



The international liability and compensation regime for tanker oil spills

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Date: 18 March 1967

Cause of spill: Grounding

Quantity transported: 119 000 tonnes of crude oil

Quantity spilled: whole cargo

- Unprecedented scale of pollution damage, impacting coastlines, fishing waters and the livelihoods of many victims
- No international convention on liability and compensation in place
- Led to the establishment of a regime for compensation for victims of oil pollution





The international liability and compensation regime

Legal framework



- 1969 Civil Liability Convention
(34 Member States)
- 1971 Fund Convention
(1971 Fund dissolved in 2014)

Previous regime

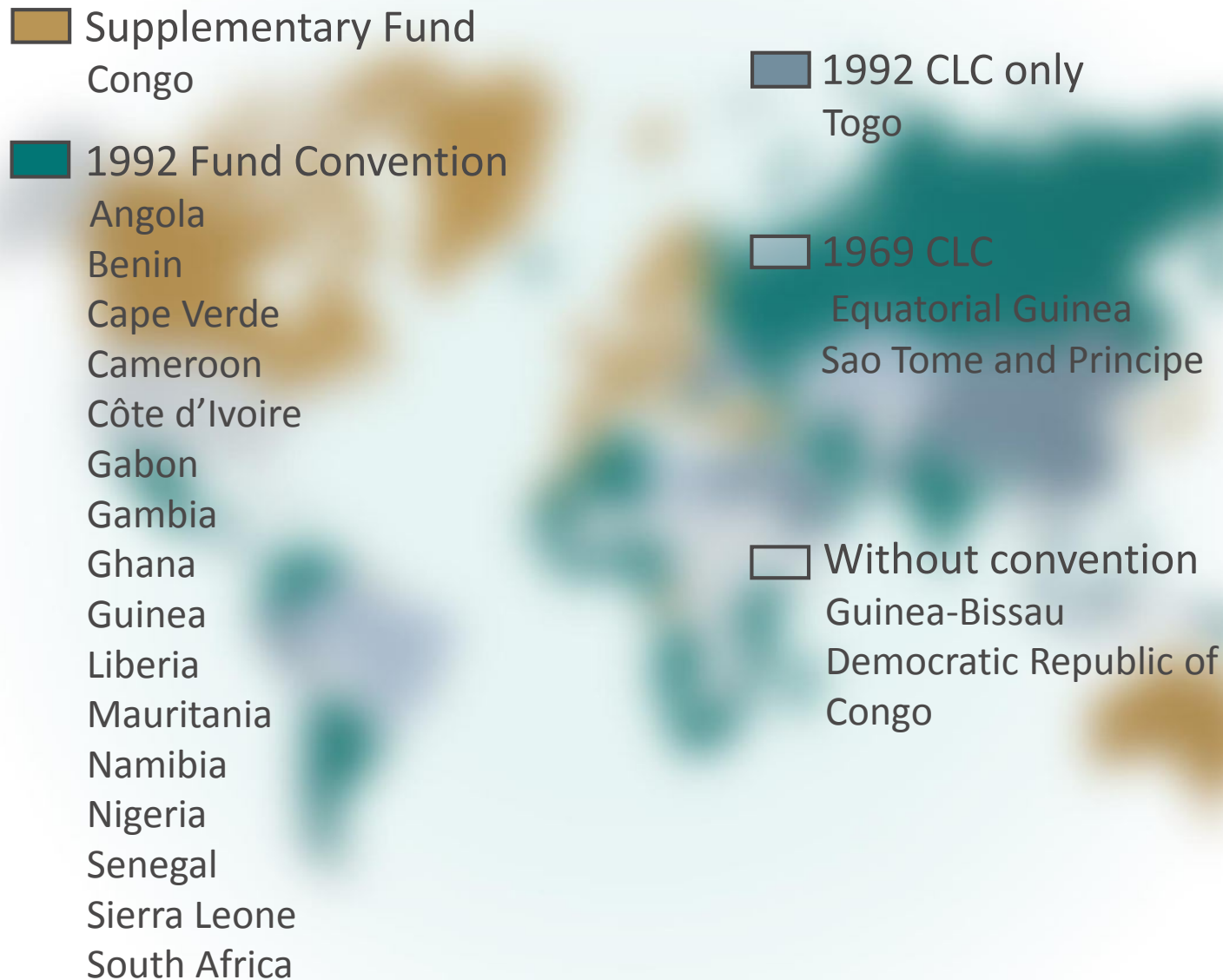
Current regime

- **1992 Civil Liability Convention (1992 CLC)**
(136 Member States)
- **1992 Fund Convention**
(118 Member States)
- **2003 Supplementary Fund Protocol**
(32 Member States)

