

Perspectives on the availability of compensation following an oil spill incident in SEA



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Jose Maura

Director

International Oil Pollution Compensation Funds

Tanker oil spills do happen



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The oil pollution compensation regime

Why do we need it?



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- Compensation to victims of pollution damage caused by **spills of persistent oil from tankers**
- Compensation through **amicable settlement**
- **Uniform and consistent** application of compensation regime
- **Equal treatment** of all claimants



The Compensation Regime

Three tier system



Source of money

Oil receivers in
Supplementary Fund
States Parties

Contribution

Paying organisation Compensation regime

Supplementary Fund
Supplementary Fund Protocol
3rd tier

Oil receivers in
1992 Fund States
Parties

Contribution

1992 Fund
1992 Fund Convention
2nd Tier

Shipowner

Insurance
Premium

Insurance (P&I Clubs)
1992 Civil Liability Convention
1st tier

Payment

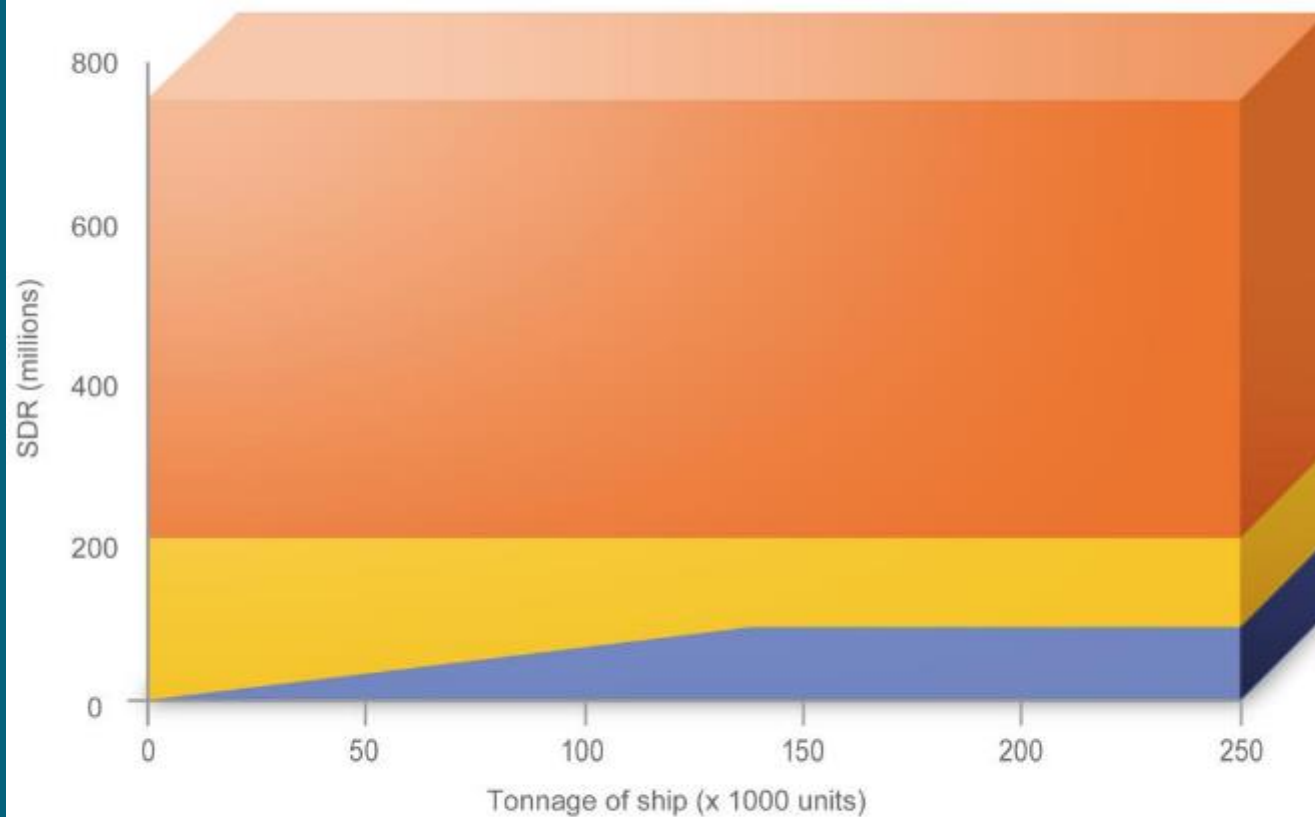
Claimants

Compensation limits



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Maximum limits of compensation



