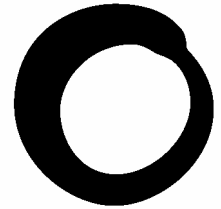


November 2002



**Friends of  
the Earth**

# Briefing

## Prestige oil spill – Who foots the bill?

### Introduction

A Liberian listed Greek company managed the Japanese constructed and Bahamian registered Prestige. It was chartered by a Russian owned Swiss company with British directors and carrying Russian oil from Latvia to Singapore. The ship was recently inspected and surveyed in St Petersburg, Dubai and Guangzhou (China) where repairs were made to the part of the ship that subsequently broke.

So who is liable for the environmental disaster that has unfolded?

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## **International liability regime**

The 1969 Convention on Civil Liability for Oil Pollution Damage makes the ship-owner responsible for damage caused by oil spills up to \$80m. It explicitly exempts the oil company that chartered the ship from liability.

However, subsequent Conventions have established the International Oil Spill Pollution Compensation (IOPC) Fund, made up largely of levies made on oil companies (in proportion to the tonnage of oil they receive). This Fund pays up to \$180m compensation (less the amount paid by the ship-owner) for damage incurred by Governments, local authorities, companies and private citizens as a result of oil spills. It can pay for reasonable clean-up costs but does not pay compensation for environmental damage.

In some cases, such as the Erika oil spill off France in 1999, oil companies, which have chartered ships that have then spilt oil, have been forced by public opinion to make 'voluntary' payments of compensation.

## **What is wrong with the present regime?**

**Lack of clear accountability:** The maze of (offshore) ownership, flag of convenience registry and limited insurance and legal liability is what is known, in short, as the 'corporate veil'. This is the way corporations hide their liabilities and accountability through subsidiaries and passing the buck. As a result too much of the risk is put on the environment and people such as fishing communities.

*Instead the liability needs to be clearly laid at the door of those who will profit most from the cargo – in this case the oil industry. Action is needed to pierce the corporate veil and by doing so ensure realistic risks are born by corporations, not by the public.*

**No environmental cover:** The IOPC Fund does not cover environmental damage. It only provides compensation for the economic cost of clean up, and the loss of income of those directly affected by the oil spill. Organisations and governments can claim for the cost of removing the oil (where possible), cleaning wildlife and even loss of income (eg fishing, tourism) but there is no compensation for any damage to existing marine and bird habitats or loss of any particular species.

**Fund too small:** The IOPC Fund is hopelessly inadequate to deal with large oil spills. The Exxon Valdez oil spill cost Exxon over \$2 billion to clean up and has devastated the local fishing industry, which was previously one of the most productive in the US. It takes time to build up the Fund's reserves and a few major oil spills could exhaust the Fund quite quickly.

*Oil companies profit most from oil and so should carry the full liability burden. If they did so, they would inevitably operate to higher standards.*

**Difficult to get money:** The IOPC Fund has a reputation for disputing compensation claims from oil spills in order to reduce payouts from the Fund. Claims as a result of the Erika oil spill off France some 3 years ago are still being processed. Local people in Scotland were still pursuing claims from the Fund 7 years after the Braer oil spill off the Shetlands in 1993. Some claimants in Scotland were only able to claim compensation from the Fund after the

Scottish Executive dropped its own claims for costs of clean up – in other words, taxpayers subsidised the oil industry. Similarly Exxon has disputed the claims from Alaskan fisherman over the damage caused to fish populations as a result of the Exxon Valdez oil spill.

*Justice for victims must be made much swifter – only the industry and lawyers benefit from delay.*

## **Why are things like this?**

The international nature of the oceans requires international laws, conventions and oversight. Many key decisions are taken by the International Maritime Organisation (part of the UN family) based in London. Many decisions relating to shipping regulation are decided by states but also according to the global share of shipping tonnage they own. This gives a strong vote to the so called flags of convenience. These states attract shipping registration because they operate a business-friendly (ie low standard, low tax) climate. They even – openly – indicate their representation of the shipping industry at the IMO. Just six countries register half of the World's shipping volume – Panama, Liberia, the Bahamas, Cyprus, Malta and China. In this way the shipping industry acts as both poacher and gamekeeper of shipping policy. In short, as with so many other policies, the needs of business are being put before those of people and the planet.

## **Can the UK and Europe devise their own, better rules?**

### **Yes**

**US Oil Spill Pollution Act:** The US introduced its own legislation following the Exxon Valdez oil spill in 1998 that is based on strict liability and unlimited compensation. This has led to a dramatic fall in oil spills in US waters. The absence of a cap on compensation and strict liability where those who cause the spill are automatically liable is a strong disincentive to oil companies considering transporting oil on substandard ships through US waters.

**EU Environmental Liability Directive:** The EU has been negotiating an environmental liability directive for nearly 10 years. The environmental liability directive would make companies and individuals liable for damage they cause to the environment. This could help discourage ships like the Prestige from travelling near ecologically sensitive marine habitats. Unfortunately the EU has compromised significantly over the directive by only applying it to protected habitats and inserting numerous exemptions for industry. Public concern expressed over the damage caused by the previous Erika oil spill and concerns over biodiversity damage from Genetically Modified Organisms have been driving the EU to reach a conclusion but final agreement on the directive appears some time away. The CBI and European employers federation UNICE have been leading the business fight to weaken the directive.

## **What can be done to stop such spills and impacts in the future?**

**General (Corporate accountability):** Binding international and national rules are needed to hold corporations to account and liable for their bad practices – whatever sector they work in. Voluntary corporate social responsibility is plainly not working if spills like the Prestige are

## **Prestige oil spill – Who foots the bill?**

still taking place in the 21<sup>st</sup> century. Friends of the Earth is campaigning for a framework for corporate accountability under the UN and for the national law change through the CORE bill (see [www.foei.org](http://www.foei.org), [www.foe.co.uk](http://www.foe.co.uk), [www.corporate-responsibility.org/](http://www.corporate-responsibility.org/)).

**Move less oil:** Ultimately, no ship protection system can guarantee that an oil tanker won't run into trouble and that oil spills won't occur. Oil spills and the damage they cause are an inherent risk of an oil-based economy. The need to limit global climate change necessitates the replacement over the next century of oil and other fossil fuels with renewable sources of energy. The sooner this happens, the less likely it will be that further oil spills occur.

**Double Hulled vessels:** Double hulled vessels provide more protection from oil spills than single hulled tankers and may have prevented the Prestige oil spill. The EU currently has legislation that will see single hull tankers banned in EU waters by 2015. While salvagers were desperately trying to save the Prestige, another tanker, the Pindar, ran aground off Denmark. This was also carrying fuel oil, but it was double-hulled. Ballast tanks were punctured but no oil was spilt (see [www.tankerworld.com](http://www.tankerworld.com)).

**Marine Exclusion zones:** Following the Braer oil spill, the Government commissioned the Donaldson report which recommended, among other things, the establishment of marine exclusion zones where tankers can't travel. Many oil spills are caused by human error. The best protection for sensitive marine areas is for tankers to be excluded from them. For example, the Great Barrier Reef Authority has restrictions on ships travelling near or through the Great Barrier Reef.