

# The Supplementary Fund Regime And Korea's Past Strategy

- After the *Hebei Spirit* Incident -

Hong, Jong Wan\*

## Contents

- I. Introduction
- II. Development of International Oil Pollution Compensation Fund Regimes
- III. Main Contents of the 2003 Supplementary Fund Protocol
- IV. Past Korea's Cost/Benefit Analysis toward the Supplementary Fund Regime
- V. The *Hebei Spirit* Incident
- VI. Conclusion

## I. Introduction

On Dec. 7, 2007, the *Hebei Spirit* incident occurred in Taean, the west coast of the Republic of Korea. The disaster made the Korean government reflect on its past strategy in respect of Korea's participation in the Supplementary Fund Regime<sup>1)</sup>. This is mainly because Korea is one of the major oil importing

---

\* Researcher. The Institute of International Peace and Legal Affairs, Kyung Hee Univ.

Master's course in U.S. Law, Graduate School of International Legal Affairs, Kyung Hee Univ.

1) The term of 'Supplementary Fund Regime' is, as one of international oil pollution compensation fund regimes, the concept including international institutions and conventions, especially formed in response to a need to coordinate behavior among party states around oil pollution compensation issues. For

countries in the world, and historically has experienced a lot of oil pollution incidents<sup>2)</sup>. Under these circumstances, analyzing the effectiveness of the Supplementary Fund Regime and the Korea's strategy at the national level is necessary for the persistent development of Korea under international oil pollution compensation fund regimes.

In order to deal with Korea's national interests and strategy relating to the Supplementary Fund Regime, here are some questions: How have international oil pollution compensation fund regimes developed until now? What are main contents that the "Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992" (hereinafter referred to as 2003 Supplementary Fund Protocol) includes? Which kinds of rights and obligations will the party state of the "International Oil Pollution Supplementary Fund, 2003, established under the 2003 Supplementary fund Protocol" (hereinafter referred to as Supplementary Fund) have? Are there any precedents compensated by the Supplementary Fund? If Korea were a member state of the Fund, what would have been the costs incurred, and what would have been the benefits, regarding the *Hebei Spirit* incident case recently occurred in Korea? Were there any other approaches affecting cost/benefit analysis? Why Korean government failed to ratify the 2003 Supplementary Fund Protocol earlier? What was Korea's strategy? What kind of the long-term strategy should Korea devise?

---

more detail on the Supplementary Fund Regime, M. Jacobsson, "The Significance of the Third Tier Supplementary Fund and the On-going Review of the International Compensation Regime," Petroleum Association of Japan Oil Spill Symposium(2005) Michael G. Faure and Hui Wang, "Compensation for Oil Pollution Damage: China versus the International Regime," *Asia Pacific Journal of Environmental Law*, vol. 9, no. 1(2005), pp. 2-19. For more detail on international environmental regimes, Ryang Kang, "A Study on International environmental Regime-The Case of the Antarctic Treaty System-," *Ocean and Polar Research*, vol. 28(2)(June 2006), pp. 165-169.

2) See Appendix 1.

## II. Development of International Oil Pollution Compensation Fund Regimes

Under the 1992 Fund Regime, compensation for international oil pollution damage<sup>3)</sup> has been addressed through two main relevant conventions: the “International Convention on Civil Liability for Oil Pollution Damage, 1992” (hereinafter referred to as 1992 CLC) and the “International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992” (hereinafter referred to as 1992 FC)<sup>4)</sup>. The 1992 CLC is related to liability of ship owner, and the 1992 FC is related to oil receiver’s liability. According to these oil pollution compensation conventions, ship owner has primary liability of compensation for oil pollution damage, and then oil receiver has secondary liability<sup>5)</sup>. However, many countries, which were normally experienced huge oil spill accidents, have continuously raised the problem of compensation limit. Under this situation, the ‘Supplementary Fund’ was born in order to extend the scope of secondary liability compensation limit. Even though some countries point out the Supplementary Fund Regime’s problems<sup>6)</sup>, it is, at least, clear that the Fund regime is the most practical one to cover huge oil

---

3) Art. 2.6, 1992 CLC (“Pollution damage” means: (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; (b) the costs of preventive measures and further loss or damage caused by preventive measures.)

4) IOPC Funds, 1992 Fund Claims Manual(April 2005), p. 7.

5) Jin Yong Mok, “Recent trends toward international oil pollution damage compensation regime,” *Ocean Policy Research*, vol.1211(2006), p. 3.

6) Two things are generally pointed out: 1) the compensation limit should be much higher than 750million SDR, 2) there are too much gap in light of contribution obligation between ship owner and oil receiver. For more detail, 7<sup>th</sup> meeting of the 1992 Fund 3<sup>rd</sup> intersessional Working Group, IOPC Fund(March 2005).

damage in the future and is on its way to the development of an international oil pollution compensation fund regime.

Meanwhile, historically, international oil pollution compensation fund regimes have been deeply related to big incidents resulted in huge oil pollution damage<sup>7)</sup>. In this regard, the first big case was the *Torrey Canyon* disaster in 1967. Due to lack of any sufficient oil pollution compensation fund regime to deal with the incident, since *Torrey Canyon* disaster, international oil pollution fund regime has been created. Namely, the International Maritime Consultative Organization (IMCO, now International Maritime Organization) produced two international conventions: the “International Convention on Civil Liability for Oil Pollution Damage, 1969” (hereinafter referred to as 1969 CLC) and the “International convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971” (hereinafter referred to as 1971 FC). They are often called the 1971 Fund Regime. Since that, there have been some major oil spill disasters such as *Amoco Cadiz* (1978), *Exxon Valdez* (1989), *Erika* (1999), and *Prestige* (2002) cases. The major disasters were a critical reason for developing oil pollution compensation fund regimes in the manner of increasing compensation limit of each fund regime<sup>8)</sup>. The table below shows such regimes’ change.

As of now in 2008, 1992 CLC’s / 1992 FC’s Amendment (1992 Fund Regime) and the Supplementary Fund Regime are generally applied in current oil pollution incidents among member states of each fund, because the 1971 Fund regime was ceased to be in force in 2002, and 1992 CLC / 1992 FC were amended in 2000. In other words, current oil pollution compensation regime is driven by the 1992 Fund Regime and the Supplementary Fund Regime<sup>9)</sup>.

---

7) See Appendix 2.

8) For more detail, M. Jacobsson, “The International Compensation Regime 25 Years on,” *The IOPC funds’ 25 years of compensating victims of oil pollution incidents*, IOPC Funds(2003), pp. 13–14.