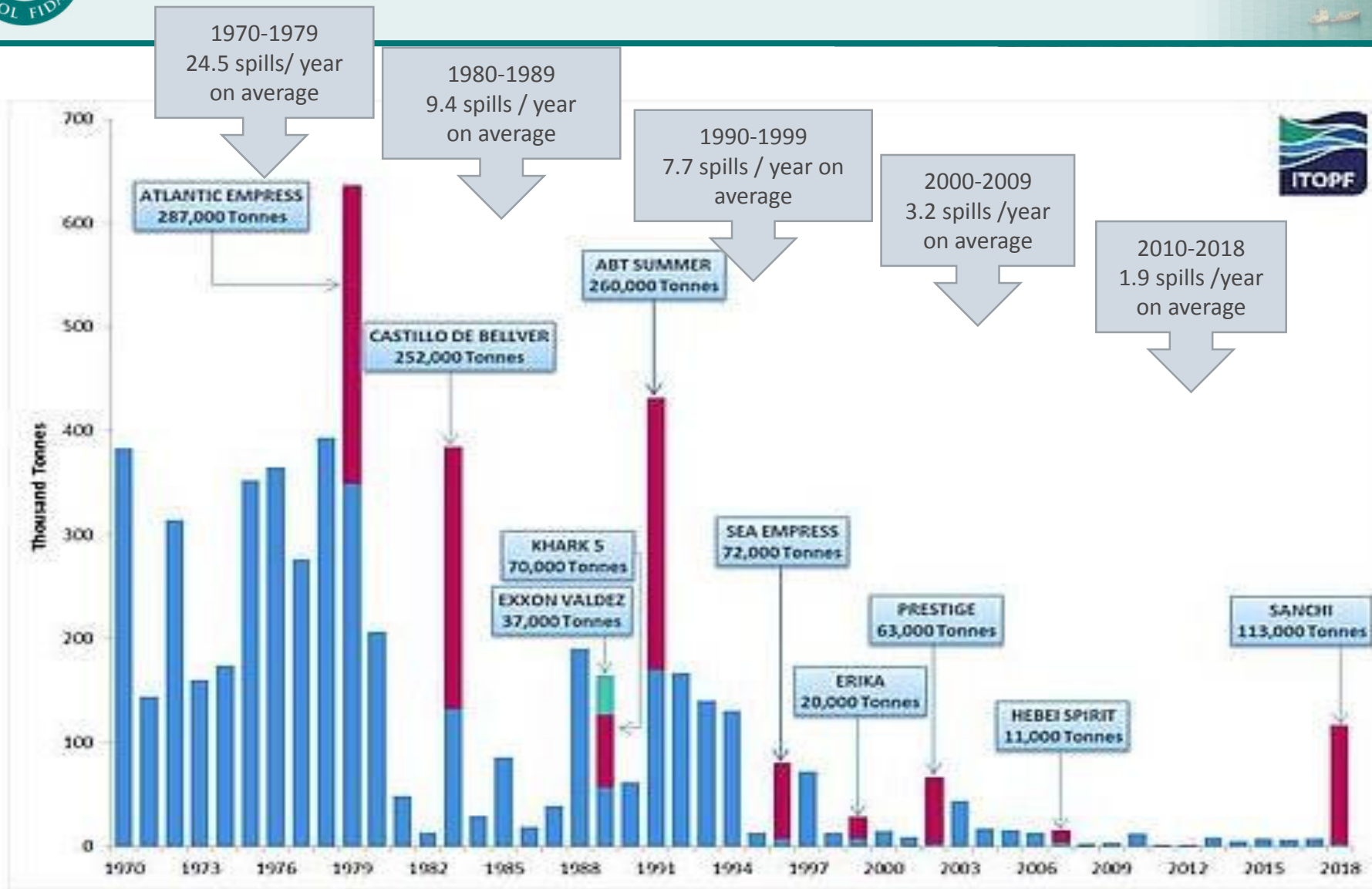


Member States

State members of GI WACAF



How big a problem are spills from tankers?



Number of large spills (>700 tonnes) from 1970 to 2018



Outline of the regime

Scope of the Conventions

The purpose of this regime is to **provide compensation** to the victims through uniform international rules.

