



## **Oil Tankers & Pollution Laws**

Léonie J Archer

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### APPENDICES

## ABBREVIATIONS

CLC	Civil Liability Convention
COFR	Certificate of Financial Responsibility
COLREG	Register for Preventing Collisions at Sea
CRISTAL	Contract Regarding a Supplement to Tanker Liability for Oil Pollution
grt	Gross Registered Tonnage
ICS	International Chamber of Shipping
IMO	International Maritime Organization
LOOP	Louisiana Offshore Oil Port
LOSC	Law of the Sea Convention
MARPOL	International Convention for the Prevention of Pollution from Ships
MEPA	Marine Environment Protection Association
NOAA	National Oceanic and Atmospheric Administration
OPA	US Oil Pollution Act
OPRC	International Convention on Oil Pollution Preparedness, Response and Cooperation
OTA	Office of Technology Assessment
P & I	Protection and Indemnity
PIRO	Petroleum Industry Response Organization
PSA	Particularly Sensitive Area
SBT	Segregated Ballast Tank
SOLAS	International Convention for the Safety of Life at Sea
STCW	Standards of Training, Certification and Watchkeeping for Seafarers
TOVALOP	Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution
ULCC	Ultra Large Crude Carrier
VLCC	Very Large Crude Carrier
VTS	Vessel Traffic System

## 1. INTRODUCTION

This study concerns oil pollution and sea-going tanker movements in the wake of the US Oil Pollution Act of 1990. The purpose is to look at the passage and enactments of the OPA, many of whose provisions are only just entering into force now, and consider their effect on ship and cargo owners and movement of oil in US waters and mainland ports (the study only briefly considers offshore unloading and lightering). The study then considers and compares maritime legislation over the same period within the EC (now EU). It concludes with a brief survey – in the context of growing global environmentalism and the impetus of the OPA – of anti-pollution initiatives being pursued in the rest of the world.

When the US OPA was passed considerable fears were expressed by the tanker industry, traders and analysts that there would be severe disruption to US oil supply and the creation of a two-tier freight rate system in the tanker business. There was also the fear that the OPA would encourage the use of so-called ‘rust buckets’. It was also assumed that the American Act would most likely spark off similar legislation in Europe, particularly in the wake of the 1993 *Braer* accident in UK waters when there were increased cries for greater safety and for tightening up of shipping standards worldwide. The study examines those expectations and whether they occurred in reality. Overall the study considers (a) the effectiveness of the growing body of anti-pollution and spill prevention legislation, and (b) the effect of such legislation on the tanker industry.

The sources of information for the study are Platt’s *Oilgram News*, *Petroleum Intelligence Weekly*, *Petroleum Argus* and *Energy Compass* from 1989 to early 1995 to find the full story of the fears, expectations and realities of the OPA’s enactment. Additionally of course the near 100 pages of the Act itself have been perused, a particularly important task as some secondary reports have confused Federal and State law. During the time since the passing of the Act many US states have passed their own oil spill laws, all of which are more rigorous than the national OPA. For Europe, essential sources of information for Community legislation are

published communiqués from the Commission (Directives, Regulations, Opinions, Proposals and so forth) as well as the *Official Journal of the European Communities*. The international framework of law and convention derives from material of the International Maritime Organization (IMO). Sources for the rest of the world are the IMO and the information bulletins cited above for the USA.

## 2. THE US OIL POLLUTION ACT OF 1990

The OPA was passed in direct response to the *Exxon Valdez* spill of 11 million gallons in Prince William Sound. Oil spill legislation had been attempted for the previous 15 years, spurred on by the oil spills of the *Argo Merchant* in domestic waters and of the *Amoco Cadiz* abroad, but had failed. (Indeed, Federal legislation had been slowly evolving for 70 years, starting with the OPA of 1924.) The large, widely publicized Exxon spill and ever growing environmentalism combined to mark a turning point in Congressional thinking. According to the Alaskan Oil Spill Commission reporting at the start of 1990, 'A narrow economic view on tanker operations' put the *Valdez* on Bligh Reef, and complacency and the weakening of rules and regulations over a ten-year period contributed to the resulting environmental disaster. The Commission said that events leading to the grounding revealed a situation,

where the risk of disaster had increased steadily through the years of relatively incident free tanker trade. Success bred complacency; complacency bred neglect; neglect increased the risk – until the right combination of errors finally led to an accident of disastrous proportions. (*Oilgram News*, 16 January, 1990)

Such statements came in the context of earlier public commitments by the Bush administration to pursue harsh penalties against polluters. The *Exxon Valdez* marked a turning point in liability costs and Exxon was the first to face environmental crime charges and fines, and also charges under the Dangerous Cargo Act, the Migratory Bird Treaty Act, Refuse Act, Clean Water Act and the Ports and Waterways Safety Act. In terms just of clean-up costs Exxon spent around \$2 billion compared to \$85 million Amoco paid as a result of the 1978 *Amoco Cadiz* accident which spilled six and a half times more oil.

In the immediate aftermath of the disaster, calls came from various quarters for double hulls to become the domestic and international standard for oil tankers, and for the increased use of tugs and expansion of licensed piloting. Many US states began the process of tightening or introducing their own oil spill contingency legislation – though in 1990 already 17 of the 24 coastal states had legislation that imposed unlimited liability on tanker owners in the event of a

spill. The industry organization Marine Response Corps (formerly PIRO – Petroleum Industry Response Organization) began the business of establishing regional response centres. A study requested for Congress by the General Accounting Office immediately following the *Exxon Valdez* concluded that a unified and coordinated effort was needed to deal with future oil spills; Exxon had demonstrated a state of ‘national unpreparedness [in that there existed] no single designated leader or authority to ensure that preparations are adequate’ (Adequacy of Preparation and Response to Exxon Valdez Oil Spill GAO/RCED-90-44). According to the report priority was to be given to improved prevention measures. A substantial spill off the Californian coast by a tanker carrying Alaskan oil bolstered the cause of those supporting such initiatives and the newly enacted OPA. The Chair of the House Interior Water, Power Offshore Energy Resources subcommittee declared that,

the continued lobbying of the oil industry for a weaker oil spill liability bill is totally inconsistent with the public interest ... We cannot allow the oil shippers to cripple this legislation. (*Oilgram News*, 12 February, 1990)

The then governor of California went further and said,

as long as California remains thoroughly dependent on imported oil ... we are going to run the risk of having oil tanker accidents ... The fundamental lesson of this most recent oil spill is that the best thing we can do for California’s environment and economy is to strike out hard against our dependency on imported oil and produce more Californian energy of all types right here at home (*Oilgram News*, 16 February, 1990)

While promoting and having effective spill response teams, centres and technology were clearly deemed important, the Office of Technology Assessment, one year after the Exxon spill, urged prevention as a priority policy, reminding the nation that the volume of oil recovered from a spill is always a small percentage and warning them:

oil spills will occur repeatedly, and catastrophic ones will never be cleaned up satisfactorily. Therefore prevention of major spills must be a high priority. (OTA. *Coping with an Oil Sea. An Analysis of Oil Spill Response Technologies*, 1990)

The Act itself, the 1990 OPA, which was signed into law on 18 August, contains a great

many provisions, new rulings and amendments to earlier legislation (see Appendix 1 for Summary of the Act). The main areas covered are oil pollution liability and compensation, international pollution prevention and removal, various measures for the prevention of domestic oil spills and the penalties incurred for such spills outside of the OPA, and particular provisions for safety in Prince William Sound.

The three enactments that particularly concerned oil companies and the tanker industry (and continue to concern them) are rulings about the future construction of tankers, new definitions of financial responsibility in the event of a spill, and assessment of costs for damage to natural resources. The first states that by the year 2015 all oil vessels operating in waters under US jurisdiction must be double hulled. A detailed schedule for the phase-out of single-hulled vessels is laid out according to the age of the tanker, with single-hulled tankers of an advanced age barred from 1995. Single-hulled vessels would only be allowed to lighter 60 miles or more offshore and use the LOOP (Louisiana Offshore Oil Port) till 2015. This provision caused consternation to the industry on two counts: first, there is much debate as to whether double hulls are in fact safer; in a serious accident at speed a double-hull ship may lose more oil. Tanker organizations proposed a different design – the mid-deck design – to Congress and the US Coast Guard as an alternative, but this was turned down and the OPA's requirement stays in place. Second, the costs of meeting the requirement are large, adding as much as 15 per cent to the price tag of a new ship and costing up to \$10 million to retrofit an existing VLCC. (The 1990 cost for a VLCC built in Japan was \$85 million, and for a double-hulled carrier \$100 million.) In 1990 only about 600 of the world's 3000 tankers had even partial double bottoms, and there were no fully double-hulled VLCCs or ULCCs. Indeed, 40 per cent of the US flag tanker fleet will have to be retired or retrofitted by the year 2000 if the demands of the legislation are to be met.

The second ruling of great concern was – and is – the new definitions of financial responsibility in the event of a spill, by which the USA broke with international compensation schemes (IMO Civil Liability Convention and Fund Convention; industry TOVALOP and

CRISTAL, see below). The Act stipulates that basic liability for tankers less than 3000 gross registered tonnage (grt) extends to \$1200 per grt or \$2 million total whichever is the greater, or in the case of a vessel greater than 3000 gross registered tonnage, \$1200 per grt or \$10 million. This compares with the pre-1990 damage limitations of only \$150 per ton. (The concept of strict liability for oil pollution damages and the limit of \$150 grt was introduced in the Water Quality Improvement Act of 1970, as amended by the Federal Water Pollution Control Act of 1972.) It was feared that such an increase would drive smaller operators away from the US oil trade, although it was the case that even this greatly increased liability could still be covered by insurance. Oil companies and other ship owners already upped their coverage to between \$500 million and \$1.5 billion following the \$2 billion *Exxon Valdez* spill – a level that more than meets the basic liability requirements of the Act.

