

The International Regime on Liability and Compensation for Oil Pollution Damage



PAJ Oil Spill Symposium 2012

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Outline



- **Rational of the International Compensation Regime**
- **Legal Framework**
- **How the IOPC Funds work?**
- **Assessment of Claims**
- **Current Topics**

The international regime:

Why do we need it?



- 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



1992 Compensation Regime

When does it apply?



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- Pollution damage
- Spills of persistent oil from tankers
- Territory, territorial waters and Exclusive Economic Zone or equivalent
- Preventive measures
- 'Mystery spills'

The international compensation regime

History



- 1969 Civil Liability Convention
- 1971 Fund Convention (**ceased to be in force in 2002**)

Previous regime

Current regime

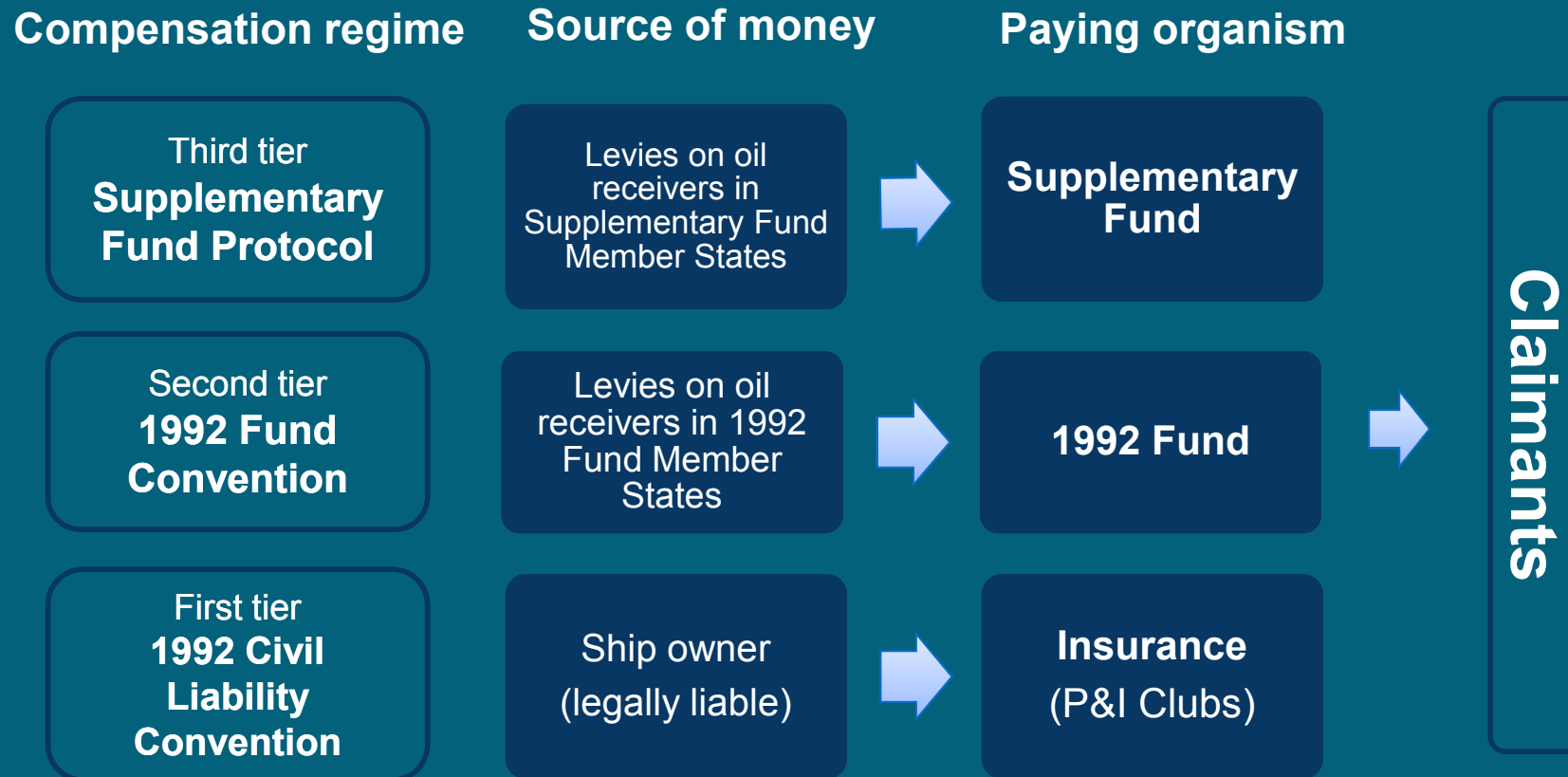
- **1992 Civil Liability Convention**
- **1992 Fund Convention**

