

THE INTERNATIONAL REGIME FOR OIL POLLUTION DAMAGE and THE HNS CONVENTION

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21 February 2008



International Oil Pollution Compensation Funds

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International Regime on Liability and Compensation for Oil Pollution Damage

1992 CIVIL LIABILITY CONVENTION (CLC)

- 121 Contracting States; 116 States Parties

1992 FUND CONVENTION (FC)

- 102 Contracting States; 99 States Parties

2003 PROTOCOL TO 1992 FUND CONVENTION

- 21 Contracting States; 20 States Parties

(As at 5 February 2008)

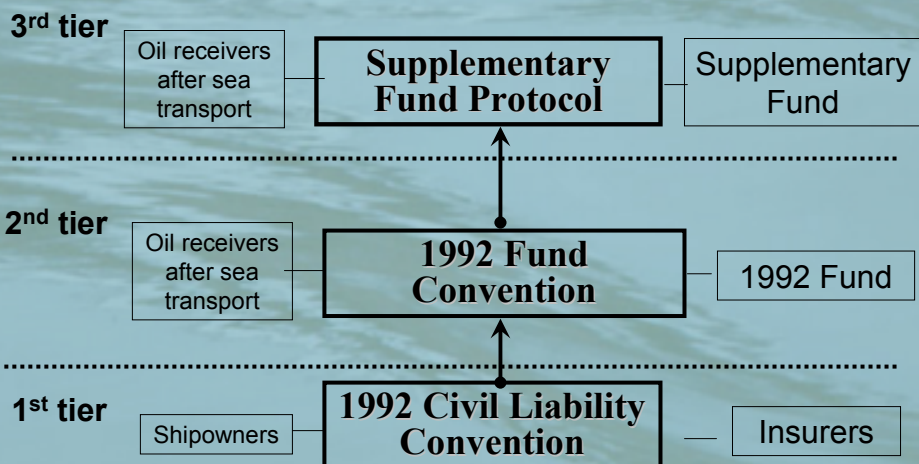
1971 Fund Convention ceased to be in force on
24 May 2002



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THE THREE-TIER SYSTEM



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1992 CONVENTIONS APPLY TO:

- Pollution damage
- Spills of persistent oil from tankers
- Territory, territorial waters and EEZ or equivalent
- Preventive measures
- Bunker spills from unladen tankers
- 'Mystery spills' from a tanker



MAIN TYPES OF CLAIM

- Clean-up operations and preventive measures
- Property damage
- Losses in fishery, mariculture and tourism sectors:
 - Consequential loss
 - Pure economic loss
- Environmental damage; limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken



1ST TIER 1992 CIVIL LIABILITY CONVENTION

- Strict liability of registered shipowner (Art. III)
- Limitation of liability (Art. V)
- Shipowners may lose right of limitation (Art. V, 2)
- Compulsory insurance (Art. VII)



1992 CLC – LIMITS OF SHIPOWNER'S LIABILITY

GT	SDR	US \$
≤ 5000	4 510 000	7 093 000
Per additional GT up to 140 000	631	992
GT ≥ 140 000	89 770 000	141 200 000

Exchange rate as of 8 February 2008

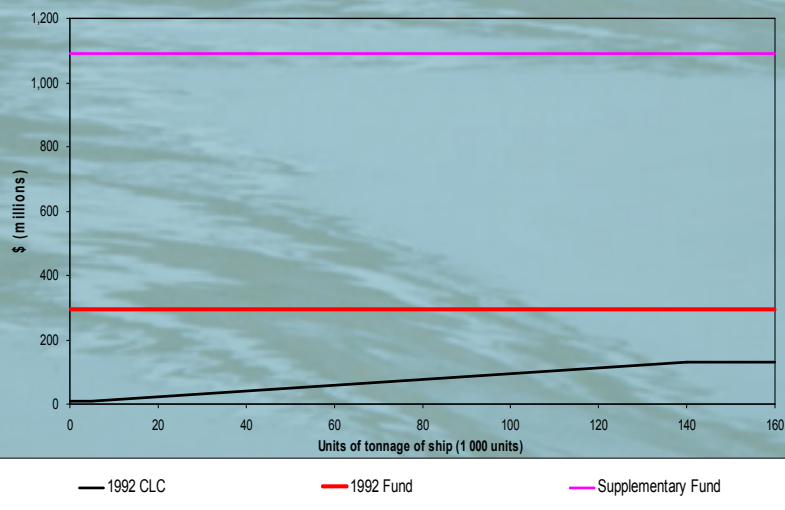


2ND TIER THE 1992 FUND CONVENTION

- Provides compensation for pollution damage to the extent that the compensation available under the 1992 CLC is inadequate
- Creates an intergovernmental organisation: the IOPC Fund
- Maximum compensation 203 million SDR (US\$319 million)



