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Oil spill compensation scheme from an oil tanker in Korea : a case study on the Hebei Spirit

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Oil Spill Compensation Scheme from an Oil Tanker in Korea : Case Study on the Hebei Spirit

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DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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ABSTRACT

Title of Dissertation: **Oil Spill Compensation Scheme from an Oil Tanker in Korea : Case Study on Hebei Spirit**

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This dissertation is a case study of the Korean Oil Spill Compensation Scheme from a tanker, examining it through the analysis of the Hebei Spirit incident, which is the largest oil pollution incident from a ship in the Republic of Korea, occurring on 7 December 2007.

Additionally, the present International Compensation Schemes including its evolution and domestic compensation schemes of two countries, the United States and Canada, were also investigated briefly in order to compare them with the Korean Scheme.

The oil spilled from the Hebei Spirit has affected much of the western coasts, approximately 350km of the Korean coastline. The incident incurred irrevocable damage to the marine ecological system, mariculture, and various coastal businesses such as restaurants and tourism.

The most important issues were how to get compensation for the losses from the Hebei Spirit incident because the estimated amounts of loss of damages exceeded the limitation amounts of compensation under the Korean Oil Spill Compensation Schemes at the moment.

Furthermore, the payments from shipowners and International Oil Pollution Compensation Fund were delayed for various reasons, and victims, such as fishermen, vendors, environmentalists and residents criticized the Korean Goverment.

As a result, the Korean Government enacted a Special Law in March 2008, in order to make speedy payments in the form of advance compensation or loans to claimants. However, this Special Law can not alone solve the problems entirely, but the Korean Government has also had to shoulder a lot of the financial burden.

Therefore, this dessertation will analyze the problems that arose during the compensation process under the present International and Korean Oil Spill Compensation Schemes and seek any measures to ensure a more effective compensation to victims who may suffer from economic loss of damages in the future.

KEY WORDS: Hebei Spirit, Oil Spill, Compensation, International Oil Pollution Compensation Fund, Civil Liability Convention, Fund Convention, Oil Pollution Act 1990, Liability, Limitation

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LIST OF ABBREVIATIONS

CLC	International Convention on Civil Liability for Oil Pollution Damage
CODGA	Compensation for Oil Pollution Damage Guarantee Act
CRISTAL	Contract Regarding a Supplement to Tanker Liability for Oil Pollution
CSA	Canada Shipping Act
EEZ	Exclusive Economic Zone
FC	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage
FOSC	Federal On-Scene Coordinator
GT	Gross Tonnage
HNS	Hazardous and Nuxious Substances
HSC	Hebei Spirit Center
IMCO	Intergovernmental Maritime Consultative Organisation
IMO	International Maritime Organization
IOPC Fund	International Oil Pollution Compensation Fund
ITOPF	International Tanker Owners Pollution Federation Limited
KCG	Korea Coast Guard
KOEM	Korea Marine Environment Management Corporation
KRW	Korean Won
LLP	Liability Limitation Proceeding
MARPOL	International Convention for the Prevention of Pollution from Ships
MLA	Marine Liability Act
MLTM	Ministry of Land, Transport and Maritime Affairs
MPCF	Maritime Pollution Claims Fund
MOGASM	Ministry of Government Administration and Safety Management
MOMAF	Ministry of Maritime Affairs and Fisheries
NPFC	National Pollution Fund Center

OPA 90	Oil Pollution Act, 1990
OSLTF	Oil Spill Liability Trust Fund
POPs	Persistent Organic Pollutants
SDR	Special Drawing Rights
SLQ	Stand Last in the Que
SOPF	Ship-Source Oil Pollution Fund
STOPIA	Small Tanker Oil Pollution Indemnification Agreement
TOPIA	Tanker Oil Pollution Indemnification Agreement
TOVALOP	Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution
US	United States
USCG	United States Coast Guard

CHAPTER 1 Introduction

1.1 Introduction

On 7 December 2007, a Hong Kong Flag tanker Hebei Spirit (146,848 GT) was struck by the Korean Flag crane barge Samsung No.1 while at anchor approximately 5 miles off Taean county on the west coast of the Republic of Korea.

The crane barge was being towed by two tugs, when the tow line broke suddenly, caused by a rough passage. The crane barge was unable to manoeuvre itself, and was subsequently blown by the strong wind towards the tanker. Consequently, the crane barge collided with the tanker and the crane on the barge punctured three of the port cargo tanks of the tanker.

After the collision, around 10,500 tonnes of crude oil from the tanker escaped into the sea, and the oil affected most of the western shoreline of Korea very quickly due to heavy weather. Finally, the incident incurred irrevocable damage to the marine ecological system, mariculture, and various coastal businesses, such as restaurants and tourism.

There were many issues such as legal aspects regarding the cause of the incident, leading to marine environmental impact assessment and an oil spill response system. However, the most important issue was related to the proper compensation to victims suffering from huge economic losses.

Most of the victims, the maritime authorities and the local government did not have much knowledge of the practical application of the compensation schemes under the International Convention and Korean Law. That is why research on the practical review of the compensation scheme is of great interest to the author of this dissertation.

1.2 Objectives of Dissertation

The objective of this dissertation is to identify any problems regarding the current Korean Oil Spill Compensation Schemes through a case study of the Hebei Spirit incident, and to provide advice on how to upgrade the Scheme in the future.

Towards this end, the purpose of the research is:

i) to review current Korean and International Compensation Schemes when an oil pollution incident occurs from a tanker,

ii) to analyze current claims proceedings of the Hebei Spirit incident under the Schemes in order to find any problems, which occurred during the compensation proceedings,

iii) to examine the International and Korean Compensation Schemes, and

(iv) to provide advice on development of alternatives for the International and Korean Compensation Schemes in the future.

For this objective, the author will review the compensation schemes of the United States (US) and Canada, which have their own national funds other than the International Oil Pollution Compensation Fund. Also, the author will attempt to compare the claims proceedings with other major oil pollution incidents which have recently occurred.

1.3 Organization of the Dissertation

In Chapter 2, the author will review three compensation schemes applicable to an oil pollution incident from a tanker as follows:

i) The evolution of the International Oil Spill Compensation Schemes, which are Civil Liability Convention, Fund Convention, Supplementary Fund, TOPIA and STOPIA,

ii) Korean Compensation Schemes including a Special Law enacted for the Hebei Spirit incident, and

iii) The National Compensation Schemes, especially national funds, of the US and Canada.

In Chapter 3, the author will analyse the current claim status and process including who can make the claims, who will pay, what types of damages are covered, how to make claims, and how much compensation is available under the International and Korean Oil Spill Compensation Schemes. This case study will provide the basic understanding on the practical application of the compensation scheme and assist in carrying out the claim process efficiently in the future.

Then, in Chapter 4, the author will analyze the main problems, especially delay of payments, and the cause of the problems identified during the claim process. The causes of the problems will be analyzed in two parts, one involving the problems with the IOPC Fund and the other associated with Korea’s claim process.

CHAPTER 2 Overview of the Compensation Schemes

2.1 Introduction

In dealing with compensation for oil pollution damage caused by spills from oil tankers, there are two international conventions, the Civil Liability Convention and the Fund Convention, elaborated under the auspices of the Iinternational Maritime Organization (IMO). As a member state of these conventions, the Republic of Korea follows a similar compensation scheme to that of the international scheme in general. Meanwhile, the United States is not a member state of these international conventions, but it has a different compensation system to that of the international scheme. Therefore, there is a need to study this system in general including the differences between it and the international scheme.

This chapter will briefly review three issues. Firstly, it is the evolution of these international schemes including the present framework. The CLC 1969 and the FC 1971 were the original international framework for the compensation scheme, but today they have been developed as the CLC 1992, the FC 1992, and the Supplementary Fund Protocol. Furthermore, on a voluntary basis, there are two agreements, STOPIA 2006 and TOPIA 2006, to address the imbalance created by the establishment of the Supplementary Fund.

Therefore, the original framework and new framework will be examined in this chapter. Secondly, the Korean Compensation Scheme including status of implementation of the international scheme and the domestic laws will be analyzed. Finally, both the compensation scheme of the US under the Oil Pollution Act 1990 (OPA 90) and Canadian Oil Spill Compensation Scheme will be introduced and evaluated.

2.2 International Compensation Schemes

2.2.1 Civil Liablity Convention and Fund Convention

Traditionally, the maritime law of each country allowed the limitation of liability of shipowners in order to protect their shipowners, and this tendency resulted in the development of an international convention on 25 August 1924, namely the International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Sea-going Vessels (Kim, 2009, p.2). This convention was amended as an International Convention relating to the limitation of the liability of owners of sea-going ships on 10 October 1957 (Voskuil, 1980, p.101). At the time, an oil tanker owner was also able to limit his liability in cases of oil pollution incidents in principle.

However, in 1967, the oil tanker Torrey Canyon had stranded itself on rocks off the Scilly Isles to the southwest of Great Britain and spilled its cargo of crude oil. The disputes about liability for compensation and the funds available led the Intergovernmental Maritime Consultative Organisation (IMCO), the forerunner of the International Maritime Organization, to consider options to make liability and compensation more certain (http://www.intertanko.com).

As a result of these deliberations, on 29 November 1969, the International Convention on Civil Liability for Oil Pollution Damage (CLC) was adopted to ensure that adequate compensation is available to persons who suffer oil pollution damage in case of oil pollution incidents from oil tankers. Since this international convention needed a long time to come into effect, tanker owners had created the Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP) in 1969.

TOVALOP is a voluntary agreement by the shipowners of oil tankers to accept responsibility up to certain levels that a tanker owner would clean up oil pollution resulting from a casualty of his ship and would compensate victims of the oil pollution (Jacobsson, 2003, p.14).

Following settlement of the tanker owners' contribution to oil pollution response, the focus turned to the responsibility of the cargo owners. As a result, the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FC 1971) was adopted in 1971 at IMCO, followed by the establishement of the International Oil Pollution Compensation Fund (IOPC Fund).

At that time, a voluntary agreement, known as the Contract Regarding a Supplement to Tanker Liability for Oil Pollution (CRISTAL) was set up by the oil industry, topping up compensation provided by TOVALOP, to make voluntary provision until the FC entered into force on a worldwide basis. The CLC 1969 and the FC 1971 entered into force on 19 June 1975 and 16 October 1978 respectively.

Consequently, there are two tiered compensation systems: the first tier is compensated for any loss of damages from the oil pollution by shipowners, and the second tier is compensated by cargo owners, namely the oil industry, when the loss of damage is over the limitation of the liability of shipowners.

These two Conventions were amended in 1992 by two protocols, and these amended Conventions are well known as the CLC 1992 and the FC 1992. The major amendments to the 1992 Conventions is the increase of the limitation of liability and expansion of the scope of application. Meanwhile, the 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

However, the termination of that Convention does not result in the immediate liquidation of the 1971 Fund as the Organisation has to meet its obligations with respect to pending incidents (http://www.iopcfund.org/govbodies.htm).

CLC has a legal character that is the "principle of polluter pay" and "strict liability". It means that shipowners have to compensate all claims for oil spills from their ships whether they are at fault or not.

When the Nakhodka incident occurred in Japan in 1997, a number of member states worried that the total amount of compensation under the CLC 1992 and the FC 1992 was insufficient to compensate all victims in full, so it was necessary to significantly increase the amount of compensation after the Erika incident in France on 12 December 1999. As a result, the IMO Legal Committee held in 2000, decided to increase the limits of the compensation amount by some 50% of the 1992 Conventions and it entered into force on 1 November 2003 (Jacobsson, 2008, p.9). Table 1 shows the summary of changes in the limitation amounts of compensation.

Table 1 Changes of the limitation amounts of compensation per incident

(unit: million SDR[1])

CLCs		FCs	
CLC 1969	210 million francs	FC 1971	450 million franc[2]
1976	14	1978	60
CLC 1992	59.7	FC 1992	135
2000	89.77	2000	203
		2003 (Supplementary Fund)	750

Source: Author (2010)

[1] The unit of account in the CLC 1992 and FC 1992 is the Special Drawing Right (SDR) as defined by the International Monetary Fund. 1 SDR = US$ 1.527540 or € 1.163130 based on 10 August 2010.
[2] Franc was used for the unit of account in the CLC 1969 and Fc 1971. 450 million franc was approximately 30 million SDR at the time.

2.2.2 Supplementary Fund

A number of member states, especially in the European countries, recognized that the limits of compensation amount decided by the IMO Legal Committee held in 2000, was insufficient and that point of view had accelerated from the Prestige incident on 13 November 2002 in Spain. Thus, in 2000, the Assembly of the 1992 IOPC Fund established a Working Group in order to carry out a general review of the 1992 Conventions.

The Working Group worked towards the creation of an optional third tier of compensation and in May 2003, a Supplementary Fund was established at the IMO through a Protocol that increased the amount of available compensation to around US$1 billion, including the amounts paid under the CLC 1992 and the Fund Convention, in countries that are parties to it.

This Protocol entered into force on 3 March 2005 and the Supplementary Fund is financed by contributions payable by oil receivers in the Member States. The criteria for compensation are the same as for the 1992 Conventions, that is, a spill of persistent oil from a tanker within the EEZ of a contracting State (Gonsaeles, 2005, pp.85-130).

Mans Jacobsson, former director of the IOPC Fund, introduced the main contents of this protocol as follows (Jacobsson, 2008, p.10):

i) The protocol established a new intergovernmental organization, the International Oil Pollution Compensation Supplimentary Fund, 2003.

ii) Any State which is a Party to the FC 1992 may become a Party to the Protocol and thereby become a Member of the Supplementary Fund.

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

iv) The total amount of compensation payable in respect of any one incident is 750 million SDR, including the amount payable under the 1992 Civil Liability and Fund Conventions, 203 million SDR.

v) The Supplementary Fund only pays compensation for incidents which occur after the Protocol has entered into force in the affected State .

In summary, there are currently three tiers for the International Compensation Schemes as shown in Figure 1, and the compensation limit under the International Compensation Schemes is currently up to 750 million SDR, if a State joins the Supplementary Fund as shown in Figure 2.