Additional protection

- **2003 Supplementary Fund Protocol**

The compensation regime

- Three Tier System



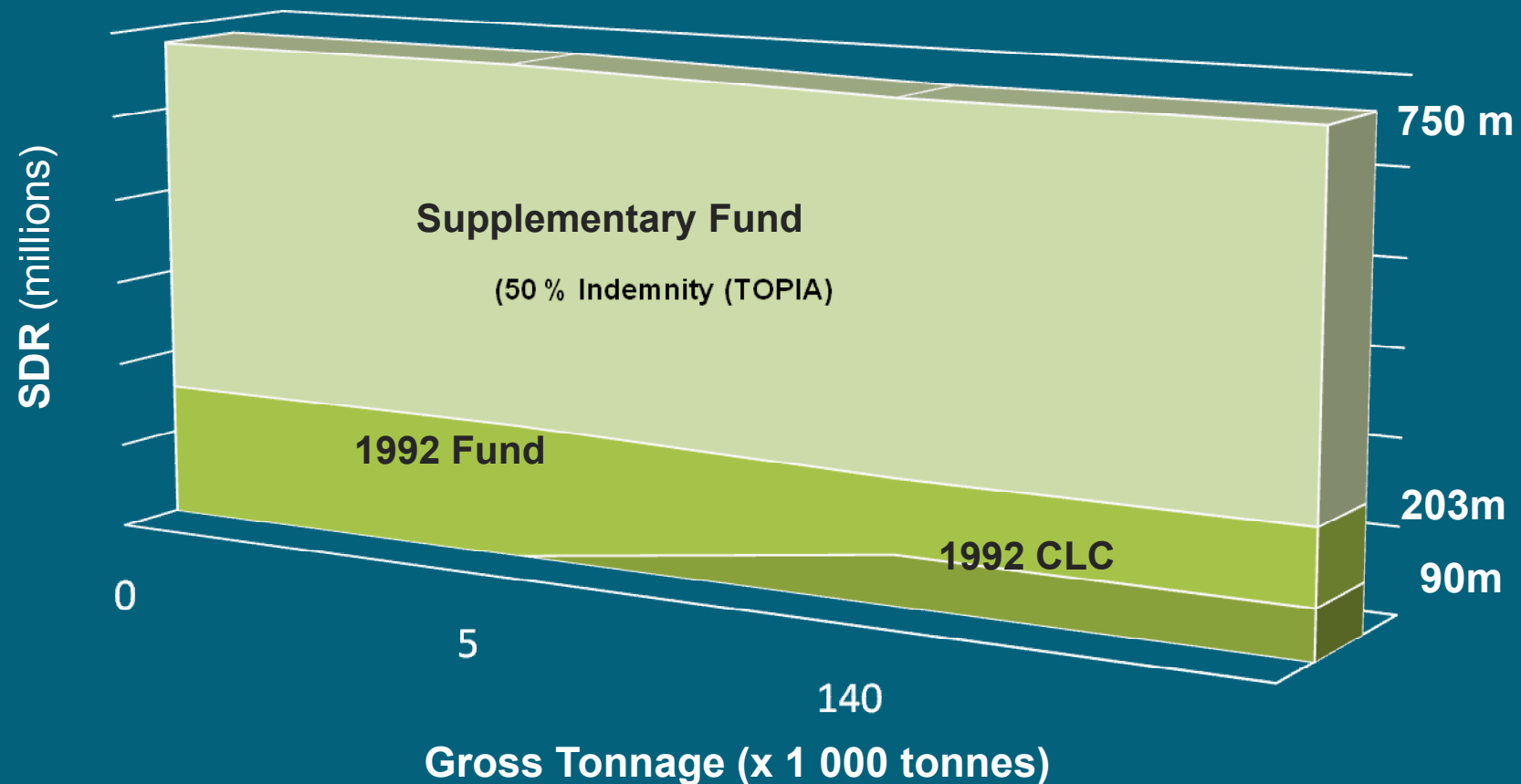
Compensation limits

Laid down by the Conventions



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■ Supplementary Fund ■ 1992 Fund ■ 1992 Civil Liability Convention



1992 Civil Liability Convention

First Tier



- **Strict liability of registered tanker owner**
- **Limitation of liability** based on the gross tonnage of the ship
- Ship owners required to have **compulsory, third party insurance** and certificate
- **Direct action against insurer** of the ship



