



# The IOPC Funds – Recent Developments

*Petroleum Association of Japan*



## The IOPC Funds

*Recent developments*

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# The international liability and compensation regime

## *Basic principles*

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:

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





# The international liability and compensation regime

## *Legal framework*



### Previous regime

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

### Current regime

- 1992 Civil Liability Convention (1992 CLC)  
(140 Member States)
- 1992 Fund Convention  
(117 Member States)
- 2003 Supplementary Fund Protocol  
(32 Member States)

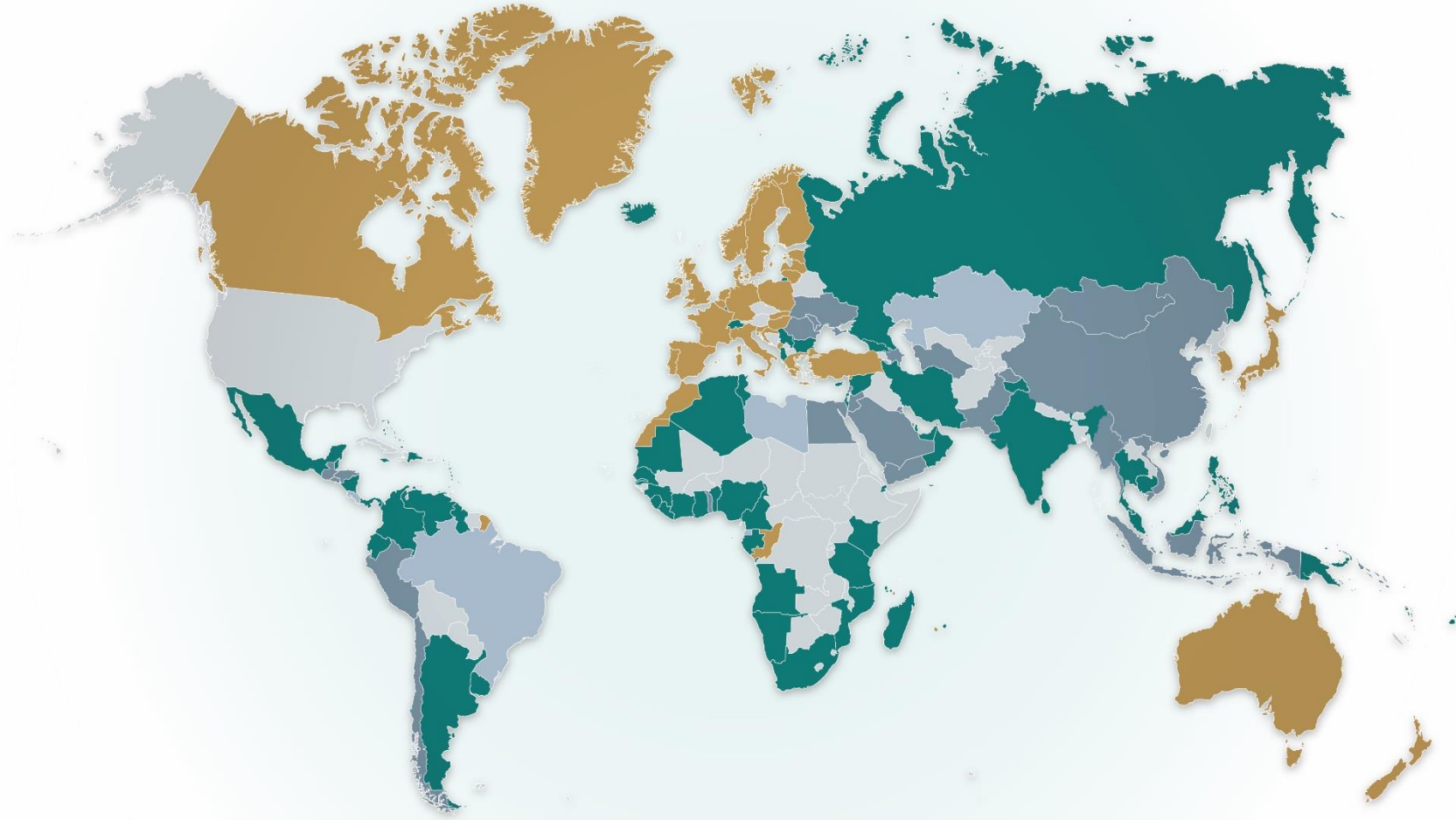
The numbers of Member States are correct as at 31 December 2019.