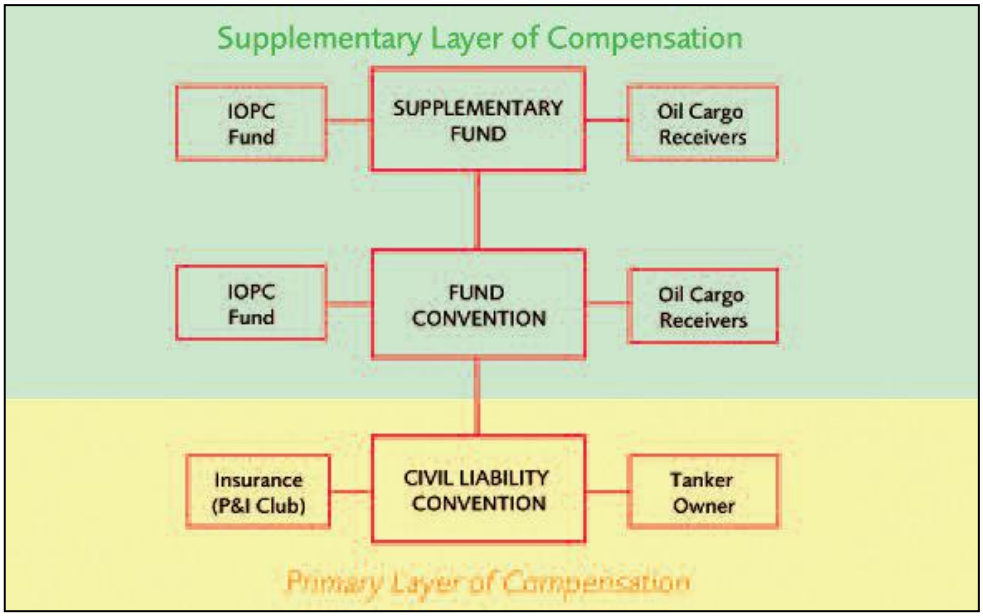


Figure 1 The Layers of Compensation

Source: International Tanker Owners Pollution Federation Limited, 2009, p.31.

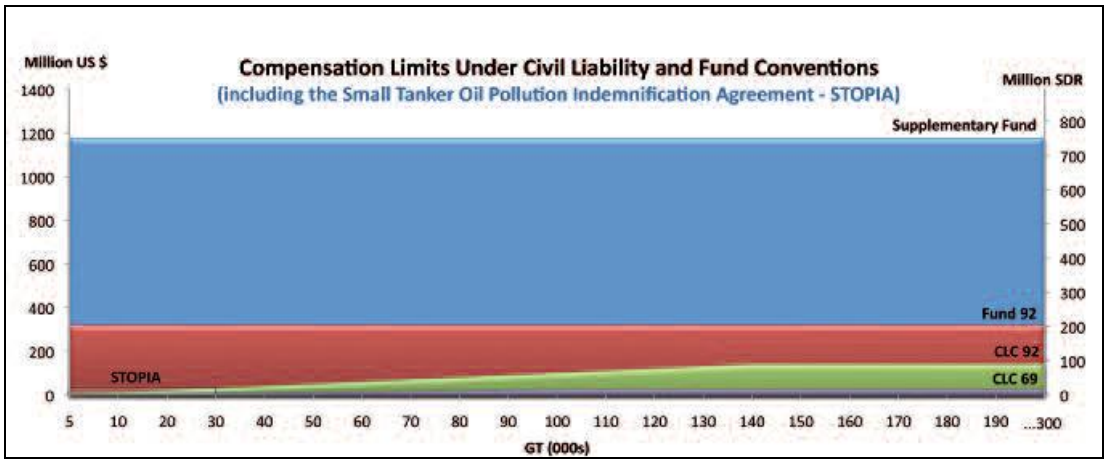


Figure 2 Compensation Limits under International Compensation Schemes

Source: International Tanker Owners Pollution Federation Limited, 2009, p.32.

2.2.3 Small Tanker Oil Pollution Indemnification Agreement and Tanker Oil Pollution Indemnification Agreement

In principle, the 1992 Conventions were designed to ensure an equitable sharing of the compensation for the victims by oil pollution between shipowners and oil receivers. However, an imbalance was created by the establishment of the Supplementary Fund which is financed by the oil receiver. Therefore, in order to solve this imbalance and to ease the burden on oil receivers, the International Group of P&I Clubs developed two agreements, known as the Small Tanker Oil Pollution Indemnification Agreement (STOPIA 2006), and the Tanker Oil Pollution Indemnification Agreement (TOPIA 2006). These Agreements are on a voluntary basis, but contractually binding agreements. These agreements entered into force on 20 February 2006 (Jacobsson, 2008, p.10).

Under the CLC 1992, the limitation of compensation amount applicable to small tankers not exceeding 5,000 gross tonnage, is just 4.51 million SDR. However, under STOPIA 2006, the limitation of compensation amount applicable to the tankers up to 29,548 gross tonnage, is raised on a voluntary basis to 20 million SDR.

Under TOPIA, the Supplementary Fund is entitled to reimbursement by the shipowner/P&I Club to 50% of the amount paid in compensation by the Fund in respect of incidents involving tankers covered by the agreement (International Tanker Owners Pollution Federation Limited, 2009, p.32).

Consequently, these two agreements reduced the burden on oil receivers under the Supplementary Fund and was offered by the International P&I Clubs, without any amendments to the CLC 1992 (Jacobsson, 2008, p.11).

2.2.4 International Oil Pollution Compensation Fund

The International Oil Pollution Compensation Funds (IOPC FUNDs) were established to provide compensation for pollution damage to the extent that the protection afforded by the CLCs is inadequate. In other words, if all the admissible claims for oil pollution damage cannot be covered by shipowners according to the CLCs, then the IOPC FUNDs will provide the compensation amount according to the FC. There are three IOPC Funds, namely the 1971 Fund, the 1992 Fund, and the Supplementary Fund, in accordance with the Fund Conventions (FCs). These organizations were established in 1978, 1996, and 2005 respectively. Meanwhile, the 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

In case of the 1992 Fund, its organization is mainly composed of an Assembly, a Secretariat headed by a Director (Article 16), and an Executive Committee. The Assembly consists of all Member States and the Executive Committee consists of 15 Member States elected by the Assembly every year and the maximum term of appointment is 2 years.

Table 2 shows the Member States of the Executive Committee of the 1992 IOPC Fund, which was elected by the Assembly in October 2009. The Assembly is the supreme organ governing the FC. The function of the Executive Committee is to take policy decisions concerning the admissibility of compensation claims for oil pollution incidents. The Assembly created the Committee in October 1997 by means of a Resolution which sets out the composition and mandate of the Committee (http://www.iopcfund.org).

The Secretariat is located in London, and currently has 27 staff in three departments: Claims, External Relations and Conference, and Finance and Administration. IOPC FUNDs have a joint Secretariat.

Table 2 Member States of Executive Committee of IOPC Fund 1992 (2009~2010)

Canada	Cameroon	Spain	China(Hong Kong Special Administrative Region)	Liberia
Sweden	Cyprus	Philippines	Trinidad and Tobago	France
Germany	Singapore	Japan	The Netherlands	Uruguay
Republic of Korea				

Source : International Oil Pollution Compensation Fund, Annual Report 2009, p.24

Member States to both the CLC 1992 and the FC 1992 are 104 States and 1992 Fund Member States, which are Parties to the Supplementary Fund Protocol, are 26 States as of 10 August 2010. As a result of the Hebei Spirit incident, Korea ratified the Supplementary Fund Protocol in May 2010 and joined the Supplementary Fund with effect from 6 August 2010 in accordance with Article 21 of the Protocol.

The IOPC Funds are financed by levies on certain types of oil of more than 150,000 tonnes carried by sea. The levies are paid by entities which receive oil after sea transport, and normally not by States. Table 3 shows the major 18 States contributing to the 1992 Fund that are more than one percent of the total contribution.

Table 3 Status of Contribution from Member States in 1992 Fund (2009)

Member State	**Contribution Oil (tones)**	**Percents of total**
Japan	255 144 426	17.13%
Italy	129 334 221	8.68%
India	126 405 239	8.49%
Republic of Korea	119 568 421	8.03%
Netherlands	110 103 026	7.39%
France	98 359 780	6.60%
Singapore	92 190 163	6.19%
United Kingdom	73 071 850	4.91%
Canada	70 544 358	4.74%
Spain	63 471 950	4.26%
Germany	38 722 135	2.60%
Malaysia	29 425 638	1.98%
Sweden	26 860 650	1.80%
Australia	26 838 918	1.80%
Greece	23 653 163	1.59%
Turkey	23 166 454	1.56%
Argentina	15 156 816	1.02%
Norway	14 928 387	1.00%

Source: International Oil Pollution Compensation Fund, Annual Report 2009, p.18.

Japan is the largest contributor with more than 17% of the total contribution to the 1992 Fund and Korea is the fourth largest State in the 1992 Fund based on the contributing rate.

However, it is different with the United Nations (UN) assessment system in calculating the contribution of each State. The UN calculates it based on the relative capacity of each State to pay, as measured by their Gross National Income (GNI), but the IOPC Fund does not reflect the relative economic capacity of each State (United Nations, 22 December 2006).

2.3. Korean Compensation Scheme

2.3.1 Compensation for Oil Pollution Damage Guarantee Act

The Republic of Korea (Korea) ratified the CLC 1969 on 18 December 1978. Korea also ratified the FC 1971 on 8 December 1992 and Compensation for Oil Pollution Damage Guarantee Act (CODGA) was legislated at the same time. This Act reflected all contents of the CLC and FC. On 7 March 1997, Korea ratified the 1992 Conventions and amended the Act accordingly.

This Act has several different regulations when compared to the 1992 Conventions and they are as follows (Kim, 2009, pp.9-12):

i) Liability for Pollution Damage

In Article III of the 1992 CLC, the shipowner shall be liable for any pollution damage caused by the ship. On the contrary, in Article 2, (4) and 5, (4) of the CODGA, the charterer together with the shipowner, shall be liable for pollution damage, in cases where a foreign flag ship is chartered by a Korean. This provision is to protect victims, where ships not covered for their liabilities under the 1992 Conventions, are chartered by Koreans.

ii) Exemption of Liability for Pollution Damage

In Article III, 4 of the 1992 CLC, any charterer, manager or operator shall not be liable for pollution damage unless the damages resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. Regardless, according to Article 5, (5) of the CODGA, any manager or operator shall not be liable for pollution damage and there are no provisions for any exemption on it. Therefore, it can be interpreted that victims can not make claims to manager or operator of a ship even though he is at fault, as described in Article III of the 1992 CLC.

iii) Right of Recourse of the Shipowner against Third Party

In Article III, 5 of the 1992 CLC describes "Nothing in this Convention shall prejudice any right of recourse of the owner against third party". This means that the shipowner has the right of recourse against their charterer, manager or operator according to a general principle of law on the liability. However, according to Article 5, (6) of the CODGA, a shipowner is restricted in his right of recourse against their charterer, manager or operator, only when the damages result from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

iv) Scope of Application for Compulsory Insurance

According to Article 7 of the 1992 CLC, the shipowner of a tanker carrying more than 2,000 tonnes of persistent oil as cargo has to maintain insurance to cover the liability under the 1992 CLC, but the shipowner of a tanker carrying 200 tonnes of persistent oil as cargo has to maintain proper insurance according to the CODGA.

v) Maritime Lien

According to Article 51 of the CODGA, indemnity bond for loss of damage caused by oil pollution from a ship shall be applied maritime lien, but this clause is not in the 1992 CLC. This provision enables victims caused by oil pollution, to recover their loss of damages before other claims.

The shipowner is able to follow the Liability Limitation Proceeding (LLP) under Article 41 of this Act when the amount of loss caused by an oil pollution incident exceeds the amount of limitation under the CLC. Other than the CODGA, there is a separate Act called the Liability Limitation Proceeding Act. There are six steps in the LLP under this Act as shown below (Kim, 2009, pp.22-24):

i) Application for Commencing the LLP

A shipowner has to apply for commencement of the LLP to court having jurisdiction of the incident within six months after receiving claims exceeding the amount of limitation available under the CLC.

ii) Deposition

The shipowner has to deposit the amount of limitation under the CLC and 6% of the interest to the court of justice.

iii) Commencement of the LLP

The court of justice decides when to commence the LLP and then receive claims from victims until the designated date.

iv) Attendance of the LLP

Victims have to submit their claims within the designated date and the IOPC Fund may also attend the LLP as an interest party.

v) Examination

The court examines detailed contents of each claim submitted by victims. If there are any different views on the claims, the claims may be decided as submitted.

vi) Judgement

If there are different views or arguments on the claims, the court decides the amount of loss as judgment. If the IOPC Fund or claimants disagree with this decision, they may bring this matter to court.

2.3.2 Korea Marine Environment Management Act

The details of oil pollution prevention and response are regulated in Korea Marine Environment Management Act. This Act was formerly known as the Korea Marine Pollution Prevention Act, which was registered in 1977, reflecting the MARPOL Convention, but was replaced with the Korea Marine Environment Management Act in 2007, with expansions on various provisions dealing with costal marine environmental issues.

This Act has a wide scope and is composed of 13 Chapters and 133 Articles including relevant International Conventions, such as MARPOL, Ballast Management Convention, OPRC, Antifouling Convention, London Conventions and Stockholm Convention on Persistent Organic Pollutants (POPs). The major contents of this Act are as follows:

- Chapter 1 General Provision,
- Chapter 2 Measures for Conservation and Management of Marine Environment,
- Chapter 3 Regulation for Prevention of Marine Pollution,
- Chapter 4 Regulation for Prevention of Air Pollution in Ocean,
- Chapter 5 Inspection of Vessel for Prevention of Marine Pollution,

- Chapter 6 Measures against Marine Pollution Prevention,
- Chapter 7 Marine Pollution Effect Investigation,
- Chapter 8 Marine Envrionment Business,
- Chapter 9 Sea Area Utilization Conference,
- Chapter 10 Establishment of KOEM[3],
- Chapter 11 Supplementary Provisions,
- Chapter 12 Penal Provision.

In the Act, there are four main provisions for the oil pollution response regime except for operational regulations in accordance with MARPOL and they are as follows:

i) Principle of Polluter Responsibility (Article 7)

A person who has caused damage of marine environment or marine pollution shall take responsibility for the restoration of the damaged and polluted marine environment and bear expenses necessary to remedy any damage or pollution of the marine environment thereof. This provision harmonizes with the 'Strict Liability' of the CLC.

ii) Designation of the Responsible Government Agents (Article 24, 61 and 62)

Responsible government agents for oil spill incidents at sea are as follows:

- The Ministry of Land, Transport and Maritime Affairs (MLTM)[4] should take the lead responsibility for the coordination of all the activities in marine pollution incidents, including international cooperation and support on site.

[3] Korea Marine Environment Management Corporation (Formerly, Korea Marine Pollution Response Corporation, KMPRC) is a specialized organization for oil pollution response established in 1997.
[4] Formerly Ministry of Maritime Affairs and Fisheries (MOMAF); changed the name according to amendments of Korean Government Organization Law in Feb.2008.

