

**THE INTERNATIONAL REGIME FOR
COMPENSATION FOR OIL POLLUTION DAMAGE
and
THE DRAFT PROTOCOL TO
THE HNS CONVENTION**

**NOBUHIRO TSUYUKI
Legal Counsel
International Oil Pollution Compensation Funds**

**PAJ OIL SPILL SYMPOSIUM
3 March 2010
Tokyo, Japan**



OUTLINE FOR PRESENTATION

- The international regime for compensation for oil pollution damage;
(membership of Conventions; applicability of Conventions; concept of “pollution damage”)
- Piracy/terrorism and the international regime

- The HNS Convention
- Draft Protocol to the HNS Convention





STATES PARTIES

1992 Civil Liability Convention (CLC)

- 122 States Parties

1992 Fund Convention (FC)

- 103 States Parties

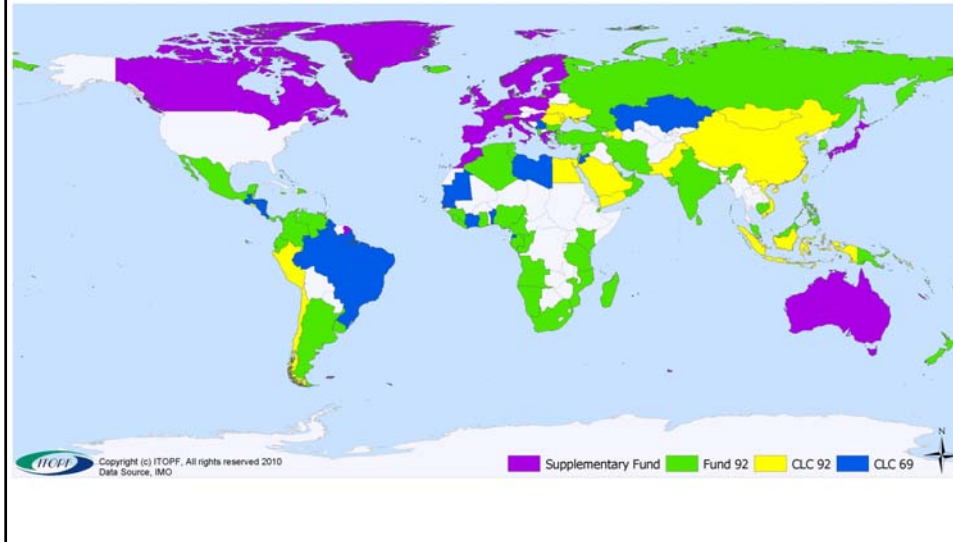
2003 Supplementary Fund Protocol

- 26 States Parties

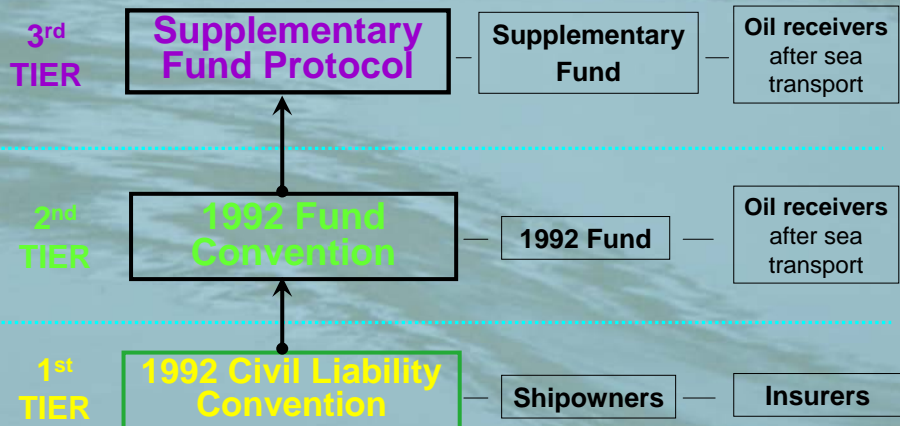
1971 Fund Convention ceased to be in force on
24 May 2002



STATES PARTIES



THE THREE TIER SYSTEM



RATIONALE OF THE INTERNATIONAL REGIME

- Provide compensation to victims of pollution damage caused by spills of persistent oil from tankers
- Compensation through amicable settlements; court involvement avoided
- Uniform application in all Member States
- Equal treatment of all claimants and contributors



CONVENTIONS APPLY TO

- Pollution damage
- Spills of persistent oil from tankers
- Territory, territorial sea and EEZ or equivalent
- Preventive measures
- Bunker spills from unladen tankers (unless “clean”)
- ‘Mystery spills’ from a tanker



POLLUTION DAMAGE

(Art. I.6, 1992 CLC)

- (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.