■ 1992 CLC ■ 1992 Fund Convention ■ Supplementary Fund

The Member States

November 2015




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 1992 Fund Convention (**114** Member States)

 1992 Civil Liability Convention (**133**)

 Supplementary Fund (**31**)

 1969 Civil Liability Convention (**35**)

Status of Conventions

Contrasted picture in South East Asia



	CLC 92	FUND 92	SUPPLEMENTARY FUND
Brunei	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Cambodia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
China	<input checked="" type="checkbox"/>	<i>HKSAR only</i>	
DPR Korea			
Indonesia	<input checked="" type="checkbox"/>		
Japan	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Malaysia	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Myanmar			
Philippines	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Republic of Korea	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Singapore	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Thailand			
Vietnam	<input checked="" type="checkbox"/>		

Main types of claims



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- **Clean-up operations and preventive measures**

- **Property damage**

- **Economic losses in fishery, mariculture and tourism sectors:**

- Consequential loss
- Pure economic loss

- **Environmental damage**

- Reasonable costs for reinstatement of the environment



The IOPC Funds

Its role



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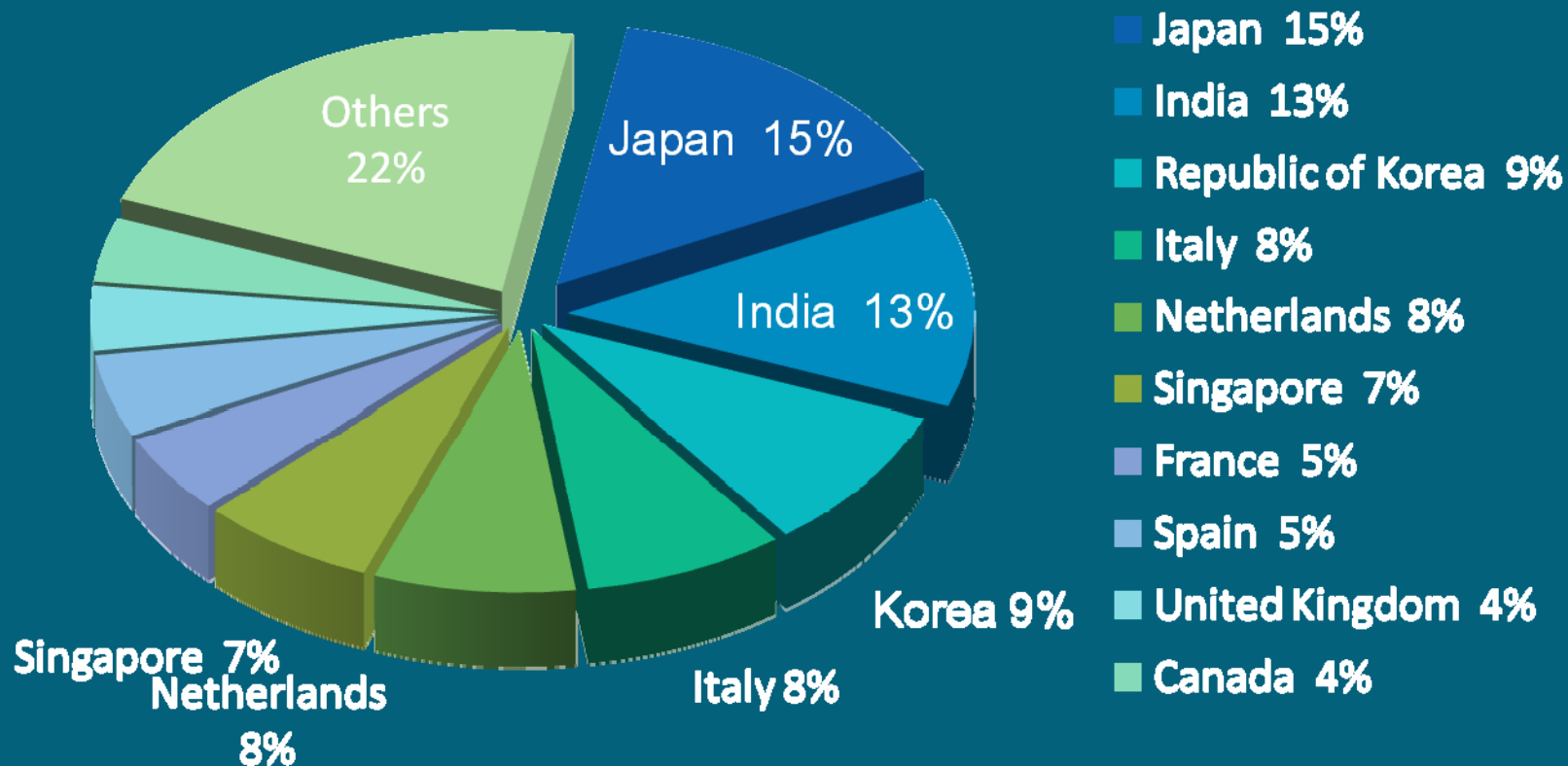
- **Administer Fund Conventions**
- **Consist of Assembly, Executive Committee and Secretariat**
- **Establish criteria for admissibility of claims**
- **Assess claims and pay compensation to victims when applicable**
- **Financed by contributions from oil receivers (industry) in Member States**