- The Korea Coast Guard (KCG) should be responsible for commanding oil spill response activities off-shore, setting up a national contingency plan and area contingency plans.

- Local governments should be responsible for commanding oil spill response activities in their shoreline areas.

iii) Arrangement of Oil Response Vessels and Equipments (Article 67)

An owner of a ship or oil storage facility falling under any of the following subsections shall, in order to prepare against marine oil spill accidents, arrange or install oil spill response vessels or prevention equipment.

- A tanker is not less than 500 GT;
- A ship other than tanker which is not less than 10,000 GT
- Oil storage facility whose capacity is not less than 10,000 kiloliters

Normally, this obligation of the owner of a ship or oil storage facility is carried out by KOEM.

iv) Marine Pollution Effect Investigation (Article 77)

Polluter shall execute marine pollution effect investigation through a marine pollution effect investigation institution.

Unfortunately, the local governments did not have the abilities to carry out their responsibility during the Hebei Spirit incident. Also, the Korea Coast Guard did not command private oil spill response companies on site properly since they did not want to take responsibility for the costs incurred during their control. As a result of these problems, recently the MLTM is discussing these issues with relevant parties to consider the necessary amendments in the Act.

2.3.3 Special Law

On 14 March 2008, the National Assembly legislated a special law, namely 'The Special Law for the Support to Residents Suffering Damages from the M/T Hebei Spirit Oil Spill Incident and Restoration of Marine Environment' (Taean Special Law), in relation to this incident, so that the local residents of the affected areas may receive compensation in a speedy and appropriate fashion. The main contents are as follows:

i) Establishment of Special Committee on Oil Pollution Incidents(Article 5, 6).

The Special Committee is comprised of the Prime Minister as the chairperson and its main roles are to:

- discuss/decide on relevant issues regarding the support for compensation to victims,
- discuss/coordinate relevant issues regarding marine environment restoration,
- make decisions on support for areas affected by oil pollution.

ii) Victim Group (Article 7).

Residents who suffered losses from the Hebei Spirit incident may establish victim groups upon which they have to notify the local government. The victim groups may then attend the meeting of the Special Committee and present their opinions during the meeting.

iii) Support for Compensation to Victims (Article 8, 9)

This provision is divided into two types of compensation. Firstly, the Korean Government may make advance payments to claimants based on the assessed amount of the IOPC Fund, and if the total amount approved by the IOPC Fund exceeds the maximum amount available under the FC 1992, then the Korean Government would make payments to cover that excess amount.

According to this provision, the Korean Government had made advance payments for 373 applications (KRW31.4 billion) submitted by claimants until the end of 2009, which were based on the full amounts assessed by the IOPC Fund (International Oil Pollution Compensation Fund, June 2010). Secondly, a claimant, who has not received the assessment results from the IOPC Fund within six months from filing a claim, may apply for a loan to the Korean Government. The total number of loans executed was 920 (KRW3 billion) as of the end of 2009, but that figure had increased rapidly to 6,557 (KRW 17 billion) as of the end of May 2010, and is expected to jump higher in the future (International Oil Pollution Compensation Fund, June 2010).

iv) Designation of Special Marine Environmental Restoration Zone (Article 10).
The Minister of MLTM throughout discussion with the Minister of the Ministry of Environment may designate severely damaged areas and sensitive areas that may change the ecosystem as Special Marine Environmental Restoration Zones (Special Zones). The Korean Government must set up a Special Marine Environmental Restoration Plan for the Special Zones and implement proper measures according to the plan.

v) Support for Affected Areas by Oil Pollution (Article 11 and 12)
The Korean Government may provide support for medical services, prevention of epidemics, clean-up and collecting wastes. The Korean Government also provides financial support for residents who had suffered damages from the Hebei Spirit incident but could not receive any compensation at all from the IOPC Fund or the shipowner.

In accordance with the decision rendered by the Taean Special Law, the Korean Government declared its decision to stand last in the queue (SLQ) in receiving compensation for clean up and recovery costs incurred by the central and local governments during the 41st session of the Executive Committee of the 1992 IOPC Fund held in June 2008 (International Oil Pollution Compensation Fund, June 2008).

The main purpose of the enactment of the Taean Special Law is for the provision of financial support to victims. This is because the estimated amount of compensation had already exceeded the limited amount of compensation in accordance with the CLC 92 and the FC 92, which Korea ratified at the time. There are three main reasons for the enactment of the Taean Special Law (Ministry of Land, Transport and Maritime Affairs, 2010, pp.100-101).

Firstly, under the International Compensation Scheme, the CLC 92 and the FC 92, which Korea ratified, the limitation amount is 230 millon SDR (KRW321.6 billion), but losses estimated by the IOPC Fund are around KRW372-424 billion (based on estimated losses until March 2008). Therefore, actual victims can not recover their losses from the IOPC Fund and the Korean Government has to take measures to solve this problem.

Secondly, a long waiting period of time is required to pay compensations by the IOPC Fund because the claims processing procedure under the Claims Manual is very complex and the assessing process also takes considerable time. As the first step, claimants need to prepare detailed relevant documents/evidence to prove their losses as objectively, scientifically and reasonably as they can. Then, there is a long waiting period during which their claims are assessed by the IOPC Fund. If there is some disagreement on the compensation amount between the claimants and the IOPC Fund, the claimants can bring this matter up to the courts.

Thirdly, under the International Compensation Scheme, there are no considerations on the living support of the destitute or small-scale businessmen. Therefore, the Taean Special Law is needed to compliment and address this problem.

Due to the Taean Special Law, the above three problems were somewhat solved, but the Korean Government has had to shoulder a lot of the financial burden.

2.4. Other Schemes

2.4.1 Introduction

Other than the International Compensation Schemes, it is nessesary to study the compensation scheme of two states, the US and Canada, because they have their own Funds to compensate losses caused by oil pollution from ships.

A similar point between these two states is that they have their own funds. However, the US did not join the International Compensation Scheme and they only apply their own scheme for any compensation action. Regardless, Canada joined the International Compensation Scheme and other than the international scheme, they have their own scheme to complement and address the problems of the international scheme.

Hereafter, the two compensation schemes will be introduced briefly with regard to the evaluation of the schemes, and how to operate/apply and limit amounts of their compensation.

2.4.2 Oil Pollution Act 1990 of the United States

The US is not a Member State of the CLC and the FC. They have an independant compensation scheme under the Oil Pollution Act (OPA 90), which was legislated in 1990. The background of this Act is founded in the Exxon Vadez oil spill incident, which occurred in Prince William Sound, Alaska on 24 March 1989. In this incident, approximately 11 million gallons of crude oil was spilled into the sea, and a huge amount of compensation arose including the cost of response activities (http://www.fakr.noaa.gov).

After this incident, the US needed to set out a shipowner's liability and compensation scheme when an oil spill occurs, in order to ensure sufficient compensation to victims. The US subsequently adopted the Oil Pollution Act in 1990 as their own liability and compensation scheme instead of ratifying the 1984 Protocol of the CLC 69 and the FC 71. They amended the Act in 2006 and 2009 and increased the limitation of the shipowner's liability and applied different limitations between a single hull tanker and a double hull tanker as shown in Table 4.

Under OPA 90, there are also two tiers for compensation. The first tier is that the shipowner's liability is the same as the CLC, and the second tier is the Oil Spill Liability Trust Fund (OSLTF), which was established by the OPA 90. It may seem that there is no liability of oil receivers, but they have to pay a five-cent per barrel tax to the OSLTF eventhough there are some conditions. In 1991, the United States Coast Guard (USCG) created the National Pollution Fund Center (NPFC) to administer the OSLTF, and to ensure effective response and recovery (http://www.uscg.mil/ccs/npfc/About_NPFC/default.asp).

Table 4 Changes of Shipowners Liability under OPA 90

Ship size	Before 2006	Amendment 2006[5]	Amendment 2009[6]
Greater than 3,000GT	The greater of $1200/ton or $10 million	Single hull	Single hull
		The greater of $3000/ton or $22 million	The greater of $3200/ton or $23.496 million
		Double hull	Double hull
		The greater of $1900/ton or $16 million	The greater of $2000/ton or $17.088 million
Less than or equal to 3000GT	The greater of $1200/ton or $2million	Single hull	Single hull
		The greater of $3000/ton or 6 million	The greater of $3200/ton or $6.408 million
		Double hull	Double hull
		The greater of $1900/ton or 4 million	The greater of $2000/ton or $4.272 million
Any other than tanker	The greater of $600/ton or $0.5million	The greater of $950/ton or $800,000	The greater of $1000/ton or $854,400

Source : Adopted by Author from Federal Register / Vol. 74, No. 125 (1 July 2009) and from Steamship Mutual web site (http://www.simsl.com)

[5] Amendment of 2006 : effected on 11 July 2006, for tanker, effected on 9 October 2006
[6] Amendment of 2009 : effected on 31 July 2009

According to the explanation of the NPFC, the OSLTF is funded in the following ways (http://www.uscg.mil/npfc/About_NPFC/osltf.asp):

- Investment interest on the Fund's principal,
- Costs recovered from responsible parties,
- Civil penalties from responsible parties,
- Barrel tax on domestic and imported oil, and
- Transfers from other legacy pollution funds.

The OSLTF has two major components. One is the Emergency Fund that is:

> "available for Federal On-Scene Coordinators (FOSCs) to respond to discharges and for federal trustees to initiate natural resource damage assessments. The Emergency Fund is a recurring $50 million available to the President annually". The other one is "the remaining Principal Fund balance that is used to pay claims and to fund appropriations by Congress to Federal agencies to administer the provisions of OPA and support research and development" (http://www.uscg.mil/npfc/About_NPFC/osltf.asp).

Now, the largest source of income for the Fund has been from the five cent/barrel tax on imported and domestic oil. This tax was discontinued on 31 December 1994; but the Energy Policy Act of 2005 re-instated the tax beginning in April 2006. If the balance of the OSLTF reaches US$2.7 billion, the tax will no longer apply, until and unless the Fund balance later drops below US$2 billion. The tax will be discontinued, regardless of the Fund balance, on 31 December 2014.

The second largest source has been transferred from other legacy pollution funds, but these transfers are now complete. The largest of the fund transfers was US$334.7 million from the Trans-Alaska Pipeline Liability Fund.

The OSLTF comes into operation when the responsible party denies a claim or fails to settle it within 90 days, or when the first level of liability is insufficient to satisfy all admissible claims for compensation. Further, the OSLTF will recover the costs from the responsible party such as the polluter. The maximum amount of compensation by OSLTF is US$1 billion per incident.

2.4.3 Canadian Compensation Scheme

Canada adopted the International Compensation Scheme as a Member State of the CLC, the FC and the Supplementary Fund contrary to the National Compensation Scheme of the US. However, Canada simultaneously operates its own national fund, namely the Ship-Source Oil Pollution Fund (SOPF) to compensate any losses caused by oil pollution from ships.

The SOPF was established by Part XVI of the amended Canada Shipping Act (CSA) on 24 April. The SOPF succeeded the Maritime Pollution Claims Fund (MPCF), which had existed since 1973 and the accumulated amount of 149,618,850 Canadian Dollars (C$) in the MPCF was transferred to the SOPF (http://www.tc.gc.ca).

The International Compensation Scheme applies only to spills of persistent oil from tankers, but SOPF is available to pay compensation for spills of all kinds of oil including non-persistant oil from all kinds of ships. This compensation scheme is governed by Part 6 of the Marine Liability Act (MLA) (http://www.tc.gc.ca).

The main financial source of the MPCF was a levy of 15 cents per tonne from 15 February 1972 to 1 September 1976. MPCF collected a total of C$34,866,459 during that period. On 1 April 2009, the Minister of Transport imposed a levy of 46.29 cents per metric tonne of contributing oil imported into or shipped from a place in Canada in bulk as cargo on a ship (http://www.tc.gc.ca).

Based on 1 April 2009, the maximum liability of the SOPF is C$154,392,072 for all claims per one oil spill incident and this amount is indexed annually (Ship-Source Oil Pollution Fund , 2009).

The SOPF is very useful in two cases. Firstly, the SOPF pays claims to the extent claimants have been unable to obtain full payment of their claims from the shipowner or any other party. The SOPF is also available to provide additional compensation as a third layer in the event that funds under the CLC 92 and the FC 92, with respect to spills in Canada from oil tankers, are insufficient to meet all established claims for compensation. In other words, if the amount of compensation is over the limitation of amount of FC 92 (203 million SDR, around C$382 million[7]), the SOPF may provide additional compensation up to C$154 million to claimants as shown in Figure 3. As a consequence, Canada may compensate total amounts of C$537 million including amounts available under the CLC 92 and the FC 92 based on 1 April 2009[8].

Secondly, claimants may file their claims directly with the SOPF and when the administrator of the SOPF pays a claim, he is subrogated to the rights of the claimant and is obligated to take all reasonable measures to recover the amount of compensation paid to claimants from the shipowner, or the IOPC Fund, or any other liable person. The administrator also has the responsibility to legally prove claims against them. Under the Canadian compensation scheme, victims can recover their losses of damage from the SOPF speedily because the SOPF has its own assessment procedure and assessor.

[7] 1 SDR=C$1.8856 based on 1 April 2009.
[8] Canada did not join the Supplementary Fund at the time.