LIMITS LAID DOWN IN THE CONVENTIONS

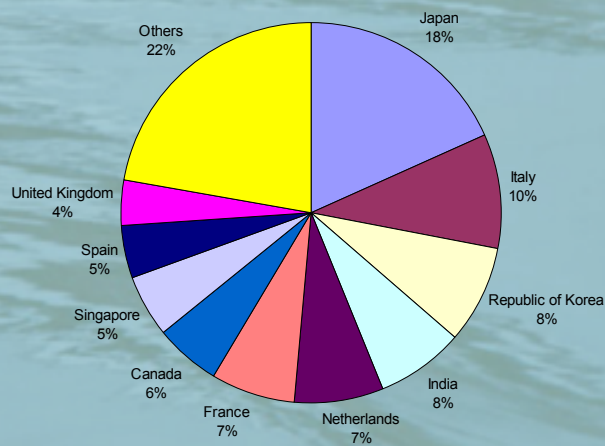


WHO CONTRIBUTES TO THE FUND? (Art. 10)

- Person receiving > 150 000 tons of contributing oil /year after sea transport
- Contributing oil = crude oil and heavy fuel oil
- Contributions decided by Fund Assembly
- Oil receivers pay, not governments



1992 Fund General Fund contributions 2006

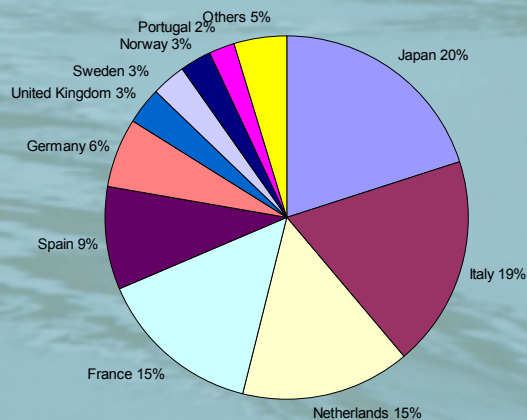


3RD TIER SUPPLEMENTARY FUND

- Supplementary Fund Protocol
Entry into force in March 2005
- Maximum compensation 750 million SDR
(US\$1 180 million), including amounts payable under
1992 Conventions
- Contributions to Supplementary Fund payable by oil
receivers in States Parties to Protocol



Supplementary Fund General Fund contributions 2006



STOPIA 2006

- Applies to pollution damage in 1992 Fund Member States
- Voluntary increase to 20 million SDR of limitation amount for ships up to 29,548 gross tonnage
- 1992 Fund remains liable to pay compensation to claimants over 4.51 million SDR
- 1992 Fund will be indemnified by the shipowner for difference between CLC limit and 20 million SDR



TOPIA 2006

- Applies to pollution damage in Supplementary Fund Member States
- Supplementary Fund will continue to pay compensation to claimants in accordance with Supplementary Fund Protocol
- Shipowner will indemnify the Supplementary Fund for 50% of the compensation it has paid to claimants



THE HNS CONVENTION and HNS Focus Group



THE HNS CONVENTION

- International Convention on Liability and Compensation for Damage in Connection with the Carriage of **Hazardous and Noxious Substances** by Sea, 1996
- Provide compensation for damage resulting from the maritime transport of hazardous and noxious substances (HNS)