This regime provides compensation to:

- victims of **'pollution damage** (including preventive measures)' caused by **'persistent oil'** from **'ships (tankers)'**

This regime applies to damage caused in:

- **territory, territorial waters** and **Exclusive Economic Zone** (or equivalent) of Member States

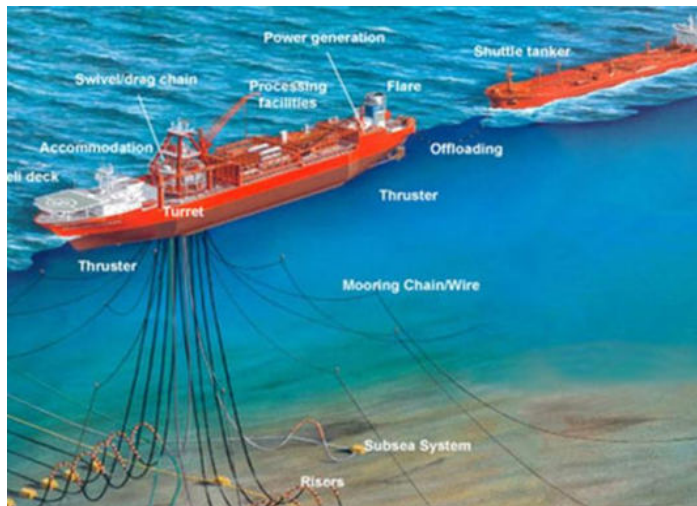


The “modern” oil transaction

What is a “ship” under Art. I.1 of CLC?



- Nowadays, more than 30% of the oil produced, is obtained from offshore sources:
 - FSOs (Floating Storage and Offloading);
 - FPSOs (Floating Production Storage and Offloading);
 - FDPSOs (Floating Drilling Production Storage and Offloading)
- What is a ‘ship’ under Article I.1 of the 1992 CLC?





Is the regime applicable to floating storage and offloading units (FSOs or FSUs)?

Article I, 1992 Civil Liability Convention

1. 'Ship' means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo . . .



Definition of “ship”

FSOs are not ships



- Secretariat was instructed to provide legal analysis on interpretation of definition of ‘ship’ in Article I.1 CLC.
- Legal analysis: FSOs (in general) are not ‘ships’ because the term is linked to ‘**carriage of oil**’, which involves ‘**the navigation of the ship on a sea-going voyage**’
- Working Group was set up in 2011 to consider the implications of making a decision on the interpretation
- The Working Group met for its final meeting in Spring 2015
- ‘Hybrid’ solution adopted (Oct. 2015)
- A) Agreed list of vessels in / out; +
- B) Concept of ‘maritime transport chain’



International Compensation Regime

Basic concept



Civil Liability Convention (CLC)

- **Prompt Payment of Compensation**
 - ‘Strict liability’ on shipowner
 - ‘Limitation of liability’ for shipowner
 - ‘Time bar’
 - ‘Compulsory insurance’
- **Uniform Rule of Jurisdiction**