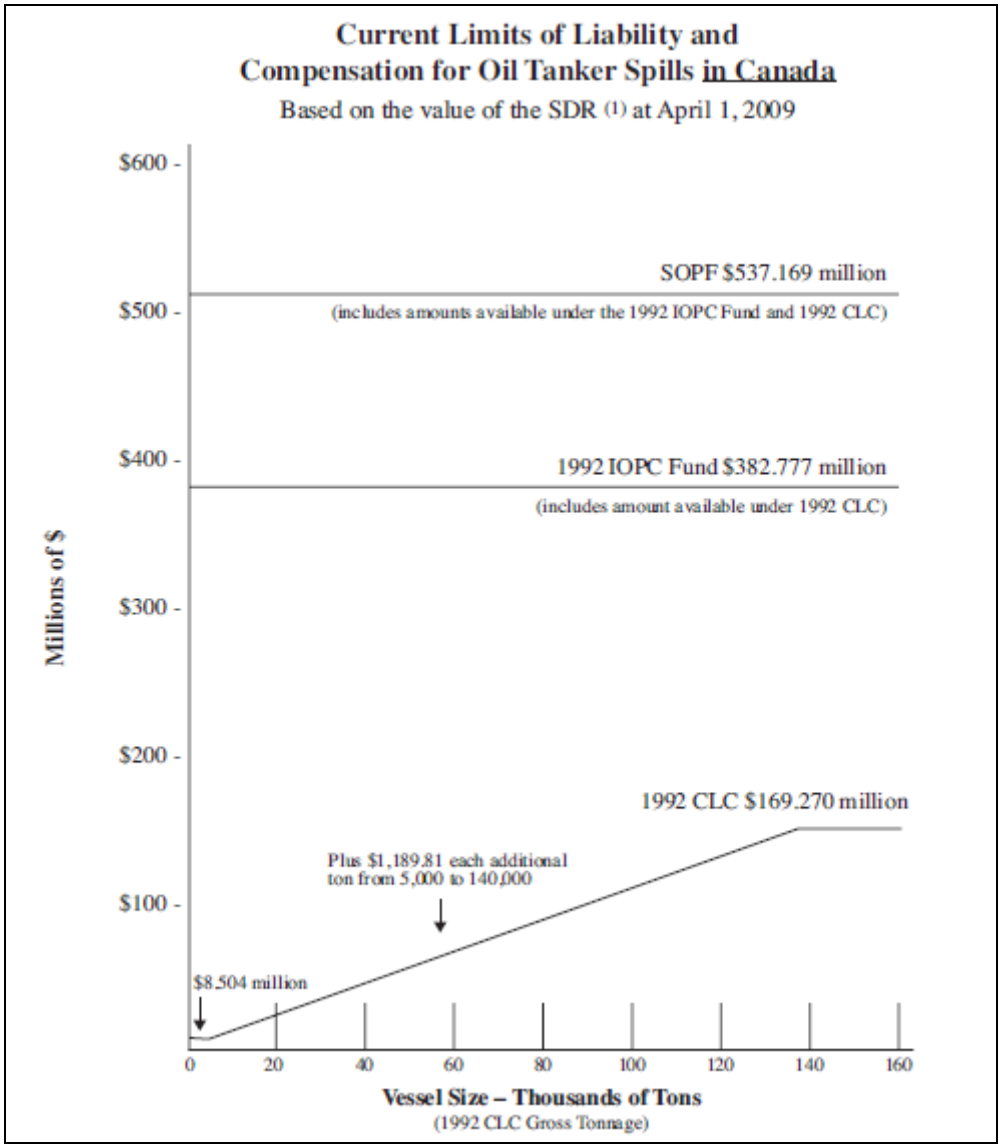


Figure 3 Limits of Liability and Compensation for Oil Tanker Spills in Canada

Source: Ship-Source Oil Pollution Fund (2009). Annual Report 2008-2009. p.4

CHAPTER 3 The Hebei Spirit Incident

3.1 Introduction

The Hong Kong registered tanker Hebei Spirit which was laden with about 209,000 tonnes of four different crude oil was struck by the crane barge Samsung No 1 while at anchor about five miles off Taean on the West Coast of Korea (see Figure 4), and aprroximately 10,900 tonnes of crude oil escaped into the sea from the tanker.

The crane barge was being towed by two tugs, Samsung T-5 and Samho T-3, when the tow line broke. Weather conditions were poor and it was reported that the crane barge was blown by the strong winds into the tanker, puncturing three of its port cargo tanks No.1, 2 and 3.

This incident is recorded as the most catastrophic oil pollution incident in the history of Korea in terms of the amount of oil leaked and scale of damage. The Korean Government declared the areas affected by oil as National Disaster Zones according to the relevant Act.

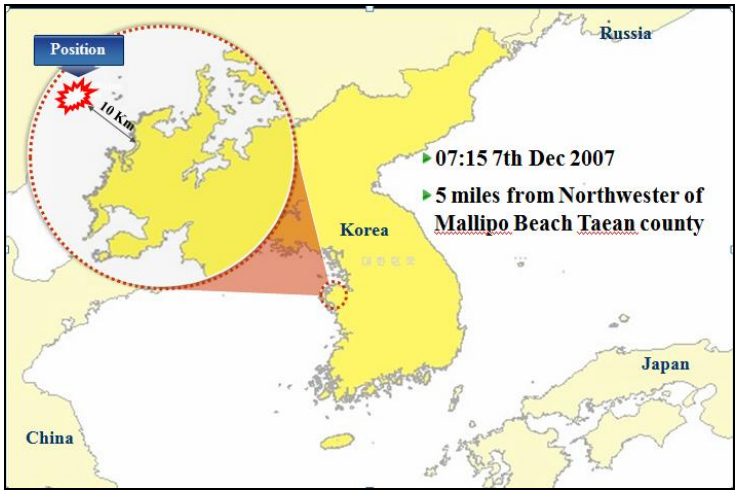


Figure 4 Location of the Hebei Spirit Incident

Source: Author

This chapter attempts to describe the incident of the Hebei Spirit incident including the cleanup operations, impacted areas, and then attempts to apply the FC 1992 regarding compensation for the victims.

3.2 Overview of the Incident

3.2.1 Impact of the Oil Spill

As a result of this incident, the areas affected by the spill along the western coasts of three provinces, Chungchongnam-Do, Chollanam-Do and Chollabuk-Do, of Korea have around 350 km of coastline, 101 islands, 15 beaches and 35,000 hectares of aquaculture farms and other facilities, and including the total number of households affected of approximately 40,000 units as shown in Figure 5 (International Oil Pollution Compensation Fund, 22 June, 2008). This means much of the western coast was affected by the oil spill.

The west coast of Korea is a very important area for aquaculture in Korea because there are large numbers of mariculture facilities including seaweed, shellfish cultivation and large-scale hatchery production. The area is also exploited by small and large-scale fisheries.

The oil affected a large number of these mariculture facilities, as it passed through the supporting structures, contaminating buoys, ropes, nets and the produce. Immediately after the Hebei Spirit incident, the Korean Government declared a fishing ban on the affected areas by the oil spill and restricted all harvest and capture of marine products from the affected areas, in order to protect the public health against any potential negative effects from the sale and distribution of contaminated fisheries products.

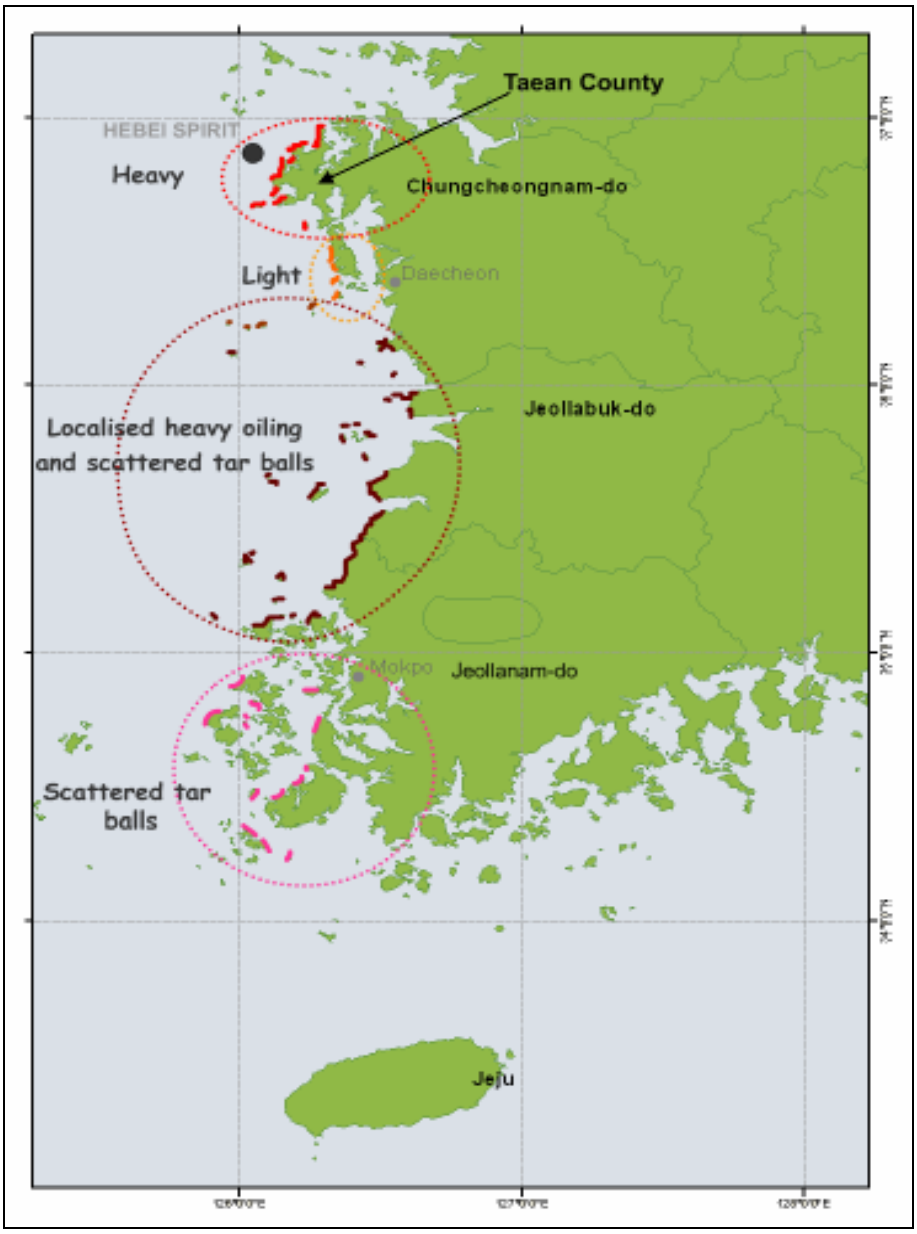


Figure 5 Map of shoreline contamination

Source: International Tanker Owners Pollution Federation (Feb. 2008). News & Events:The Environmental Impact of the Hebei Spirit Oil Spill, Taean, South Korea. p.3

As of 18 April 2008, in consideration of the progress of the clean-up operations undertaken in the affected areas, and the results of the marine environmental study and fisheries product safety test, the Korean Government lifted restrictions on fishing activities for the first time. Thereafter, since 3 September 2008, all types of fishing activities were resumed in all the affected waters and coasts.

The oil has also impacted amenity beaches and other areas of the Taean National Park. The Taean peninsula is a favourite tourist destination for visitors from the Seoul metropolitan area, with an estimated 20 million visitors every year, mostly during the months of July and August.

3.2.2 Clean-up operations

Two plans, the National Contingency Plan prepared by KCG and the National Disaster Prevention Master prepared by the Ministry of Government Administration and Safety Management (MOGASM), were applied to coordinate all the measures to combat the oil spill. According to those plans, a National Disaster Response Organization was established as illustrated in Figure 6.

As mentioned earlier in Chapter 2, the MLTM has overall responsibility for marine pollution response in the waters under the jurisdiction of Korea, and the KCG has responsibility for control/command of all the response activities at sea and local governments have the responsibility to control shoreline clean-up.

The KCG mobilized their response vessels and various equipment on site and effectively controlled the response activities carried by KOEM and private companies at sea. However, it was very difficult to collect oil at sea due to heavy weather even though large numbers of specialized response vessels were launched.

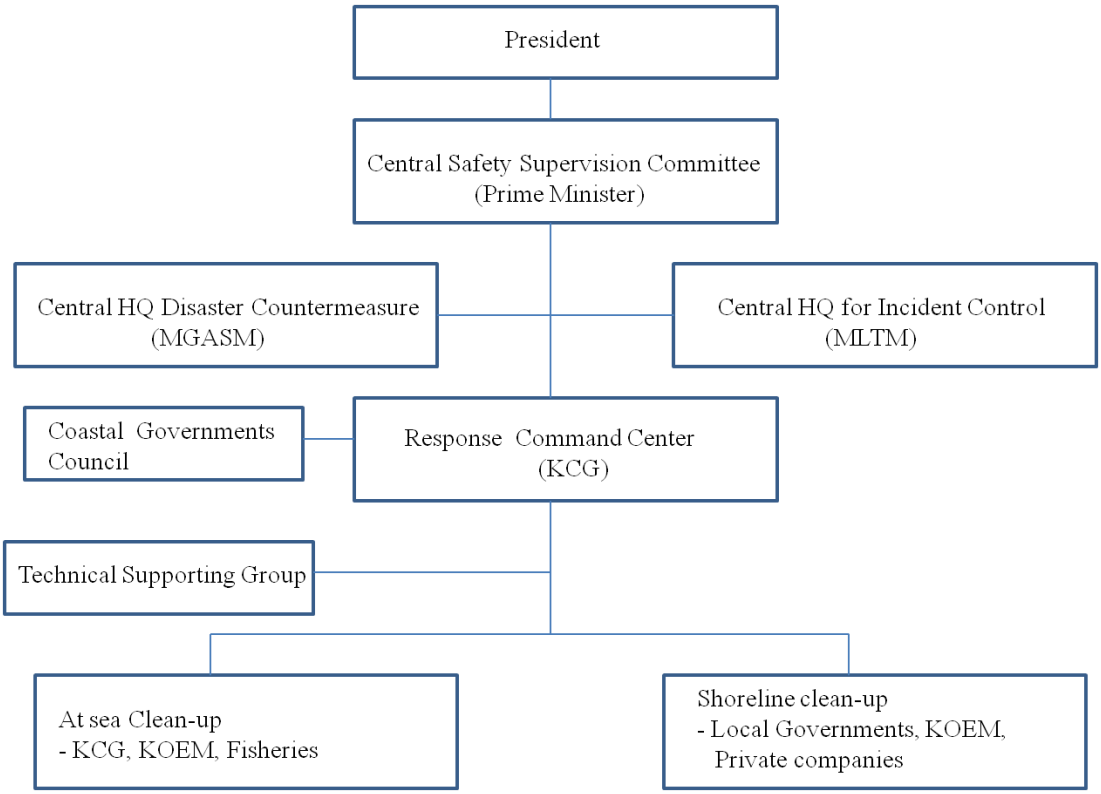


Figure 6 National Disaster Response Organization for Hebei Spirit incident

Source : Author

The oil slick also affected the shoreline very quickly since the site of the spill incident was so close (around 10 km) to the shoreline and the local currents were very strong and fast. Therefore, the use of oil booms to contain oil and skimmers to collect oil were very restricted. Consequently, most of the clean-up operations were carried out on the shoreline. At the same time, the use of oil booms was a very effective measure in protecting the sensitive areas, such as entrance areas of the intake water of power plants and fish farms inside several important bays.

Clean-up operations at sea were carried out by the KCG, the KOEM and local fishermen and the shoreline clean-up was carried out by more than 1.2 million volunteers, local residents, the military and private clean-up companies. Most of the clean-up operations were finalized by 10 October 2008, but additional clean-up

operations had to be conducted in the first half of 2009 as more traces of oil were found, particularly tar balls in some of the islands and marine aquaculture farms (International Oil Pollution Compensation Fund, 9 March 2009).