9) The 1992 CLC/FC includes their each amendment. As a result, 1992 CLC/ FC include the compensation limit increased through their amendments in 2000, hence the terms, 1992 CLC and 1992 FC, include

[Table 1: Compensation Regime's Changes]

| IOPC Fund Regime   | Ship owner  | Oil receiver  |
|--|---|---|
| 1971 Fund Regime:<br>1971 Fund Convention ceased to be in force 24/05/02   | 1969 CLC  | 1971 FC<br>↓<br>1971 Fund   |
| 1992 Fund Regime:<br>Adopted in 1992,<br>In force 1996<br>↓<br>2000 Amendment<br>Adopted in 2000,<br>In force 01/11/03 | 1992 CLC<br>(114 States Parties)<br>↓<br>1992 CLC's Amendment<br>(2000 CLC Amendment) | 1992 FC<br>(99 States Parties)<br>↓<br>1992 Fund<br>↓<br>1992 FC's Amendment<br>(2000 FC Amendment) |
| Supplementary Fund Regime:<br>Adopted in 2003<br>In force 03/05/05   |   | 2003 Protocol to 1992 FC<br>(21 States Parties)<br>↓<br>Supplementary Fund                          |

\* Table 1 was designed by the writer in this paper, using several relevant materials from IOPC Fund.

One of the most important aspects in those regimes is to augment each regime's maximum amount of compensation. The maximum amount of compensation is 89.77million Special Drawing Right (SDR<sup>10</sup>) under 1992 CLC's Amendment, 203 million SDR under 1992 FC's Amendment, and 750 million SDR under the Supplementary Fund. Supposing a huge incident occurs, 1992 CLC would work at first (Primary tier of compensation) for its compensation, next 1992 FC operate (Second tier of compensation), and then Supplementary Fund be applied (Third tier of compensation)<sup>11</sup>, on the condition that ship owner and oil receiver are each party of relevant conventions.

each amendment. The current oil pollution compensation regimes, therefore, can be called as the 1992 Fund Regime and the Supplementary Fund Regime.

10) SDR is the unit of account defined by the International Monetary Fund, converted here into US dollars at the rate of exchange applicable on Aug. 4, 2008, 1 SDR = US\$1.61935

11) For more detail on the three tier system, "OIL SPILL COMPENSATION: A Guide to the International Conventions on Liability and Compensation for Oil Pollution Damage," IPIECA/ITOPF publication(2007), pp. 2-3.

### III. Main Contents of the 2003 Supplementary Fund Protocol

#### 1. Scope of Application

The scope of application of the Supplementary Fund is oil pollution damage in: 1) the territory of a contracting state, 2) the territorial sea, 3) the exclusive economic zone (EEZ), and 4) if the state has not established its EEZ, an area beyond and adjacent to the territorial sea of that state extending not more than 200 nautical miles (Art.3)<sup>12)</sup>. The scope of the Protocol is identical to one of 1992 CLC and 1992 FC. The EEZ was firstly added with the 1992 CLC.

#### 2. Compensation Limit

When the aggregate amount of claims based on the assessment made by the IOPC exceeds the limit of the 1992 Fund, the Supplementary Fund shall pay the compensation within the amount of 750 million SDR. If the claim amount of money exceeds 750 million SDR, the amount available shall be distributed in such a manner that the proportion between claim and the compensation actually recovered by the claimant shall be the same for all claimants (Art. 5, 4.2, 4.3).

The aggregate amount of compensation limit has increased from 203 million SDR under the 1992 Fund to 750 million SDR under the Supplementary Fund. This fact reflects on the past concerns of intergovernmental society experiencing

---

<sup>12)</sup> Art.3, 2003 SFC(This Protocol shall apply exclusively: (a)To pollution damage caused: (i)in the territory, including the territorial sea, of a Contracting State, and (ii)in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more that 200 nautical miles from the baselines from which the breadth of its territorial sea is measured; (b)To preventive measures, wherever taken, to prevent or minimize such damage.)

global oil pollution disasters, and thus, its response, throughout international oil pollution regime changes, has been made. The table 2 below shows compensation limit's changes according to each convention.

[Table2: Compensation Limit]

|  | Ship owner(Insurer: P&I <sup>13</sup> )   | Oil receiver(IOPC Fund)                  |
|--|---|--|
| 1992 CLC / FC <sup>14</sup> )                      | 59.70million SDR<br>(US\$ 96.7 million)   | 135million SDR<br>(US\$ 218.6 million)   |
| 2000 Amendment of<br>1992 CLC / FC <sup>15</sup> ) | 89.77 million SDR<br>(US\$ 145.4 million) | 203million SDR<br>(US\$ 328.7 million)   |
| 2003 Supplementary<br>Fund <sup>16</sup> )         | 89.77 million SDR<br>(US\$ 145.4 million) | 750million SDR<br>(US\$ 1,214.5 million) |

\* Source by IOPC Funds

### 3. Jurisdictional Competence

When a legal action for compensation for pollution damage has been brought before a court of a contracting state under the 1992 CLC against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Supplementary Fund (Art. 7.2). However, where the action has been brought before a court in a contracting state to the 1992 CLC but not to this Protocol, any action against the Supplementary Fund shall, at the

13) OIL SPILL COMPENSATION, *supra* note 11, p. 5(Protection and Indemnity Clubs (P&I Club) are mutual, non-profit making associations which insure their ship owner members against various third-party liabilities, including oil pollution. Whilst each Club bears the first part of any claim, the concept of mutuality is extended by the 'pooling' of large claims by the major P&I Clubs that are members of the International Group.)

14) 1992 Fund Regime applicable to incidents occurring before 2003.11.

15) 1992 Fund Regime applicable to incidents occurring from 2003.11.

16) Supplementary Fund Regime applicable to incidents occurring from 2005.3.

option of the claimant, be brought either before a court of the state where the Supplementary Fund has its headquarters or before any court of a contracting state to this Protocol competent (Art. 7.3).

#### 4. Jurisdiction in Other Countries

Any judgment by another country's court having jurisdiction according to Article 7 of this protocol shall, when it has become enforceable in the state of origin and in that state no longer subject to ordinary forms of review, be recognized and enforceable in each contracting state on the same conditions as are proscribed in Article 10 of the 1992 CLC (Art. 8.1). A contracting state may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent (Art. 8.2).

#### 5. Subrogation

The Supplementary Fund shall, in respect of any amount of compensation for pollution damage paid by the Supplementary Fund, acquire by subrogation the rights that the person so compensated may enjoy against the ship owner or his guarantor, 1992 Fund, and the 3<sup>rd</sup> person (Art. 9). Namely, the Fund can exercise subrogation against 1) the ship owner 2) his guarantor, 3) the 1992 Fund, and 4) the third person.

#### 6. Oil receiver's Obligation: Contributions

With regard to the obligators, annual contributions to the Supplementary Fund shall be made through contracting states by any person who has received in total



quantities exceeding 150,000tons (Art. 10).

As of Aug. 2008, the member states were 21 states, and 2006 annual contribution due in 2007 was a levy of 1.4 million pound for the Supplementary Fund<sup>17)</sup>. However, the contribution was used for only administrative costs because there had been no incidents which required that Fund to pay compensation.

