due under this Part, particulars contained in any list transmitted by the Central Government to the Supplementary Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

(5) No person shall disclose any information which has been furnished to or obtained by him under this section unless the disclosure is made,-

(a) with the consent of the person from whom the information was obtained;

(b) in connection with the compliance of this section;

(c) for the purpose of any legal proceedings arising out of this section or of any report of such proceedings.

(6) A person who,-

(a) refuses or wilfully neglects to comply with a

notice under this section, or  
(b) makes, while furnishing any information in compliance with a notice under this section, any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,  
shall be guilty of an offence punishable under this Act.

**352-ZF.** (1) In the event the aggregate quantity of contributing oil received in India is less than 1 million tons, the Central Government shall assume the obligations, as stated under Article 14 of the Supplementary Fund Protocol, to contribute to the Supplementary Fund in respect of oil received within the territory of India.

**Obligation of the Central Government**

(2) The Central Government shall be compensated for its contribution made in accordance with subsection (1) from the financial security received under section 352ZE, as per rules prescribed from time to time.

**352-ZG.** (1) Without prejudice to the provisions of section 352-X, any action for a claim against the Supplementary Fund for compensation under this Part shall be brought before the High Court.

**Jurisdiction of Courts**

(2) The Supplementary Fund shall have the right to intervene as a party to any legal proceedings instituted in the High Court against the owner or his guarantor.

(3) Where an action for compensation for pollution damage has been brought against the owner or his guarantor before the High Court each party to the proceedings may notify the Fund of the proceedings.

(4) Where such notice of proceedings has been given to the Fund, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in that judgment may not be disputed by the Fund on the ground that it has not intervened in the proceedings.

**352-ZH.** Without prejudice to Part X-B and X-C, in respect of any sum paid, a compensation for pollution damage, that authority and the Fund shall acquire by subrogation any rights which the person so compensated would have enjoyed under the Supplementary Fund Protocol. **Subrogation and right of recourse**

**352-ZI.** Without prejudice to Part X-B and X-C, **Extinguishment of claims** notwithstanding anything contained in any other law for the time being in force, no action to enforce a claim against the Supplementary Fund under this Part shall be entertained by a High Court in India unless-

(a) the action to enforce is commenced; or

(b) notice of action to enforce a claim against the owner or his guarantor in respect of the same pollution damage is given to the Fund, within three years from the date when the damage occurred:

Provided that in no case an action to enforce a claim shall be brought after six years from the date of the incident that caused such damage.

**352-ZJ.** The Central Government may make such **Power to make rules** rules as may be required to carry out the purposes of the Supplementary Fund Protocol.

### **Notes on clause**

**Clause \_\_\_** seeks to insert a new Part XD to the Act comprising sections 352 ZB to 352 ZJ to incorporating the provisions of the International Oil Pollution Compensation Supplementary Fund, 2003 ( “the Supplementary Fund”). This Part provide for any person suffering pollution damage, if in the event such person has been unable to obtain full and adequate compensation for such damage established under Part X-B and Part X-C, in the event the total damage exceeds or there is a risk that it will exceed the applicable limit of compensation, in which event, a claim shall be made under this Part. As to who shall or shall not be liable to pay contributions to the Supplementary Fund and the manner in which contribution to the Fund shall be payable, the quantum of amount payable to be determined by the Assembly of the Supplementary Fund, requirement for giving financial security for payment of contribution to the Central, the power of Central Government to call for information from persons who are



liable to make contribution to the Fund for the purpose of transmitting the same to the Fund, action to enforce a claim against the Supplementary Fund to be entertained within three years from the date when the damage occurred provided certain conditions are fulfilled and the Central Government to make rules that may be required for carrying out the purposes of the Supplementary Fund Convention.

### **MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause \_\_\_ empowers the Central Government to frame rules to carry out the purposes of the Oil Pollution Compensation Supplementary Fund, 2003 (“the Supplementary Fund”).

2. The matters in respect of which rules may be made are matters of procedure and administrative detail and it is not practicable to provide for all the matters in the Bill. The delegation of legislative power is, therefore, of a normal character.