A huge number of volunteers from other cities helped cleaning oil on several beaches affected during the early stages. Human resources and the main response equipment and materials used until October 2008 are as shown in Table 5.

Table 5 Total Amount of Resources used till October 2008

	Personnel (Volunteers)	Vessels (unit)	Oil Boom (Km)	Absorbant (tonnes)	Dispersant (kℓ)
Total	2,132,322 (1,226,730)	19,864	46.77	493	298

Source: Iinternational Oil Pollution Compensation Fund (29 May 2009). 92FUND/EXC.45/6/2.

3.2.3 Legal Proceedings

In the case of criminal proceedings, the Director of the IOPC Fund reported that

> in April 2009, the Korean Supreme Court overturned the decision by the Court of Appeal, which had held that the Master of one of the towing tugs and of the crane barge and the Master and Chief Officer of the Hebei Spirit were liable for the destruction of the Hebei Spirit, and sent back the case to the Court of Appeal for a retrial. The Supreme Court in its judgement also annulled the Court of Appeal's decision to imprison the crew members of the Hebei Spirit. The Supreme Court, however, upheld the decision to imprison the Master of one of the towing tugs and of the crane barge and confirmed the fines imposed by the Court of Appeal (International Oil Pollution Compensation Fund, 16 June 2010).

Regarding the Liability Limitation Proceeding (LLP) by the owner of the Hebei Spirit, the Director of the IOPC Fund reported (International Oil Pollution Compensation Fund, 16 June 2010) as follows:

- February 2008: the owner made an application to commence LLP before the Limitation Court.

- February 2009: the Limitation Court rendered an order for the commencement of the LLP

- 126,316 claims totalling KRW 3,597 billion have since been submitted to the Limitation Court.

- The Limitation Court appointed a Court Administrator to deal with the claims and indicated its intention that the Court Administrator review the assessments by the Club's and the Fund's experts and by the claimants' experts rather than appoint his own experts.

- At the same time, in March 2009, the Limitation Court rendered the order for the commencement of the limitation proceedings for the Samsung Heavy Industry, the bareboat charterer of the two towing tugs and of the crane barge, and set the limitation fund, together with legal interests, at an amount of KRW5,600 million.

3.3 Application of International Compensation Scheme

3.3.1 Liability and Limitation of Compensation

As mentioned in Chapter 2, Korea is a party to the CLC 1992 and a Member State of the Fund 1992, but not a Member State of the Supplementary Fund at the time.

Since the CLC 1992 is based on strict liability, the shipowner of the Hebei Spirit was liable to pay the compensation to victims eventhough the ship was not at fault in this pollution incident according to the CLC 1992. Furthermore, if the total amount of damages was to exceed the limitation amount applicable under the CLC 1992, the Fund 1992 would be liable to pay compensation to the victims of the spill. The tonnage of the Hebei Spirit (146,848 GT) is in excess of 140,000 GT. The limitation amount applicable is, therefore, the maximum of 89.77 million SDR available under the 1992 CLC, and the total amount available for compensation under the 1992 CLC and the 1992 Fund Convention is 203 million SDR. Table 6 provides the summary of the incident including the maximum available compensation amounts by the shipowner and the IOPC Fund.

Table 6 Summary of Hebei Spirit Incident

Ship's name	Hebei Spirit
Date of incident	7 December 2007
Place of incident	10 km off Taean county
Cause of incident	Collision
Quantity of oil spilled	10,900 tonnes (12,547kℓ)
Flag State of Ship	Hong Kong
Gross tonnage	146,848 tonnes
P&I Insurer	China Shipowners Mutual Insurance Association (China P&I) Assuranceforeningen Skuld (Gjensidig) (Skuld Club)
CLC Limit	89.77 million SDR (KRW187 billion)
Fund Limit	203 millon SDR (KRW322 billion)[9]

Source: Iinternational Oil Pollution Compensation Fund, 16 June 2010

[9] The 40th Exacutive Committee of the 1992 IOPC Fund decided that the conversion of 203 million SDR into Korean Won would be made on the basis of the value of that currency *vis-a-vis* the SDR on 13 March 2008 at the rate of 1SDR=KRW1,584.330. When coverted, KRW322 billion is approximately US$310 million.

Unfortunately, the Korean government as well as most of the victims expected that this maximum amount was not sufficient to recover the total loss of costs from this incident.

As a result of this problem, local residents demanded a more satisfactory solution from the Korean Government and the national assembly legislated a Special Law. However, the Special Law brought forward a large number of claims from victims, so the Korean Government shouldered the financial burden for the payments to the victims.

3.3.2 Level of Payment

Article 5 of FC 1992 mentions "the amount available shall be distributed in such a manner that proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be same for all claimants." In other words, if the total amount of compensation payable exceeds the limitation of amount of the FC 1992, the IOPC Fund should decide the levels of payment through a manner of proportion to make equivalent compensation to all victims.

Consequently, when the total amount of compensation payable exceeds the limitation of amount of the FC 1992, victims cannot recover the whole compensation from the IOPC Fund eventhough their claims were accepted by the IOPC Fund. In this case, there are no solutions to recover full payments for victims under the International Compensation Scheme.

In the case of the Hebei Spirit, the IOPC Fund expected the total estimated amount of losses arising from the incident could exceed the Fund's maximum amount of the limitation for compensation.

The IOPC Fund estimated the amount was between KRW352 billion and KRW424 billion (267 million SDR) on the basis of the limited information available as of 26 February 2008. Therefore, the IOPC Fund initially decided the level of payments as 60% of the amount of the damage actually suffered by the respective claimant as assessed by the Fund's experts in the 40th Executive Committee held on 26 Febuary 2008 International Oil Pollution Compensation Fund, 26 February 2008).

Thereafter, the 42nd Executive Committee held in June 2008 decided to reduce the level of payment to 35% of the established claims because of the increased uncertainty as to the total amount of the potential claims (International Oil Pollution Compensation Fund , 27 June 2008).

3.3.3 Compensations Covered by the IOPC Fund

There are no detailed descriptions for types of damages covered by the IOPC Fund in the FC 1992, but the IOPC Fund published a Claims Manual to guide claimants by giving an overview of the IOPC Fund's obligation to compensation in accordance with the FC 1992. This Manual was adopted by the Assembly of the 1992 IOPC Fund in October 2004, and several amendments were made in December 2008. However, it is only a practical guide, presenting claims against the IOPC Fund, but it is not a legally binding document.

According to this Manual, in general, the IOPC Fund may compensate any loss of damage arising from the incident in five main types, namely clean-up costs and preventive measures, property damages, consequential losses, pure economic losses and environmental damages.

i) Clean-up and preventive measures

In principle, the IOPC Fund is payable for the cost of clean-up operations at sea and shoreline (Claims Maual, 2008, p.12). However, compensation is only payable for the cost of reasonable measures. The interpretation of the word 'reasonable' is unclear, but claimants must prove that all clean-up measures operated by them were necessary activities for effective operations. In practice, there are a number of gaps between claimants and the experts appointed by the IOPC Fund and shipowners to assess the cost of clean-up operations. For example, the KCG used a number of chemical dispersants by airplane after a week had passed from the date of the Hebei Spirit incident, so the experts of the IOPC Fund and shipowners expressed doubts about the effects of the dispersants. Therefore, the KCG must show scientific evidence to prove the effects of the dispersant in order to recover costs, such as rental cost of airplanes and cost of dispersants. According to Article 3(b) of FC, the IOPC Fund may compensate the cost for preventive measures in the territorial waters of a State which is not a Party to the Convention. However, this case did not occur in the Hebei Spirit incident because the spilled oil did not reach any other States such as China and Japan.

ii) Property Damage

The IOPC Fund is payable for reasonable costs of cleaning, repairing or replacing property that has been contaminated by oil (Claims Manual, 2008, p.12). There are a number of claims for the cleaning and replacing of fishing gears such as nets and equipment of fish farms in the Hebei Spirit incident because a number of fish farms were affected by oil. There were also cleaning costs of various types of ships in berth at ports affected by the oil.

iii) Consequential Loss

This refers to "loss of earnings suffered by the owners of property contaiminated by oil" (Claims Manual, 2008, p.12). In other words, if a fisherman has loss of income because his fishing nets were contaiminated by oil and he could not fish until the cleaning of the nets, he can claim his loss of income during that time to the IOPC Fund. However, again it only applies to reasonable costs.

iv) Pure Economic Loss

This refers to the "loss of earnings caused by the oil pollution suffered by persons whose property has not been polluted" (Claims Manual, 2008, p.13). There are a number of claimants who had suffered pure economic loss in the Hebei Spirit incident. Fishermen could not catch any fish during the designation of the fishing ban by the Korean Government. Therefore, they had to claim loss of earnings to the IOPC Fund. However, the Korean Government must prove to the IOPC Fund that the fishing ban was a necessary measure at the time in order to recover the loss from the IOPC Fund. The owners of restaurants, hotels, and tourisms living in the affected areas by the oil submitted a huge number of claims to the IOPC Fund, but most of them had inadequate evidence for their losses. Furthermore, there were a number of claims from fish markets.

v) Environmental Damage

The IOPC Fund may pay for "the cost of reasonable reinstatement measures aimed at accelerating natural recovery of environmental damages" (Claims Manual, 2008, p.13). However, the case of recovery of the cost for environmental damages from the IOPC Fund is very rare in practice because it is very difficult to prove the direct relationship between the incident and the cost of reinstatement measures.

In summary, the types of compensations covered by the IOPC Fund in accordance with the Claims Manual are divided into five types in principle. In most of the oil pollution incidents, it is relatively easy to provide actual evidence of the costs for clean-up, preventive measures, property damages and consequential loss, but for the costs of pure economic loss, it is very difficult to calculate the actual loss of damages because there are no detailed standards for such calculations.

Therefore, big gaps may usually occur in assessing the damages between claimants and the IOPC Fund, and these problems may be brought to court and result in the delay of settlements of compensation.

3.3.4 Claim Office

On 24 December 2007, the KOEM arrested the Hebei Spirit in order to ensure compensation for huge costs of clean-up operations, losses and damages from the oil spilled from the ship (Ministry of Land, Tranport and Maritime Affairs, 2010, p.22). Meetings to discuss compensation issues between MLTM/KOEM and the owner/Skuld P&I Club were held several times and a Coorperation Agreement was made on 5 January 2008.

In this agreement, each party confirmed that the arrest of the ship was unnecessary in view of the compensation guaranteed in accordance with the international law, namely the CLC 1992 and the FC 1992, and agreed to set-up a Receipt Office for the receipt of claims under the CLC and the FC. As a result of this agreement, the ship was allowed to sail from Korean waters on 7 January 2008.

Thereafter, throughout consultation with the MLTM, the 1992 Fund and the Skuld Club, the Hebei Spirit Centre was established in Seoul to assist claimants in the presentation of their claims for compensation. The Centre has a manager and two supporting staff members. The office became fully operational on 22 January 2008 (International Oil Pollution Compensation Fund, 21 February 2008).

On 1 July 2008, a second Cooperation Agreement was concluded between the owners/Skuld P&I Club and the MLTM. In accordance with this Agreement, the Skuld P&I Club undertook to pay claimants 100% of their claims as assessed by the Fund and the Skuld P&I Club up to the CLC limit.

In return, the Korean Government undertook to compensate in full all claims as assessed by the Club and the 1992 Fund as well as the judicial settlements in excess of the IOPC Fund's limit to ensure that all claimants would eventually receive full compensation. The Korean Government further ensured that the Skuld P&I Club deposit in the Court the balance between the payments already made by them and its limit under the 1992 CLC (International Oil Pollution Compensation Fund, 9 September 2008).

3.4 Claim Status

3.4.1 Estimated Losses

The IOPC Fund presented their estimated losses to each Executive Committee as shown in Table 7. The estimated losses for the clean-up operation were increased continuously because additional clean-up had to be conducted until the first half of 2009. The estimate of the expected admissible costs for the at-sea and onshore clean-up, consequent disposal of waste and for environmental restoration and monitoring as a result of the incident totals KRW186,870 million.

The estimated losses for fisheries and mariculture were increased up to KRW209 billion until June 2009, but decreased to approximately KRW166 billion in June 2010 because the experts found many excessive claims through assessment. The estimated losses for tourism were also decreased due to lack of evidence.

Table 7 Estimated Losses Caused by the Hebei Spirit Incident

	Estimated losses(unit:billion KRW)						
	2008			2009			2010
	March	June	October	March	June	October	June
Clean-up	110	134.5	162.3	163.3	173	195	186.9
Fisheries/ Mariculture	190	206	206	206.0	209	149	166.2
Tourism	72~ 124	198~ 233	198~ 233	198~ 233	198~ 233	198~ 233	100
Total	372~ 424	538.5~ 573.5	566.3~ 601.3	567.3~ 602.3	580~ 615	542~ 577	453.1

Source : Adapted by Author from IOPC Fund Executive Committee Papers.

In June 2010, the IOPC Fund estimated total losses of damages caused by the Hebei Spirit was approximately KRW453 billion, but big gaps remained with the claims amount of KRW1,978 billion submitted by claimants.

3.4.2 Claim Situation

According to the report of the Director of the 1992 IOPC Fund (International Oil Pollution Compensation Fund, 16 June 2010), as of 1 June 2010, a total of 19,025 claims had been submitted on behalf of 117,636 claimants. Of the claims registered in the HSC, 228 claims had been submitted by fishery cooperatives or committees on behalf of 98,839 small-scale fishermen affected by the oil spill.

The remaining 18,797 claims, mostly in aquaculture and tourism sectors, had been registered and are being assessed individually. A total of 6,163 claims had been assessed and of these, 4,307 had been rejected.

A total of 1,654 claims, totalling KRW102,516 million have been paid by the Skuld Club. These payments also include a number of subrogated claims submitted by the Korean Government.

Table 8 provides an update of the claims registered in the HSC as at 1 June 2010.

Table 8 Claim Situation caused by the Hebei Spirit Incident

	Claimed but not yet assessed		Assessed but not yet paid[10]		Paid	
	No.of Claims	Amount (million KRW)	No.of Claims	Amount (million KRW)	No.of Claims	Amount (million KRW)
Clean-up/Preventive Measures	56	105,505	50	9,459	165	78,790
Property Damage	11	2,603	5	94	6	345
Fisheries/Mariculture	5,638	1,468,548	429	1,005	145	9,342
Tourism and other Economic Damage	7,067	285,476	4,114	1,348	1,338	14,037
Environmental Damage	1	2,195		-	-	-
Total	12,773	1,863,327	4,598	11,906	1,654	102,516

Source: International Oil Pollution Compensation Fund , June 2010. (IOPC/JUN10/3/5).