1992 Civil Liability Convention

Ship owner's liability



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Ship owner is exempt if it is proved

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

Ship owner cannot limit liability if it is proved

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



1992 Fund Convention

Second Tier



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What

Establishes the IOPC Fund to:

- pay compensation
- collect contribution

Maximum compensation is 203 million SDR, including the amount to be paid under 1992 CLC

Legal framework of jurisdiction and enforcement

When

Ship owner is exempt under the 1992 Civil Liability Convention (CLC)

Ship owner is financially incapable

Damage exceeds the ship owner's limited liability amount under 1992 CLC

Not applicable

Damage occurs in non-Member State

Damage is caused by an act of war or spill from a warship

Claimant cannot prove it came from a ship

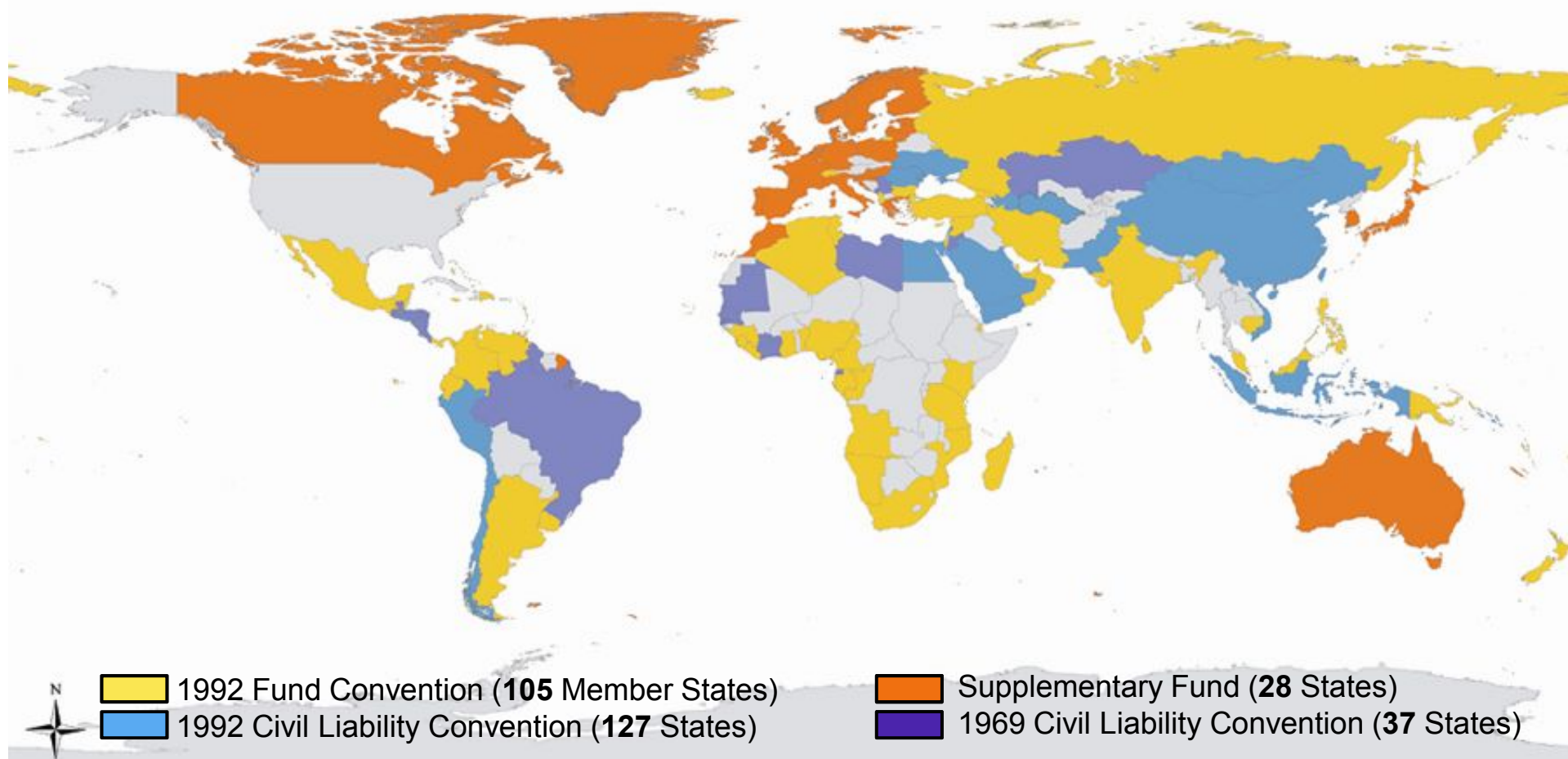
➤ Exclusive Jurisdiction

- ✓ courts of state party in whose territory, territorial sea or EEZ or equivalent the damage occurred