#### 7. Transitional Provision: Capping System

The 'capping system' means that contribution of a single contracting state shall not exceed 20% of the total amount of annual contributions. This system was adopted in the "International Conference on the Establishment of a Supplementary Fund for Oil Pollution Damage," because Japan had consistently requested it and European countries wanted Japan to be a member state of the Protocol<sup>18)</sup>. The capping system will terminate: 1) when the total quantity of contributing oil received in all Contracting States per year has reached 1,000 million tons, or 2) it will be 10 years after the date of entry into force of this Protocol has elapsed, whichever occurs earlier (Art. 18.4)<sup>19)</sup>. Although the capping system is a transitional provision of the Protocol, it gives Japan great advantage because of the only country applicable to capping system.

---

17) IOPC Funds, "Annual Report 2007," n.d., <[http://www.iopcfund.org/npdf/AR07\\_E.pdf](http://www.iopcfund.org/npdf/AR07_E.pdf)>, pp. 39–40.

18) Lee Sik Chai, "A Study on the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992," *Study of Maritime Law*, vol.15, no.1(2003), pp. 14–16.

19) Art. 18.4, 2003 SFC (The provision in paragraph 1 to 3 shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year, including the quantities referred to in article 14, paragraph 1, has reached 1,000 million tons or until a period of 10 years after the date of enter into force of this Protocol has elapsed, whichever occurs earlier.)

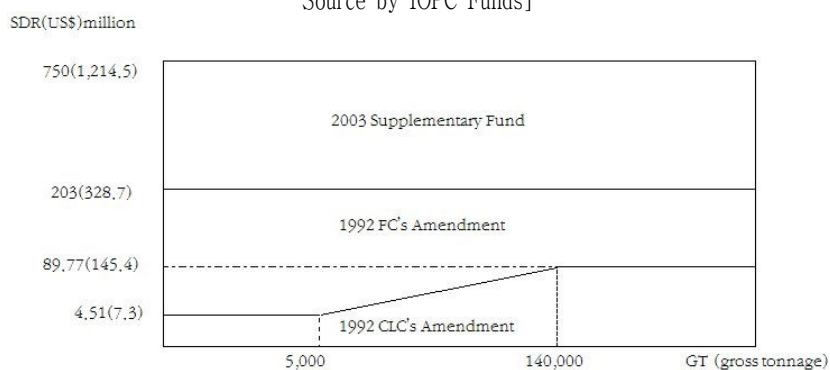
#### IV. Past Korea's Cost/Benefit Analysis toward the Supplementary Fund Regime

##### 1. Basic Understanding the Process of Compensation

When an oil ship of country X which is a party state of 1992 CLC makes an oil spill incident in the sea of country Y which is oil receiver's country and a member state of 1992 FC, compensation for the oil pollution damages would be addressed by two aspects: the ship owner side and the oil receiver side. Compensation is paid by the two parties' insurers, namely P&I Club and IOPC Fund respectively.

With regard to ship owner's liability, ship owners can limit their liability to an amount of 1) 4.51 million SDR for a ship not exceeding five thousand units of gross tonnage, 2) 4.51 million SDR plus 631 SDR for each additional unit of tonnage for a ship with tonnage between 5,000 and 140,000 units of tonnage, and 3) 89.77 million SDR for a ship of 140,000 units of tonnage or over<sup>20)</sup>.

[Picture 1: Compensation limit under 1992 Fund and 2003 Supplementary Fund Regimes, Source by IOPC Funds]



20) Art. 5.1. in 2000 Amendment of 1992 CLC.

With regard to oil receiver's liability, under the 1992 Fund Regime, the maximum compensation is 203 million SDR per accident, irrespective of the size of the ship but including the sum paid by the ship owner or his insurer, and under the Supplementary Fund Regime, the maximum of compensation available for pollution damage is 750 million SDR, which includes the 203 million SDR under the 1992 Fund Regime.

Supposing the ship of country X was 140,000 GT or more and the aggregate amount of damage was 170million SDR, the compensation will be paid 89.77million SDR from ship owner's insurer under the 1992 CLC, and 80.23(170 - 89.77) million SDR from IOPC Fund under the 1992 FC.

In the meantime, when a big oil incident occurs and its total damage amount exceeds the aggregate amount of 1992 FC's compensation limit and country Y is a party of the Supplementary Fund, the Fund can compensate the damage within the limit of 750 million SDR and can acquire by subrogation the rights against others<sup>21</sup>).

As mentioned before, historically, new fund regimes have been made after huge incidents which exceeded the fund's compensation limit occurred. For example, international society learned valuable lessons from huge oil spills in Japan (*Nakhodka*, 1997), in France (*Erika*, 1999) and in Spain (*Prestige*, 2002), all of which demonstrated the difficulties in respect of delays in full compensation for claims. At the time, policy consideration of the international society was that implementation of the 2003 Supplementary Fund Protocol will overcome both problems, with claimants more likely to be paid promptly and in full. From this historical perspective, if some big incidents exceeded the compensation limit of the Supplementary Fund occur, new Fund regime might be discussed at the international level.

Since 2005, when the Supplementary Fund was in force, there has been no

---

21) For more detail on subrogation against others, see p. 7 in this paper.

incident exceeded the compensation limit of 1992 Fund among its party states. Up to now 2008, the only one case was the *Hebei Spirit* case in Korea. However, Korea cannot enjoy compensation's benefit of the Supplementary fund because it is not a party state of the Fund. Why did the Korean government fail to ratify the protocol earlier?

## 2. Cost/Benefit analysis

### 1) What Was the Cost?

Even though there are several political or diplomatic aspects to measure costs/benefits regarding that a country ratifies the 2003 Supplementary Fund Protocol<sup>22)</sup>, it is clear that, in an economic perspective, 'cost' includes contribution and 'benefit' includes compensation. When an incident payable by the Supplementary Fund occurs, all party states have to pay contribution at the rate of their amount of oil receiving per year in order to compensate the claims. The important thing is that a total amount of compensation under the Supplementary Fund is 750 million SDR, while the compensation limit of the 1992 Fund is 203 million SDR. Accordingly, every party state has heavier burden of contribution, and hence countries, particularly which have never occurred big disasters applicable to the Supplementary Fund, were likely to hesitate the ratification of the 2003 Supplementary Fund Protocol. On this arithmetic basis, there were some opinions against Korea's early participation to the Supplementary Fund Regime in 2003<sup>23)</sup>.

One of the studies of the Korea Maritime Institute (KMI) shows specifically reasons why the Korean government did not ratify the 2003 Supplementary Fund

---

22) Lee Sik Chai, *supra* note 18, pp. 16-19.

23) *Id.* p. 20.

Protocol<sup>24)</sup> earlier. Briefly explaining, the reason is that costs outweighed benefits of the ratification in an economic aspect. The table 3 shows that the contribution of oil companies was a critical perspective of the ratification<sup>25)</sup>.