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



ADMISSIBILITY OF CLAIMS; SOME GENERAL PRINCIPLES

- Loss or damage caused by contamination (link of causation between the contamination and the loss)
- Claimant must prove loss or damage
- Loss must be economically quantifiable
- Any expense or loss must actually have been incurred
- Any expense must be for measures which are reasonable and justifiable



1ST TIER 1992 CIVIL LIABILITY CONVENTION (1992 CLC)

- Strict liability of registered shipowner (Art. III)
(no fault required; very few exemptions)
- Limitation of liability (Art. V)
Shipowners may lose right of limitation (Art. V,2)
- Compulsory insurance (Art. VII)
Direct action against insurer



1ST TIER
LIMITS OF SHIPOWNER'S LIABILITY
 (Art. V,1 1992 CLC)

GT	SDR	US \$
GT < 5 000	4 510 000	6 913 000
(per additional GT)	+ 631	+ 967
140 000 < GT	89 770 000	137 600 000

Exchange rate as of 12 February 2010



1ST TIER
SHIPOWNER EXEMPT WHEN INCIDENT
 (Art. III,2 1992 CLC)

- Resulted from an act of war or a grave natural disaster
- Was wholly caused by an intentional act of a third party
- Was wholly caused by negligence of public authorities in maintaining navigational aids



2ND TIER
1992 IOPC FUND CONVENTION
(1992 FC)

- 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 1992
- Maximum compensation 203 million SDR, including amounts payable under 1992 CLC



2ND TIER
1992 FC APPLIES WHEN
(Art. 4,1)

- Shipowner exempt under 1992 CLC
- Shipowner financially incapable of meeting obligations
(NB. Compulsory insurance over 2,000 tons of oil as cargo)
- Damage exceeds the shipowner's liability



2ND TIER 1992 FC DOES NOT APPLY

- Damage in non-Member State (Art. 3)
- Damage caused by an act of war or spill from warship (Art. 4,2(a))
- Claimant cannot prove oil originated from a “ship” as defined in the Conventions (Art. 4,2(b))



TIME BAR (Art. 6 1992 FC)

Claimants will lose their right to compensation against the 1992 Fund:

- **3 years** from the date the damage occurred
- And in any event **6 years** from the date of the incident
- Unless they bring court action against the 1992 Fund before those dates

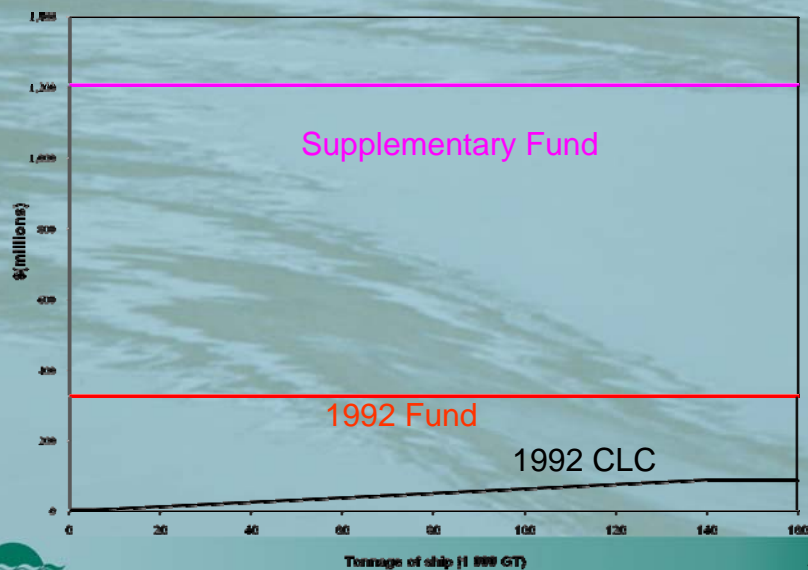


3RD TIER SUPPLEMENTARY FUND PROTOCOL

- Protocol establishing a Supplementary Fund entered in force in March 2005
- Maximum compensation 750 million SDR, including amounts payable under 1992 Conventions
- Contributions to Supplementary Fund payable by oil receivers in States Parties to Protocol



LIMITS OF COMPENSATION

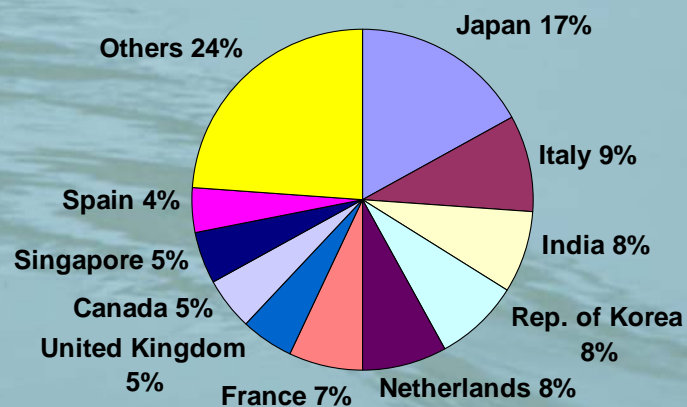


WHO CONTRIBUTES TO THE FUND?