➤ Time Bar

- ✓ Court action within 3 years from the date the damage occurred, or
- ✓ Formal notification to the 1992 Fund of a court action against ship-owner within the same period
- ✓ Court action in any case within 6 years from the date of incident

The Member States



The IOPC Funds

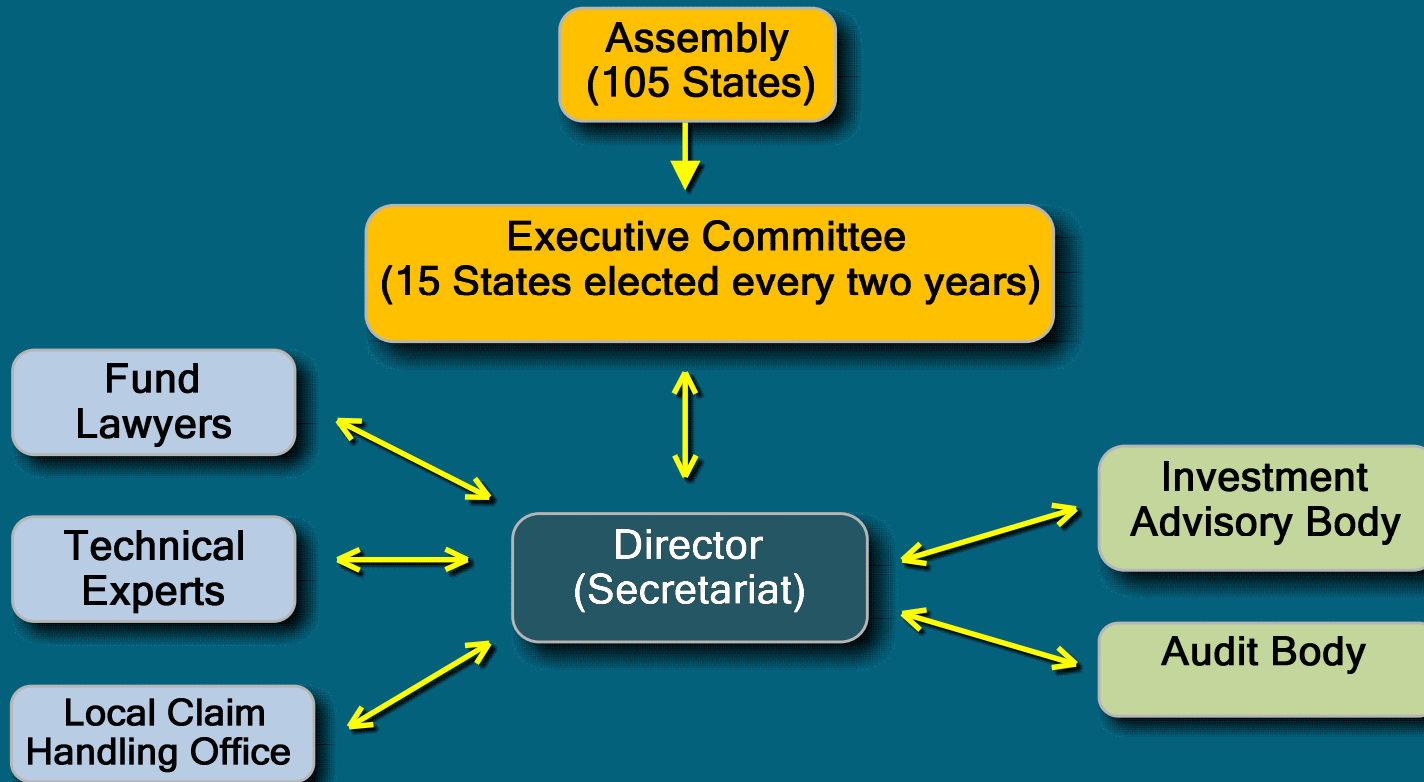


- Administer Fund Conventions
- Consist of Assembly, Executive Committee and Secretariat
- Establish criteria for admissibility of claims
- Financed by contributions from oil receivers



How does the IOPC Funds work?

Operation of the Secretariat



Who contributes to the Fund?