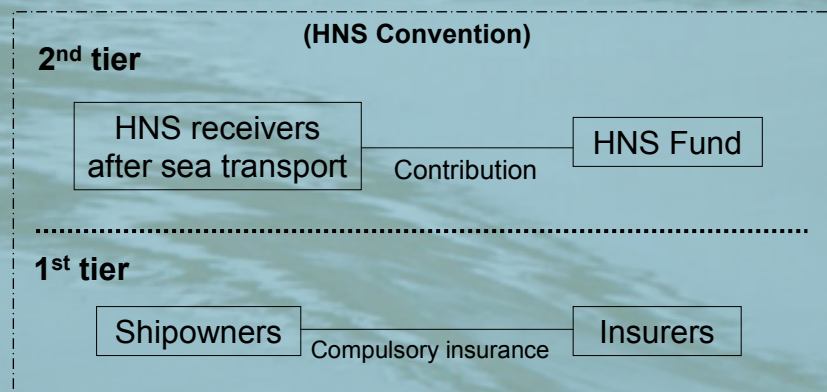


DEVELOPMENT OF THE HNS CONVENTION

- 1984 Diplomatic Conference failed to agree original HNS Convention
- 1996 HNS Convention agreed at a Diplomatic Conference organised by the IMO
- 1997- Work on implementation of the Convention
- 2007 HNS Focus Group set up to revise the Convention



THE TWO-TIER SYSTEM



DEFINITION OF HNS (Art. 1.5)

“**Hazardous and noxious substances**” (HNS) means:

- (a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:
and
- (b) residues from the previous carriage in bulk of substances referred to in (a) (i) to (iii) and (v) to (vii) above.



BULK HNS AND PACKAGED HNS (Art. 1.5)

Bulk HNS

- (i) Oils Annex I Appendix I of MARPOL 73/78
- (ii) Liquids Annex II Appendix II of MARPOL 73/78
- (iii) Liquids Chapter 17 of IBC Code
- (v) Gases Chapter 19 of IGC Code
- (vi) Liquids flashpoint not exceeding 60°C
- (vii) Solids Appendix B of BC of BC Code, if also covered by IMDG Code in packaged form

Packaged HNS

- (iv) IMDG Code



DAMAGES COVERED BY THE CONVENTION (Art.1.6)

- Loss of life or personal injury on board or outside the ship carrying the HNS
- Loss of or damage to property outside the ship
- Economic losses resulting from contamination of the environment;
eg. in the fishing, mariculture and tourism sectors
- Costs of preventive measures;
eg. clean-up operations at sea and onshore
- Costs of reasonable measures of reinstatement of the environment



THE CONVENTION DOES NOT COVER (Art.4.3)

- Pollution damage caused by persistent oil (already covered by CLC/Fund regime)
- Damage caused by radioactive substances



COMPENSATION LIMITS

➤ SHIPOWNER

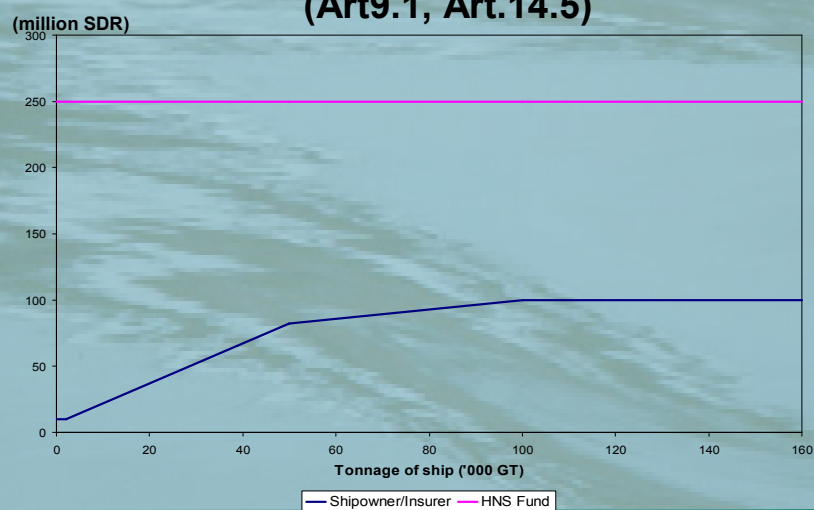
- ships $\leq 2\,000$ GT - 10 million SDR(US\$15.7 million)
rising to
- ships $\geq 100\,000$ GT - 100 million SDR(US\$157 million)

➤ HNS FUND

- maximum of 250 million SDR (US\$393 million)
(including amount paid by shipowner/insurer)



LIMITS LAID DOWN IN THE CONVENTIONS (Art9.1, Art.14.5)



COMPARISON WITH CLC/FC SYSTEM

- Covers very wide range of substances in both bulk and packaged form
- Not just pollution damage but other types of claims, eg. death and personal injury
- Contribution system much more complicated



COMPARISON OF LIMITS

(million SDR)

	HNS Convention	CLC/Fund	Supp. Fund
Shipowner - minimum	10	4.5	-
Shipowner - maximum	100	89.8	-
Fund	250	203	750