‘Exclusive jurisdiction’ in States where damage occurred

Claimants can only sue in their national court

Fund Convention

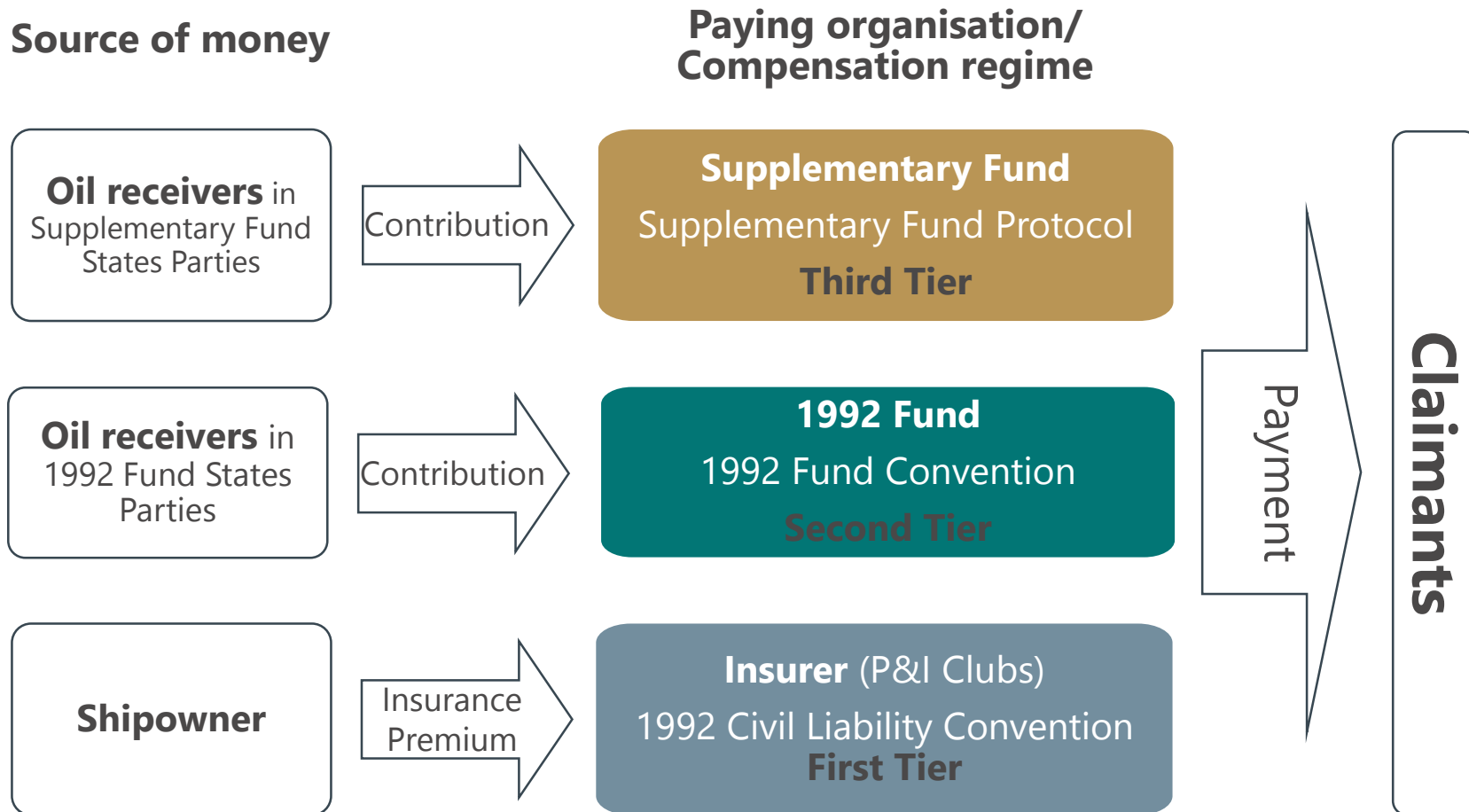
- To provide sufficient amounts of compensation





How the regime works

Three Tier system





1992 Civil Liability Convention

First Tier

- Strict liability of registered tanker owner
- Limitation of liability based on the gross tonnage of the ship
 - Maximum: SDR 89.7 million
- Ship owners required to have compulsory, third party insurance and certificate
- Direct action against insurer
- Very limited exceptions





Shipowner's liability

Compulsory insurance



Article VII of the 1992 CLC

1. The owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Article V, paragraph 1 to cover his liability for pollution damage under this Convention.

P&I Clubs cover shipowner's legal liabilities to third parties

2. A certificate attesting that the insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with. [Omitted]

ANNEX
CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

Issued in accordance with the provisions of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Name of ship	Distraction number	Port of registry	Name and address

This is to certify that there is in force in respect of the above-mentioned ship a policy of insurance or other financial security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Type of Security: _____

Duration of Security: _____

Name and Address of the Issuer (if within Contracting State): _____

Name: _____

Address: _____

This certificate is valid until: _____

Issued or certified by the Government of: _____

(Full designation of the State)

At _____ On _____

(Place) (Day) (Month)

Signature and Title of Issuing or certifying official: _____

Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of these should be indicated.
3. If security is furnished in several forms, these should be stated.
4. The entry "Duration of Security" must stipulate the date on which such security takes effect.

