Pollution and Liability Regimes

Many incidents with huge impact occurred in the seas that were subject to indemnities throughout the history which have caused environmental damage and exorbitant costs for measures taken for preventing the spread, clean-up, indirect economic losses incurred in tourism, fishing industry, death and injuries, damage to sea creatures and ecology.

For all these reasons, rules regulated by international organizations emerged and states have aimed to ensure protection under these circumstances by adopting such rules into their internal law. International Maritime Organization (IMO) constituted some rules particularly for preventing maritime pollution and limiting liabilities and developed financial guarantee and fund formulations such as compulsory insurance in order to recover such damages. Thanks to the conventions formed with this aim, it has been ensured that, the liability for recovering the damage is shared between the maritime and oil industry through various protections which have been provided for the victims.

As mentioned above, environmental law was developed following some disasters, which can be called as milestones from this perspective. For instance, the CLC 69 liability regime was developed immediately after the "TORREY CANYON" incident, which took place in 1967 and affected the coasts of England and France, which was followed by FC 71, leading to the constitution of the 71 Fund and subsequently, MARPOL 73 was developed. Unfortunately, our country also got its share from these disasters. After the disaster which took place in the tanker called "Independenta" in 1979, the fire could not be extinguished for a month and 95,000. m/tons of oil spilled into the sea. Afterwards, 25,000 m/tons of oil spilled into Bosporus because of the Nassia (1994) incident and the fire sustained for a week. Following these incidents, our country became a party to both CLC 92 Convention and FUND 1992 protocol in 2001. (CLC 92- Official Gazette: 26.04.2018/ FUND 1992- Official Gazette 18.07.2001).

When we look at the area of application of the CLC regime in detail, it is seen that the pollution damage incurred due to the pollution taking place in one of countries, that is a party to the convention, including the land waters or at a neighbour territory and measures for preventing or minimising such damage is under coverage. The most important point here for the implementation of the convention is that the "pollution damage" referred in the convention must arise from the "vessel" again as defined in the convention. Such pollution damages include the property

Av. Elif KAÇAR, LLM
Senior Claims Executive
+90 216 545 0300 (D.243)
+90 532 288 11 34
elif.kacar@turkpandi.com

Having graduated from Istanbul Bilgi University, Faculty of Law in 2008, she completed her one year legal training at Nsn Law Firm which is specialized on commercial and maritime law and qualified as lawyer of Istanbul Bar. She moved to The United Kingdom for her post graduate education and obtained her LLM degree in International Commercial Law at Kingston University, London by writing her thesis on e-bill of ladings and worked at Nsn Law Firm as attorney in her return, being active in litigation of various commercial disputes. She has joined Türk P&I as claims executive in 2016.

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damage, damage related indirect loss, net economic loss and environmental damage. Article 3 of the convention stipulates circumstances under which the ship-owner is released from the liability. For instance, the cases where the pollution takes places because of a war, hostility and act of God and circumstances arising from the negligence and misconduct of the authority are out of coverage. If we glance through the limits stipulated in the convention, we can say that a liability limit between 4.51 million SDR and 89.77 million SDR is applicable depending on the deadweight of the vessel.

According to article 7/1 of CLC 92, the ship-owner of a vessel, which is registered at states that are parties to the Convention and carry more than 2000 m/tons of oil, is obligated to have a financial guarantee such as an insurance or bank guarantee or a certificate to be issued by an international indemnity fund, in order to cover the limits stipulated under the convention. The states, which are parties to the Convention, issue certificates that certify fulfilment of this obligation for the vessels registered under them and inspect whether the vessels entering to their waters have the same certificate. Thus, the ship-owners of the vessels bearing the flags of the countries that are not parties to CLC 92, become also obligated to have such financial guarantee in order have a commercial relation with the states that are parties to the Convention. The Blue Card received from P&I insurers is submitted to the Flag State and a CLC certificate is received in return.

When we have a look at the Fund Convention, we see that the FC aims for the indemnification of pollution damages that exceed the coverage of CLC 92 (art.2). The states, which are parties to CLC92 but not to FC 92, are excluded from the protection provided by FC 92. FC 92 anticipates payment of compensation for damages not indemnified due to one of the following circumstances (Article 4/1). If the ship-owner has relied on the reasons for discharging from liability stipulated under CLC 92 or is not financially capable of fulfilling its liabilities under CLC 92 and the insurance does not cover the liabilities or the coverage is not sufficient or the pollution damage exceeds the limits of liability of the ship-owner under CLC 92, then FC 92 applies and damages are covered under this convention. The FC 92 limit has recently been increased from 135 million SDR to 203 million SDR.

I believe you have heard of the recent "AGIA ZONI" incident, where the vessel had sunk at anchorage at Piraeus Port/Greece on September 10th, 2017. When the vessel sank, she was carrying 2.914 m/tons of IFO and 370 m/tons of MGO. It is estimated that 700 m3 of fuel oil polluted Salamina Islands, Piraeus and Athens coasts. Greece is a party to both 1992 CLC and 1992 Fund Convention. According to the data available at official website of the International Oil Pollution Compensation Funds (IOPC Funds), the deadweight of the tanker Agia Zoni II is 1.597 GT and shall be subject to the limitation stipulated for < 5.000 GT according to 1992 CLC, thus the liability will be limited with 4.51 million SDR in this case.

In case where there is an environment clean up and compensation of pollution requirement arising from carriage of dangerous and hazardous goods, which is not covered under CLC and IOPC Fund, the HNS Convention will be applied, which has been signed by only 8 states, including Turkey. The damages exceeding LLMC limits, shall be compensated from a fund built. Oil varieties which are not covered by CLC and IOPC funds are also covered by this convention. Pursuant to HNS Convention, total limit of the ship-owner and the Fund is maximum 250 million SDR.

If it is explained briefly, another remedy used regarding the pollution caused by tankers is the Memorandum (MOU) signed between IG representing P&I insurers and IOPC Funds (92 Fund and Supplementary Fund) in 206. As the result of this MOU, an order based on two Agreements, which are STOPIA 2006 (Small Tanker Oil Pollution Indemnification Agreement) and TOPIA 2006 (Tanker Oil Pollution Indemnification Agreement), has been adopted.

As the disorganization of the regulation in pollution cases leads to a complexity of application of limits, we wish one international uniform liability regime is adopted in the future for better order.