The clause of real concern in the liabilities section of the Act is that which states that the cap on liability disappears if a spill results from gross negligence, violation of certain regulations, or misconduct by an employee. This open-ended liability – compounded by the increasingly common state legislation for unlimited liability which takes precedence over the Federal law (see below) – presented tanker owners and operators with what seemed to be uninsurable risks. According to the assessment of the OPA by Petroleum Industry Research Foundation Inc. (PIRINC),\* this exception clause effectively did away with the limitations provision as it came into effect with the violation of any ‘applicable Federal safety, construction or operating regulation’:

The Federal regulations on safety and operation are very specific, and in almost every instance where a discharge occurs it is caused by an act which would be considered a violation of such a regulation. Therefore, in effect, this exception nullifies the limitation provision because a spill will almost always result from the violation of such a standard or regulation. (p.25)

Defences to liability could be claimed if it was proved that a discharge was caused solely by an act of God, act of war, or act of omission of an unrelated third party. However, the

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\* ‘Transporting US Oil Imports: The Impact of Oil Spill Legislation on the Tanker Market’, prepared for the US Department of Energy, June 1992.

responsible party must prove that it exercised due care with respect to the oil and took precautions against foreseeable acts of third parties. Moreover, the defences do not apply if a responsible party failed to report the incident or failed to cooperate with a Federal official or comply with a Federal order regarding the discharge. PIRINC wrote:

These severe limitations on traditional defenses ... significantly changed risk assessment under OPA ... Unlimited liability isn't a new concept. What's new is the seeming ease with which it may be imposed. (*ibid*)

The OPA also expressly provided that the various states were free to enact and enforce their own pollution prevention and liability laws and to impose additional requirements upon responsible parties. All coastal states had their own laws, and several amended them with the passage of OPA to widen the scope of liability, both in terms of the parties concerned (vessel owners and operators, cargo owners, and charterers) and defences allowed. Financial responsibility amounts varied from state to state, and while Federal law might expressly limit a guarantor's liability that limitation might not apply under state law. The OPA did not specify how claims valid under an array of different Federal and state laws should be resolved. Once again, PIRINC's assessment of the situation in 1992 was that:

Overall, the rights of the states to legislate freely in the area of oil pollution prevention and liability has placed vessel owners and operators not only in the unnecessarily onerous position of having to assure compliance with Federal and state regulations that overlap, but of having to comply with different procedures and face different liabilities in each jurisdiction. (p.32)

The absence of limitation in the OPA was not just with respect to the immediate compensatory sum, but also was seen to leave open the legal door into the indefinite future for late developing claims for compensation so the account might never be closed.

The fear and expectation was that the law would drive away the principal and responsible operators, leaving the seas wide open for one-tanker operators whose liability would be limited to the assets they owned. Intertanko, the independent tanker owners' organization, claimed that the legislation would encourage the use of rust buckets and thus shoot itself in the foot. In counter-argument to this, some analysts saw the demise of the small operator and the

concentration of tanker movements in US waters in the hands of a few large companies. On ground there was similar divergence of approaches, with oil companies adopting quite different strategies. Shell suspended its shipments of oil to mainland USA (a decision that did not affect Shell's US subsidiary Shell Oil or the large amounts of oil handled through the LOOP) as did Elf (though this only affected one ship), while Conoco made public its plans to reduce its liability by building an expanded, modernized fleet of tankers with double hulls. Arco and Statoil similarly planned to improve their fleets, with the former committing itself to carrying all its own oil in double-hulled tankers each carrying \$1.5 billion worth of insurance. At the same time the Hong Kong World Wide Shipping, one of the largest independent tanker operators, announced its intention to consider halting shipments to the USA, whilst the Danish shipping company Maersk claimed it was facing 'unacceptable and unbearable risks' and pulled its fleet of dirty tankers, as did the Norwegian company Knock Tankers. In the light of the Act and of such actions and perhaps especially of the media hype attached to the quite minor decisions of Shell and Elf, the overarching question in 1990 was how would the USA be supplied?

The third enactment of the OPA which caused – and continues to cause – heated debate and disagreement was that dealing with the measurement of damages, i.e. the cost of restoring, rehabilitating, replacing or acquiring the equivalent of the damaged natural resources plus the cost of the diminution in value of such natural resources pending restoration. As with the liability clauses, this too departed from or was an extension of the international compensation regimes (CLC, Fund, TOVALOP, CRISTAL). Section 1006(e) states that

The President, acting through the Under Secretary of Commerce for Oceans and Atmosphere and in consultation with the Administrator of the Environmental Protection Agency, the Director of the United States Fish and Wildlife Service and the heads of other affected agencies, not later than 2 years after the date of the enactment of this Act, shall promulgate regulations for the assessment of natural resource damages ... resulting from a discharge of oil ...

In fact it was not until 1994 that a proposed rule establishing procedures to assess damages and provide a process for determining compensation to the public was released by the National Oceanic and Atmospheric Administration (a Final Rule is due in 1995). The NOAA

notes that the assessment process outlined in the proposal is optional but that under the OPA such assessments will 'have a rebuttable presumption of accuracy in any administrative or judicial proceedings'.

In the proposed rule, the total diminution in value of resources and/or services affected by a spill is considered compensable, including losses associated with 'direct' use and 'passive' use values. Direct use includes such things as fishing, hunting, swimming and bird watching; passive use includes the value of knowing the resource is available for use, now and in future generations, and the value derived from protecting the natural resource for its own sake. Assessment of the latter has proved particularly problematic because the NOAA relied on the controversial methodology of contingent valuation – a survey-based approach that relies on a questionnaire for directly eliciting information about the value of the good or service in question. One oil industry source said of the proposed rule, 'We are amazed that Federal regulators would propose to use a method which no definitive study has held up as reliable.'

Of those studies, the main concerns of economists are that small changes in questionnaire design can lead to ludicrous ranges of damage estimates; because survey respondents are not required to pay anything, results are usually inflated; respondents do not distinguish between unique resources with irreversible damage and generic resources with limited damage; respondents may make a political statement rather than an economic one; and finally they cannot disaggregate the value of one resource from the value of a package of resources (PIRINC, pp. 50–52).

According to one industry analyst with Intertanko, the poll method suggests 'per dead seagull' monetary figures and points towards 'totally unsustainable compensation demands in cases of a substantial oil spill incident'. He concludes 'This Natural Resources Damage Assessment exercise threatens to be one of the most unsustainable parts of the OPA' (Philip Rankin, *Petroleum Review*, January 1995).

The NOAA has acknowledged there is a problem, but points out that there is no other method currently available. Discussion of how to value the environment and its use continues

in the context of the OPA as, of course, in many other circles as well.

Another fundamental difficulty that Intertanko's members have with the US OPA is that the Act placed the entire compensatory burden on to the tanker owner, exempting the cargo owner, charterer or oil importer from any direct liability. This again is a departure from international norms. Intertanko's view is that the charterer, the cargo buyer and the importer in the USA are partners in a common adventure and should therefore share liability. To quote Philip Rankin again,

From the potential pollution victim's viewpoint, it is illogical too that what is generally the fattest and most accessible wallet – the US based oil importer – is not in fact accessed under the Federal law to make compensation.

Rankin is of the opinion that this regime not only potentially jeopardizes justified compensation claims and lessens the momentum for safer ship operations, it also undermines the structure of international oil shipping. His overall judgement of the OPA is that it is misconceived and represents an attitude of criminalizing the tanker industry. As late as 1995 he argues that the USA is endangering the world tanker industry and endangering its own economy and commercial strength. We shall return to these matters shortly.

Following the OPA's passage into law in 1990, the implementation of its provisions has devolved mainly to the US Coast Guard. One of their principal and most controversial tasks is to secure from each vessel intending to operate in US waters in 1994 and onwards an oil spill response plan and proof of insurance to cover the new financial responsibilities. On receipt of these the Coast Guard issues a Certificate of Financial Responsibility (COFR) without which vessels cannot enter US waters or dock at US ports. Before the OPA, for a VLCC operating in US waters evidence of financial responsibility amounting to around \$15 million was required; under the OPA, a VLCC would require evidence of financial responsibility of around \$120 million, or \$250 million for the largest tankers. As mentioned, although high, such figures were within the range of cover offered by the Clubs.

Nevertheless, the need to have such a certificate threw into sharp relief all the industry's fears about insurability under the OPA. A standard response was to do nothing other than lobby

for either a revision of the liability ruling or an extension to the Coast Guard's deadline for acquisition of the certificates. Just a few months after the OPA's passage the Protection and Indemnity (P & I) Clubs which insured 90 per cent of the world's fleet threatened to withdraw from insurance schemes as a way of putting pressure on the USA to come more into line with international liability limits. The Clubs refused to comply with the new regulations which they thought required them to provide guarantees that would expose them to direct action from claimants in the event of an oil spill and subject them to unlimited liability. (The Clubs had acquiesced to direct action in the past because liability limits were very much lower than under the OPA, potential claimants were clearly defined, and traditional policy defences available. Now there were strict limits on policy defences imposed by the OPA.)