[10] The number of assessed claims includes rejections.

Through simple analysis of Table 8, two significant problems can be found in the claims process of the IOPC Fund. Firstly, the assessment proceeding by the IOPC Fund is much too slow. Despite two and a half years having passed from the date the incident occurred, 12,773 claims among the total of 19,025 claims have not yet been assessed by the IOPC Fund. In other words, the assessed rate based on the number of claims is less than 33%, and approximately 67% of the claims have not yet been assessed as shown in Figure 7.

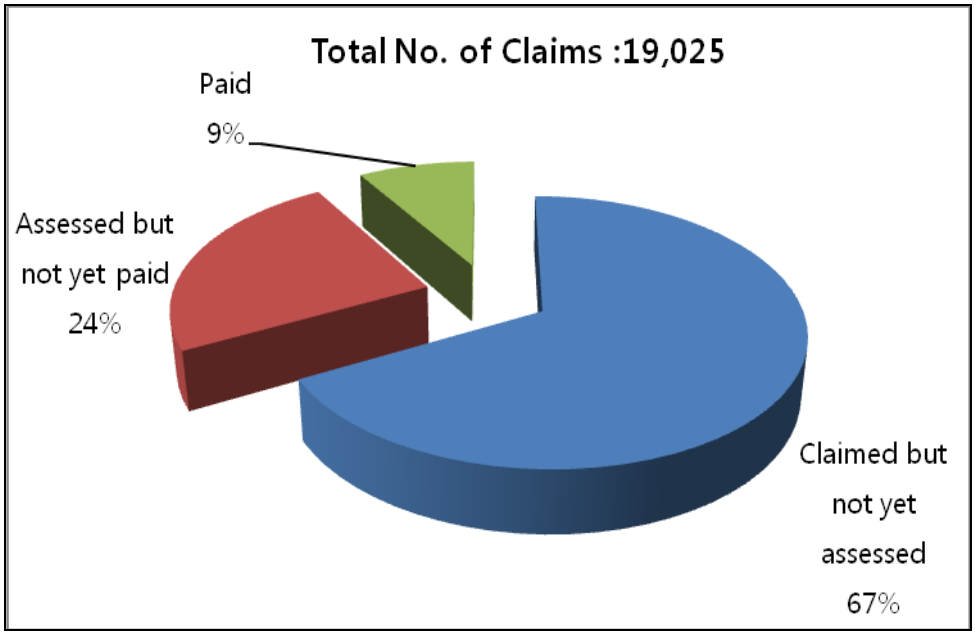


Figure 7 Rate of assessment by the IOPC Fund based on the number of claims

Source : Author

Looking at the calculation of the assessment rate based on the amount of claims, it is more significant. Approximately KRW1,863 billion from the total of KRW1,978 billion claimed by victims have not been assessed and the assessed rate is less than 6%. In other words, 94% of claims have not yet been assessed as shown in Figure 8.

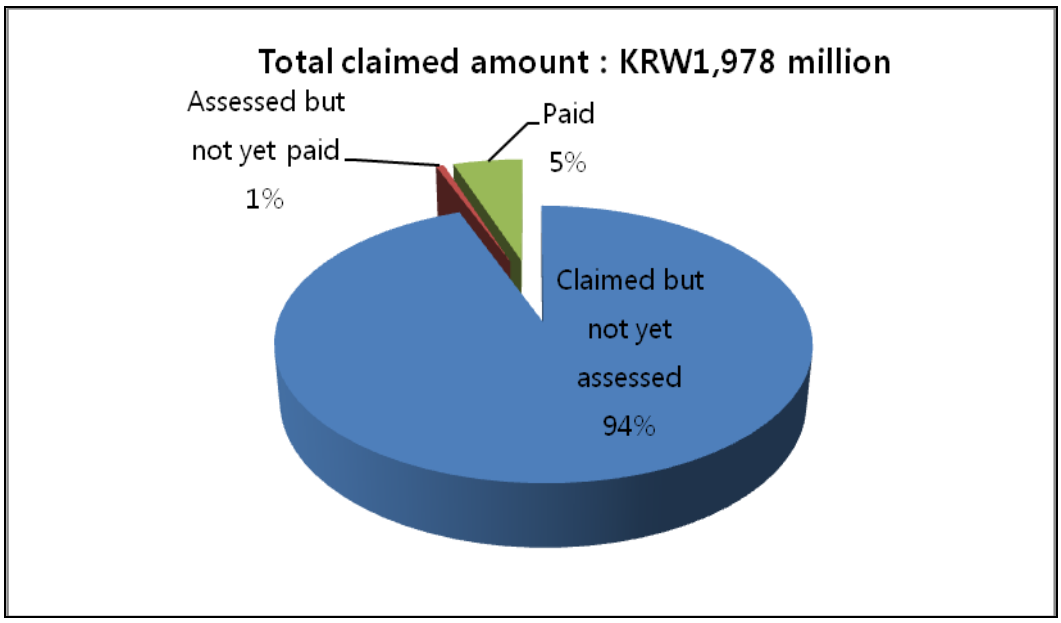


Figure 8 Rate of assessment by the IOPC Fund based on the amount of claims

Source: Author

Secondly, payment by the shipowners and the IOPC Fund to victims is also very slow. Based on the number of claims, 1,654 claims among the total of 19,025 were paid which brings the payment rate to less than 9% . Based on the amount of claims, around KRW103 billion from the total of KRW1,978 billion claimed by victims were paid and the payment rate is approximately 5%.

Eventhough the total number of claims submitted by victims is not the exact amount to be paid to them at the moment, the proceeding of the assessments and payments is too slow. In a general point of view, the main reason for these problems seems to be lack of experts or staff at the IOPC Fund to assess the huge number of claims.

Looking at Figures 9 and 10, these problems can clearly be seen. Furthermore, Figures 11 and 12 show the development of claims from March 2008 to June 2010 and the delay of assessment and payment by the IOPC Fund can also be seen clearly.

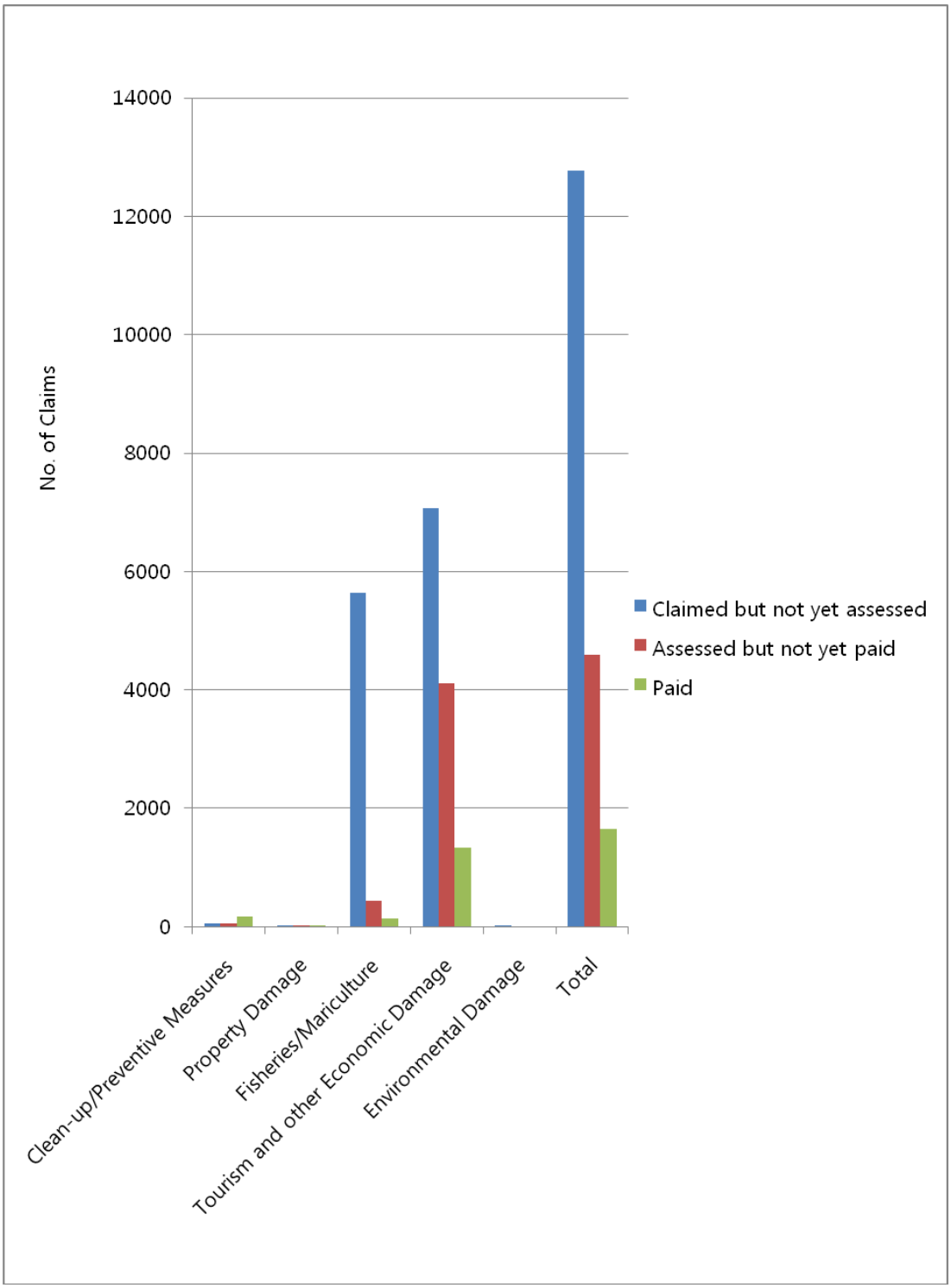


Figure 9 Claims Status (based on number of claims)

Source: Author

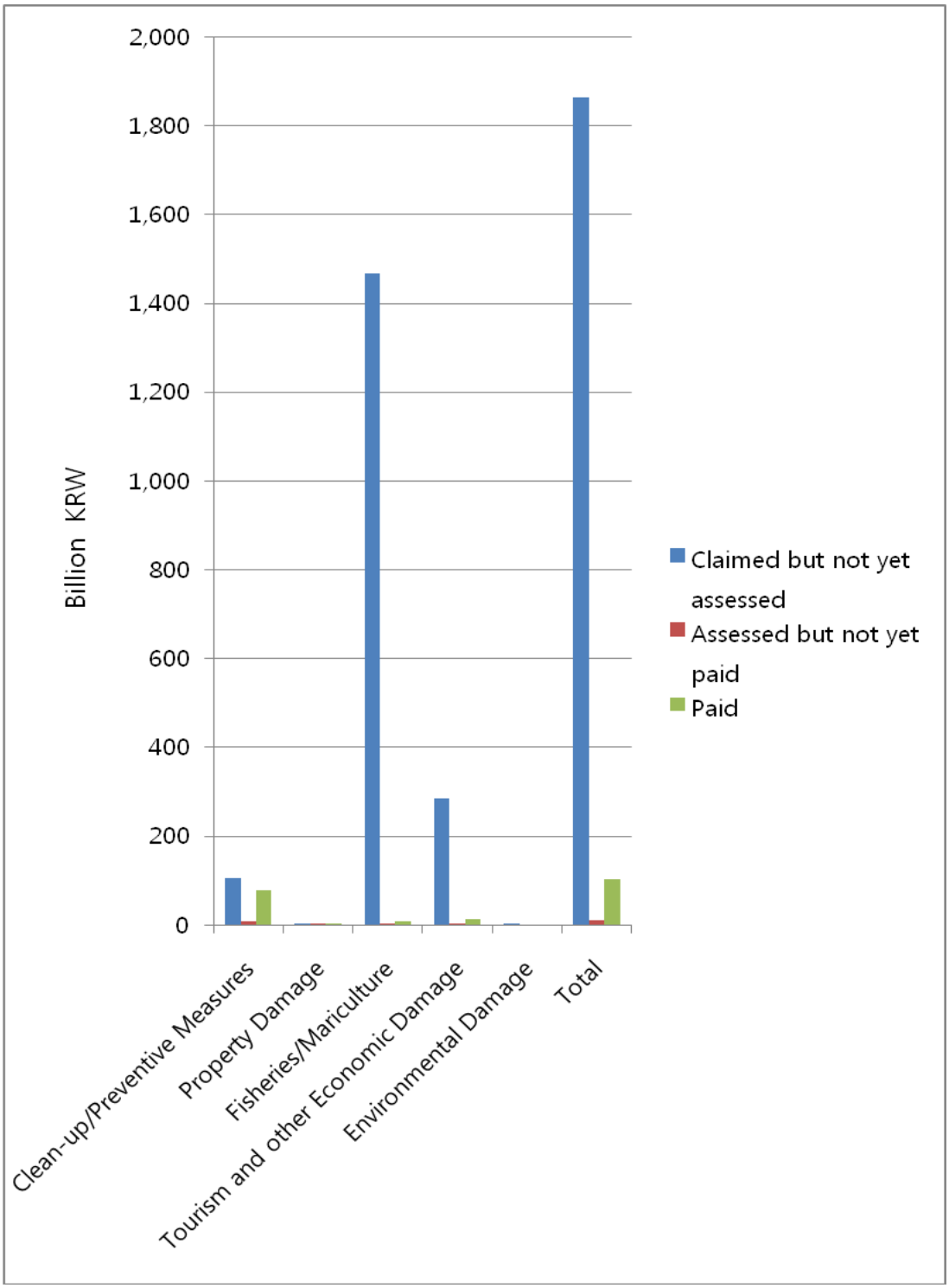
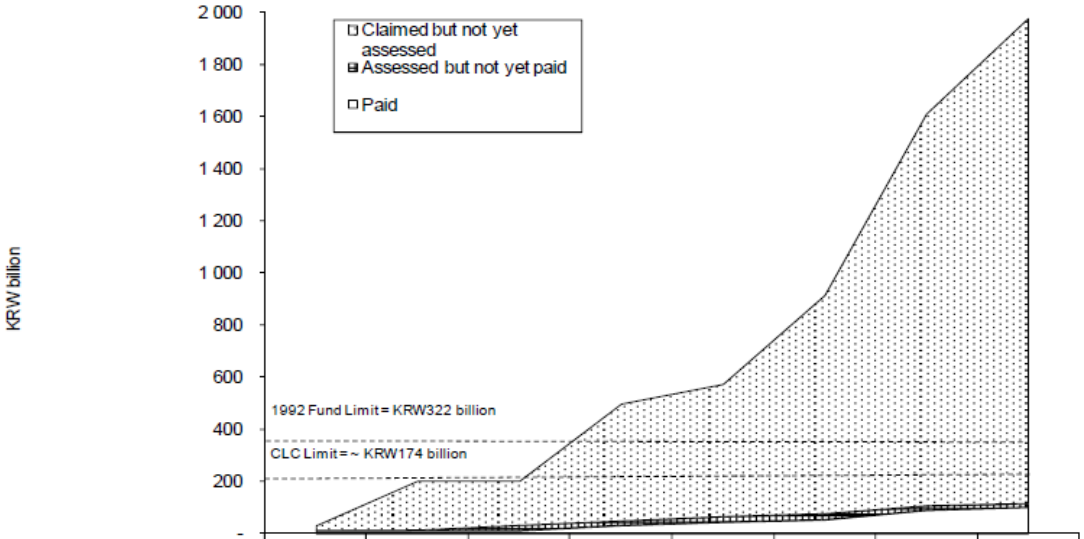