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS: Trusts of the Convention

WORLD OIL POLLUTION LIABILITY INSURANCE



Definitions

Pollution damage – 1992 Civil Liability Convention



Article I(6)

- 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





Scope of application

'Preventive Measures' and 'incident'



1992 Civil Liability Convention

Article 1.7

'Any reasonable measure taken by any person after an incident has occurred to prevent or minimize pollution damage'



Article 1.8

'Any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage'





Shipowner's liability

Few exceptions to shipowner's liability



Shipowner is **exempt** from liability

if it is proved that

- damage resulted from an act of war or natural phenomenon (*force majeure*)
- damage was a result of an intentional act by a third party
- damage was caused by negligence or wrongful act of public authorities

Shipowner **cannot limit** liability

if it is proved that

- damage resulted from the owner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result





1992 Fund Convention

Second Tier



Main features

- **Pays compensation** when:
 - damage exceeds shipowner's liability under the 1992 CLC
 - shipowner financially incapable of meeting their obligations
 - no liability under the 1992 CLC
- Maximum compensation **203 million SDR**, including CLC
- **Contributions** from oil receivers in State Parties to the 1992 Fund Convention
- Very limited exceptions
 - damage resulted from an act of war, damage caused by a State ship
 - claimant cannot prove that damage resulted from incident involving ship(s)