The Coast Guard argued that the Clubs had misunderstood and in fact under the OPA the guarantor is legally liable only for the amount of insurance coverage. Section 1016 of the OPA restated the position of last pollution laws, in which the guarantors' liability can be limited to the agreed amount, this limitation being a clear defence, and the Coast Guard clearly went on public record several times emphasizing that under no circumstances can a guarantor be subject to unlimited liability. The P & I Clubs still balked, however, arguing that whatever the principle might be a great deal of time and money could be lost in making a righteous defence against the 'litigious zeal of aggrieved Americans who can always find an ambulance-chasing lawyer willing to argue the point', as Stewart Wade wrote in *Fairplay* in August 1994. Moreover, as Wade continued, the Clubs' possible exposure under Federal law was only half the argument:

One of the greatest weaknesses of OPA is that it did not attempt to transcend state law. An owner which spills faces the nightmare of both Federal and state liabilities, with the state laws often being far more onerous than the OPA. And it is here that the coast guard's repeated protestations fall down. For the coast guard cannot speak for the states. (*op. cit.*, pp.38-9)

The P & I Clubs continued their opposition through to 1994 and in consequence oil and tanker industry heads issued warnings of profound impacts on the US economy as well as global commerce. The stalemate and inactivity continued virtually to the eleventh hour. The first

company to win a certificate from the Coast Guard was Mobil, just months before the final deadline. It got its certificate by setting up a new subsidiary, the Marine Guaranty Corporation, to act as financial guarantor of its 49-ship fleet. Under Coast Guard rules this is one of five approved ways of providing evidence of financial responsibility (though one limited to the large financially sound few; one mid-sized oil company had a similar proposal rejected by the Coast Guard). The others are self-insurance, surety bond (both also of limited appeal and restricted to owners with reputations as impressive as their balance sheets) insurance guarantee, or an approved mechanism such as a specialized letter of credit. By the middle of November 1994, just one month away from the deadline, only 110 tankers had been certified, no way near the figure needed to meet US import needs. However, in December the P & I Clubs finally approved a scheme whereby they would continue to underwrite coverage for pollution coverage, but would not be guarantor; should they refuse to pay for any liability for any reason, a guarantor in the form of another insurance company must step up to fill the breach. Shoreline and First Line were the principal companies to fulfil this role, with the latter providing cover of up to \$375 million per vessel if the owner's P & I club disputes a claim and the former offering up to \$395 million. By the December deadline some 500 vessels had been awarded their Certificates of Financial Responsibility, thus allaying fears of supply disruption. That figure more than doubled in January 1995, leaving US import needs well covered. Most key shipping majors such as Saudi Vela and Greek owned Ceres Hellenic had secured their certificates and, according to the press, big importers such as Chevron and Exxon, which had seen no import disruptions, considered COFRs to be a non-issue.

By the end of 1994 other fears or expectations had also been allayed or proved wrong. The view that the OPA would encourage the use of rust buckets and drive away more responsible tanker owners and operators such as the major oil companies did not become a reality. The oil companies remain key players and as just mentioned Mobil was the first to get its COFR. All oil majors have stringent inspection programmes for ships that may be chartered. The vast majority of independent owners also appear committed to the US trade, with the only

independent companies to withdraw entirely from US trade being either very small or having only a small interest in US oil trades relative to their other activities. The report for the Energy Department by PIRINC in 1992 stated that the quality of tonnage docking at US ports was much improved, and there were fewer major tanker spills in US waters in 1991 than in any year since 1978, mainly thanks to the tighter controls on tanker operations. Improving safety was also reflected in the way in which ship owners began to emphasize their efficient and safe operations in market to charterers, displaying what the Report calls a 'novel approach in the shipping industry'. Reorganization by ship owners of their companies to create separate corporations – either for each ship or for their US operations exclusively – in order to try and protect assets that have nothing to do with US oil trades from possible liability claims, did not result in any lowering of standards. As PIRINC writes,

The increasingly close links between markets participants – ship owners, cargo owners, charterers, insurance companies and their professional representatives and organisations – that are now essential for trade to the USA are a far stronger force for the maintenance of higher standards than the reduced exposure of a ship owner's global assets is for lowering them. (pp. 70–71)

PIRINC concluded that while there will always be some prepared to run the gauntlet with bad ships and risk assets, overall,

The question of what type of tonnage will be used to carry oil imports in the future appears to be largely settled: the majority of vehicles will be well maintained, operating to very high standards, owned either by an oil company or, more likely, an independent owner with a solid reputation and a close relationship with the charterer. (p.67)

Another expectation was that a two-tiered market in tanker rates would emerge, with new or retrofitted vessels commanding higher rates than older ones in consequence of their ability to more easily meet new spill rules. This did not happen, and many owners found spot market rates failing to cover their operating costs. It was also feared that an insignificant number of tankers would get their Certificates of Financial Responsibility, resulting in operational inflexibilities and hence the likelihood of increased freight rates. This too did not happen as more than enough vessels for the USA's import needs were certified. There was some boost in freight rates,

however, at the very end of December 1994 with certified tankers charging a slightly higher rate than before the certification deadline.

The lack of disruption to oil tanker movement was also the case for the tougher and varied state laws which can take precedence over the Federal OPA. Several states whose pollution laws were extreme have subsequently modified them or offered more practical interpretation of key statutes. The only states that are regarded as extremely difficult to deal with are Alaska and Maine. According to PIRINC, Maine is the sole state for which the rust bucket argument might be valid as a large number of shipowners have withdrawn from business there.

Acceptance of the Federal and state legislation as opposed to withdrawal from US trade was also seen in the dying opposition to double-hulled vessels. Despite the additional costs, over half the orders in the first 18 months of the OPA's existence have been for double-hulled ships, a number coming from owners who had been the most vociferous opponents of the OPA's design requirement.

Overall, none of the doom-mongery regarding disruption to US oil supplies and tanker traffic actually materialized. The USA's economic and commercial strength has not been weakened and neither has the structure of world shipping. The one thing that did become a reality, not surprisingly, following the enactment of the OPA was the increased costs facing tanker owners. These costs came from huge rises in insurance premiums, the increased cost of fleet maintenance given new stipulations for insurance inspection and coverage, and the increased costs for new tanker construction and old tanker retrofitting in the light of the OPA's requirements. Industry estimates put the cost of implementing the OPA as high as \$3.4 billion per annum until 2015.

A test case for the new liability laws of the OPA has yet to happen, but as one analyst wrote at the start of 1995, the fear is considerable:

When one considers the atmosphere in a US court following an oil spill it must certainly be expected that many will seek to define the grossness of 'gross negligence' in terms of the grossness of the consequences – minor negligence with gross consequences becomes gross negligence. (Philip Rankin, *Petroleum Review*, January 1995)

### 3. LEGISLATION IN EUROPE

In Europe, the incident of the *Exxon Valdez* and the drafting of the OPA, although surrounded by much publicity, had little immediate concrete effect. The fairly conservative Community measures introduced in the wake of the much earlier accidents of the *Torrey Canyon*, *Amoco Cadiz* and *Betelgeuse* remained in force, such as the 1979 Directive laying down minimum requirements for tankers entering or leaving Community ports. These were seen as working alongside or within the international regulatory framework as laid down by the International Maritime Organization (IMO), which included an agreement signed by 14 states, including Community members, concerning Port State Control (*Memorandum of Understanding on Port State Control* dated 26 January, 1982). One present-day commentator on European law considers that,

the modest scale of community action ... [following the Amoco Cadiz] ... reflects the doubts of the UK and other states about the need for a Community role in this field. The view had been taken that national and joint contingency plans together with action in wider regional and international organisations provided the better way forward without duplication at Community level. (*Manual of Environmental Policy*, 4.12-2)

The only response of note to the Alaskan disaster was the Resolution by the European Parliament of 13 April, 1989 addressing the huge oil spillage, which was sent to the Council, the Commission, all member-states, and the government of the USA (see Appendix 2 for summary). It called for a review of crew training, the use of safer sea routes and double-hulled carriers, the introduction of 'appropriate' penal sanctions against polluters, and the enforcement of the conventions of the IMO.

This last point, which referred particularly to MARPOL 73/78 (the IMO's 1973 International Convention for the Prevention of Pollution from Ships, amended 1978 and entering into force 1983) was significant in that it set the scene for subsequent Community action and established a divergence between US and European policy in the area of marine pollution

prevention: the one would work outside of the international framework, the other within it. As an Opinion of the European Economic and Social Committee stated later the same year, the question was

how, as a matter of principle, the Community should proceed given that work on the protection of the marine environment has been carried out at international level and there is widespread adoption of international standards. The Community has two alternatives: it could either introduce different standards and requirements of its own, or it could work towards effective implementation of international standards.

The Opinion continued:

The problem with the first alternative is that other countries or regional groups of countries might be tempted to follow suit, which would result in different rules being applied in different geographic areas, causing unnecessary confusion to shipping ... The Committee therefore recommends that the Community follow the second course ... In the final analysis, pollution is an international, not a Community, problem. What matters for the Community, then, is strict enforcement of international standards by its Member States. (89/C 329/08, 3.2)

This principle, which was directly contrary to the US stance and its promulgation of the 1990 OPA, was to be reiterated and emphasized in all subsequent Community documents. Compliance with and effective implementation of international conventions, whose standards were considered more than adequate for the intended purpose, were to be the central tenets of European maritime policy, as the Debates of the European Parliament recorded in March 1989:

in order to maintain safety at sea – all that is required is compliance with the international conventions on the matter, such as the conventions on the safety of human life at sea and on the transport and handling of dangerous goods, and the conventions of the International Labour Organisation and the International Maritime Organisation. (Debates of the European Parliament, 17.3.89. No. 2-376/283)

In 1990 the IMO strengthened its policy with respect to marine pollution with the publication of a new treaty entitled the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC Convention, see summary in Appendix 3). This was signed into being by 90 member countries of the IMO, to come into force 12 months after ratification

by 15 nations. (The fifteenth ratification occurred in May 1994.) The convention had two main thrusts: oil pollution emergency plans and international cooperation. All ships are required to carry detailed plans for dealing with pollution and must report any discharge of oil without delay. Whilst in port they can be subject to inspection 'in accordance with the practices provided for in existing international agreements or national legislation'. Parties to the Convention agree to cooperate in the event of a spill and provide advisory services, technical support and equipment at the request of other parties. Integrated R & D is encouraged, as is the development of standards for compatible oil combating techniques and equipment. Cooperation is also called for in the area of crew training, and assistance is proposed for developing countries.

The IMO, as followed by the EU, clearly emphasizes the international character of pollution prevention plans and displays the same conservatism with respect to earlier maritime instruments, placing heavy reliance on the content and full implementation of SOLAS 1974 (International Convention for the Safety of Life at Sea) and MARPOL 73/78 – all of which is very different to the approach adopted by the USA who, despite being a signatory to the OPRC Convention and indeed its main initiator, adopted its 'go-it-alone' and break away OPA the same year. Also unlike the OPA were the pollution liability and compensation provisions of the OPRC. The Convention harks back to the 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund), and the need to implement them and their 1984 Protocols as quickly as possible. The financial responsibilities laid down in these instruments, to which we shall return, were far less onerous than those newly stipulated in the OPA.