[Table 3: Cost/Benefit Analysis of interest parties, source by KMI]  
(In the case of ratification of the 2003 Supplementary Fund Protocol)

| Ref                   | Benefit   | Cost                                  |
|-----------------------|---|---------------------------------------|
| Korean Government     | Strengthening Global Image  | Obligation to report toward IOPC Fund |
| Oil companies         | In the huge incident over the limit of 1992 Fund, more compensation | Contributions                         |
| Victims in the future | Broaden scope of compensation                                       | Nothing                               |
| Ship owners           | Nothing   |                                       |

As of Dec. 2004, contribution rate of Korea under the 1992 Fund was 8.47%, which means Korea have to pay 8.47% of total amount of compensation when an incident occurs<sup>26)</sup>. As of July 2005, the number of party states of the Supplementary Fund was 11, thus, if Korea had ratified the protocol, the contribution rate would have been 16.36% with two reasons: 1) small number of party states to share the contribution, and 2) the 'capping system'<sup>27)</sup>. As for the number of the party states and heavy burden of contribution, the analysis of the KMI report was based on the scientific research and it was reasonable. That analysis could be verified through IOPC annual report in 2007. The below picture 2 shows that the general contribution under the 1992 Fund Regime.

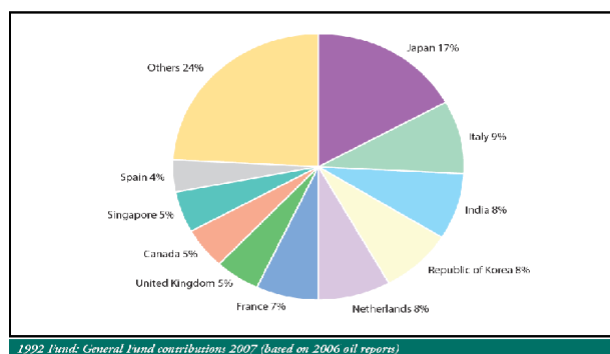
24) Jin Yong Mok, "The response to the 2003 Supplementary Fund Protocol and oil pollution damage compensation system's amendment," Basic Research 2005-17, (KMI, 2005).

25) Id. p. 75.

26) Id. p. 66.

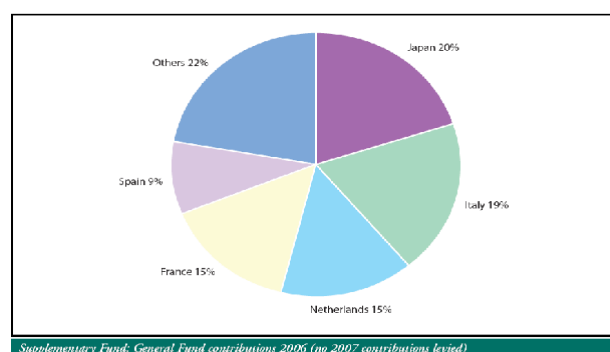
27) Id. pp. 67-68.

[Picture2: 1992 Fund's General Fund contributions 2007]



Under the 1992 Fund Regime, Korea has to pay the amount of around 8 %; it is similar to one of Netherlands; it is also a little less than one of Italy. Meanwhile, the picture 3 shows the contribution of contracting parties under the Supplementary Fund Regime. In picture 3, figures of Italy, Netherlands, France, and Spain are almost double to the figures in picture 2. If it had ratified the 2003 Supplementary Fund Protocol, Korea also would have paid more contribution under the Fund due to the small number of the party states.

[Picture3: Supplementary Fund's General Fund contributions 2006]



In the second place, the 'capping system' makes the contribution rate of one country not exceed more than 20% of the whole contribution. For example, even though Japan's contribution is 35% of all, that amount should be only 20% of all, not 35%. Other members, thus, have to share the 15% of Japan's contribution. For these two reasons, as moving from the 1992 Fund to the Supplementary Fund, it was sure that party states of the Supplementary Fund had heavy burden in terms of contribution.

## 2) What Was the Benefit?

The table 3 says that, in the event of ratification, the benefit of oil companies was more amount of compensation. By the way, the reverse logic raises an important question, that is, in the case of non-ratification, whether the Korean oil companies have to pay more compensation toward victims or environmental damage of oil pollution incidents at a cost of themselves. If oil companies need not to pay legal compensation for prospective victims or environmental damage at the companies' money, the cost of non-ratification might close to zero. As for Korean laws governing legal compensation for oil pollution damage<sup>28)</sup>, even though there are two Acts of 'Compensation for Oil Pollution Damage Act' and 'Commercial Act', there is little room to address legal compensation strictly against oil receivers<sup>29)</sup>. It is also difficult for Korean courts to make a decision including punitive damage against oil receivers under Korea's civil law system. In reality,

---

28) The main laws relating to maritime environment protection in Korea are 'Maritime Pollution Protection Act (1977)' and 'Compensation for Oil Pollution Damage Act (1992)'. For more detail on these two laws, Young Jun Lee, "A Study on Current Law Systems related with Maritime Environment Protection," *Kyung Hee Law Journal*, vol.33, no.1(1988), pp. 270-273.

29) As for the legal compensation issue of *Hebei Spirit* incident, Kyong Un Chun, "A Study on Legal Compensation for Oil Pollution Damage," *Environmental Law Research*, vol.30, no.2(August 2008), pp. 509-528.

GS Caltex - one of the big Korean oil companies- did not have heavy burden of compensation in the *Sea Prince* incident in 1995. This judgment trend of Korean courts is different from the one of French Court in the *Erika* incident, and from the one of US Supreme Court in the *Exxon Valdez* disaster. In *Erika* case, Paris Criminal Court admitted the liability of the oil receiver, Total S.A, in Paris, France. The US Supreme Court also decided \$2.5 billion punitive damage award in the *Exxon Valdez* disaster, on June 25 2008.

On the other hand, considering the relevant Korea's national laws and judicial decision trends, the benefit of oil companies in Korea, in any case of ratification or not, would be zero. Consequently, benefits and costs of oil companies would be like as below table 4. It means that Korean oil companies' strategy would run counter to the ratification of the 2003 Supplementary Fund Protocol.

[Table 4: Cost/Benefit of Korean oil companies regarding ratification of the 2003 SFP]

|                  | Benefit    | Cost         |
|------------------|------------|--------------|
| Ratification     | Close zero | Contribution |
| Non-ratification | Close zero | Close zero   |

With regard to the position of the Korean government, table 3 says that the benefit was to strengthen global image. As one of the major oil importing countries, however, the benefit of Korea was underestimated. If the Korean government had participated in the new regime actively, it would have had supplementary benefits or enjoyed a certain number of national interests. This is mainly because a member state which has obligation of contribution can be in more powerful position at the same time. In this regard, 'capping system' provides a lesson to Korea. Japan, the most major oil importing nation among IOPC Fund members, constantly insisted 'capping system' and eventually the



system was adopted. It was possible because Japan had paid its contribution under the Supplementary Fund Regime.

### 3. Review

The cost side of the analysis was accurate. However, there were two kinds of mistakes in the benefit side of the analysis. On the one hand, it should have considered national benefit, in case of ratification, more specifically at the national and international level. At the national level, protection of the Korean environment or victims from feasible oil disasters should have been included in the national interest, and at the international level, several tangible or intangible values and interests in a global society should have been counted in benefit.