States which have deposited an instrument of accession or denunciation, but for which the Convention has not yet entered into force or ceased to be in force, have also been included.



# Member States

December 2019



■ 1992 Fund Convention (117 Member States)

■ 1992 Civil Liability Convention (140)

■ Supplementary Fund (32)

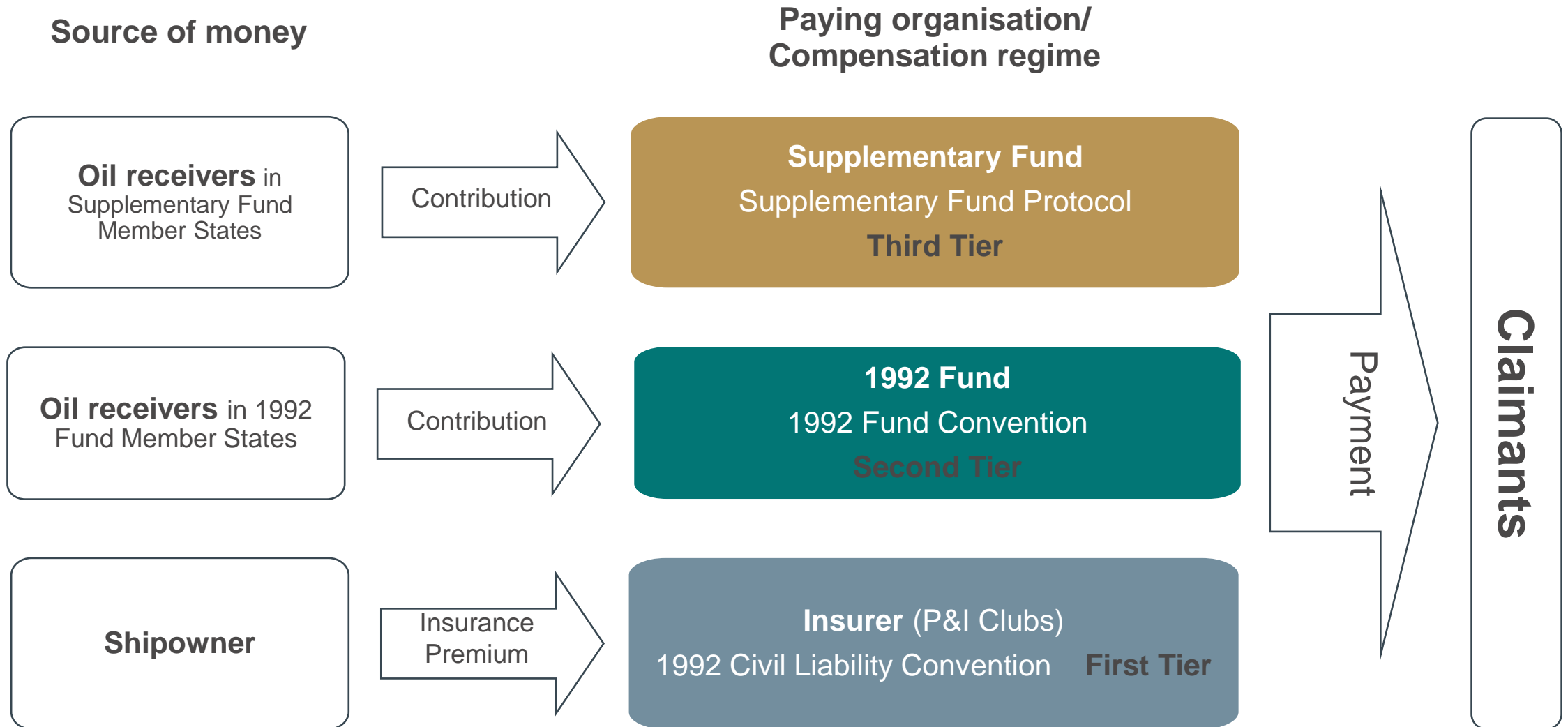
■ 1969 Civil Liability Convention (32)

States which have deposited an instrument of accession or denunciation, but for which the Convention has not yet entered into force or ceased to be in force, have also been reflected.