In 1991, still explicitly in the wake of the *Exxon Valdez* spill, all member nations of the European Community as well as the Soviet Union, Sweden, Norway and Finland signed new agreements to revise the 1982 Memorandum of Agreement on the Inspection of Ships while in Ports. This required more rigorous technical and safety inspections of ships calling at European ports, together with improved training of crews and disaster response teams.

With the exception of these initiatives, which, in the main, were not legally binding, little of significance regarding pollution prevention and tanker movements in European waters occurred in the first years of the decade. As the EC Transport Commissioner of the time said:

There has been a growing volume of dangerous goods carried in the Community, but their transport has not been viewed as a top EC priority because there are existing national and international rules. (*International Environment Reporter*, 8 May, 1991)

The European *Exxon Valdez*, as it were, or turning point was the sinking of the *Haven* off the Italian Riviera in April 1991. This event sparked off calls from various quarters for harsher European legislation viz tanker safety. The following year the European Parliament, in Resolution A3-0144/92 (see summary in Appendix 4), called on the Commission to institute a comprehensive aerial surveillance system for the coasts of the Community; to prohibit tanker passage through particularly sensitive and dangerous areas; to study the possibility of double hulls; and to establish a limit for the number of accidental spills which, if exceeded, would put the company responsible for them out of the oil transporting business. Again ratification and implementation of the MARPOL Convention by member-states were called for. Some countries unilaterally introduced stringent anti-pollution measures – such as Spain requiring tankers to be accompanied by tugs on emergency stand-by. Costs of dealing with the *Haven* spill raised doubts as to the efficacy of Europe's compensation requirements, as laid out in 1969 and 1971 in the two conventions of the IMO, and there was also debate about cargo owners paying damages for which there was no precedent in Europe but which was legislated for in various US states. Intertanko promoted its mid-deck tanker design at European conferences whilst the IMO followed the lead set by the US OPA and drafted legislation mandating double hulls for all new vessels built in member countries. The sinking of the *Haven* also prompted the International Oil Pollution Compensation Fund (see further below) to double its cover. The IMO's response to the *Haven* disaster resulted in new regulations being agreed in 1992 which stipulated that as of July 1993 all new tankers must have either double hulls or some equal design like the mid-deck concept. The rulings combine tougher inspections and the fitting of double hulls or the

equivalent when tankers reach 30 years of age, or 25 in the case of some vessel categories. About 90 per cent of the world's fleet is affected by the decision. Half of all tankers and 80 per cent of VLCCs will reach the IMO's 25/30 age limit by 2001. The IMO also set up a working group to discuss the role of the human element in maritime casualties and the Committee considered establishing mandatory VTS (vessel traffic systems) in certain areas.

The grounding of the *Aegean Sea* off the Spanish coast in December 1992 and the disaster of the *Braer* off the Shetlands just weeks later dramatically fuelled the argument for improved tanker safety and appropriate spill response facilities. The disasters focused attention on the potential problem of aging vessels, and some European charterers began to adopt maximum age limits. A memo by BP at this time disclosed that one-third of tankers offered for charter to the company in recent years had been blacklisted. (While the memo pointed to old age and poor maintenance, it also noted that some old ships were well maintained and posed less of a risk than newer vessels. A leading ship broker proposed that major oil companies should publish a 'white list' of vessels that have been inspected and approved for charter, so forcing the bottom tier of substandard tonnage off the market.) The disasters threatened to derail the process by which the IMO was seeking to establish limits to ship owners' oil spill liability; if implemented, those limits, whilst actually higher than existing European legislation, could prevent more draconian moves later which might be sought in the wake of further accidents like the *Aegean Sea*.

The *Braer* incident led to renewed controversy over tanker routes and over the free access to European ports enjoyed by tankers of all flags and all nationalities. Particular attention focused on (a) the 'flag of convenience' system which allows ship owners to flag their vessels in countries with poor standards of operation and inspection, and (b) the quality of the many international classification societies, some of which, according to one spokesman, consisted of little more than a man, a dog and a fax machine. There were calls for more rigorous international policing mechanisms. In Holland politicians called for tankers failing to meet IMO safety rules to be arrested in port. France and Italy signed an agreement barring tanker traffic in the ecologically sensitive Straits of Bonifacio, and Germany considered similar measures to protect

its coast. The UK launched an inquiry into the safety of merchant shipping off UK shores, the Donaldson Report, and called on tankers operating in British waters to observe a voluntary code of new routing and operational guidelines. The EC Parliament recommended a ban on tankers more than 15 years old, inspection of ships in EC ports, obligatory pilot guidance, the introduction of double hulls, and obligatory safety training for crews (Resolutions B3-1681 and B3-0047; see details in Appendices 5 & 6).

Within weeks of the *Braer* incident the European Commission published 'A Common Policy on Safe Seas' (Com (93) 66 Final), an extensive document touching on all aspects of Community thinking *vis à vis* safer shipping and intended as a basis for subsequent legislation. The document is divided into two parts: Part I lays out the Necessity and Main Features of a Common Policy on Safe Seas for the Community, and Part II consists of the Action Programme. It states its purpose at the outset as,

the enhancement of safety and prevention of pollution at sea through the elimination of substandard operators, vessels and crews from Community waters, irrespective of the flag of the ship.

It proposes that individual action by member-states on the basis of international standards has been uneven and hence inadequate in the past, and is likely to remain so in the future unless the binding force of the EC is brought into play. By way of justification for its intervention in the realm of national and international law, the Commission argued that:

The Community, thanks to its political and legislative machinery, is uniquely placed both to ensure that Member States apply standards to ships flying their flags in a more uniform and rigorous manner and to enforce, with common methods and rigor, respect of the same standards on vessels of all flags when operating in EC waters. (Executive Summary para 3)

The Policy sets out to establish convergent implementation of existing international laws, to encourage more effective Port State Control (see further below), to develop harmonized navigational aids, and to support and strengthen international organizations. For the first time it questions the comprehensiveness of the existing international conventions, stating in context of the enormous variations in safety performances of flag states that in addition to inadequate

implementation and insufficient enforcement there existed the possibility of widely different interpretations in the Codes and 'gaps and weaknesses' in the Conventions.

Together these account for the main differences in the safety and environmental performance of the world fleets, including the fleets of the EC Member States.  
(2.13)

Nevertheless, the Commission still saw Europe as operating essentially within the IMO framework, though with the proviso that more rigorous application of international rules within the Community must have as its corollary action within the IMO to ensure similar developments elsewhere in the world where Community vessels operate in competition with third country vessels. In view of the Community's changing role in respect to developing and enforcing (in part) a global common transport policy ('By requiring all vessels entering Community ports to comply with international standards, the Community will assist powerfully the universal enforcement of those standards' – Opinion 94/c 34/16 para 3.4.3., 24 November, 1993), the document calls for a reassessment of its status in the IMO, and raises the possibility of the Community seeking membership of the Organization, a move which caused concern to organizations such as the International Chamber of Shipping (ICS) (see further below).

Specific initiatives of 'A Common Policy on Safe Seas', often presented as working in tandem with IMO initiatives, include the setting of standards, with adequate training, for flag states and following on from that the establishment also of minimum standards for the activities of classification societies to whom the safety work of the flag state is usually delegated and whose numbers have proliferated in the last two decades; improved training for ship crews, including the requirement for a common language for on-board operations; frequency of surveys and ship inspections, with common criteria for 'what to inspect, how to inspect, and how to decide' (this last initiative gives a list of vessels posing a particular threat to the environment and counts 'tankers nearing the date of phasing out ... under the US Oil Pollution Act of 1990 ... [which], being unable to operate in USA waters, are bound to concentrate in other areas, including those of the MOU [European Memorandum of Understanding on Port State Control] countries.');

technologies; a reduction in port dues levied on the more environmentally friendly SBT tankers; and, finally, the suggestion to amend international law and allow coastal states to apply mandatory reporting obligations to ships in transit in European and/or international waters not bound for a Community port. The Commission states its intention to tackle issues of port inspection and reporting, minimum training, and common standards for classification standards in official Proposals to be adopted in 1993, and further matters of port state control, training, traffic surveillance and ratification of international resolutions in the course of 1995–6. Included under the heading ‘Other Actions’ with unspecified dates are VTS development and studies on the feasibility of a civil liability system for damage to the environment. Interestingly, an Opinion of the European Economic and Social Committee in November 1993 on a Common Policy on Safe Seas states that:

It has been maintained that banning ships over a certain age would enhance safety and effectively safeguard the environment. However, age itself is not an efficient criterion of the quality of a vessel if it is built, operated and maintained in accordance with international standards ... Evidence from recent major accidents corroborates the view ... that double hulls are not a panacea. (94/c 34/16)

Central to the Policy’s stated purpose is the intensification of Port State Control within the already existing framework of the European Memorandum of Understanding. The same Opinion of the Economic and Social Committee, para 5.1.1., states:

The 1982 European Memorandum of Understanding (MOU) provides a well-tested and efficient procedure and, being a full member, the Commission has the opportunity to introduce its proposals and achieve its goals. The MOU has the added advantage of having a wider membership than the Community (Norway, Sweden, Finland, Poland) and close links with regimes throughout the world (Japan, Canada, Australia, Russia, the Latin America area, the Asia Pacific area). The Committee stresses the role of European cooperation within the MOU for the application of IMO standards.

Although the most important and far-reaching document to come out of the Commission on maritime safety issues, ‘A Common Policy on Safe Seas’ claims neither to be ‘exhaustive nor definitive’. It explicitly recognizes that over time new issues may emerge and priorities change, and all its Programme of initiatives can do is represent those measures which are at present ripe

for action at Community level. In this respect and in its lack of legislative force, the European Community response to the *Haven*, *Aegean Sea* and *Braer* accidents was very different from the American reaction to the *Exxon Valdez*.

Initiatives within the Programme were intended to be translated into Proposals which, after invited comment from various Community bodies, would be translated, eventually, into Directives or Regulations, the detailed implementation of which would be the responsibility of individual member-states. (A Directive is binding as to certain ends to be achieved, for example, that certain standards be met by certain dates, while leaving the member-state the choice of methods for doing so; a Regulation is directly applicable law and more rarely used.) To discover whether policy goals are being achieved, therefore, it is necessary to examine how they are being implemented in each country. Such examination is an immense task, as is, in consequence, assessment of the effectiveness of Community initiatives.