On the other hand, the benefit of oil companies under ratification was, in reality, inappropriate. The Korean government should have considered a unique Korean laws' ground and judicial trends. Because there was no any strong Act governing effectively oil receiver or the third party who are responsible to the oil incident, it cannot fully cover great amount of oil pollution damage of incidents such as the *Hebei Spirit* incident. As a matter of law, Korean oil companies might ignore legal responsibility of heavy burden private compensation for prospective victims under those Korean national laws and judicial decision environment. Hence, it was likely to be accurate that the benefit of oil companies under ratification was nothing.

## V. The *Hebei Spirit* Incident

### 1. Korea's Loss of the Hebei Spirit Case

The Hong Kong flag tanker *Hebei Spirit* (146,848 Gross Tonnage) was struck by the crane barge Samsung No. 1 while at anchor about 8 km off Taean on the west coast of the Korea. So far, claims have been submitted for clean-up operations, losses in the fisheries / mariculture sector, property damage, losses in the tourism and other economic sectors, and the like. The losses arising out of the incident are expected to exceed the compensation limit under the 1992 CLC and the 1992 FC.<sup>30)</sup>

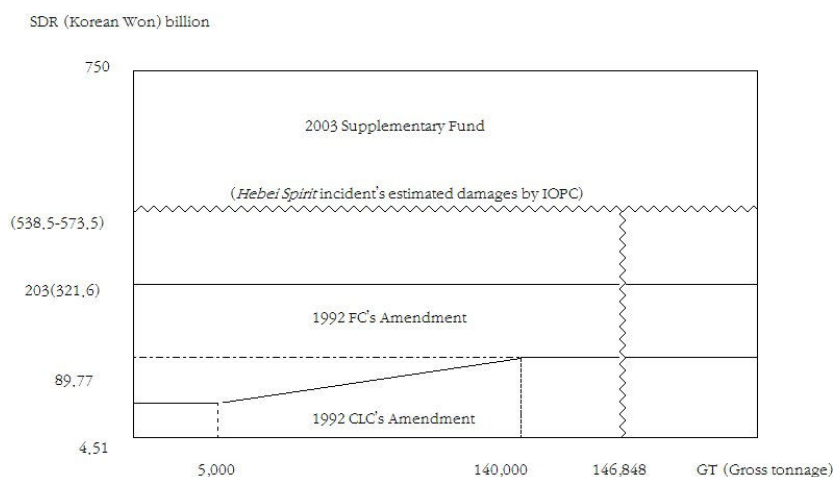
In respect of ship owner in this incident, the flag state of the ship is Hong Kong, and ship owner's P&I insurer is "Assuranceforeningen Skuld (Gjensidig)" (Skuld Club). Because the ship's GT is over 140,000 tons, there is no room for STOPIA<sup>31)</sup> to be applicable. Accordingly, ship owner's liability is limited by 89.77 million SDR which is the compensation limit of the 1992 CLC. In respect of oil receiver in this incident, the oil receiver is Hyundai Oilbank, one of the Korea's oil companies. Because Korea is a party to the 1992 FC, Korean victims can get compensation up to the maximum limitation of the 1992 FC's compensation from IOPC Fund. However, if the losses exceed the limit of the 1992 Fund, the extra compensation cannot be paid by IOPC Fund because Korea is not a member state of the Supplementary Fund.

---

30) EXECUTIVE COMMITTEE, 41<sup>st</sup> session Agenda item 3, 92FUND/EXC.41/9, 21 May 2008.

31) Small Tanker Oil Pollution Indemnification Agreement ('STOPIA') is an agreement between the owners of tankers of 29,548 GT or less to indemnify the 1992 Fund.

[Picture 4: *Hebei Spirit* incident's Compensation for estimated damages]



Under the Supplementary Fund Regime, if the total damage amount of money is over the limitation of the 1992 Fund as well as under the maximum limitation of the Supplementary fund, such an amount of compensation can get paid provided that the said country is a member state of the Supplementary Fund. The estimate damage money of the *Hebei Spirit* accident is about Won 538.5 - 573.5 billion according to IOPC investigation<sup>32)</sup>.

In *Hebei Spirit* case, the estimate amount of damage is between the 1992 Fund and the Supplementary Fund. As a result, only if Korea is a member state of the Supplementary Fund, the full compensation can be applicable to the whole damage of the incident. In other words, the loss of Korea is approximately Won 217 - 252 billion since it is not a member state of the Supplementary Fund.

32) EXECUTIVE COMMITTEE, 41<sup>st</sup> session Agenda item 5, 92FUND/EXC.41/11, 27 June 2008, p. 13.

## 2. Each Relevant Party in Compensation Process

Normally, the operators or masters of the oil ship and another wrongdoer incurred the oil spill accident would be brought before a criminal court which has jurisdictional competence. In *Hebei Spirit* incident, as for the owner of *Hebei Spirit*, 'non-fault responsibility' should be applied on conformity with 'Compensation for Oil Pollution Damage Act' and the amount of compensation is, in detail, stipulated in the law<sup>33</sup>). However, as for the legal responsibility of another wrongdoer, Samsung Heavy Industries Co., there is a strong possibility that the company will refer to 'limited liability' in accordance with Article 746 of 'commercial Act<sup>34</sup>). On the other hand, compensation issues would be dealt with by the ship owner's insurer and by IOPC fund on the condition that the said country is a member state of the relevant fund conventions. Moreover, practically in huge oil spill accidents, victim's countries used to take part in compensation issue for prompt and reasonable solution. In the *Hebei Spirit* incident, the Korean government, Skuld Club, and the 1992 Fund are main actors to address compensation issue. Each party's role and position are as below.

### 1) Korean Government

Shortly after the *Hebei Spirit* case occurred, the Korean government made the "Special Law for the Support of Affected Inhabitants and the Restoration of the Marine Environment in respect of the *Hebei Spirit* Oil Pollution Incident" (*Hebei Spirit* Special Law), which was approved by the National Assembly in March 2008 and entered into force on Jun. 15, 2008, with the purpose to promptly address compensation issues for the affected local population and pollution damage of

---

33) Kyong Un Chun, *supra* note 29, p. 544.

34) *Id.*

the accident. The main contents relating compensation under the *Hebei Spirit* special law are as follows: firstly, the central government or the Choongcheonam Province - local government - had authorization to make payments in the form of advance compensation or loans to claimants, provided such payments were based on the assessment made by the 1992 Fund and the Skuld Club<sup>35</sup>). In the second place, within the scope of the above payment, the central and local government can exercise subrogation rights toward the 1992 Fund and the Skuld Club at a later date<sup>36</sup>). The third way is that, for the local population suffering the damage, if the amount of compensation they receive is over the 1992 Fund's compensation limit, the central and local government can compensate the losses in full or a part, but the extra payment shall not exceed the amount of compensation based on the assessments of claims by the 1992 Fund and the Skuld Club<sup>37</sup>).

However, Won 117.2 billion had been paid as an advance of compensation or emergency subsistence aid by central government, local government, and private donors. In order to acquire by subrogation rights, the Korean government must prove that the payment was an advance of compensation.