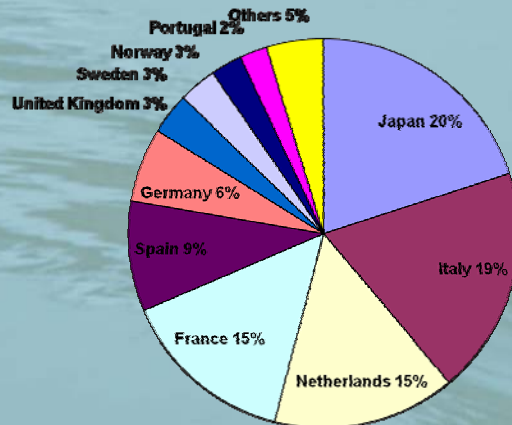
- Person receiving > 150 000 tons of contributing oil/year after sea transport
- Contributing oil = crude oil and heavy fuel oil
- Contributions decided by Fund Assembly
- Oil receivers pay, not governments



1992 FUND: GENERAL FUND CONTRIBUTIONS



Supplementary Fund: General Fund contributions



STOPIA / TOPIA 2006

- Voluntary industry agreements
- Sharing of financial burden between shipowners and oil industry

STOPIA 2006 (for incidents in 1992 Fund States Parties)

Voluntary increase to 20 million SDR of limitation amount for tankers up to 29 548 GT

TOPIA 2006 (for incidents in Supplementary Fund States Parties)

Shipowner will indemnify the Supplementary Fund for 50% of the compensation it has paid to claimants



THE INTERNATIONAL REGIME AND PIRACY / TERRORISM

- Shipowner has strict liability
- Ownership is not normally lost by act of piracy/terrorism
- Fund States Parties on East coast of Africa
- Exoneration for shipowner in Art.III, para 2, 1992 CLC
- Exoneration for IOPC Fund in Art.4, para 2, 1992 FC



THE INTERNATIONAL REGIME AND PIRACY / TERRORISM

- For shipowner and IOPC Fund to prove:
 - ... that the damage resulted from an act of war, hostilities, civil war or insurrection
- For shipowner to prove:
 - ... that the damage was wholly caused by an act or omission done with intent to cause damage by a third party



THE DRAFT PROTOCOL TO THE HNS CONVENTION



THE HNS CONVENTION (1996)

Aim

- To ensure adequate, prompt and effective compensation for:
 - Loss of life or personal injury
 - Loss of or damage to property outside the ship carrying HNS and economic losses
 - Costs of preventive measures, clean-up and reasonable measures of reinstatement of the environment
- Caused by **Hazardous and Noxious Substances (HNS)** in connection with their transport by sea



DEVELOPMENT OF HNS CONVENTION

- 1984 Diplomatic Conference failed to agree original HNS Convention
- **1996** HNS Convention agreed
- ~2007 Work on implementation on Convention (Both in IOPC Funds and IMO LEG)
- 2007 HNS Focus Group set up at IOPC Fund
- 2008 IOPC Fund submitted draft Protocol to IMO
- 2008-09 IMO LEG discussed draft Protocol
- **Apr.2010** IMO has Diplomatic Conference to adopt draft Protocol to the HNS Convention



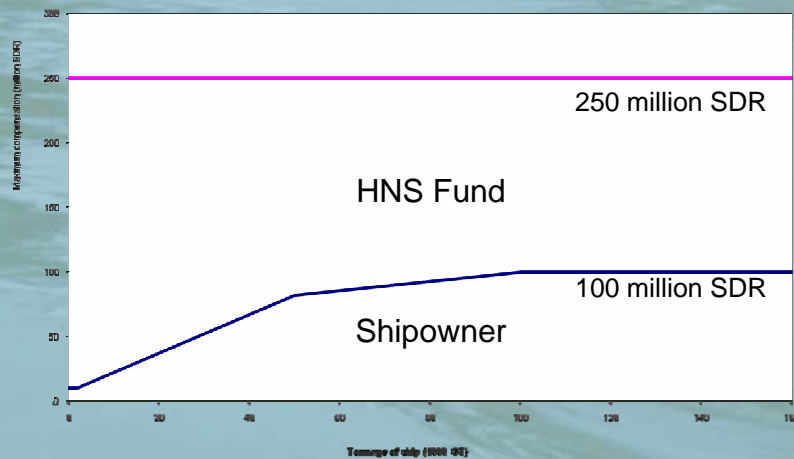
LIMITS OF COMPENSATION

GT	SDR	US \$
Shipowner		
GT < 2 000	10 000 000	15 328 000
(per additional GT)	+ 1 500	+ 2 300
50 000	82 000 000	125 686 000
(per additional GT)	+ 360	+ 552
100 000 < GT	100 000 000	153 275
HNS Fund	250 000 000	383 188 000