Reaction to 'A Common Policy on Safe Seas' was mixed. For a number of countries, notably the UK, the proposals posed a threat to the almost sacrosanct freedom and right of passage of vessels enshrined in custom and the Law of the Sea Convention. Shipowners' Associations and the International Chamber of Shipping (ICS), misunderstanding the nature of the Community's approach, expressed concern about the regional – instead of international – character of the document and claimed that it undermined the global authority of the IMO and posed a threat to the harmonization of rules worldwide. The Secretary General of the ICS – which speaks for the national shipowners' associations of the world's biggest maritime nations – referred scathingly to 'ambitious Eurocrats' and said his members did not want to cope with 'marginally different regimes which make it a matter of uncertainty as to whether they are in compliance with the law of country A, B or C' (*Financial Times*, 23 June, 1993). The UK Department of Transport voiced scepticism about one of the major planks of the Common Policy, Port State Control, declaring that 'the main risk of a spill is of an accident and the inspection will not reduce risks of accidents' (*Energy and Environment*, no. 49, January 1993, p.17). The UK also objected to unilateral regional action on the grounds that it would in fact encourage

convenience flagging and retaliatory action by other nations/regions.

1993 saw the passage of Directive 93/75 on the Minimum Requirements for Vessels Bound for or Leaving Community Ports and Carrying Dangerous or Polluting Goods (which requires vessels to report their contents, destination and route to European ports of call on departure from the loading port) and the submission of official Proposals on minimum levels of training, SBT tankers, and an extension to ships in transit of Directive 93/75. The same year the IMO established a sub-committee on Flag State implementation to issue guidelines for the enforcement of safety standards by classification societies and authorized work to begin on revising the two main annexes of the MARPOL Convention, dealing with oil and chemicals. Regulation 26 of Annexe 1 of MARPOL required all new ships delivered after April 1993 to be provided with a Shipboard Oil Pollution Emergency Plan (additional to and less complex than the Vessel Response Plan required by the OPA).

1994 saw the passage of Directive 94/57 on Common Rules and Standards for Ship Inspection and Survey Organizations and for the Relevant Activities of Marine Administrations. This establishes measures, very similar to those developed by the IMO already, to be followed by

Member States and organisations [classification societies] concerned with the inspection, survey and certification of ships for compliance with international conventions on safety at sea and prevention of marine pollution. (Article 1)

It provides a procedure whereby member-states may be obliged to withdraw recognition from an organization that does not fulfil the stated criteria for standards and inspection. Compliance with this Directive is laid down for January 1996. Directive 94/58 on the Minimum Level of Training of Seafarers was also adopted in 1994. This applied only to vessels flagged by member-states, and based itself on the IMO 1978 STCW Convention (Standards of Training, Certification and Watchkeeping for Seafarers, as amended in 1991). Implementation of the requirements of this Directive must be in force by 31 December, 1995. A so-called Eurorep system was also proposed, i.e. a proposal for a Council Directive concerning the setting up of a European vessel reporting system in the maritime zones of Community member-states.

Interestingly, the proposed system was to have application beyond immediate Port State Control:

The purpose of the Directive is to set up a vessel reporting system to be known as Eurorep. The system is to inform coastal states, on a real time basis, of the identity, position, route, cargo and cargo distribution of vessels, with particular reference to those carrying dangerous or polluting goods.

The proposal supplements Directive 93/75/EEC ... extending the obligation to provide such information not only to vessels bound for or leaving Community ports but also to those operating within 150 miles of Community coasts, even if they are not intending to call at a Community port. (Opinion of the Economic and Social Committee 94/c 295/06 para. 2.1, 2.2

The purpose of the system is to facilitate rapid and effective rescue operations in the event of an accident and possible marine pollution. The Committee recognized that guidelines for the implementation of Eurorep should only be implemented once amendments to the SOLAS Convention recognizing the principle of mandatory reporting were approved by the IMO at its session meeting in May 1994. Discussion was started as to the use of transponders – automatic electronic identification systems – installed on board vessels which could be read from the shore. (Although required to carry their name and home port on their hulls, many vessels at present are in effect anonymous whilst at sea). In May the IMO approved mandatory ship reporting in specified areas, to come into force 1 January, 1996.

Implementation of the 1993 IMO Resolution A 747(18) on the exemption of dedicated water ballast areas of SBT tankers in the calculation of port dues based on gross tonnage was also laid out in 1994 in Council Regulation No. 2978/94. (Alternately, port authorities were to ensure that fees for an SBT tanker were at least 17 per cent lower than the fee for a tanker without segregated ballast tanks.) This is intended to

rectify an ethical anomaly ... act as an incentive to replace old-style ships ... [and] ensure fair competition both between ports and, more important, between SBT and non-SBT tankers. (Opinion of the Economic and Social Committee, 94/C 295/05)

Most countries and the ICS broadly welcomed this move in favour of environmentally friendly vessels, but some countries, notably Germany and the Netherlands, objected to the

Directive, arguing that SBTs should not be allowed an excessive reduction as they already enjoyed certain economic advantages (like not having to spend a long time in port expelling ballast). The Regulation is due to come into force on 1 January, 1996.

In addition to these two pieces of legislation, studies were started in 1994 on various subjects, largely in parallel with studies/proposals by the IMO, by the Commission (for example, on pilotage and static intact stability of certain oil tankers); a Resolution was issued by the European Parliament on such issues as a European shipping register (EUROS), training of ship inspectors, VTS, and the creation of mandatory shipping lanes; a study and recommendation on the enforcement of EC and IMO rules including recent amendments to the SOLAS and STCW Conventions, and introduction of Maritime Environmentally Sensitive Areas; and a Proposal for a Directive on international standards for ship safety, pollution prevention and shipboard living and working conditions. This builds on the Paris MOU and addresses matters of control, criteria and harmonization of port inspections, as well as the means for greater transparency in the results of inspections in the Community.

The Proposal specified that port authorities should publish quarterly a list of the ships which they had been obliged to detain due to deficiencies. The listing should include the name of the ship, IMO number, flag state, the shipowner and classification society. The Proposal applies to ships of all flags, not just EU vessels. Six months after the adoption of this Proposal, shipping ministers from the USA, Canada, China, Poland, Russia, Croatia, Finland, Norway and Sweden joined forces with the EU nations to publish quarterly 'black lists' of ships deemed to be sub-standard or operated by crews with insufficient training. Examples of the types of deficiencies found in vessels calling at European ports include defective life-saving equipment, corroded plating, seized hatches, faulty radio equipment, out of date charts, and crews certified only for journeys between the islands of Indonesia (data for British ports in August 1994). The publication of such a listing strikes at the core of European thinking *vis-à-vis* marine safety. According to the Commission and its committee, while national and regional governments clearly have their role to play in improving standards and so forth, practically speaking those

more immediately involved with ship operations are the ones upon whom attention should be fixed, for

In the last resort, it is shipowners, ship operators, sea farers, underwriters, charterers, flag states, classification societies and Port States who must all pull together to apply the formula correctly. (Opinion 94/c 34/16 para 8.1.1.)

EU inspection data will be polled, at a centre in Saint Malo, France, to allow follow-up checks and monitoring of substandard ships between EU ports.

The ICS once again expressed concern at some of these European Initiatives, writing in its 1993/1994 Annual Review:

The IMO has developed guidelines on the conditions for the acceptance of classification societies, so why risk confusing the issue with a European Directive? The existing European port state control regime, already established and improving year by year, does not need legal measures within the EU, so why must the Commission try to mount a take-over bid ... The European Parliament has accepted advice from the Commission on the development of a reporting system for vessels in European waters, but seems almost certain to jump the gun on the practical discussion underway in IMO. (p.9)

In total, the opinion of the ICS regarding European legislative activity regarding maritime safety and pollution is:

If the European Commission would simply concentrate on the more effective implementation of internationally agreed measures, the shipping industry would applaud it unreservedly ... The worry, however, is that the Commission's real goal is to enhance its competence, and become a member of IMO in its own right, speaking on behalf of the member states at IMO meetings. Without any doubt, the effect would be to politicise a forum which has hitherto been gratifyingly free of the party politics of shipping. (*ibid*)

Unlike the US OPA, one area not explicitly and concretely addressed in these documents is that of fines, penalties and liabilities for pollution. These are covered by two old IMO conventions – the Civil Liability Convention of 1969 which entered into force in 1975 and the International Oil Pollution Compensation Fund of 1971 which entered into force in 1978 – and by two industry agreements – TOVALOP and CRISTAL.

The IMO conventions, whose speedy ratification is urged on EU member-states, work

jointly: According to the original documents those affected by pollution can claim damages from the shipowner without having to prove the latter's negligence to a limit of \$14.6 million or \$140 per ton of tanker. Additional compensation up to a total of \$47 million can be claimed from the Fund, contributions to which are paid by oil importers according to the amount of oil imported. These compensation amounts were increased in 1992 to a maximum of \$62 million for shipowners of vessels more than 140,000 grt, and additional cover up to a total of \$140 million from the Fund (increasing to \$208 million in certain circumstances).

These protocols replace amendments made in 1984 which failed to get ratified, and come into force, for the CLC, 12 months after being accepted by 12 states (four with not less than 1 million units of gross tanker tonnage) and for the Fund after acceptance by eight states who have imported 450 million tons of what is termed 'contributing oil' in the previous year. The USA played a key role in drafting the 1984 protocols but never endorsed them. This was the start of the rift which developed between the USA and Europe and the rest of the world's maritime community on pollution compensation and liability issues. As discussed earlier, the USA decided to act unilaterally within its own waters with respect to compensation procedures and amounts with the creation of an indigenous and unique piece of legislation; Europe stayed within the international framework and procedures/awards which have many more limits to them than the US Act. Maximum liability is lower and the defendant under IMO law does not face the same threat of unlimited liability. More defences are open to him, and liability under the Civil Liability Convention only applies to the shipowner; in the Oil Pollution Act it embraces the 'operator' of the vessel as well, which could cover a whole spectrum of potential defendants. The belief of the IMO is that its system of limited liability is preferable to that of the USA since it provides a much stronger guarantee of a pay-out within a reasonable period of time.