## 2) Skuld Club

The Hebei Spirit is owned by HebeiSpiritShipping Company Limited. It is insured for pollution risks by Skuld Club. After the incident, on Jan. 5, 2008, a cooperation agreement was made in order to deal with compensation issues between the owners/Skuld Club, and Korean Marine Pollution Response Corporation (KMPRC) and Ministry of Maritime Affairs and Fisheries (MOMAF). Basically, the position of Skuld Club is to compensate within the limit of their compensation. Further to the cooperation agreement, the Skuld Club took part in

---

35) Art. 8 ① ②, in *Hebei Spirit* Special Law.

36) Art. 8 ③, in *Hebei Spirit* Special Law, and Art. 9.3, to the 1992 Fund Convention.

37) Art. 9 ① ②, in *Hebei Spirit* Special Law.

discussions with the Korean government to resolve its concern that the Limitation Court might not fully take into account any payment made by the Skuld Club, and that, therefore, the Club would run the risk of paying compensation in excess of the limitation amount. The discussion is still ongoing.

### 3) IOPC Fund

In March 2008, the Executive Committee of the 1992 Fund, in view of the uncertainty as to the total amount of the potential claims, decided that payments should for the time being be limited to 60% of the amount of the damage actually suffered by each claimant, as assessed by the Fund's experts. The 1992 Fund and the Skuld Club have established a Claims Office (Hebei Spirit Centre) in Seoul to assist claimants in the presentation of their claims for compensation. The 1992 Fund's research is still ongoing.

## 3. Review

The basic principle of the Korea's government is to compensate in full for the affected local people within the amount of the assessment made by the 1992 Fund and the Skuld Club. Consequently, even though the amount of assessment is over the limitation of the 1992 Fund's compensation limit, the affected local people can be paid. However, there are questions openly raised in respect of the 'full compensation' and 'Polluter Pays Principle' in Korean society. This is mainly because the loss will be reimbursed by tax of Korean citizens. It is also because wrongdoer, Samsung and oil receiver, Hyundai would be escaped from the legal liability under Korea's courts.

Considering the past strategy of the Korean government and current response toward reasonable compensation, it is clear that, if the Korean government had

hoped to keep in the current oil pollution compensation regime, it must rearrange domestic legal system or, at least, must review the possibility to introduce non-fault liability of oil receivers because the potential victims are not likely to response effectively against major oil companies under current Korean legal circumstances. Otherwise, the Korean government must ratify the 2003 Supplementary Fund Protocol in order to protect its potential victims or national maritime environment. The Korean government should have taken one of two things above.

## VI. Conclusion

The history of oil pollution compensation fund regime says that the nature of each new Fund Regime is to compensate for adversely affected environment and people in full and promptly. The bigger incident occurs, the higher compensation is required. In this regard, the Supplementary Fund Regime stands for the recent necessity for the higher compensation's fund regime. Under the 2003 Supplementary Fund Protocol, party states have to pay its contribution at a rate of its amount of oil receiving per year, while the party state can enjoy the benefit of higher compensation from the Supplementary Fund in the event of big oil spill incidents. In Korea, however, there were no oil spill incidents which exceeded the compensation limit under the 1992 Fund Regime. Under the given circumstances, Korea implemented Cost/Benefit Analysis relating to the ratification of the 2003 Supplementary Fund Protocol and finally, based on the analysis, reserved ratification to the Protocol. In the meantime, the *Hebei Spirit* incident indicated that such a big oil spill accident could happen in Korea, and demonstrated that, even in the case of cost/benefit analysis, considering a relevant domestic legal system is critical. As a result of the *Hebei Spirit* incident,

the Korean Government brought a great of losses as much as Won 217 - 252 billion. The main problem of past Korea's strategy was not to consider the insufficiency of the national compensation system including domestic Acts or judicial decision.

In conclusion, Korea's ratification of the 2003 Supplementary Fund Protocol was necessary because it could help out not only insufficient domestic legal system related with oil pollution compensation, but also the role of Korea under the new fund regime.

After the *Hebei Spirit* incident, the Korean government is preparing for the ratification of the 2003 Supplementary Fund Protocol. If Korea decided to ratify it, then the next thing to do is to think about how to create more Korea's national interests and how to foster Korea's capability and role under the new fund regime. In this regard, the Korean government must solve some questions. The remaining questions might be as follows: How do Korea strengthen its role under the Supplementary Fund Regime focusing on major European countries? What are the Japan's and India's strategy toward the Supplementary Fund Regime? Which thing will drive Korea well in the long run between making a strong and effective national compensation system such as U.S. Oil Pollution Act (1990) and taking part in an international oil pollution compensation fund regime constantly? And, what are other possible effective strategies for the prospective victims or maritime environment in Korea?



[Appendix 1: source by IOPC Fund, <http://www.iopcfund.org/ongoing.htm>]  
Ongoing Incidents (Updated 15 July 2008)

The table below lists incidents that the IOPC Funds have dealt with during 1991-2008, in reverse date order. Links are provided to the relevant sections of the 2007 Annual Report and/or to the most recent documents issued for meetings of the governing bodies during 2004-2008.

| Ship                  | Place of Incident  | Date of Incident | Annual Report        | Meeting Documents<br>Records of Decisions   |
|-----------------------|--------------------|------------------|----------------------|---|
| Incident in Argentina | Argentina          | 25-26/12/07      |                      | June 2008 <a href="#">Document Record of Decisions</a>  |
| <i>Hebei Spirit</i>   | Republic of Korea  | 07/12/07         | <a href="#">2007</a> | June 2008 <a href="#">Document 1</a><br><a href="#">Document 2</a><br><a href="#">Document 3</a><br><a href="#">Document 4</a><br><a href="#">Record of Decisions</a> |
| <i>Volgoneft 139</i>  | Russian Federation | 11/11/07         | <a href="#">2007</a> | June 2008 <a href="#">Document Record of Decisions</a>  |
| <i>Shosei Maru</i>    | Japan              | 28/11/06         | <a href="#">2007</a> | June 2008 <a href="#">Document Record of Decisions</a>  |
| <i>Solar 1</i>        | Philippines        | 11/08/06         | <a href="#">2007</a> | June 2008 <a href="#">Document Record of Decisions</a>  |
| <i>N°7 Kwang Min</i>  | Republic of Korea  | 24/11/05         | <a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions</a>   |
| <i>N°11 Hae Woon</i>  | Republic of Korea  | 22/07/04         | <a href="#">2004</a> | October 2004 <a href="#">Document Record of Decisions</a>   |
| <i>Jeong Yang</i>     | Republic of Korea  | 23/12/03         | <a href="#">2004</a> | October 2004 <a href="#">Document Record of Decisions</a>   |
| <i>Kyung Won</i>      | Republic of Korea  | 12/09/03         | <a href="#">2004</a> | October 2004 <a href="#">Document Record of Decisions</a>   |
| <i>Duck Yang</i>      | Republic of Korea  | 12/09/03         | <a href="#">2004</a> | October 2004 <a href="#">Document Record of Decisions</a>   |