Supplementary Fund Protocol

Third tier



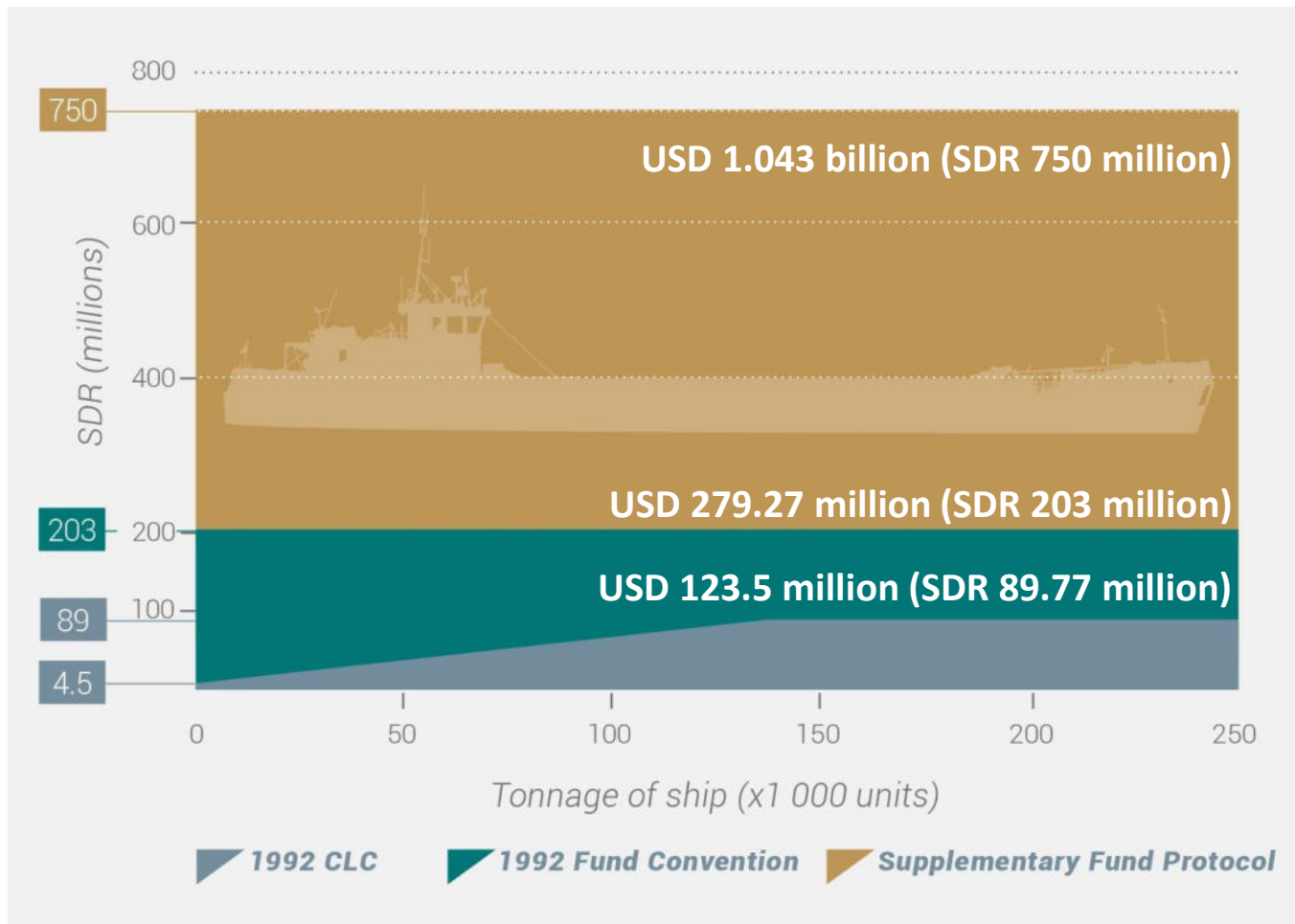
Main features

- **Pay compensation** when:
 - damage exceeds, or there is a risk that it will exceed, the applicable limit under 1992 Fund
- Maximum compensation **750 million SDR**, including amounts payable under 1992 Conventions
- **Contributions** from oil receivers in State Parties to Supplementary Fund Protocol
- **Minimum contribution**: 1 million tons of contributing oil are deemed to be received in each State Party



Compensation limits

Liability limits under the Conventions



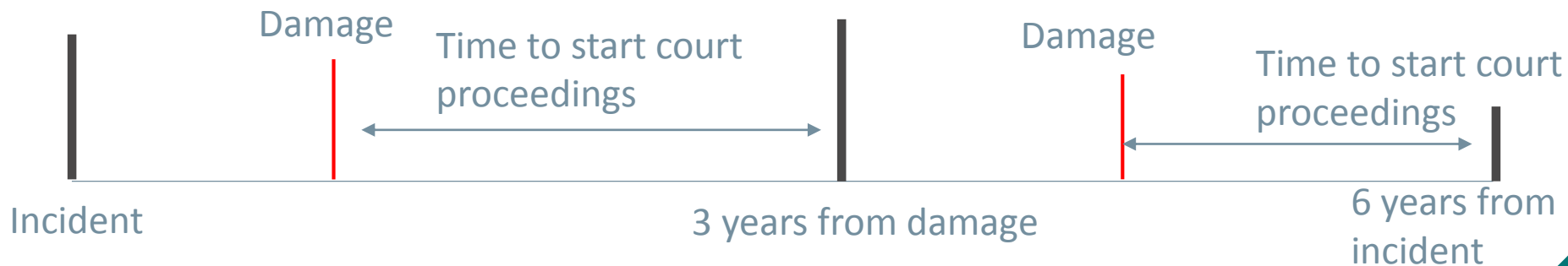
*Exchange rates as at 30 June 2020



- Article VIII – 1992 CLC
- Article 6 – 1992 Fund Convention

‘Rights to compensation shall be extinguished unless’

- ‘Action is brought within **3 years** from date of damage’;
or
- ‘In no case shall an action be brought after **6 years** from the date of the incident’





Claims procedure

National courts have final say

Although the IOPC Funds apply the criteria adopted by Member States uniformly, the final judgment of each Member State national court binds the claim settlement dispute

- **No international court** involved
- Implementation of Conventions is crucially important

Member State

National Court



judgment



Claimants

dispute

Insurer



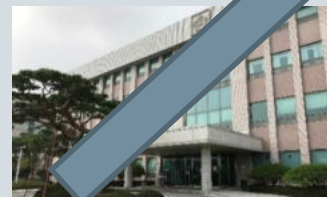
apply criteria uniformly

International

International Court



judgment



Member State judgment

dispute

Insurer



apply criteria uniformly



Who contributes to the Funds?

Definition of 'contributing oil'



Contributing Oil	Non-Contributing Oil
<p>Crude Oils</p> <ul style="list-style-type: none"> All naturally occurring crude oils* Condensate Topped crudes Spiked crudes Reconstituted crudes <p>Finished Products</p> <ul style="list-style-type: none"> N°4 fuel (ASTM) Navy special fuel Light fuel oil N°5 fuel (ASTM) – light Medium fuel oil N°5 fuel (ASTM) – heavy Bunker C fuel oil Heavy fuel oil N°6 fuel oil (ASTM) Blended fuel oils by viscosity or sulphur content Bituminous emulsions and fuel oil emulsions** <p>Intermediate or Process Stocks</p> <ul style="list-style-type: none"> Fuel oil blend stocks 	<p>Crude Oils</p> <ul style="list-style-type: none"> Natural gas liquids Condensate* Casinghead naphtha Natural gasoline Cohasset-panuke <p>Finished Products</p> <ul style="list-style-type: none"> LNG and LPG Aviation gasolines - Motor gasoline (petrol, essence) White spirit Kerosene Aviation kerosene - Jet 1 A and N°1 fuel (ASTM) Gas oil Heating oil N°2 fuel (ASTM) - Lubricating oil Marine diesel <p>Intermediate or Process Stocks</p> <ul style="list-style-type: none"> Straight run naphtha Light cracked naphtha Heavy cracked naphtha Platformate Reformate Steam-cracked naphtha Polymers Isomers Alkylates Catalytic cycle oil Reformer feed Steam cracker feed Gas oil blend stocks Catalytic cracker feedstock Visbreaker feedstock Aromatic tar

* To be considered as 'non-contributing oil' if more than 50% by volume distills at a temperature of 340°C and at least 95% by volume distills at a temperature of 370°C, when tested by the ASTM Method D 86/78 or any subsequent revision thereof.