- Oil receivers: 'persons' who receive more than **150 000 tonnes** of contributing oil (**crude oil** and **heavy fuel oil**) per year after sea transport
- Member states are required to submit oil reports to the Secretariat each year
- The Fund Assembly decides the amount of contributions to be levied each year, based on amounts required to meet claims

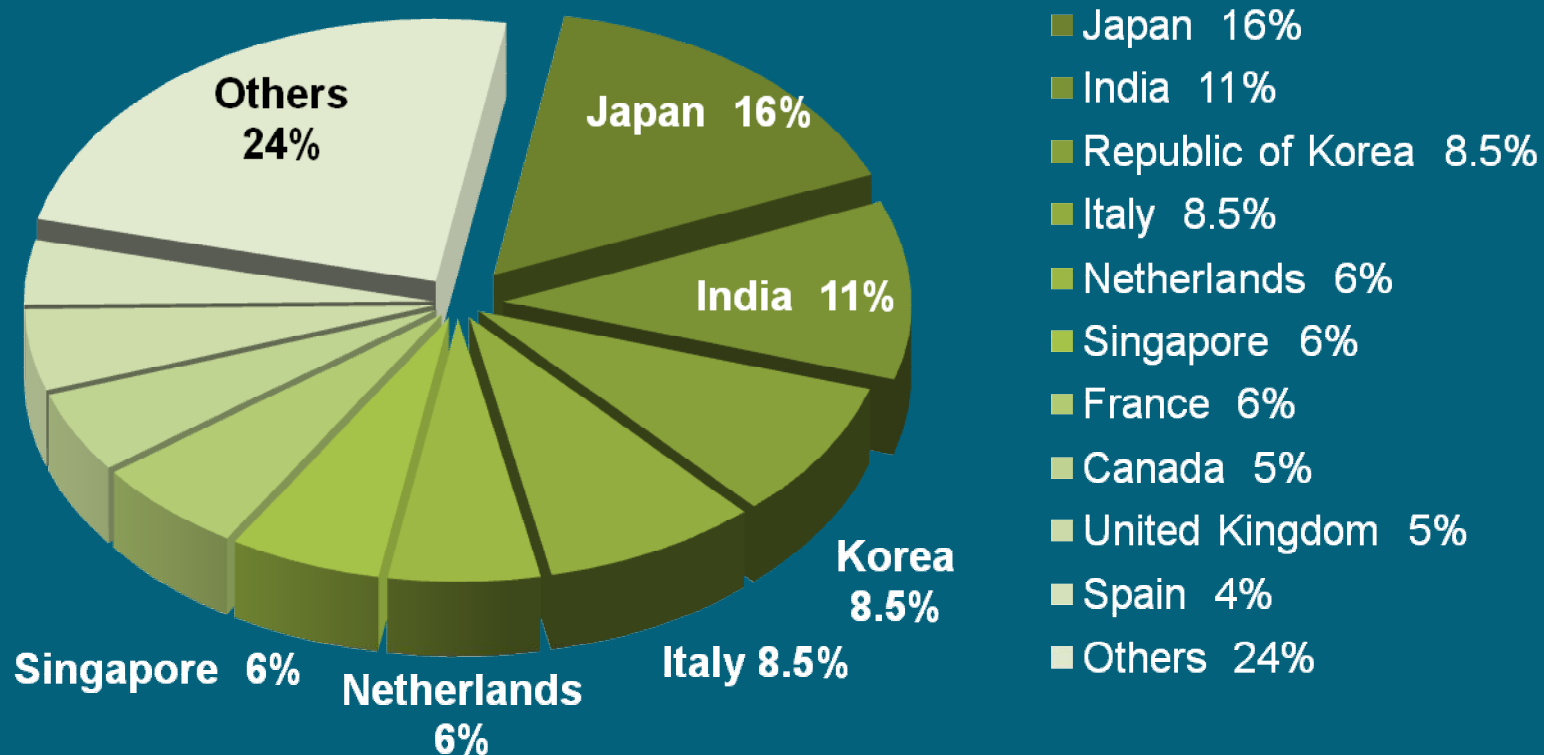


Contributions

From Member States' oil industry



Contributions to the 1992 Fund (2010)



1992 Fund policy on outstanding oil reports



- ✓ No provision in the Convention on failure to oil reporting
- ✓ Policy decision by the Assembly in October 2008;
 - ✓ Where a state is two or more oil reports in arrears, any claim submitted by Administration of that State or a public authority working on the recovery from that incident
 - ✓ will be assessed but payment will be deferred until reporting deficiency is rectified.
- In 2003 Supplementary Fund Protocol, no compensation will be paid to non oil-reporting States (including “nil”-reports)