# How the regime works

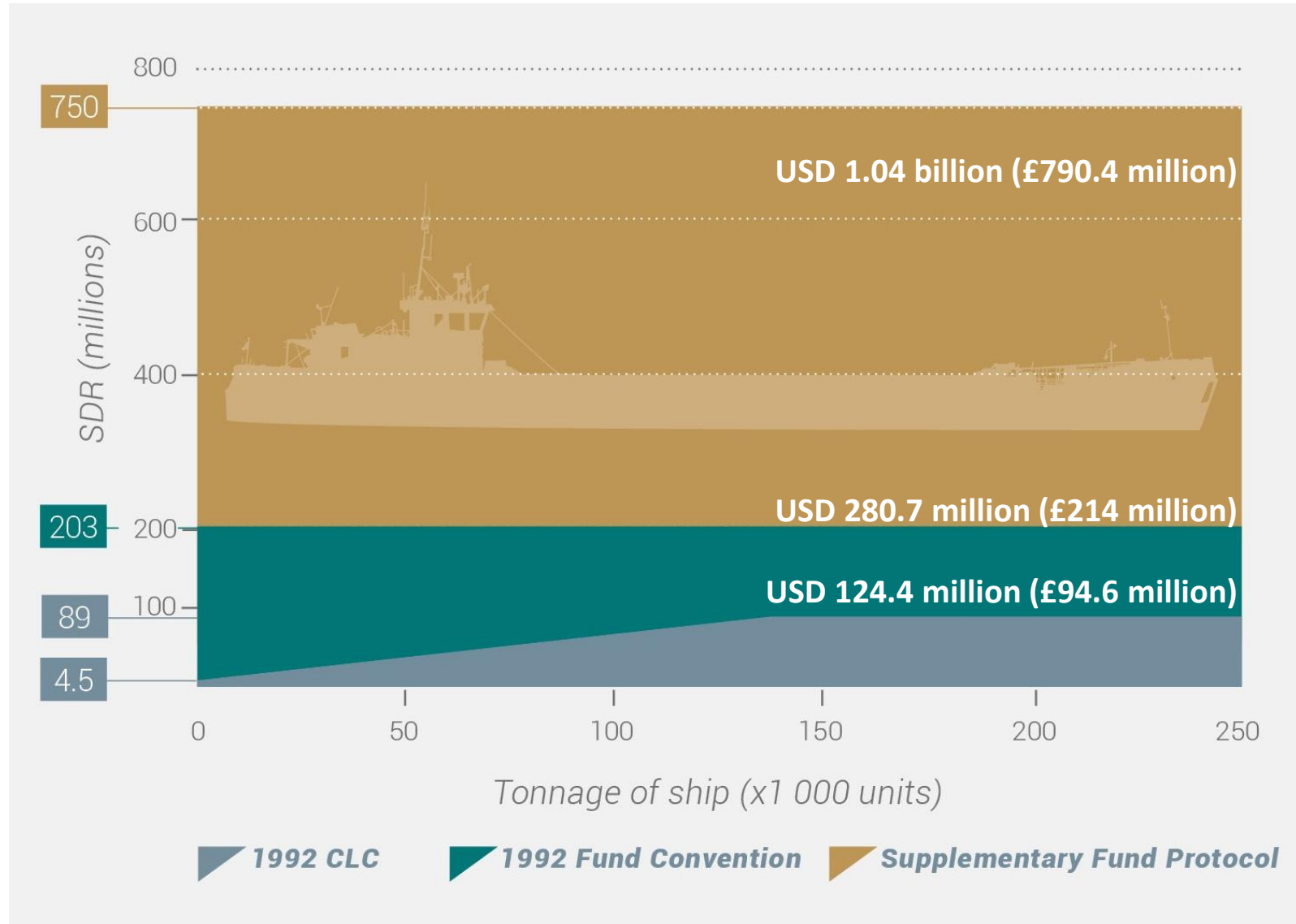
## Three Tier system





# Compensation limits

## *Liability limits under the Conventions*



\*Exchange rates as at 30 December 2019



# Who contributes to the Funds?

## Contributors

- Oil cargo interests are our contributors: 'persons' who **receive** more than 150 000 tonnes of **contributing oil** per year after sea transport



- In the 115 Member States of the **1992 Fund**, there were approximately **230 contributors** in 2018.
- In the 32 Member States of the **Supplementary Fund**, there were approximately **140 contributors** in 2018, including 7 States.