Exchange rate as of 12 February 2010



LIMITS OF COMPENSATION



COMPARISON WITH CLC/FC SYSTEM

- Covers very wide range of substances in both bulk and packaged form
- Not just pollution but other types of claims; e.g. death or personal injury, fire and explosion risks
- Contribution system much more complicated, due to wide range of substances contributing



COMPARISON WITH CLC/FC SYSTEM LIMITS OF COMPENSATION

(million SDR)

	HNS Convention	1992 CLC / 1992 Fund	Supplementary Fund
Shipowner - minimum	10	4.5	-
Shipowner - maximum	100	89.8	-
Fund	250	203	750



THE DRAFT PROTOCOL

- Revise the HNS Convention to resolve three main issues:
 - **Concept of “Receiver”**
 - **Contributions to the LNG Account**
 - **Non-reporting of contributing cargo**
- Not a wholesale revision of HNS Convention
- April 2010: Diplomatic Conference by IMO



THE CONCEPT OF “RECEIVER” (Art.1.4)

Issue:

- Definition of receiver* creates administrative burden for reporting
Packaged HNS

* “Receiver” means; (Article 1.4(a))
the person who physically receives
contributing cargo discharged in the
ports and terminals of a State Party



BULK HNS AND PACKAGED HNS (Art. 1.5)

Bulk HNS

- (i) Oils carried in bulk
- (ii) Noxious liquid substances carried in bulk
- (iii) Dangerous liquid substances carried in bulk
- (v) Liquefied gases
- (vi) Liquid substances carried in bulk with a flash point not exceeding 60°C
- (vii) Solid bulk materials

Packaged HNS

- (iv) Dangerous, hazardous and harmful substances, materials and articles **in packaged form**



CONCEPT OF THE “RECEIVER”

Solution by the Draft Protocol:

- **Packaged HNS** to be covered for compensation by the HNS Fund but **not liable for contributions** (Art.1.2)
- Increase the shipowner’s limit of liability to balance extra contributions by receivers of bulk HNS (Art.7)



CONTRIBUTIONS TO THE LNG ACCOUNT

Issue:

- Contributor to the LNG account may **not be subject to jurisdiction of a State Party** and therefore payment of contributions cannot be enforced



CONTRIBUTOR TO THE HNS FUND

(Art.1.4, Art.18, Art.19)

The person liable to pay contributions,

- All types of HNS (except LNG/persistent oil):
The person who physically receives cargo
- **LNG:**
The person **who held title to an LNG cargo** immediately prior to discharge
- Persistent oil:
The person liable to contribute to 1992 Fund



CONTRIBUTIONS TO THE LNG ACCOUNT

Solution by the Draft Protocol: (Art.11)

Contribution to the LNG account shall be made by

- **Receiver of LNG cargo**
- **Titleholder of LNG cargo** where:
 - (i) titleholder entered agreement with receiver that titleholder shall make such contribution
 - (ii) receiver informed State Party about agreement
- Receiver shall contribute if titleholder does not



NON-REPORTING OF CONTRIBUTING CARGOS (Art.43)

Issue:

14 States have ratified the HNS Convention
but only 2 States have submitted reports

- Claimants in those non-reporting States
would still be eligible for compensation
- Difficult to determine the conditions for entry
into force of the HNS Convention



CONDITIONS FOR ENTRY INTO FORCE (Art.46)

18 months after:

- Ratification by at least 12 States
(including 4 States each with not less than
2 million of gross tonnage)

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



NON-REPORTING OF CONTRIBUTING CARGOS

Solution by the Draft Protocol:

Non-reporting by State

- **No compensation** by the HNS Fund until the reports have been completed (Art.14)
- **Temporary suspension** from being a Contracting State if non-reporting after ratification (Art.20(7))



Conclusion

The International Regime for Oil Pollution

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

The Draft Protocol to the HNS Convention

- The Draft Protocol was made to resolve the issues of the HNS Convention
- Expected to be adopted at Dip-Con in April



Thank you for your attention!

**For further information
www.iopcfund.org**