Compensation

- Main Types of Claim -

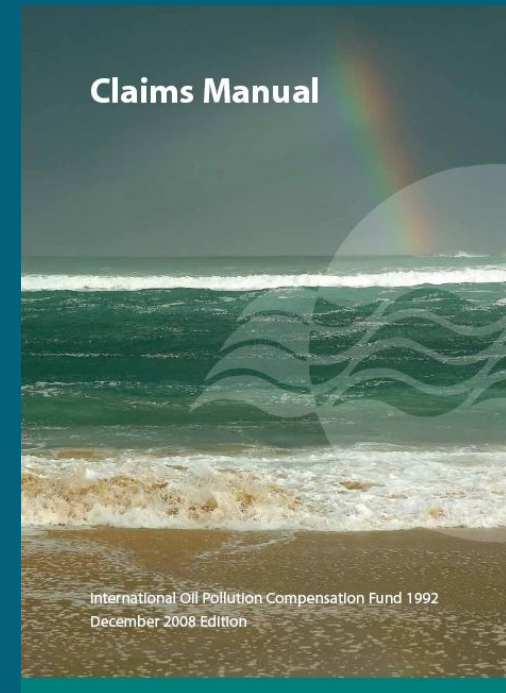


- **Property damage**
- **Clean-up operations and preventive measures**
- **Losses in fishery, mariculture and tourism sectors**
 - **Consequential loss**
 - **Pure economic loss**
- **Environmental damage; limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken**

Compensation - *Admissibility Criteria* -



- Existing criteria: Claims Manual
 - Reasonableness;
 - Relationship between costs and benefits;
 - Objective criteria;



Political/social considerations are outside the scope of the Conventions

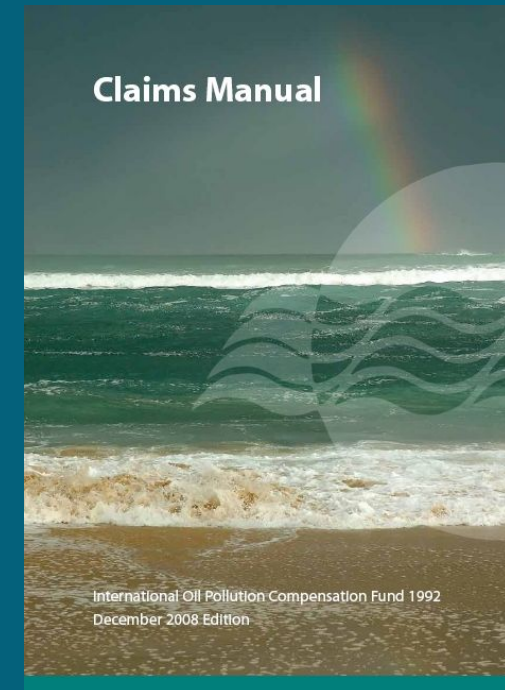
Compensation

- *Presentation of Claims* -



General guidelines:

- 1992 Fund Claims Manual
- Early notification to enable experts to attend on-site
- Key to successful recovery is good record-keeping linking action to expenditure



Preparing a clean up claim



Documentation:

Daily activity logs – Response organisation/contractors

Worksheets

Aircraft/ vessel logs - extracts from log books

Beachmasters – daily reports

- number of personnel,
- type and amounts of equipment/materials
- type and length of shoreline cleaned

Purchase orders (invoices)

Presentation of claims



- Invoices insufficient by themselves
- Narrative describing response activities and linking these with expense
- Maps & spreadsheets very helpful
- Cost items should be supported by invoices, receipts, worksheets, wages records etc.

Evidence provided must be sufficient for the IOPC Fund to form its own opinion of the losses suffered

Role of experts



- Local and international experts
- Jointly appointed by IOPC Fund + P&I Club
- Advise and assist all parties on most effective clean up to minimize resource damage
- Investigate damage & monitor clean-up
- Offer guidance on admissibility of claims

Expert's role is always advisory

Claims for Compensation



- Early notification to Fund to enable experts to attend on-site
- Key to successful recovery is good record keeping linking action to expenditure
- Assessment carried out on the basis of technical criteria
- Assessments can be revised provided further information is submitted based on Fund criteria i.e no 'horse trading'



IOPC Funds

CURRENT TOPICS

Hebei Spirit

Republic of Korea, 2007



IOPC Funds

- Samsung Heavy Industries' crane barge collides with Hong Kong-registered crude carrier *Hebei Spirit*
- Spills **10 900** tonnes of crude oil
- 375 km of shoreline affected
- **127 000** persons affected
- Special Law to compensate victims of the spill
- Korean Government decides to 'stand last in the queue' with some claims
- **18 000** claims, representing **74 000** people assessed: **£92 million**
- **KRW 135 120 million** (£79 million) paid