Contributions

From Member States' oil industry



Contributions to the 1992 Fund (2014)



What we have paid

1978 - 2015



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Supplementary Fund

- No incident
- No compensation paid

The 1992 Fund

- Has been involved in 42 incidents
- Paid about £237 million in compensation

The 1971 Fund

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

Total

- Incidents: 149
- Compensation paid: £567 million

Engagement with Member States

Importance of maintaining good contacts



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- **In the event of an incident, good lines of communication are essential between the affected State and the Secretariat**
- **Contacts must be established long before a spill to ensure Conventions are implemented and victims are protected**
 - Support is available from the IOPC Funds and IMO in matters of training and assistance with implementation
- **Attendance to meetings of Governing bodies by Member States is vital to the functioning of the Organisation**



General Public Information

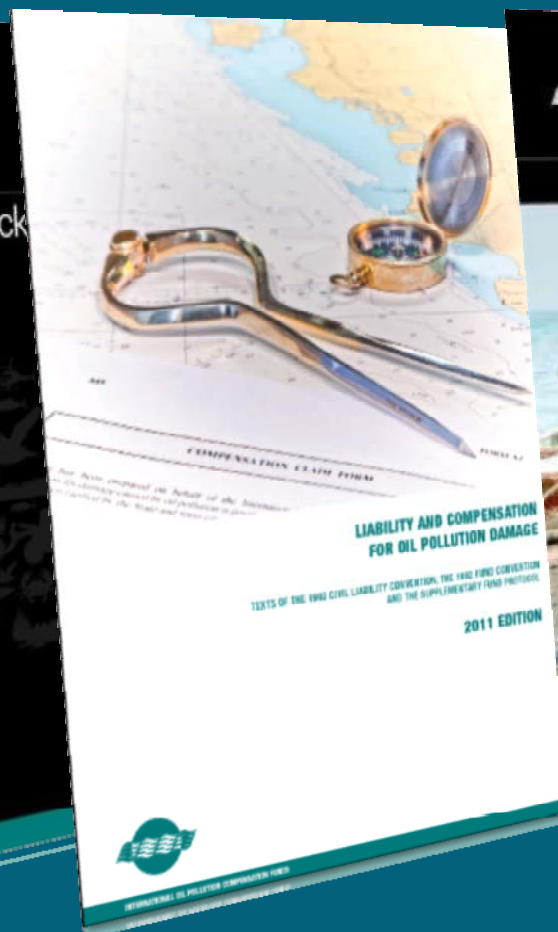
Printed and online publications – www.iopcfunds.org