FINANCING OF THE HNS FUND (Art.18, Art.19)

- HNS Fund financed by contributions based on quantities of contributing cargo received in State Parties after sea transport
- Both initial and annual contributions
- General account
At least 2 (up to 5) sectors: Bulk solids, Other HNS
- Separate accounts
Up to 3 Separate Accounts: Oil, LNG, LPG



WHO CONTRIBUTE THE HNS FUND? (Art.1.4, Art.19)

The person liable to pay contributions to the HNS Fund,

- Persistent oil:
Any persons liable to contribute to the 1992 Fund
- LNG:
Any persons who held title to an LNG cargo immediately prior to discharge
- All other types of HNS:
The receiver as defined in Article 1.4



DEFINITION OF RECEIVER (Art.1.4)

- the physical receiver
- or
- if the physical receiver is acting as an agent for another who is subject to the jurisdiction of any State Party, the principal, if the agent discloses the principal to the HNS Fund



CONDITIONS for ENTRY INTO FORCE (Art.46)

- 18 months after ratification by at least 12 states, subject to:
- 4 States each having ships with a total tonnage of at least 2 million GT
- and
- 40 million tonnes of contributing cargo (bulk solids and other HNS, not oil, LNG or LPG) received in these States in previous calendar year



CURRENT STATUS

- 8 States have ratified the Convention
Angola, Cyprus, Morocco, the Russian Federation
Saint Kitts and Nevis, Samoa, Slovenia, Tonga
- Only 2 of these States (Cyprus and Slovenia)
have submitted reports on contributing cargo
- The Convention has not entered into force



WORK CARRIED OUT BY THE IOPC FUNDS

- HNS Contributing Cargo Calculator (HNS CCCC)
 - CD-ROM
 - website www.hnscccc.org
- Guide to the Implementation of the HNS Convention
- Workshops (June 2005 and May 2006)
- HNS Brochure
- HNS Convention website - www.hnsconvention.org
- HNS Focus Group



HNS FOCUS GROUP

- October 2007: Set up by 1992 Fund Assembly
- Aim: Facilitating the entry into force of the HNSC
- Mandate to develop **draft Protocol to resolve three main issues:**
 - Contributions to the LNG Account
 - The concept of “receiver”
 - Non-submission of contributing cargo reports
- Not a wholesale revision of the HNS Convention



TIMEFRAME FOR WORK

- 18 Jan. 2008: Policy proposals to be submitted by States
- 15 Feb. 2008: Draft Protocol to be developed by
Chairman of Focus Group, IOPC Funds and IMO
- Mar. 2008: First meeting of HNS Focus Group
- Jun. 2008: Approval of Protocol by 1992 Fund Assembly
- Oct. 2008: Legal Committee of the IMO
- 2009?: Diplomatic Conference



CONTRIBUTIONS TO THE LNG ACCOUNT (Art.19.1(b))

- LNG Account: Person liable for contributions is “person who ..., immediately prior to its discharge, **held title to an LNG cargo** discharged in a port or terminal of that State”
- Issue:
Person liable for contributions may not be subject to jurisdiction of a State Party and therefore payment of contributions cannot be enforced
- Policy proposal submitted by States:
Change to standard definition of receiver



THE CONCEPT OF “RECEIVER” (Art.1.4)

- Issue:
Definition of receiver creates administrative burden for reporting **Packaged HNS**
- Policy proposal submitted by States:
 - Packaged HNS to be covered for compensation by the HNS Fund but not liable for contributions
 - Increase in shipowner’s limit to balance extra contributions by receivers of bulk goods



NON-SUBMISSION OF CONTRIBUTING CARGO REPORTS (Art.43)

- Issue:
Only 2 out of 8 States have submitted reports but claimants in those States would still be eligible for compensation
- Policy proposal submitted by States:
 - Deny compensation to claims in States which have not submitted reports (cf. Supplementary Fund)
(*Exception for claims for death or personal injury)
 - Consider excluding States which have not submitted reports



Conclusion

The International Regime for Oil Pollution Damage

- The regime of the 1992 Conventions has in general worked well
- Used as model in other Conventions

The HNS Convention

- The HNS Focus Group was set up to facilitate the entry into force of the HNS Convention
- Draft protocol to resolve the issues of the HNS Convention will be discussed at the HNS Focus Group

Information

IOPC Funds website: www.iopcfund.org