|                                |                      |          |  |   |
|--------------------------------|----------------------|----------|--|---|
| <i>Victoriya</i>               | Russian Federation   | 30/08/03 | <a href="#">2004</a>                         | October 2004 <a href="#">Document Record of Decisions</a>   |
| <i>Hana</i>                    | Republic of Korea    | 13/05/03 | <a href="#">2004</a>                         | October 2004 <a href="#">Document Record of Decisions</a>   |
| <i>Buyang</i>                  | Republic of Korea    | 22/04/03 | <a href="#">2004</a>                         | October 2004 <a href="#">Document Record of Decisions</a>   |
| Incident in Bahrain            | Bahrain              | 15/03/03 | <a href="#">2005</a>                         | March 2005 <a href="#">Document Record of Decisions</a>   |
| <i>Spabunker IV</i>            | Spain                | 21/01/03 | <a href="#">2003</a>                         | —   |
| <i>Prestige</i>                | Spain                | 13/11/02 | <a href="#">2007</a>                         | June 2008 <a href="#">Document 1</a><br><a href="#">Document 2</a><br><a href="#">Record of Decisions</a> |
| Incident in the United Kingdom | United Kingdom       | 29/09/02 | <a href="#">2003</a>                         | —   |
| Incident in Guadeloupe         | Guadeloupe           | 30/06/02 | <a href="#">2003</a>                         | —   |
| <i>Zeinab</i>                  | United Arab Emirates | 14/04/02 | <a href="#">2004</a>                         | October 2004 <a href="#">Document Record of Decisions 1</a><br><a href="#">Record of Decisions 2</a>      |
| <i>Singapura Timur</i>         | Malaysia             | 28/05/01 | <a href="#">2004</a>                         | October 2004 <a href="#">Document Record of Decisions</a>   |
| <i>Baltic Carrier</i>          | Denmark              | 29/03/01 | <a href="#">2003</a>                         | —   |
| <i>Natuna Sea</i>              | Indonesia            | 03/10/00 | <a href="#">2003</a>                         | —   |
| Incident in Sweden             | Sweden               | 23/09/00 | <a href="#">2006</a>                         | October 2006 <a href="#">Document Record of Decisions</a>   |
| <i>Alambra</i>                 | Estonia              | 17/09/00 | <a href="#">2007</a>                         | October 2007 <a href="#">Document Record of Decisions</a>   |
| Incident in Spain              | Spain                | 05/09/00 | <a href="#">2003</a>                         | —   |
| <i>Slops</i>                   | Greece               | 15/06/00 | <a href="#">2007</a>                         | June 2008 <a href="#">Document Record of Decisions</a>  |
| <i>Al Jaziah 1</i>             | United Arab Emirates | 24/01/00 | <a href="#">2007</a><br><a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions 1</a><br><a href="#">Record of Decisions 2</a>      |

|                       |                      |          |                      |   |
|-----------------------|----------------------|----------|----------------------|---|
| <i>Erika</i>          | France               | 12/12/99 | <a href="#">2007</a> | June 2008 <a href="#">Document Record of Decisions</a>    |
| <i>Dolly</i>          | Caribbean            | 05/11/99 | <a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions</a> |
| <i>Pontoon 300</i>    | United Arab Emirates | 07/01/98 | <a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions</a> |
| <i>Evoikos</i>        | Singapore            | 15/10/97 | <a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions</a> |
| <i>Katja</i>          | France               | 07/08/97 | <a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions</a> |
| <i>Plate Princess</i> | Venezuela            | 27/05/97 | <a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions</a> |
| <i>Nissos Amorgos</i> | Venezuela            | 28/02/97 | <a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions</a> |
| <i>Kriti Sea</i>      | Greece               | 09/08/96 | <a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions</a> |
| Incident in Germany   | Germany              | 20/06/96 | <a href="#">2007</a> | March 2008 <a href="#">Document Record of Decisions</a>   |
| <i>Sea Empress</i>    | United Kingdom       | 15/02/96 | <a href="#">2003</a> | —   |
| <i>Yuil N°1</i>       | Republic of Korea    | 21/09/95 | <a href="#">2004</a> | October 2004 <a href="#">Document Record of Decisions</a> |
| <i>Yeo Myung</i>      | Republic of Korea    | 03/08/95 | <a href="#">2005</a> | October 2004 <a href="#">Document Record of Decisions</a> |
| <i>Sea Prince</i>     | Republic of Korea    | 23/07/95 | <a href="#">2003</a> | —   |
| <i>Iliad</i>          | Greece               | 09/10/93 | <a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions</a> |
| <i>Keumdong N°5</i>   | Republic of Korea    | 27/09/93 | <a href="#">2004</a> | October 2004 <a href="#">Document Record of Decisions</a> |
| <i>Braer</i>          | United Kingdom       | 05/01/93 | <a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions</a> |
| <i>Aegean Sea</i>     | Spain                | 03/12/92 | <a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions</a> |
| <i>Vistabella</i>     | Caribbean            | 07/03/91 | <a href="#">2007</a> | October 2007 <a href="#">Document Record of Decisions</a> |

[Appendix 2: source by IOPC Fund, [http://www.iopcfund.org/npdf/jub\\_en.pdf](http://www.iopcfund.org/npdf/jub_en.pdf)]

| Year | Event  | Incident                                      |
|------|--|---|
| 1967 |  | Torrey Canyon                                 |
| 1969 | Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution(TOVALOP) concluded<br>1969 Civil Liability Convention adopted   |   |
| 1971 | Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution(CRISTAL) concluded<br>1971 Fund Convention adopted  |   |
| 1975 | 1969 Civil Liability Convention entered into force   |   |
| 1976 | Protocol adopted changing monetary unit from gold franc to SDR   |   |
| 1978 | 1971 Fund Convention entered into force<br>1971 Fund established in London: 14 Member States<br>1971 Fund limit: 30 million SDR  | Amoco Cadiz                                   |
| 1979 | 1971 Fund limit increased to 45 million SDR  | Antonio Gramsci<br>Miya Maru N <sup>o</sup> 8 |
| 1980 | Memorandum of Understanding signed with P&I Clubs Working Group: admissibility and payment of claims<br>Assembly Resolution: no abstract damage quantification of environmental damage based on theoretical models | Tanio   |
| 1982 | Claims Manual published  |   |
| 1984 | Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention adopted. These Protocols did not come into force   |   |
| 1985 |  | Patmos  |
| 1986 | 1971 Fund limit increased to 52.5 million SDR  | Oued Gueterini                                |
| 1987 | 1971 Fund limit increased to 60 million SDR  |   |
| 1988 |  | Exxon Valdez                                  |
| 1990 |  | Rio Orinoco                                   |
| 1991 |  | Haven   |