IOPC Funds

International Oil Pollution Compensation Fund 1992

Claims Information Pack



International Oil Pollution Compensation
Annual Report



The 2010 HNS Convention



September 2014



Implementation of the Conventions

Practical issues



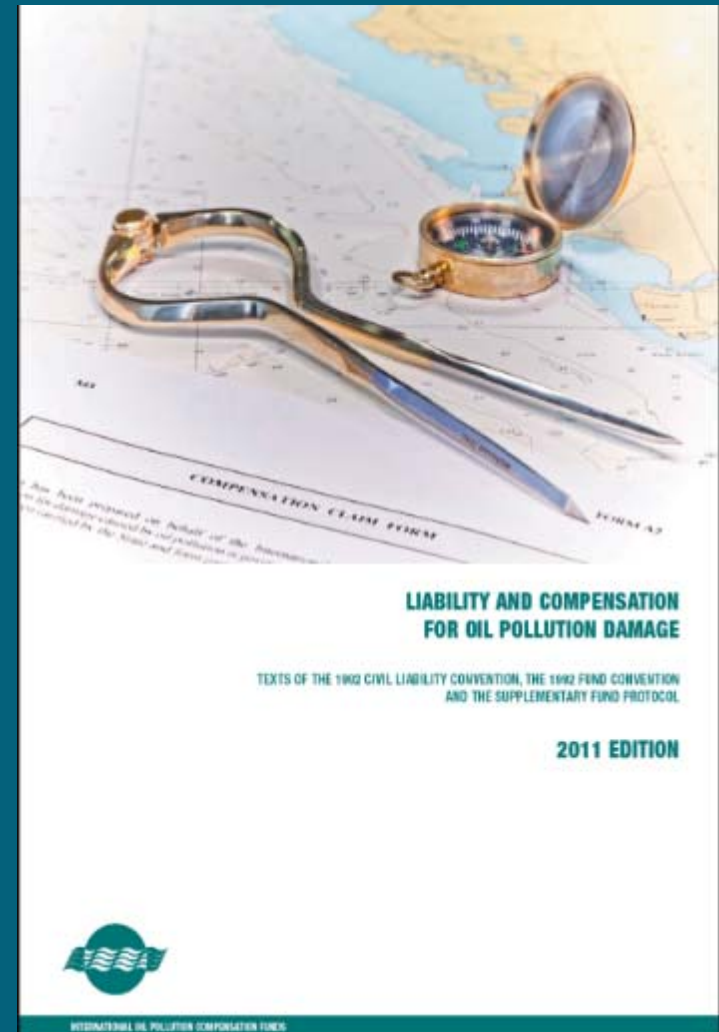
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1. Claims

- Interpretation by national courts
- Conflict with national law

2. Oil reporting and contributions

- Implementation of the 1992 Fund Convention in national law
- Consequences



Implementation into national law

General considerations



- **Must always be made with due consideration for the national legal system and legislative tradition**
- **In some States, when an international treaty is ratified, it automatically becomes part of national law (self-executing)**
- **As for States where treaties are not self-executed, all substantive provisions of treaties must be implemented by means of national statute**

Volgoneft 139

Russian Federation, 2007



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**Insurance gap of
some SDR 1.5 million**



- Russian-registered small tanker breaks apart in a storm in Kerch Strait
- Spills 1 200–2 000 tonnes of fuel oil
- 50 km of shorelines in Russian Federation and Ukraine affected. Ukraine not party to 1992 Conventions
- 1992 CLC limit (before November 2003) is SDR **3 million**
- 1992 CLC limit (after November 2003) is SDR **4.5 million**
- *Force majeure* defence
- 'Metodika' claim for environmental damage not admissible

Volgoneft 139

Russian Federation, 2007



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- The Russian Federation had **not implemented** the new 1992 CLC limit decided by the Legal Committee of IMO at the time of the incident (SDR 4.5 M)
 - the shipowner's insurance covers only SDR 3 M.
- Legal proceedings ongoing to solve the insurance gap issue

Oil reporting and contributions

Financial impact on the Funds



- **Obligation to provide oil reports and pay contributions**

- Art. 10 to 15 define obligations of States and contributors

- **Issues when States have not implemented the Convention**

- No domestic legislation clarifying obligations of contributors
- Contributors decline to submit oil reports or pay contributions

- **Consequences**

- Unfair and unequal treatment of contributors between Member States

- **1992 Fund current policy on outstanding oil reports**

- 2009 Circular: Compensation to government claims deferred until outstanding reports are submitted

Importance of correct implementation

Risks and measures



•**Lack of implementation can result in financial loss to IOPC Funds and its contributors:**

- Non reporting of oil and non payment of contributions
- Failure by State to ensure that shipowners maintain right type of insurance cover
- Court judgments not following decisions of Member States
- IOPC Funds may be forced to pay compensation for non-admissible claims

•**CLC/Fund Conventions must be implemented to ensure equal treatment between Member States (fairness).**

- Development of a policy to address failure by Member States to implement the Conventions
- Priority given to dialogue with State concerned to resolve implementation issues
- Ultimately, Assembly may decide to take legal action against a Member State to recover a loss

Availability of compensation



- **Make sure adequate level of protection is available: 1992 CLC - 1992 Fund - Supplementary Fund**
- **Make sure Conventions are implemented correctly**
- **Governments should be proactive and work with claimants & compensation regime**
- **Cooperation between the parties:**
 - **- insurer (P&I Club)**
 - **- 1992 Fund**
 - **- Supplementary Fund**
 - **- Government (both central and local)**



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Jose Maura
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