# Contributions

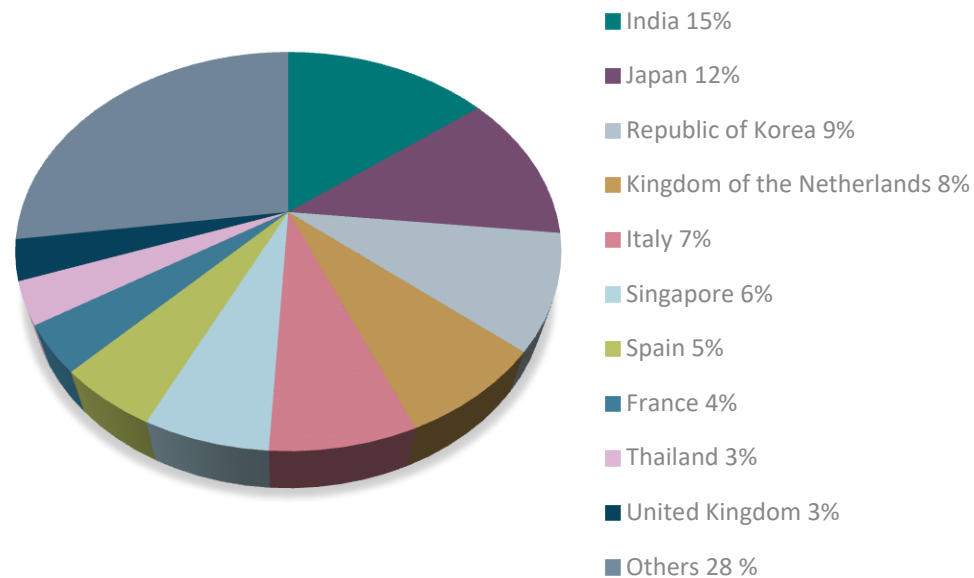
*Oil received by Member States' oil industries in 2018*



## 1992 Fund

**1 536 586 640 tonnes**

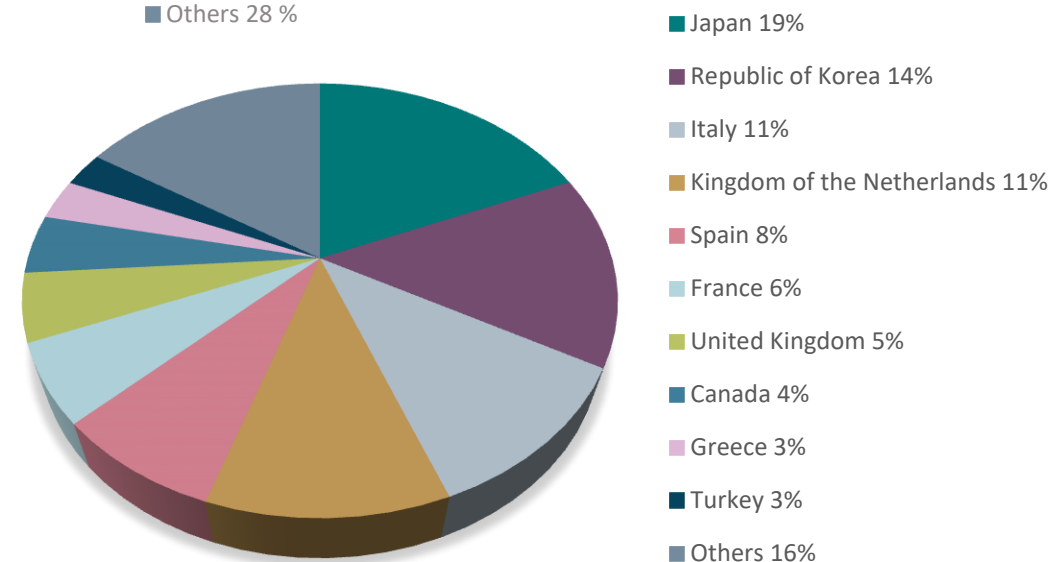
10 States represent **72%** of contributions  
43 States reported **nil** tonnages