|      |  |                            |
|------|--|----------------------------|
| 1992 | Protocol to 1969 Civil Liability Convention and 1971 Fund Convention(1992 Convention) adopted  | Aegean Sea                 |
| 1993 | Working Group: criteria for the admissibility of claims  | Braer<br>Keumdong No5      |
| 1996 | Hazardous and Noxious Substances Convention(HNS Convention) adopted<br>1992 Civil Liability Convention and 1992 Fund Convention entered into force<br>1992 Fund established: 9 Member States<br>1992 Fund limit: 135 million SDR | Sea Empress                |
| 1997 | TOVALOP and CRISTAL terminated   | Nakhodka<br>Nissos Amorgos |
| 1998 | Working Group: definition of 'ship'  |                            |
| 1999 |  | Erika                      |
| 2000 | Working Group: adequacy of international compensation system<br>IMO legal Committee applied a special procedure to increase 1992 Conventions' limit  | Al Jaziah I                |
| 2001 | Working Group continues  | Singapura Timur            |
| 2002 | Working Group continues<br>1971 Fund Convention ceased to be in force<br>Revised Claims Manual published   | Prestige                   |
| 2003 | Working group continues<br>Protocol creating Supplementary Fund adopted Increased 1992 Fund limit of 203 million SDR takes effect.   |                            |

## Recommended Reading

- Anton, Donald K., et al. *International Environmental Law: Cases, Materials, Problems*, San Francisco: LexisNexis, 2007.
- Atapattu, Sumudu A. *Emerging Principles of International Environmental Law*, New York: Transnational Publishers Inc., 2006.
- Bodansky, Daniel, et al. ed. *The Oxford Handbook of International Environmental Law*, New York: Oxford University Press, 2007.
- Hunter, David, and James Salzman, and Durwood Zaelke, *International Environmental Law and Policy*, 3<sup>rd</sup> ed. New York: Foundation Press, 2007.
- Kato, Ichiro, Nobuo Kumamoto and William H. Matthews, ed. *Environmental Law and Policy in the Pacific Basin Area*, Tokyo: University of Tokyo Press, 1981.
- Louka, Elli. *International Environmental Law: Fairness, Effectiveness, and World Order*, New York: Cambridge University Press, 2006.
- Miles, Edward L., et al. *Environmental Regime Effectiveness: Confronting Theory with Evidence*, MIT Press, 2001
- Nanda, Ved P., and George Pring, *International Environmental Law & Policy for the 21<sup>st</sup> Century*, New York: Transnational Publishers Inc., 2003.
- Weiss, Edith Brown et al. *International Environmental Law and Policy*, 2d ed. New York: Aspen Publishers, 2007.
- Lee, Young Jun. *The theory of International Environmental Law*, Bubmunsu, 1995.
- Yu, Byeong Hwa. *International Environmental Law*, Jinsungsa, 1997.
- Chai, Lee Sik. "A Study on the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992," *Study of Maritime Law*, Vol.15, no.1, 2003.
- Chun, Kyong Un. "A Study on Legal Compensation for Oil Pollution Damage,"

*Environmental Law Research*, Vol.30, no.2, 2008.

Faure, Michael G., and Hui Wang, "Compensation for Oil Pollution Damage: China versus the International Regime," *Asia Pacific Journal of Environmental Law*, Vol. 9, no. 1, 2005.

Jacobsson, M. "The Significance of the Third Tier Supplementary Fund and the On-going Review of the International Compensation Regime," Petroleum Association of Japan Oil Spill Symposium, 2005.

Kang, Ryang. "A Study on International environmental Regime-The Case of the Antarctic Treaty System," *Ocean and Polar Research*, Vol. 28(2), 2006.

Lee, Young Jun. "A Study on Current Law Systems related with Maritime Environment Protection," *Kyung Hee Law Journal*, Vol.33, no.1, 1988.

Mok, Jin Yong. "The response to the 2003 Supplementary Fund Protocol and oil pollution damage compensation system's amendment," Basic Research 2005-17, 2005.

\_\_\_\_\_, "Recent trends toward international oil pollution damage compensation regime," *Ocean Policy Research*, Vol.1211, 2006.

Van Dyke, J. M. "The Legal Regime Governing Sea Transport of Ultrahazardous Radioactive Materials," *Ocean Development & International Law*, Vol.33, 2002.

<Abstract>

The Supplementary Fund Regime  
And Korea's Past Strategy  
- After the *Hebei Spirit* Incident -

Hong, Jong Wan

The *Hebei Spirit* incident made the Korean government reflect on its strategy in light of Korea's participation in the Supplementary Fund Regime. The Korean government could have ratified the 2003 Supplementary Fund Protocol, and thus could have enjoyed the benefits of compensation in the event of an oil pollution disaster. Why did the Korean government fail to ratify the 2003 Supplementary Fund Protocol? What was Korea's strategy at the time? This paper starts with those questions.

The basic purpose of this paper is to look back Korea's strategy regarding the Supplementary Fund Regime, and reaffirm the necessity of ratification of the 2003 Supplementary Fund Protocol. Towards this end, this paper will address as follows: section(II) explains the history of IOPC Fund Regimes, section(III)<sup>2</sup> deals with the main contents of the 2003 Supplementary Fund Protocol, section(IV) analyzes the past Korea's analysis and strategy toward the Supplementary Fund Regime, and section(V) addresses the *Hebei Spirit* case and the critical review of past Korea's strategy. The remaining questions after ratification will be shown up finally in section(VI).



<국문초록>

보충기금레짐과 한국의 과거 전략  
- 허베이스피리트 사건 이후 -

홍 종 완

허베이스피리트 사건은 보충기금레짐의 활용이라는 측면에서 한국정부의 지난 전략을 돌아보게 했다. 한국은 '2003 보충기금협약'을 비준했다면, 대형 유류오염사고 발생시 더 많은 보상을 받을 수 있었다. 왜 한국정부는 동 협약을 비준하지 않았던 것일까? 당시 한국 정부의 전략은 무엇이었을까? 본 논문은 이런 의문들로 시작된 것이다.

본고의 기본적 목적은 보충기금레짐과 관련한 한국 정부의 지난 전략을 돌아보는 것이고, 나아가 당시 '2003 보충기금협약'의 가입이 필요했음을 보여주는 것이다. 이를 위하여, 본고는 첫째, 국제유류오염보상기금 레짐의 역사를 살피고, 둘째, '2003 보충기금협약'의 주요내용을 간략히 정리하며, 셋째, 한국정부의 동 협약 가입과 관련한 당시의 분석과 전략을 고찰하며, 넷째, 허베이스피리트 사건과 한국정부의 과거 전략을 비판적으로 검토하고자 한다. 동 협약 비준 후 생각해 볼 수 있는 쟁점들은 마지막에 부연할 것이다.

주 제 어 허베이스피리트 사건, 선박소유자, 정유사, 보상한도, 1992CLC/FC, 92년 펀드레짐, 2003 보충기금협약, 보충기금레짐, 비용편익분석

Key Words The *Hebei Spirit* incident, Ship owner, Oil receiver, Compensation limit, 1992CLC/FC, 1992 Fund Regime, 2003 Supplementary Fund Protocol, Supplementary Fund Regime, Cost/Benefit Analysis