The shipowner's liability under the CLC is covered by compulsory insurance normally available from the Protection and Indemnity (P & I) Clubs. Following the *Braer* disaster in 1993 there have been calls from some quarters for another increase in the compensation limits – not to the scale of liability in the USA but 'something midway between the global voluntary schemes

and the US' which would not put pressure on a struggling industry.

Although, as we have seen, the first half of the 1990s has been marked by significant safety and anti-pollution initiatives in Europe (both via the Commission and national law and the IMO), moves to extend the criteria under which claims can be made to the Fund, particularly regarding environmental damage, have been strongly resisted. Growing environmental concern has given rise to an increasing number of claims for compensation of non-pecuniary loss or damage. This trend has coincided with a growing resolve on the part of the P & I Clubs to improve cost control. In the wake of the legal issues surrounding claims from the *Haven* and the *Braer*, a special working group was set up in May 1994 to determine the admissibility of claims for compensation under the Fund. To a very large degree this move was no more than a cosmetic ploy as the deliberations of the group were limited by instructions to adhere strictly to the existing language of the 1971 Fund Convention. This mandate clearly restricted attempts at more liberal legal interpretations and hence any revision of the definition of oil pollution damage under the 1969/1971 Conventions' regime was kept to a minimum.

With few exceptions, the 1994 working group endorsed past practice and policy of the Fund in its assessment of claims, which generally accord substantial discretion to the director. It gave considerable attention to matters of 'pure economic loss' where there is a reasonable link between the damage and the pollution; proven geographic or economic dependency; and the potential for the claimant to mitigate damages. Concerning environmental damage specifically, the working group endorsed the position adopted by the Fund that claims relating to the impairment of the environment should be accepted only if the claimant had sustained a 'quantifiable' economic loss, and that the loss must be such that it could be quantified in monetary terms. This is, of course, a very different approach to that adopted by the USA. In the States uncertainty surrounds the defendant with respect to the number and amount of claim that can be made. In Europe, the boot is on the other foot and significant uncertainty attaches to the claimant as to the viability of a claim – especially those related to pollution damage and costs of environmental reinstatement. The meeting in May closed with little having been changed from

earlier compensation policy and a note from the chair for the future to the effect that consideration of environmental damages is a new area for the Fund and it is important to keep an 'open mind' as the concept is further developed. Within Europe, The Council Conclusions on Maritime Safety, mentioned above, has urged

Member States and, where appropriate, the Community, to support, within the IMO ... the conclusion, in 1996, of a liability Convention for the carriage of hazardous noxious substances with high limits

and

a substantial increase in the limits of the International Convention on limitation of liability for maritime claims 1976. (A. 7 and 8)

Existing side by side with CLC and the Fund are the two contractual schemes mentioned earlier, TOVALOP and CRISTAL. Both are agreements voluntarily entered into. TOVALOP is an agreement between oil tanker owners and bareboat charterers, and CRISTAL is an agreement between oil cargo interests, such as owners, traders and receivers. The acronyms stand for Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution, and Contract Regarding a Supplement to Tanker Liability for Oil Pollution. As the latter title suggests, CRISTAL supplements (should this be necessary) the compensation payable by the ship owner to claimants who have suffered damage from oil pollution. TOVALOP came into force in 1969 and was amended in 1987; CRISTAL came into effect in 1971 and was also amended in 1987. Both agreements were revised in 1994, and are designed (a) to remove voluntarily some of the legal uncertainties that may arise following an oil spill; (b) to encourage prompt action to clean up or mitigate the effects of an actual or threatened oil spill, and (c) provide adequate compensation for the victims of a spill including reimbursement of the reasonable costs incurred by governments, owners and so on under (b). Parties to TOVALOP voluntarily assume certain liabilities for which they might not otherwise be liable and undertake to provide evidence to the International Tanker Owners Pollution Federation Ltd of financial capability, usually done by insurance through entry in P & I Clubs. Some 97 per cent of the world's tanker tonnage presently participate in the agreement.

TOVALOP applies in a situation where pollution damage or threat removal measures have been caused in a location for which there is no liability in terms of CLC 1969, and the owner or bareboat charterer of the tanker involved in the incident has assumed responsibility in terms of the Agreement. CRISTAL provides a back-up, as it were, for the Fund, and like the Fund it is contributed to by oil companies. If a spill occurs in a jurisdiction where the Fund is not applicable, CRISTAL compensates the spill victims.

The present limit of liability of an owner participating in TOVALOP in respect of any one incident is \$160 per ton or \$16.8 million, whichever is the less. The TOVALOP Supplement provides for a higher, more complex figure: a maximum of \$3,500,000 for a vessel of 5000 tons or less and \$3,500,000 plus \$439 for each ton in excess of 5000 tons up to a maximum of \$70,000,000. The maximum payable in terms of CRISTAL is \$135 million.

CLC 1969, the Fund Convention 1971, TOVALOP and CRISTAL constitute four interlocking sets of rules, and damage caused by a particular incident may be compensatable by one or more or all of these schemes to one extent or another.



#### 4. INITIATIVES IN THE REST OF THE WORLD

Maritime transport and the tankering business in particular are international by character. Vessels ply international and domestic waters with cargoes loaded at one country destined for deposition in another. Operations and ownership are not confined to one nation or even one continent. The tanker *Braer* was US owned but registered under a Liberian flag; its captain was Greek, the crew Asian and the vessel was travelling from Norway to Canada through different marine jurisdictions. Not surprisingly, therefore, there is a complex knock-on effect in regulations from one region to another. Moreover, organizations such as the IMO embrace maritime nations the world over, and its Conventions – in theory at least – apply to all ratifying countries. Even where a country has not ratified a particular agreement, its provisions are often carried out by operators as they realize their ships may well operate in waters of a ratifying nation where the regulations are applied. Increasingly, therefore, in the world outside Europe and the USA, there is a move to subscribe to the developing international conventions. An example of this is the rapid growth in the number of states participating in regional agreements for Port State Control, a point to which we shall return. In addition to increase in the geographic and substantive scope of the IMO Conventions, there have also been unilateral national and regional initiatives toward environmental protection and fleet improvement. These have been sparked by developments in western Europe and the USA but also by the generally growing force of global environmentalism and environmental awareness. This growing awareness of the need to protect the marine environment was, and is, enshrined in Agenda 21 which was drawn up at the 1992 Earth Summit at Rio. We shall look at the provisions of Agenda 21 in more depth in the Conclusion. For the moment it is of interest to note that it, together with various IMO agreements, urges aid, both technical and financial, to countries less able to tackle programmes of improvement. We shall now look at some of the developments that have been taking place.

As just mentioned, the number of states participating in regional arrangements for Port State Control is rapidly increasing. The Paris Memorandum saw its first formal expansion in

1992 with the adherence of Poland. The same year Croatia, Japan and Canada were granted transitional status as cooperative bodies pending full adherence, and Russia is expected to adhere soon. Also in 1992 certain South American states undertook to carry out Port State Control functions in a similar way to that agreed by the signatories to the Paris Memorandum, and three preparatory meetings were held in the Asia Pacific region to establish a similar mechanism. In 1993 a draft memorandum of understanding on Port State Control for the Caribbean was prepared and finalized in Barbados.

Other marine protection initiatives in the rest of the world during the first half of the decade were more *ad hoc*, but nevertheless significant. Taken together, they form a pattern of growing awareness and concern. In 1990 the United Nations Environment Programme began formulating plans to establish a network of oil spill clean-up centres that could handle major incidents in the Gulf of Aden, the Red Sea or the North African Mediterranean coast. The following year Egypt proposed legislation to impose substantial new fines for the discharge of oil in Egyptian offshore areas, plus fines to vessels with inadequate on-board pollution-control equipment. Also in 1991 the countries bordering the Persian Gulf, minus Iraq, reactivated the Regional Organization for the Protection of the Marine Environment to deal with future oil spills in the area. Various other Marine Environment Protection Associations (MEPA) have been formed in subsequent years (e.g. Turmepa in Turkey, Cymepa in Cyprus).

Further afield, and on different sides of the globe, other initiatives have taken place. In 1991 Canada launched a national spill prevention plan, and Australia established a Marine Oil Spill Response Centre in Melbourne; 16 state oil companies in Latin America formed a task force to determine how to pool their resources to respond to environmental emergencies. In 1994 the Philippines president recommended an oil spill prevention and response policy which stipulated that conveyance of crude in Philippine waters be made only with the use of double-hulled vessels, a substantial requirement against catastrophic loss, and the navigation of the treacherous Balabak and San Bernadino Straits by tankers only below force 5 conditions in broad daylight, piloted or escorted by the Coast Guard. The same year the state shipping companies of India and

Iran embarked upon new building programmes, after years of having fingers pointed at them for operating old, poorly maintained tankers. Japanese and South Korean buyers started to charter new tonnage predominantly, and both countries passed resolutions discouraging older vessels from entering their ports. All four countries (India, Iran, Japan and South Korea) are looking to double-hulled vessels.

As these examples show, change is afoot worldwide to protect the environment and improve the global tanker fleet. Clearly standards are not uniform and many developments are unilateral, but they are all steps in the same direction and coupled with the regional initiatives, the umbrella functioning of the IMO, and the pressures of a global industry, improvements are being made.



## 5. CONCLUSION

Relatively speaking, pollution from oil at sea spilled by tankers is a small environmental problem. The Chapter on Protection of the Oceans in Agenda 21 of the Rio Earth Summit states:

Degradation of the marine environment can result from a wide range of sources. Land-based sources contribute 70 per cent of marine pollution, while maritime transport and dumping-at-sea activities contribute 10 per cent each. The contaminants that pose the greatest threat to the marine environment are, in variable order of importance and depending on differing national or regional situations: sewage nutrients, synthetic organic compounds, sediments, litters and plastics, metals, radionuclides, oil/hydrocarbons and polycyclic aromatic hydrocarbons. (17.18)

In the view of Agenda 21 'Approximately 600,000 tons of oil enter the oceans each year as a result of normal shipping operations, accidents and illegal discharges' (17.20). Calculations by the industry (Intertanko) tally with the UN estimates. Moreover, Intertanko reports that of the 60 per cent of world crude carried at sea, 99.98 per cent arrives at its destination without incident.