Hebei Spirit

Republic of Korea, 2007



Claim assessment teams

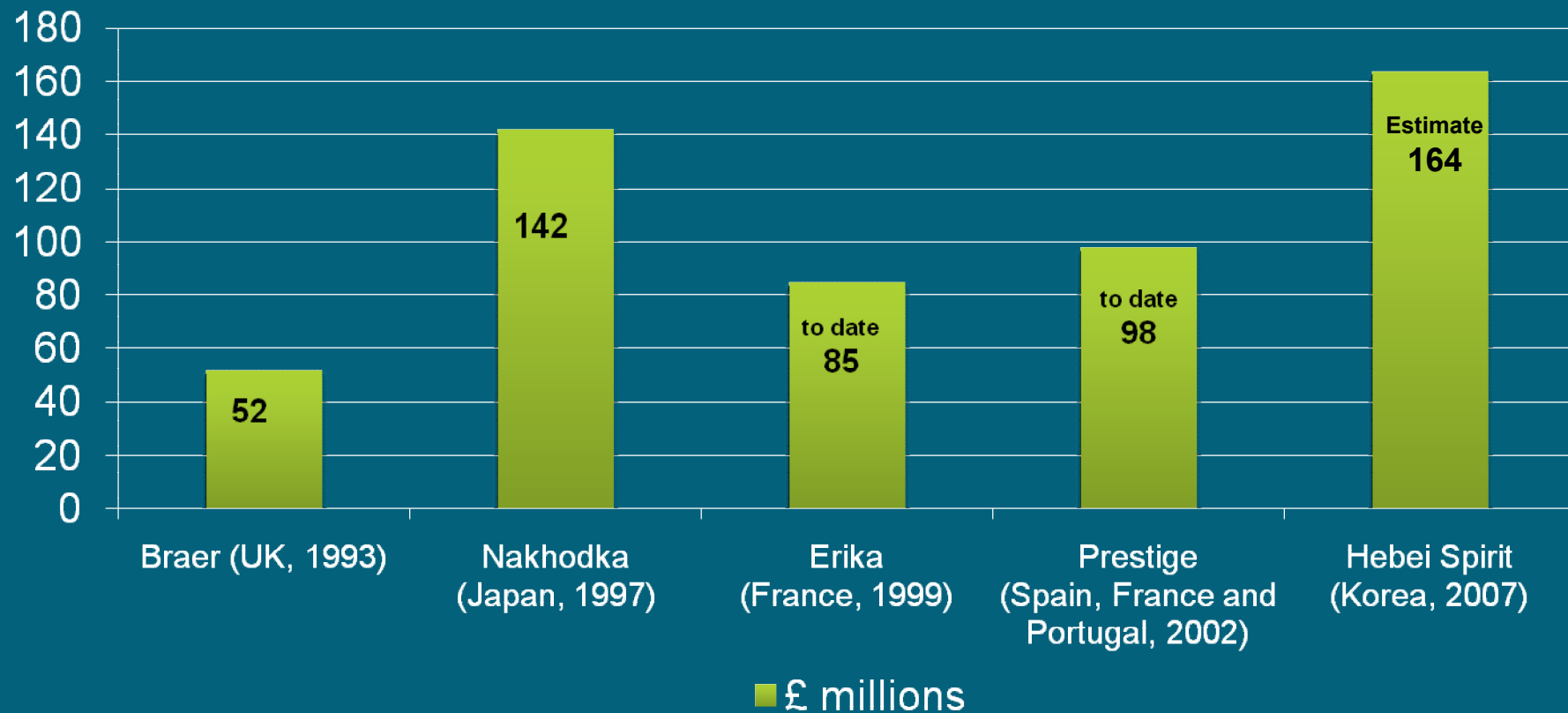
- *Komos, Hyopsung, Spark, Inteco, Homarus, CMA, ITOPF*
- Four local companies and international experts carry out assessments
- Claims managers from IOPC Funds and P&I Club
- Mainly Korean 75 experts
- Local claims office ('Hebei Spirit Centre')
- Limited evidence of loss
- Non-licensed activity
- Large number of claims for small amounts