## Supplementary Fund

**1 001 060 438 tonnes**

10 States represent **84%** of contributions







# Japan and the compensation regime

*Actively participating over the years*

- Highest contributor from 1978 until 2016. Now second highest contributor, receiving 186 million tonnes of oil in 2018.
- Always in attendance at meetings of the IOPC Funds, actively contributing to debates and discussions, submitting documents
- Provided First Vice Chair of the 1992 Fund Assembly from 2012 – present
- Current members of the 1992 Fund Executive Committee
  - \*Also previously elected to the Executive Committee in 1998; 2000; 2003; 2006; 2009; 2012; 2015 and 2018
  - \*Also previously Chaired the 1971 Fund Executive Committee from 1985-1987
- Former senior members of Japanese delegation now working with the IOPC Funds as Legal Counsel and Chair of the Audit Body





### Conventions Timeline:

#### 1969 CLC

01/09/1976 -  
15/05/1998

#### 1971 Fund Convention

*In force from 1978 to 2002  
(1971 Fund dissolved in 2014)*

16/10/1978 -  
15/05/1998

#### 1992 CLC

*In force since 1996*

30/05/1996

#### 1992 Fund Convention

*In force since 1996*

30/05/1996

#### Supplementary Fund Protocol

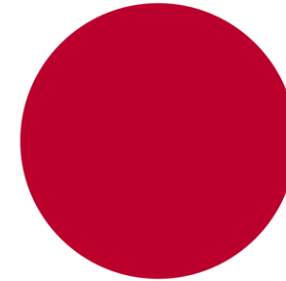
*In force since 2005*

03/03/2005

#### 2010 HNS Protocol

*Not yet in force*

?



### Reporting data:

#### Contributing oil received in 2018:

185 997 158 tonnes (12.10% of total)

#### Submission of oil reports and payment of contributions

100%

# Types of claims

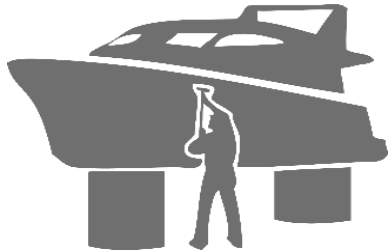
## *What is covered*



Costs of clean-up and  
preventive measures



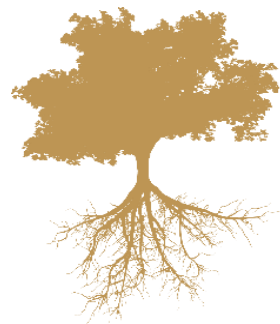
Economic losses by fisherfolk or those  
engaged in mariculture