Figure 10 Claims Status (based on the amount of claims)

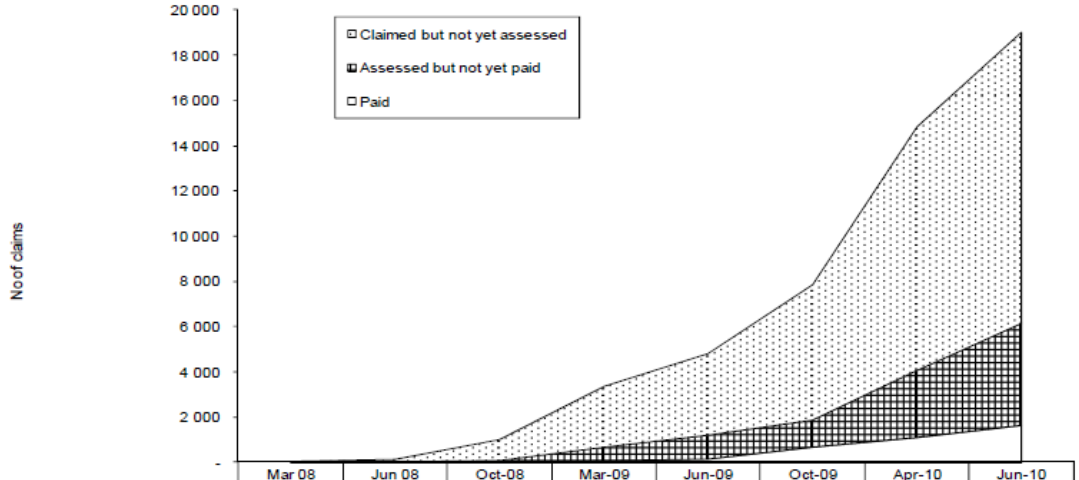
Source: Author



	Mar 08	Jun 08	Oct-08	Mar-09	Jun-09	Oct-09	Apr-10	Jun-10
Claimed but not yet assessed	17.7	188.8	169.7	449.5	508.2	839.2	1,506.0	1,864.3
Assessed but not yet paid	-	0.6	19.2	15.5	19.5	21.3	15.4	11.9
Paid	10.7	11.2	11.2	31.6	44.3	53.7	90.6	102.5

Figure 11 Development of Claims (based on the amount of claims)

Source: IOPC Fund (2010, June 16). IOPC/JUN10/3/5.



	Mar 08	Jun 08	Oct-08	Mar-09	Jun-09	Oct-09	Apr-10	Jun-10
Claimed but not yet assessed	19	97	927	2,683	3,606	5,979	10,759	12,862
Assessed but not yet paid	6	17	60	600	1,060	1,197	2,964	4,509
Paid	39	39	42	92	164	694	1,121	1,654

Figure 12 Development of Claims (based on number of claims)

Source: IOPC Fund (2010, June 16). IOPC/JUN10/3/5.

CHAPTER 4 Problems and Consideration of the Development

4.1 Introduction

The International Compensation Scheme is very useful especially in the case of huge oil spill incidents throughout the world. However, several problems relating to claim procedures taken by the IOPC Fund, such as assessment and payment continuously in practice were pointed out by each Member State.

The most significant problem is the delay of payments for compensation. For example, in the case of the Erica incident, it took approximately 18 months after the incident to pay the amount of shipowners' limitation to claimants, a further 4 years after the incident, around 30% of total amount of limitation of the FC 92 was paid by the IOPC Fund and 9 years after the incident, approximately 70% of the total amount was paid (Morandeira, 2008).

At the same time, looking at past experiences in Korea, the average amount recovered from the IOPC Fund was less than 14% of the claimed amounts. There are various reasons in the low percentage of recovered amounts from the IOPC Fund, but there is a need to analyze this issue further in order to recommend corrective measures.

This Chapter will discuss several problems, especially the delay of payments that occurred during the claims proceedings with the IOPC Fund throughout the Hebei Spirit incident and other large oil spill incidents, and the author will consider effective solutions to these problems. For this objective, the chapter will be divided into two parts, one involving the problems with the IOPC Fund and the other problems associated with Korea's claims process.

4.2 External Problems with IOPC Fund

4.2.1 Absence of Exact Standards for Compensation

As mentioned earlier in Chapter 3, there is no detailed information or guidelines in deciding whether the IOPC Fund should pay for claims submitted by various claimants.

There is only a Claims Manual, which was published by the Fund, to refer to claims procedures of the Fund, but it only offers a general overview of the obligations of the Fund to pay compensation. The Manual does not include three main significant matters, such as legally-binding elements, nor detailed standards for assessment of claims, and no designation of time periods for assessment by the Fund.

Firstly, it is an important issue whether the Manual is legally binding or not. Most of the Member States of the Fund have their own guidelines based on the Manual, and Korea also made investigation guidelines for oil pollution damage after the No.5 Kum Dong incident which occurred in 1993. These guidelines introduced various requirements including how a claim should be presented, what document a claim should contain, methods of calculating the cost of damages, and the procedures of claim assessment and payment.

However, it is just a general guideline in making claims to the Fund, and it does not include detailed information or standards in accordance with the Claims Manual. Also, the Claims Manual and various guidelines made by each State do not have any legally binding power.

The Manual describes “it does not address legal issues in detail and should not be seen as an authoritative interpretation of relevant to the international Conventions” (Claims Manual, 2008, p.5). Therefore, any significant issues caused by every incident have to be decided by the Executive Committee of the Fund because there are no clear provisions in the Conventions.

Furthermore, when claimants do not agree with the decisions of the Committee, they will bring actions against the Fund, which will then cause a delay in the payments for several more years until final decision is made by the court or the supreme court. On the contrary, it is very difficult to make unified guidelines to apply to every State because each State has different situations, laws, and customs. Also, all final decisions can be made only by the Courts of Contracting States in accordance with Article IX of CLC and Article 7 of the FC.

Secondly, the Manual, in section 2, gives general information on various types of damage covered by the Fund in accordance with Article I, 6. According to the Manual, the main types of pollution damage covered are described as six types:

i) clean-up and preventive measures,
ii) property damage,
iii) consequential loss,
iv) pure economic loss,
v) environmental damage, and
vi) use of advisers.

Besides general information, it does not give any detailed information for a standard or methods of their assessment. Consequently, claimants or experts appointed by the Fund may interprete it themselves, and these interpretations may cause a lot of arguments between claimants and the Fund. Therefore, it is necessary to develop more detailed criteria or standards for the assessments by the Fund in order to avoid a lot of arguments in future.

Finally, the Manual describes very detailed information on the period that a claim should be made, which is as follows:

> "Claimants will ultimately lose their right to compensation under the 1992 Fund Convention unless they bring court action against the 1992 Fund within three years of the date on which the damages occurred, or make formal notification to the 1992 Fund of a court action against the shipowner or his insurer within the three years period" (Claims Manual, 2008, p.19).

However, there is no mention as to the exact period to assess and pay claims, but there are only general provisions as follows:

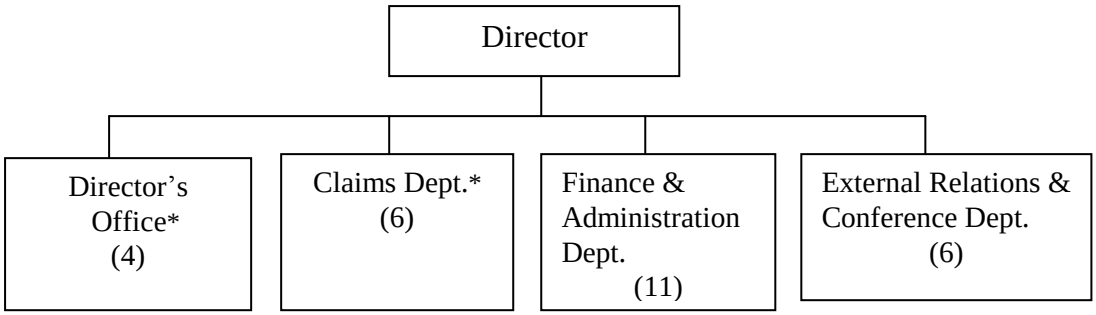
> "The 1992 Fund and the P&I Clubs try to reach agreement with claimants and pay compensation as promptly as soon as possible" (Claims Manual, 2008, p.20).

In order to facilitate a speedy assessment and payments to claimants, a provision for the exact period to assess and pay compensation is recommended to be included.

4.2.2 Size of the Secretariat of the IOPC Fund

There are currently a very small number of staff of 27, including a Director in the Secretariat of the Fund, and they work on the investigations and assessments of claims caused by the oil pollution incidents across the world.

The main role for the assessment of claims seems to be undertaken by 10 persons working in the Director's office and Claims Department as shown in Figure 13.



*One person has combined role as technical advisor and claims manager

*Deputy Director and one claims manager is vacant

*( ) : number of persons

Figure 13 Current Structure of the IOPC FUND's Secretariat

source : Adopted by Author from http://www.iopcfund.org

This small size of the Secretariat of the Fund may be considered as a significant factor for the delay of the payments. There are several reasons for increasing the staff of the Secretariat of the Fund in order to make more speedy payments. Recently, Member States of the 1992 Fund were increased and the limitation amount of compensation of the Fund based on the Supplementary Fund was increased up to more than 25 times compared to the limitation amount of the FC 71. Furthermore, oil spill incident trends are currently towards bigger and bigger spills than in earlier years and the claims are also more complex than in past years. Therefore, the workload of the Secretariat of the IOPC Fund was increased and they need to increase the staff accordingly.

According to the Claims Manual, “the fund usually appoints experts to monitor clean-up operations, to investigate the technical merits of claims and to make independant assessments of the losses” (Claims Manual, 2008, p.19). The Fund usually depends on the advice of the International Tanker Owners Pollution Federation Ltd (ITOPF).

However, the Fund has to make decisions as to whether to approve or reject a particular claim, and the Fund should have sufficient staff capacity in order to meet this principle. This issue was discussed at the Assembly of the 1992 Fund held in October 2009, but the Fund had objections to this matter (Iinternational Oil Pollution Compensation Fund, October 2008). However, the Fund should consider taking this matter into account in the future.

4.2.3 Role of the Claims Office

The IOPC Fund and the P&I Club, occasionally, establish a local claims office in the case of an incident where a large number of claims arose, in order for the claims to be processed efficiently (Claims Manual, 2008, p.17). In the case of the Hebei Spirit incident, the Fund and Skuld P&I Club established the Hebei Spirit Center in Seoul as mentioned in the previous chapter. The local claims office is very useful for claimants to submit claims.

On the other hand, it may cause delay of payments of compensation because the office does not have the authority to make any decisions on whether or not claims qualify for compensation.

The main role of the office is to transfer claims submitted by claimants to the Fund. There is an opinion that if the office has the authority to assess claims, then the

claims procedure may be speedier than the present procedure (Choi D. H. & Choi J. S., 1997, p.75).

In the case of the Sea Prince incident, which occurred in 1995, claimants were able to submit their claims to a local law firm designated by the Fund and claimants were informed of the status of their claims proceeding from the law firm directly because the law firm was handling the claims. In contrast, in the case of the Hebei Spirit, not only did the local office not have any information on the handling of the claims, but they also did not have any authority to discuss the claims.

4.3 Internal Problems in Korea

4.3.1 Unreasonable Claims and Poor Evidence

The average percentage of the actual amount compensated by the Fund among the total amount claimed in several incidents which occurred from 1993 to 2003 in Korea is less than 14% as shown in Table 9.

The main reason for this result may be due to a lot of unreasonable claims submitted by fisheries groups eventhough their claims did not have sufficient close link to causation between the contamination and the loss or damage.

In addition, this problem occurred occasionally because most surveyors or law firms appointed by owners of fisheries did not fully understand the policy for the compensation of the Fund.

Table 9 Major Oil Spill Incidents in Korea

Date	Ship's name	Claimed amount (million KRW)	Compensated amount (million KRW)	Compensation rate (%)
27 Sept, 1993	Keumdong No.5	93,132	8,718	9.4
23 July, 1995	Sea Prince	68,812	19,836	28.8
3 Aug, 1995	Yeo Myung	20,247	600	2.9
21 Sept, 1995	Yuil No.1	36,889	7,960	21.6
17 Nov, 1995	Honam Sapphire	49,923	1,112	2.2
3 April, 1997	Osung No.3	1,125	69	6.1
22 April, 2003	Buyang	3,611	319	8.8
13 May, 2003	Hana	1,589	91	5.7
12 Sept, 2003	Duck yang	696	46	6.6
12 Sept, 2003	Kyung Won	2,800	310	11.1
23 Dec, 2003	Jeong Yang	1,064	76	7.1
Total		279,888	39,137	13.98

Source : Cho (2008).

These unreasonable claims may result in more delay of compensation for the actual victims and a drop in the credit of overall claims against the IOPC Fund. Furthermore, the initial level of payment decided by the Fund may be lowered because of those excessive claims and actual victims may suffer as a result. Therefore, the Korean Government and Fisheries Associations should carry out proper education for fishermen and the owners of fisheries in order to prevent unreasonable claims or excessive claims without relevant evidence.

Another important reason for the low compensation rate is caused by inadequate evidence in proving loss or damage of claimants. According to the Claims Manual, "the assessment of claims for economic loss in the fisheries, mariculture and processing sectors is based on a comparison between the actual financial results during the claim period and those for previous period" (Claims Manual, 2008, p.30).