While oil pollution at sea is, therefore, a small problem on the macro level, at the micro level it can be both significant and devastating and deserving of the kind of attention discussed in this study. The key words of the Rio statement above are 'depending on differing national or regional situations'. A spill in the enclosed waters of the Mediterranean can have a profound and enduring impact on a sensitive marine habitat and coastline, as well as significant economic consequences for the region's fisheries and tourist industry. Such a spill would be in sharp contrast to that, say, of the *Braer* off the Shetlands where, after the initial devastation, natural forces were able quickly to disperse the spill and its effects. Additionally, spills may occur in the waters of countries unwilling or unable to address the environmental problem and implement speedy and effective remedial action. The other aspect of tanker spillage, of course, is that they can involve very large depositions of oil, millions of gallons into a concentrated area. On a micro level, therefore, oil spills at sea can be of considerable significance, environmentally and economically.

Environmentalism has been growing worldwide. The bull was taken by the horns most

dramatically by the USA with the 1990 OPA. Although the long-term success of the Act cannot be gauged yet, according to analysts the American legislation has already produced some concrete positive results. A report in 1992 by Golob's Oil Pollution Bulletin, based in Cambridge, Mass., stated that there were fewer major tanker spills in US waters in 1991 than in any year since 1975. Although this may simply have been a fortuitous occurrence, Golob's was of the opinion that the lack of spills was mainly thanks to tighter controls on tanker operations. The 1992 PIRINC report, referred to elsewhere in this study, similarly reported an improvement, stating that 'a significant influx of younger tonnage entered the trades since OPA came into effect' (p.63). Statistics from the Tanker Advisory Center in New York also reported 'some improvement in the quality of tankers calling in the US since January 1989' – all of which refutes the 'rust bucket hypothesis' and forecasts that US imports would be carried in inferior ships, by uncaring owners, for unscrupulous charterers. The drop in the average age of the tonnage is particularly significant as Lloyd's Register figures show that tankers between 20 and 24 years old are twice as likely to be involved in a serious casualty as those under five years. More than 80 per cent of insurance losses involve ships over 15 years old.

The US OPA has, of course, repercussions beyond the domestically flagged fleet and trade. The vast majority of the world's tankers are employed, at some time in their lives, in the US trades. In 1991 US oil imports accounted for approximately one-quarter of the world's seaborne trade, some 30 per cent of world tanker demand; analysis by Lloyd's Movements Data reckoned that of vessels trading to the USA in the third quarter of 1991, 88 per cent were foreign flagged. There is, therefore, a direct knock-on effect of US national legislation upon the global tanker fleet.

Psychologically, as it were, the OPA also had, and continues to have, a profound effect. A tanker shipping analyst writing in the latter part of 1993 in *Seatrade Review* stated that, whatever the drawbacks of the Act (of which, in his opinion, there are many, e.g. holding the owner/operator solely responsible for pollution), the legislation nevertheless,

has concentrated the minds of those in the tanker industry like never before. It has sparked off an intense debate about standards, quality, and the best means of

achieving them; and about the whole peculiar and fragmented way this vital industry is administered and policed ... It has put a spotlight on an esoteric industry whose darker corners were in great need of illumination.

A US Coast Guard officer states that,

the time of substandard ships, operated by substandard operators, flagged by substandard flag states, classified by substandard classification societies, and insured by substandard insurers, is coming to an end ... There is a revolution in the international maritime community [fanned by more public] concern about maritime safety and environmental protection than anytime in the past.

While the influence of the OPA, together with growing environmentalism, may well have been considerable, this dramatic piece of legislation has yet to be tested on its most controversial provision, that of unlimited liability. The occurrence of a large spill in US waters due to negligence has yet to happen. If and when (and most likely when) such an event occurs, it will be a test case for the OPA, keenly viewed by European legislators and the IMO as to how exactly the principle of unlimited liability will work in practice. The law will stand or fall in consequence, though the possibility of tankers withdrawing en masse from US trades – despite doom-mongery to the contrary – will be highly unlikely.

Of perhaps more enduring global impact than the OPA is the work of the IMO, whose steady, evolutionary approach has a wealth of experience and tradition behind it. As has been discussed in this study, it has in recent years worked to expand its scope, both substantively and geographically, and increasingly has made environmental protection a central plank of its more traditional safety at sea programmes. As we have seen, key Conventions have been introduced or older ones amended in the light of developing concerns, and the percentage of world tonnage covered by these Conventions is high: 92 per cent under MARPOL; 93 per cent under STCW; 96 per cent under COLREG; 98 per cent under SOLAS, to name but a few. Increasingly, and unlike the OPA, change is no longer triggered by disaster; there is now a momentum toward environmental betterment which will not readily be stopped. Significantly, Agenda 21 in its assessment of the steps necessary to prevent, reduce and control degradation of the marine environment from sea-based activities lends heavy support to the work of the IMO. With a mind

to the future, its words deserve quoting in full:

17.30. States, acting individually, bilaterally, regionally or multilaterally and within the framework of the IMO and other relevant international organisations ... should assess the need for additional measures to address degradation of the marine environment:

(a) From shipping, by:

- (i) Supporting wider ratification and implementation of relevant shipping conventions and protocols ...
- (iii) Cooperating in monitoring marine pollution from ships ... and enforcing MARPOL discharge provisions more rigorously;
- (iv) Assessing the state of pollution caused by ships in particularly sensitive areas identified by IMO and taking action to implement applicable measures, where necessary, within such areas to ensure compliance with generally accepted international regulations;
- (v) Taking action to ensure respect of areas designated by coastal States, within their exclusive economic zones, consistent with international law ...
- (xii) Supporting the on-going activity within the IMO regarding the development of an international regime governing the transportation of hazardous and noxious substances carried by ships ...

17.33. States should consider ratifying the Convention on Oil Pollution Preparedness, Response and Cooperation, which addresses, *inter alia*, the development of contingency plans on the national and international level, as appropriate, including provision of oil-spill response material and training of personnel.

The Conventions of greatest importance, urged upon the international community, amended in recent years and presently under review by committees of the IMO for further amendment, are SOLAS, MARPOL and STCW. All of these include improved provision for safety at sea, both in terms of technical design and equipment and crew training, the latter being explicitly the provenance of the revised STCW Convention adopted in 1995. Very importantly a treaty designed to help governments combat major oil pollution incidents, highlighted in the Agenda 21 passage quoted above, became law in May 1995: International Convention on Oil

Pollution Preparedness, Response and Cooperation (OPRC). The Convention is concerned with the establishment of oil pollution emergency plans on ships and at ports, together with national and regional contingency plans. The International Convention for the Safety of Life at Sea (SOLAS), the most important treaty dealing with safety of international shipping, has had various amendments made to it recently, to come into effect at various points between 1996 and 1998. These include various safety management objectives and enhanced programmes of shipping surveys.

The work of the IMO, and the OPA, is aided by the fact that almost every major oil company now carries out its own survey prior to taking a vessel on charter and, in today's economic climate, elderly tonnage – even in good condition – is finding it difficult to obtain employment. The results of such surveys are to be made available through a database to almost all oil majors. In like manner, the P & I Clubs are compiling statistics and carrying out major claims analysis whilst their own ship vetting programme proceeds. They are identifying ships and operators that fall short of their requirements and either refusing or suspending cover until defects are dealt with or providing cover with increased premiums depending on the seriousness of the deficiencies.

After the flurry of revision and amendment in recent years, the IMO's sights are now set on implementation and enforcement, in uniform manner, of existing conventions by maritime nations worldwide. The Organization is battling with widely variant standards and the fact that the fleets of the traditional maritime nations – which generally have good safety records – have shrunk while the fleets of other countries, many with little or no shipping experience, have grown. The IMO's efforts in this respect are concentrating on Port State Control, which it defines as the last safety net after shipowners, classification societies, insurers and flag state administrators have failed to do their job. The IMO has encouraged the development of various regional Port State Control regimes in different parts of the world, as noted in the last chapter.

Apart from urging the adoption and implementation of Conventions on the International community, Agenda 21 also advocates that pollution prevention be promoted by appropriate ship

routing and that,

IMO and as appropriate, other competent United Nations organisations, when requested by the States concerned, should assess, where appropriate, the state of marine pollution in areas of congested shipping, such as heavily used international straits, with a view to ensuring compliance with generally accepted international regulations ...

Promoting navigational safety by adequate charting of coasts and ship routing (17.31; 17.30.vii)

As we saw in our discussion of European initiatives, ship routing, reporting and VTS systems are moving to the head of the Agenda. These, together with the establishment of PSAs (Particularly Sensitive Areas barred to uncontrolled transit by vessels carrying hazardous loads), would seem to be one of the principal ways forward to protect the marine environment but allow the continuing movement of a vital shipping industry. In 1991 the IMO's Maritime Environment Protection Committee agreed a set of Guidelines 'for the Designation of Special Areas and the Identification of Particularly Sensitive Sea Areas', contained in an Annex to a Resolution, which are 'primarily intended to assist the IMO and national governments in identifying, managing and protecting sensitive sea areas'. PSAs are defined as

areas which need special protection through action by the IMO because of their significance for recognised ecological or socio-economic or scientific reasons and which may be vulnerable to damage by maritime activities.

Nations apply to the IMO for the establishment of a PSA, though the potential also exists for mandatory measures to be agreed by the IMO in a number of areas extending beyond territorial waters, a potential that has been given additional impetus by provisions in Chapter 17 of Agenda 21. Debate continues apace regarding PSAs, not least with regard to the legal ramifications of their establishment and functioning. Of paramount importance for the future of PSAs, and indeed for many routing issues in general, is the recent (1994) passage of the Law of the Sea Convention (LOSC) which enshrines the fundamental precept of the freedom of the high seas. Analysis of the highly complex LOSC, which codifies traditional customary norms as well as progressively developing new international laws, deserves an entire study of its own.