Major incidents and compensation



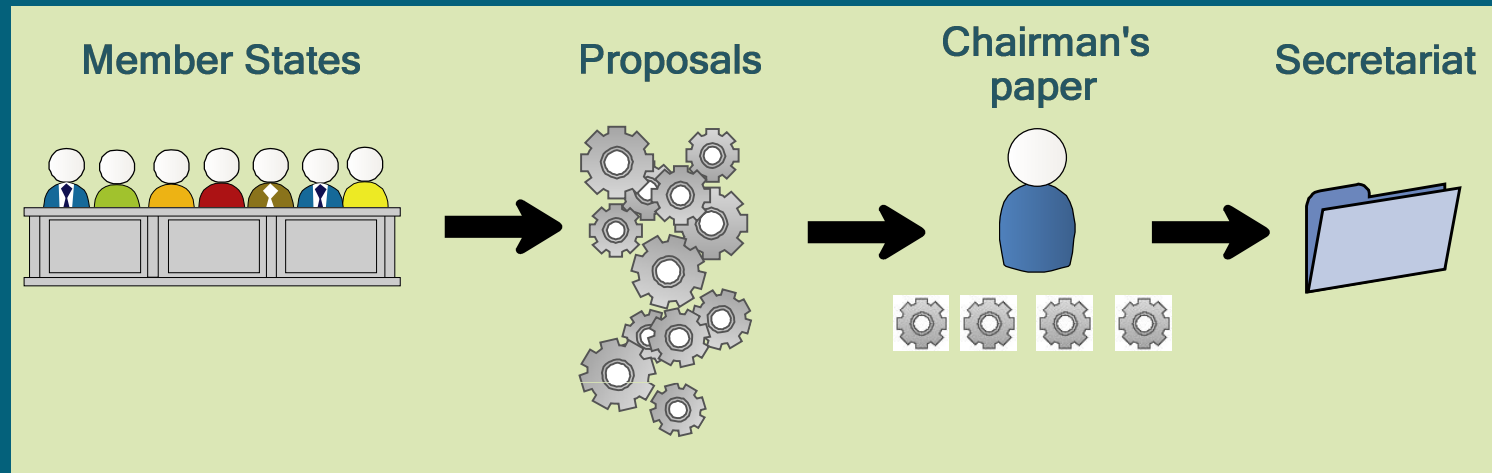
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Amount paid in claims including ship owner's contribution under 1992 CLC



Working Group

Large number of claims for small amounts



1. The role of Member States
2. Existing practices
3. Changes to the Claims Manual
4. Amendments to the Conventions

Working Group

Large number of claims for small amounts



- Large numbers of claims: capacity problems; small Secretariat; limited availability of experts/surveyors; quiet times vs. peak demands; training of surveyors
- Claims for relatively small amounts: Principles underpinning the Conventions; Need for flexible approach? Need for clarity about scope for flexibility
- Lack of (documentary) evidence: Principles underpinning the Conventions; Reject or investigate? Be critical or be criticised? Need for flexible approach? Need for clarity about scope for flexibility

Working Group's proposal

The role of Governments



IOPC Funds

- Stand last in the queue
- MoU with domestic insurance companies
- Access to statistical data
- Grouping of claims and claimants
- Standard reference prices
- Reimbursement of overpayment of interim payments
- National expert list and expert mediation panel
- Use of social security system



Working Group's proposal

Existing practices



- Partnership with commercial adjusters and accountants
- The use of economic models
- Outsourcing
- Remuneration of experts
- Claims Manual and claims forms in languages of Member States



Working Group's proposal

Changes to Claims Manual



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- Compensation based on estimation (of preliminary assessments)
- Fraud detection/prosecution
- Six-month settlement period



Working Group's proposal

Amendments to the Conventions



Working Group **rejected the adoption of UNCC methodologies** as this would require changes in Conventions



Definition of 'ship'



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 . . .



Slops

Greece, 2000



- A **floating storage unit (FSU)**, **converted from an oil tanker**, explodes and spills 1 000 to 2 000 tonnes of oil in Piraeus, Greece
- In 2000, Executive Committee decides *Slops* is not a 'ship' as defined by the 1992 CLC
- Greek Supreme Court holds that *Slops* is covered under the 1992 CLC
- 1992 Fund pays €4 million in compensation
- In 2008, 1992 Fund Assembly starts discussion on **definition of ship**

Definition of 'ship'

FSO are not 'ships'



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- Secretariat was instructed to provide “legal analysis” on interpretation of ‘ship’
- Legal Analysis (Professor Lowe):
FSOs are not ‘ships’ because the term is linked to “**carriage of oil**”, which involves “**the navigation of the ship on a voyage**”
- Working Group was set up in 2011 to consider the implications of making a decision on the interpretation





IOPC Funds

www.iopcfund.org