In the case of the Hebei Spirit incident, it is expected that the compensation rate is very low because there are big gaps between the estimated amount of KRW453 billion of damage by the IOPC Fund and the submitted claims amount of KRW1,977 billion as shown in Tables 7 and 8 in Chapter 3.

The main reason for these problems is caused by false income tax returns of fishermen. Furthermore, small-scale fishermen and bare-hands fisheries (or capture fisheries) do not have any objective evidence to support their income claims nor any income tax returns. As a result, several figures regarding productions of various fisheries published by the Korean Government are different from the actual production statistics of the fisheries.

For example, in the case of the Nahodka incident which occurred in 1997, since a local government in Japan has recorded the actual production of fish and shellfish in their region every year during the past 30 years, fisheries could recover the actual loss caused by the incident against the Fund without any problems (Kim, 2009, p.64). Therefore, the Korean Government should introduce mandatory measures for various fisheries and fishermen to implement their obligation of income tax return following relevant Acts, and try to ascertain the exact production of fisheries in the future.

4.3.2 Korean Fund

The Taean Special Law was legislated to support victims who suffered from the Hebei Spirit incident temporarily as mentioned earlier in Chapter 2. However, there is a need to consider a permanent solution to help with speedy compensation to victims in the case of huge oil pollution incidents in the future.

Eventhough Korea ratified the Supplementary Fund shortly after the Hebei Spirit incident, the delay in compensation can not be solved. Therefore, the application of an additional compensation scheme is essential. One solution is to establish a Korean Fund similar to that of the Canadian Compensation Scheme. The main problem with this solution is financial sources.

The SOPF in Canada imposes a levy on oil importers, but this measure is not easy for the Korean Government to implement at the moment. This is because the oil industry in Korea has already undertaken a financial burden from joining the Supplementary Fund. The Korean oil industry is different from that of Canada and the US because there are no major oil companies to create much benefit from their business in Korea.

Korea does not have oil resources on land, so they depend only on imported oil. As a result, Korea is currently the fourth largest contributor to the 1992 IOPC Fund as shown in Table 3. Recently, the MLTM indicated it is planning to research this matter through an institutional review.

Chapter 5 Conclusions

After the Torrey Canyon incident in 1967, the International Scheme for the compensation of pollution damage caused by oil spills from tankers was based on two sets of International Conventions, the CLC 1969 and FC 71. The international community reaffirmed its commitment to this system widely in 1992 and in 2003, and kept the levels of compensation up-to-date as mentioned in this paper.

Before the Erica (1999), Prestige (2002), and Hebei Spirit (2007) incidents, most of the Member States of the IOPC Fund focused on increasing the limitation amount, believing that the levels of compensation are enough for victims suffering from oil spills from tankers. There is no doubt that it is a fact that the most important issue regarding compensation to victims is the limitation amount which could help recover their losses for damages caused by oil spills.

However, a speedy and fair compensation also became another significant issue for victims in practice after the above three large oil pollution incidents. There is an important point of similarity in the three incidents unlike previous incidents, namely the positive intervention of the Government of each State dealing with the compensation proceedings between the victims and the shipowner/IOPC Fund. The main reasons are not only the estimation for exceeding the limitation amount of the International Compensation Scheme, but also the delay of assessment and payments to victims.

In the case of the Prestige incident, the Spanish Government enacted a Special Law, Royal Decree Laws, in order to establish a system of advance payment to the Spanish claimants, because the IOPC Fund pays the compensation only after assessment of claims, which takes more than a year (Morandeira, 2008). This advance payment was

conducted by their own assessment, similar to that of the US and Canadian compensation schemes.

In the case of the Erika incident, the French Government did not enact any Special Law, but they used a huge amount of their government budget to enable speedy payments to victims before the assessment by the IOPC Fund. Then, the French Government declared that they would stand last in the queue in recovering the amount for the advance payments from the 1992 Fund. This is the first case where the government declared that they would stand last in the queue in recovering the government budget used earlier to compensate victims from the IOPC Fund in the world (Ministry of Land, Transport and Maritime Affairs, 2010, p.425).

The Hebei Spirit incident, which is the largest oil spill incident in Korea, brought about many economical, social, environmental and political issues. The most important issue was speedy and fair compensation to actual victims suffering from the incident. Therefore, the Korean Government enacted a Special Law and also conducted advance payments from the Government budget to some of the victims. The Korean Government also declared it would stand last in the queue in recovering the Government budget used to compensate victims from the IOPC Fund, the same as the French Government. Unfortunately, the advance payments to victims were very slow because the payments were conducted based on the results of the IOPC Fund's assessment.

It is important that the IOPC Fund make changes in their administration to improve efficiency. Although the Fund is opposed to increasing staff, this is something that should be looked into seriously because the assessment periods for the claims became longer leading to longer delays in payments made out to claimants, as can be seen from the Erica, Prestige, and Hebei Spirit incidents. From looking at the current International Oil Pollution Compensation Scheme, although the compensation

amounts seem sufficient due to the Supplementary Fund, problems relating to delay in payments will constantly occur in the future.

Due to victims suffering from the delay in payments, Member States of the IOPC Fund need to enforce a separate national compensation scheme. Moreover, with the HNS Convention coming into effect shortly, the work load of the Fund will increase even more. Therefore, it will not be a matter of the staff concentrating on the problem of the compensation amount, but making sure that speedy compensations to victims can take place efficiently in cases of oil spill incidents. For this to take place, increasing the number of staff in the Fund should be looked into.

The current claims manual should also be supplemented. This is because there is a need to state the assessment standards of claims in detail to avoid different interpretations. When an accident occurs, the Fund will call ITOPF and local experts from every Member State to decide the assessment standards, but this may lead to different assessment standards every time an accident takes place because every expert has different ways of interpreting. Furthermore, there is a need to state the assessment periods of claims by the IOPC Fund. This way experts employed by the Fund can follow the assessment proceedings in a timely and speedy manner.

Through this incident, what does the Korean Government need to do in the future? The Korean Government need to concentrate on enacting a law on the detailed standards of the assessment for various types of claims, following the general standards of the assessment by the IOPC Fund in order for fair compensation to take place. Therefore, all related organizations including Government officials need to be educated and trained thoroughly and a group of Korean experts also needs to be formed and trained. For example, the KCG or local governments need to be able to command the cleaning operations reasonably, and government officials at the fisheries departments need to follow scientific evidence instead of political reasons

when declaring a fishing ban, so that no problem will arise during compensation. Sufficient training and publicity are also required in stopping excessive claims from taking place because the excessive claims prevent speedy compensations from taking place.

Monitoring of unlicensed and illegal fishing is necessary, so the government should strongly enforce the implementation of relevant Acts on fisheries accordingly. Further, the government should maintain all of the income tax returns against all kinds of business in fisheries to present a clear record of their production in order to provide proper evidence for loss of damages from oil spill incidents.

The Korean Government also joined the Supplementary Fund shortly after this incident. Therefore, in the future, there is no need to worry about the limitation amount because by joining the Supplementary Fund, the limitation amount has been raised. However, how can the actual compensation process become more timely, considering the total number of claims is over 190,000 in the case of the Hebei Spirit incident? The delay of payments by the IOPC Fund can not be solved unless the claims processing of the Fund is changed as shown not only in the Hebei Spirit incident but also in the other incidents. To solve this problem, the Korean Government needs to secure financial resources to make advance payments to victims, and develop its own national assessment system on various claims caused by oil pollution from ships.

In conclusion, the Secretariat of the IOPC Fund and the Korean Government should develop their current Compensation Schemes as mentioned above in order to make speedy and fair compensations to victims suffering from oil pollution from ships in the future, taking into account the goal of the International Compensation Schemes.

REFERENCES

Books

Choi, D. H. & Choi, J. S. (1997). *A Study on Facilitation Method of Maine Pollution Compensation (Original: 해양오염 손해배상 촉진방안 연구)*. p.75. Seoul: Korea Maritime Institute.

Gonsaeles,G. (2005). *Marine Resource Damage Assessment; liability and compensation for environmental damage, Gwendoline, In Maes F.(Eds)*. (pp.85-130). The Netherlands: Springer.

International Oil Pollution Compensation Fund. (2003). *The IOPC Funds' 25 years of compensating victims of oil pollution incidents; The international compensation regime 25 years on*. London: Author.

International Oil Pollution Compensation Fund. (2008). *Claims Manual*. London: Author.

International Oil Pollution Compensation Fund. (2008). *Annual Report 2008*. London: Author.

International Oil Pollution Compensation Fund. (2009). *Annual Report 2009*. London: Author.

International Tanker Owners Pollution Federation Limited. (2009). *Handbook 2008/09* (pp.30-33). London: Author

Kim, I.H. (2009). *A study on Preparing for the IOPC Fund Meeting (Original: 체계적인 IOPC Fund 회의 대응방안에 관한 연구)*. Seoul: Ministry of Land, Transport and Maritime Affairs.

Kim, I.H. (2009). *The Guidebook for the IOPC Fund (Original: IOPC Fund 업무 가이드북)*. Seoul: Ministry of Land, Transport and Maritime Affairs.

Ministry of Land, Transport and Maritime Affairs. (2010). *The Whitebook on the Hebei Spirit. (Original:허베이 스피리트 유류오염사고 백서-피해보상편)*. Seoul: Author.

Voskuil, C.C.A. (1980). *Hague-Zagreb essays 3: carriage of goods by sea, maritime collisions, maritime oil pollution, commercial arbitration* (p.101). In WADE, J.A(Eds). Hague: T.M.C Asser Institute.

Conference Proceedings

Cho, D.O (2008). *The 2nd Seoul Intrenational Maritime Forum; Progress and Future agenda of assistance for Compensation regarding the Hebei Spirit Incident.* Seoul: Ministry of Land, Transport and Maritime Affairs.

Morandeira, P. (2008). *The 2nd Seoul Intrenational Maritime Forum; Past experience on compensation for oil spill damage and lessons learned: Prestige Incident*. Seoul: Ministry of Land, Transport and Maritime Affairs.

Pouplard, D. (2008). *The 2nd Seoul Intrenational Maritime Forum; Past experience on compensation for oil spill damage and lessons learned: Erika Incident*. Seoul: Ministry of Land, Transport and Maritime Affairs.

Lecture Handouts

Jacobsson, M. (2008, July). *The international regime on liability and compensation for tanker oil spills*. Unpublished lecture handout, World Maritime University, Malmo, Sweden

Laws and Conventions

International Convention on Civil Liability for Oil Pollution Damage 1969, IMO, (1969).

International Convention on Civil Liability for Oil Pollution Damage 1992, IMO, (1992).

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992, IMO, (1992).

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992, IMO, (2003).

IOPC Fund Executive Committee Papers

International Oil Pollution Compensation Fund. (2008, February 21). *Incidents Involving the 1992 Fund. Hebei Spirit. Note by the Director* (92FUND/EXC.40/9). London: Author.

International Oil Pollution Compensation Fund. (2008, February 22). *Incidents Involving the 1992 Fund. Hebei Spirit. Submitted by the Republic of Korea* (92FUND/EXC.40/9/1). London: Author.

International Oil Pollution Compensation Fund. (2008, February 26). *Incidents Involving the 1992 Fund. Hebei Spirit. Note by the Director* (92FUND/EXC.40/9.Add.1). London: Author.

International Oil Pollution Compensation Fund. (2008, May 21). *Incidents Involving the 1992 Fund. Hebei Spirit. Note by the Director* (92FUND/EXC.41/9). London: Author.

International Oil Pollution Compensation Fund. (2008, September 9). *Incidents Involving the 1992 Fund. Hebei Spirit. Note by the Director* (92FUND/EXC.42/11). London: Author.

International Oil Pollution Compensation Fund. (2008, September 24). *Incidents Involving the 1992 Fund. Hebei Spirit. Submitted by the Republic of Korea* (92FUND/EXC.42/11/1). London: Author.

International Oil Pollution Compensation Fund. (2008, September 9). *Incidents Involving the 1992 Fund. Hebei Spirit. Note by the Director* (92FUND/EXC.42/11). London: Author.

International Oil Pollution Compensation Fund. (2009, March 12). *Incidents Involving the 1992 Fund. Hebei Spirit. Note by the Director* (92FUND/EXC.44/7). London: Author.

International Oil Pollution Compensation Fund. (2009, March 9). *Incidents Involving the 1992 Fund. Hebei Spirit. Submitted by the Republic of Korea* (92FUND/EXC.44/7/1). London: Author.

International Oil Pollution Compensation Fund. (2009, May 28). *Incidents Involving the 1992 Fund. Hebei Spirit. Note by the Director* (92FUND/EXC.45/6). London: Author.

International Oil Pollution Compensation Fund. (2009, May 29). *Incidents Involving the 1992 Fund. Hebei Spirit. Submitted by the Republic of Korea* (92FUND/EXC.45/6/2). London: Author.

International Oil Pollution Compensation Fund. (2010, June 16). *Incidents Involving the IOPC Fund – 1992 Fund. Hebei Spirit. Note by the Director* (IOPC/JUN10/3/5). London: Author.

Electronic Sources

Governing Bodies of the IOPC Funds. Retrieved 23 June 2010 from http://www.iopcfund.org/govbodies.htm

NEW LIFE - JAN HUDIG 1970-1973. (12 January 2001). *INTERTANKO.* Retrieved 12 July 2010 from http://www.intertanko.com/templates/Page.aspx?id=1072

International Tanker Owners Pollution Federation Limited. (1 February 2008). *News & Events: The Environmental Impact of the Hebei Spirit Oil Spill, Taean, South Korea.* http://www.itopf.com/news-and-events/archive/2008.html

Office of Exxon Valdez Oil Spill (EVOS) Damage Assessment and Restoration. Retrieved 12 July 2010 from http://www.fakr.noaa.gov/oil/

OPA 90 - Limits of Liability Increased. (July 2009). *Steamship Mutual*. Retrieved 21 June 2010 from http://www.simsl.com/Publications/Articles/OPA90LimitInc0709.html

Ship-Source Oil Pollution Fund. (2009). *The Administrator's Annual Report 2008-2009*. Ottawa: Author. Retrieved 2 July 2010 from http://www.ssopfund.gc.ca/english/annualreports.asp

The Oil Spill Liability Trust Fund. Retrieved 24 June 2010 from http://www.uscg.mil/ccs/npfc/About_NPFC/osltf.asp

United Nations (2006). *Fifth Committee Approves Assessment Scale for Regular, Peacekeepling Budgets, Texts on Common System, Pension Fund, as it Concludes Session* (Document GA/AB/3787). Retreived 15 July 2010 from http://www.un.org/News/Press/docs/2006/gaab3787.doc.htm