** Quantity of emulsion received should be reported with no allowance for its water content.



Oil Reports

Who pays contributions?

- To be filled by all entities receiving contributing oil above the threshold (150,000 tonnes/year)
- Need to specify origin of receipt (eg direct by sea or pipeline, etc.)
- Signed by competent authority from entity **AND** competent Government authority
- Information compiled and sent to the Funds by competent Government authority
- Physical oil reports and online reports
- To be submitted by **30 April** each year

Submit Oil Reports

On this page, you can report tonnage of your contributors. As the Online Oil Reporting evolves into the next phase, this reporting function will become the responsibility of your contributors. Please don't forget to send a signed hard copy of this oil report to **CTR/61/1 - SOL Petroleum**

Highlighted rows in the oil report summary grid indicate associated companies

On this page, you can update or amend contact information and status of your contributors and notify the IOPC Funds Secretariat. "Inactive" contributors do not require any tonnage report, but remain open in case there are deferred tonnage or outstanding oil reports.

2015 Oil Report Summary (4 Outstanding)		Contributor Details				
Contributor	Received Directly after Carriage by Sea	Code:	Short Name:	Full Name:	Status:	State:
CTR/61/2 Natl Oil Co.	<input type="checkbox"/>	CTR/61/1	SOL Petroleum	SOL Petroleum Properties Holdings Ltd	Active	No
CTR/61/10000 Oil Company	<input type="checkbox"/>					
CTR/61/9999 Oil Importer plc	<input type="checkbox"/>					
CTR/61/1 SOL Petroleum	<input type="checkbox"/>					

Associated Companies and Entities			
Code:	Short Name:		

Contacts			
Name	Contact Type	Organisation	Job Title
David Boyle	Invoice Contact	SOL Petroleum Properties Holdings Ltd	Accountant
Tom Jones	Oil Report Contact	SOL Petroleum Properties Holdings Ltd	Accounting & Finance Mgr

Oil Reports						
Year	Received Directly after Carriage by Sea	Coastal Movements within the Same State	Received from non-Member States	Total	Submitted	Approved
2015	123 456	Nil	Nil	123 456		
2014	250 000	Nil	Nil	250 000	✓	✓
2013	100 000	Nil	Nil	100 000	✓	✓
2012	Nil	Nil	Nil	Nil	✓	✓

Types of claims

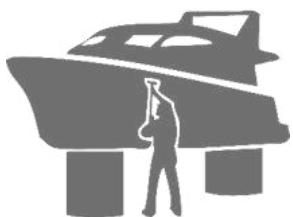
What is covered



Costs of clean-up
and preventive
measures



Economic losses by
fisherfolk or those
engaged in mariculture



Property
damage



Economic losses in
the tourism sector



Costs of reinstatement
to the environment



Presenting a claim

General criteria

- There must be a **link of causation** between damage/loss and contamination
- Claimant must **prove** loss or damage
- Loss must be economically **quantifiable**
- Any expense must be for measures which are **reasonable and justifiable**
- Any expense or loss must have been incurred





Claims process

From incident to settlement of claim



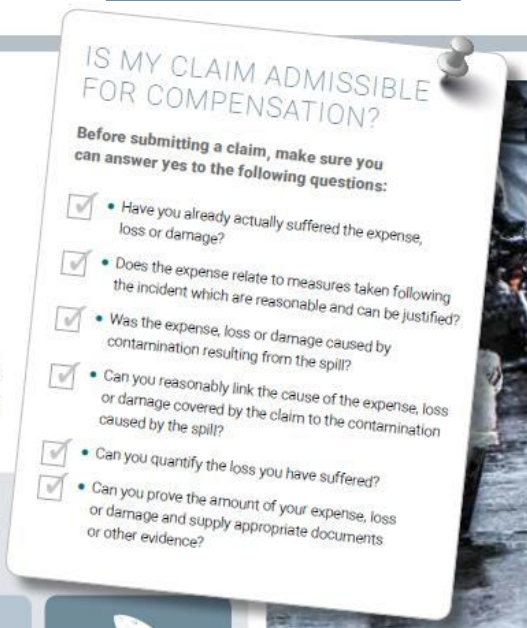
Incident occurs followed by response

Claim submitted to:

Local claims handling office, if established, or

Shipowner's insurer (P&I Club), or

1992 Fund



Insurer (P&I Club) & 1992 Fund make joint assessment

Claimant satisfied with assessment and accepts offer

Claimant unhappy with assessment, has right to commence legal proceedings



What has been paid

1978 – 2020



Supplementary Fund

- No incident
- No compensation paid

The 1992 Fund

- Has been involved in 47 incidents
- Paid about £413 million in compensation

The 1971 Fund

- Was involved in 107 incidents
- Paid about £331 million in compensation and/or indemnification

Total

- Incidents: 154
- Paid about £744 million in compensation and/or indemnification

Figures as at 30 June 2020



Other functions of the Secretariat

Engagement with Member States

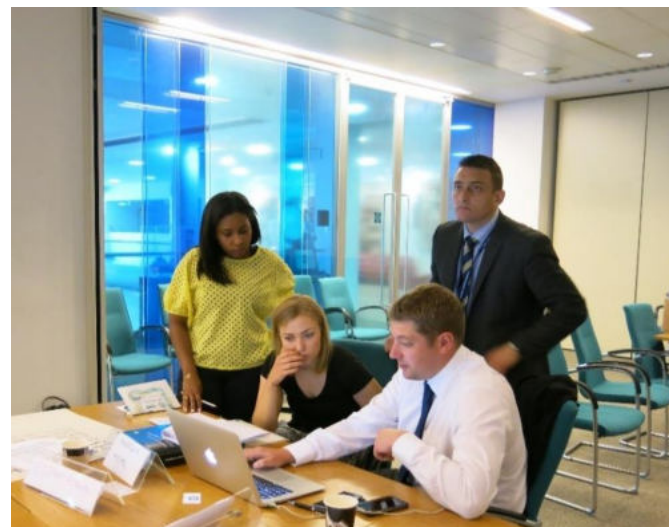
In the event of an incident, **cooperation and frequent communication** are essential between the affected State and the Secretariat.

The Secretariat establishes and maintains **good communication with Member States** by engaging in various activities (workshops, conferences, visits, meetings etc.).

Implementation

Transposition of the Convention into the domestic legal system, including

- developing and enacting national implementing legislation
- setting up of the administrative system





Other functions of the Secretariat

Information services, online



www.iopcfunds.org

Available in all three working languages of the Funds: English, French & Spanish

Interactive features allows users to easily find the latest information on

- Incidents (both open and closed)
- Member and non-Member States
- Claims and compensation

Meeting documents (past and present) available to search and download from Document Services portal

The screenshot shows the IOPC Funds website homepage. At the top, there is a navigation bar with the IOPC Funds logo, a search icon, and links for 'ABOUT US', 'PUBLICATIONS', and 'NEWS & EVENTS'. Below the navigation bar is a large banner image of an oil spill cleanup site. Overlaid on the banner is a white box with the title 'The International Oil Pollution Compensation Funds' and a brief description: 'The IOPC Funds are two intergovernmental organisations (the 1992 Fund and the Supplementary Fund) which provide compensation for oil pollution damage resulting from spills of persistent oil from tankers.' Below the banner are two main content blocks: 'Meetings' with a sub-header 'View information on upcoming meetings of the IOPC Funds' governing bodies' and 'Oil Reporting & Contributions' with a sub-header 'View detailed information on the IOPC Funds' oil reporting and contributions process'.



Other functions of the Secretariat

Publications - available to download or in hard copy upon request



General



An Overview



Annual Report



Text of Conventions



Financial Reviews

Claims information pack



Claims Manual



Guidelines for presenting claims in the fisheries, mariculture and fish processing sector



Guidelines for presenting claims in the tourism sector



Guidelines for presenting claims for clean up and preventive measures



Guidelines for presenting claims for environmental damage



Example Claim Form

Guidance for Member States



Measures to facilitate the claims handling process



Management of fisheries closures and restrictions following an oil spill



Consideration of the definition of 'ship'



Claims for environmental damage: An overview



www.iopcfunds.org

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