Still looking to the future, the final area of prime, if not primary, concern that is being

scrutinized by the IMO (and not the OPA) is that of human behaviour. It is now appreciated that human error is the principal cause of spillage. There is no point having double hulls or SBTs if the first officer is going to fall asleep and ground the tanker, or excellent safety equipment if a multilingual crew cannot communicate with each other in the event of an accident. Figures on the cause of major shipping accidents between 1989 and 1991 indicate that 30 per cent were due to equipment, mechanical or structural failure and 43 per cent were due to officer or crew error. The IMO's response to the need to reduce the occurrence of human error is to be found in the revised STCW of 1978 (International Convention on Standards of Training, Certification and Watchkeeping for Seafarers), adopted in 1995. It contains a new code concerned with the establishment of maritime training institutes, the administration of a certification programme, assessment of crewing knowledge, skills and medical fitness, and guidance on the 'human element implications'. Regarding multinational crew communications, the IMO decided in 1993 to expand the 1977 Standard Marine Navigational Vocabulary.

Chapter 17 of Agenda 21 of the Rio Earth Summit contains a programme for sustainable development of the oceans and coastal areas. 'Sustainable development' is, of course, the catch phrase of the 1990s and something that is informing many processes. The chapter does not break much new ground in the assault on sea-based marine pollution, but it does endorse and encourage the furtherance and acceleration of on-going processes, with strong reliance on and support for the work of the IMO. The OPA exploded on the scene in 1990 with, as we have seen, some immediate effect; its long-term contribution to environmental protection has yet to be seen. Other regions and countries of the world are pursuing their own initiatives, usually within the framework of, or with the cooperation of, the IMO. Such initiatives are to be encouraged, so long as they remain within an international framework and do not fragment further an already complex global industry. Much has been achieved by the IMO, with some galvanization from the OPA, in recent years. Areas for future improvement lie with

- (a) fuller and more uniform implementation of its Conventions;
- (b) work on select routing away from environmentally sensitive or hazardous waterways plus

comprehensive monitoring of ship movements;

(c) the elimination, as far as possible, of human error.

While accidents will never totally be prevented, their occurrence and effect can be minimized by the care and thoroughness with which such initiatives are devised and implemented, internationally, for an essential global industry working within a sensitive environment.

## **APPENDIX 1**

### **SUMMARY OF UNITED STATES OIL POLLUTION ACT 1990**

#### **Oil Spill Liability**

All responsible parties, defined as 'any person owning, operating, or demise chartering the vessel' are deemed, jointly and severally, strictly liable for meeting all removal costs incurred. Traders and voyage/time charterers, however, are not deemed to be responsible.

In addition, responsible parties are liable to pay damages in relation to the incident.

Limits on the amount of damages generally payable were also raised for tankers to \$1,200 per gross ton or \$10m, whichever is the greater.

However, if it is proved that the pollution was caused by (i) either gross negligence or wilful misconduct, or (ii) violation of any relevant Federal regulation, and (iii) if the owner or operator does not report the incident or refuses to cooperate with officials, then liability will be unlimited.

The Act expressly says that there is nothing to stop states from imposing additional liabilities (only six states limit possible fines : Delaware, Florida, Massachusetts, New Jersey, New York, Virginia).

The Oil Spill Liability Trust Fund, funded via a 5 cents per barrel tax on all imported oil (recently suspended, since the Fund was full), can provide up to \$1 billion for any one incident and \$500 million for damages to natural resources.

#### **Financial Responsibility**

All vessels entering US waters are required to possess a certificate of financial responsibility which guarantees that maximum liability limits can be met should an incident occur.

#### **Structural Requirements for Vessels**

All new constructions contracted after 30 June, 1990 must have double hulls if they are to call at US ports. Only single-hull tankers of 28 years or younger may operate in US waters. This figure will be reduced by one for each year until 2000. From then until 2010 the maximum age limit for single-hull vessels trading in US waters will be 23. From 2010, only two categories of single-hull vessel will be permitted in US waters: (a) those ships unloading at the LOOP and (b) those vessels lightered more than 60 miles out (until the year 2015).

For existing vessels, OPA 90 directs the Coast Guard to develop regulations on structural and operational requirements that provide protection to the environment as is economically and technologically feasible.

**Tank Vessel Response Plans**

In the event of an accident, owners or operators must have a 'worst case scenario' plan of response prepared. Vessels may be barred from loading, storing or transporting oil unless this plan has been approved by the necessary authorities.

## **APPENDIX 2**

### **SUMMARY OF EUROPEAN PARLIAMENT RESOLUTION ON THE OIL SPILL IN ALASKA 1989**

The resolution underlines the need for full enforcement of the conventions of the International Maritime Association, in particular MARPOL, and calls on the Commission to take a lead in this process.

Crews and masters of ships carrying oil or other dangerous or toxic cargoes must be properly trained and fit for their tasks, with particular reference to a ban on alcohol at sea.

The resolution calls for a review of the means of transport of crude oil, with a view to the use of land routes or safer sea routes.

All appropriate penalties are to be pursued against those responsible for pollution, and the polluter is to pay, without costs being passed on to the consumer.

## **APPENDIX 3**

### **SUMMARY OF OPRC CONVENTION ON OIL PREPAREDNESS, RESPONSE AND COOPERATION 1990**

#### **Oil Pollution Emergency Plans**

Each Party is to require that ships flying its flag have a shipboard oil pollution emergency plan, with ships subject to inspection.

#### **Oil Pollution Reporting Procedures**

Those in charge of ships must report any event on their ship involving a discharge or probable discharge of oil.

#### **Action on Receiving a Pollution Report**

On receiving a pollution report, a Party is to determine if it is an oil pollution incident, assess the nature and possible consequences, and inform all States affected.

#### **National and Regional Systems for Preparedness and Response**

Each Party is to establish a system for responding to oil pollution incidents. This includes designating an authority responsible for oil pollution response, and also a contact point and national contingency plan.

In addition, each Party is required to establish a minimum level of oil spill combating equipment, a programme of exercises for oil pollution response and detailed plans and communication capabilities.

#### **Research and Development**

Parties are to cooperate in research and development programmes in oil pollution preparedness and response.

#### **Technical Cooperation**

Parties are to provide support for those Parties which request technical assistance: to train personnel and to make available relevant technology and equipment.

Parties are to conclude bilateral or multilateral agreements for oil pollution response.

Further cooperation with the oil and shipping industries is encouraged, to assist developing countries to implement the above points. Problems faced by

developing countries are to be evaluated, to allow the formulation of the Organization's assistance programme.

The Convention also calls for the improvement of salvage services, cooperation between States and insurers and expansion of the scope of the OPRC to include hazardous and noxious substances.

## **APPENDIX 4**

### **SUMMARY OF THE EUROPEAN PARLIAMENT RESOLUTION ON THE ENVIRONMENTAL DAMAGE CAUSED BY OIL SPILLS FROM SHIPS 1992**

The Commission is to draw up measures to reduce drastically the total quantities of oil that are discharged by ships into European waters, in particular by promoting a code of conduct for oil companies that will outlaw the cleaning of oil tanks at sea, and by increasing the facilities for cleaning ships' oil tanks at ports.

The resolution calls upon the Commission immediately to institute an aerial surveillance system for the coasts of the Community, and to prohibit the passage of oil tankers through sensitive and dangerous areas. Companies responsible for repeated spills should be put out of the oil transporting business.

EC standards are to be drafted for the construction of ships.

Traffic separation schemes located just outside territorial waters are to be brought under coastal state jurisdiction.

Member States that have not ratified the MARPOL Convention should do so, and the Commission is urged to draw up a programme of financial aid that will enable developing countries to ratify and implement the MARPOL Convention.

The Commission is asked to assess the present arrangements in the Member States for prosecuting ships that are caught dumping oil at sea illegally; it is also urged to impose fines which cover the full cost of the environmental damage caused.

The possibility of fitting oil tankers with double hulls and double bottoms is to be studied.

The Commission is requested to compel supertankers to keep their distance from coasts and from sensitive and dangerous areas.

## APPENDIX 5

### SUMMARY OF THE EUROPEAN PARLIAMENT RESOLUTION ON THE ACCIDENT AND OIL SLICK AT CORUNNA 1992

The Commission and Council are to draw up measures to alleviate the damage caused by the oil tanker *Aegean Sea* and to ensure that similar incidents are avoided.

The Council and the Member States are to adopt effective preventive measures such as banning oil tankers more than 15 years old from using the ports of the Member States and banning oil tankers which do not have a double hull from territorial waters of the Member States.

## APPENDIX 6

### SUMMARY OF THE EUROPEAN PARLIAMENT RESOLUTION ON THE *BRAER* TANKER DISASTER 1993

The resolution calls on the Council, the Commission and the UK Government to agree an aid package for Shetland including:

- the full under-writing of compensation payments;
- the coverage of compensation claims not met by insurance companies;
- measures to assist the fishing industry;
- funding for studies on the impact of the disaster.

The Commission is requested to prohibit shipments of dangerous cargo through the waters of environmentally sensitive areas of the Community.

The resolution calls on the Commission and the Council to create a European register for shipping, which would allow the Community to monitor ships using EC waters.

All Community authorities are urged to adopt further safety Directives including:

- banning oil tankers more than 15 years old from using the ports of the Member States;
- setting a date for banning oil tankers which do not have a double hull from territorial waters of the Member States;
- setting up a single language for use in emergency;
- obligatory pilot guidance when routes pass near the coast;
- radar vessel control in particularly hazardous areas;
- limiting load capacity;
- obligatory training in safety measures for the crew;
- inspection of ships in EC ports.

The resolution urges the IMO to enforce full liability for shipowners for the cleaning operation, any income loss of fishermen and compensation payments for damage to the environment.

The Commission, Council and Member States must enable the IMO to ensure that national administrations licensed as flag states meet high standards. If these are not met, ships may be excluded from EC ports and territorial waters.

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