Property damage



Economic losses in the tourism  
sector



Costs of reinstatement to the  
environment

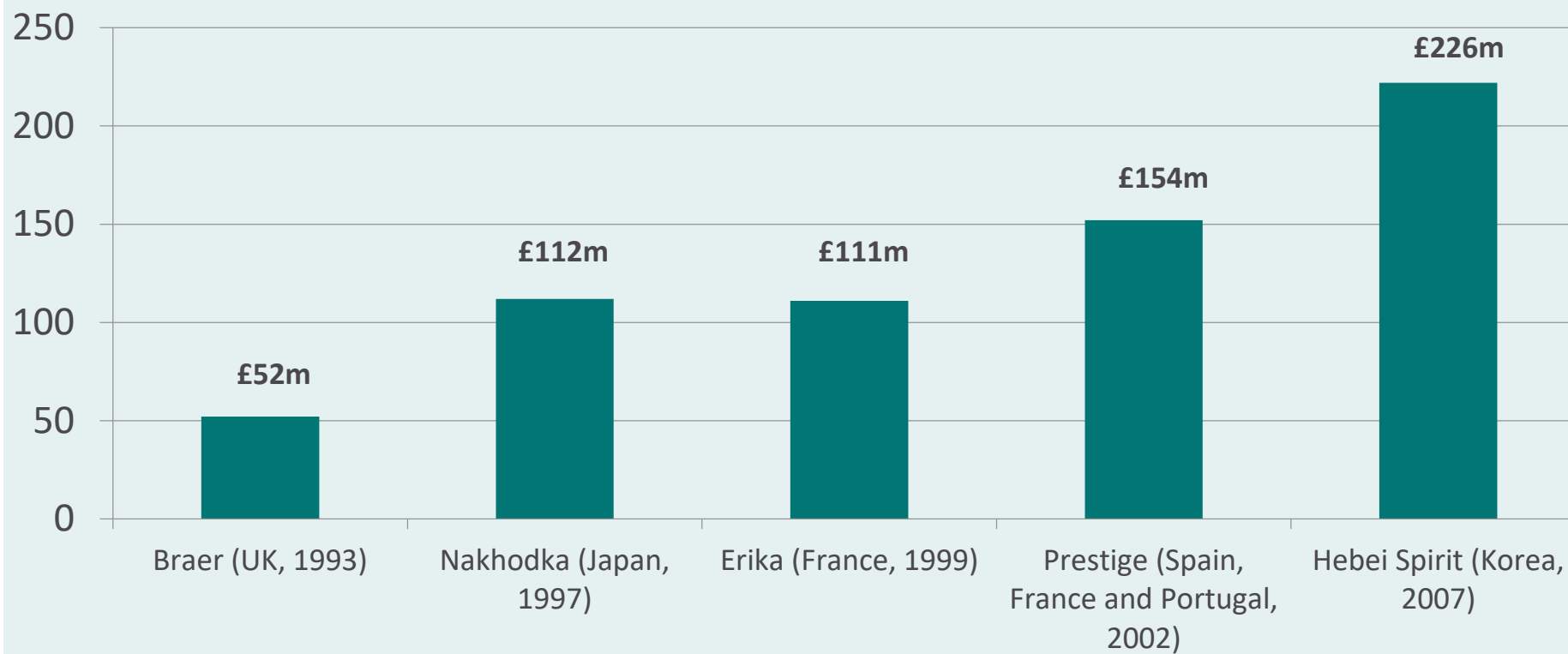


# Major incidents and compensation

## Examples



**Amount paid in claims including  
shipowner's contribution under 1992 CLC**





# What has been paid

## 1978-2019



### Supplementary Fund

- No incident
- No compensation paid

### The 1992 Fund

- Has been involved in 47 incidents
- Paid about £410 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 £741 million in compensation and/or indemnification

Figures as at 30 September 2019





# Recent developments

## *Incidents drawing to a close*

### *Prestige, Spain, 2002*



- December 18 – Supreme Court awards EUR 1 439.08 million
- London P&I Club liable for all damages up to the limit of its policy of USD 1 000 million
- 1992 Fund has paid EUR 147 million less:  
EUR 800 000 to pay any judgments by French courts; and EUR 4 800 to pay Portuguese Government

Total claims paid:  
99.5%

### *Hebei Spirit, Republic of Korea, 2007*

- The CLC limit for this incident was KRW 139.4 billion
- Skuld paid KRW 47.4 billion in excess of its limit
- 1992 Fund paid 2 balancing payments totalling KRW 44 billion.
- 1992 Fund paid KRW 27.5 billion to the Government of the Republic of Korea in exchange for a hold harmless agreement.



Total claims paid:  
100%

### *Nesa R3, Sultanate of Oman, 2013*



- All claims settled.
- OMR 3.5 million paid by the 1992 Fund.
- The 1992 Fund continues to pursue recovery of the compensation paid from the shipowner and insurer of the *Nesa R3*

Total claims paid:  
100%



# Recent developments

## Ongoing incidents

### *Agia Zoni II, Greece, 2017*

- Claims office has been set up in Piraeus to handle claims
- 373 claims totalling EUR 94.64 million and USD 175 000.
- 312 claims have been assessed and 307 claims approved
- The Fund has paid some EUR 11.27 million in compensation to 136 claimants.



### *Mystery Spill, Brazil, 2019*

- 2000km of coastline affected
- Brazil is only an observer to the 1992 Fund and Supplementary Fund
- Up to \$277 million in compensation available under 1992 Fund
- \$1022 million in compensation available under Supplementary Fund.



Not entitled to claim





# Recent developments

## Agia Zoni II incident



Ship	<b><i>Agia Zoni II</i></b>
Date of incident	10 September 2017
Place of incident	Saronic Gulf, Greece
Cause of incident	Sinking—circumstances under investigation <i>(calm weather conditions, only 2 crew members on board)</i>
Quantity of oil spilled	Unknown but estimated to be in the region of 700 metres <sup>3</sup>







# Agia Zoni II incident

## *Affected areas - Aerial views*







# Agia Zoni II incident

## *Before and After - Athens Riviera*

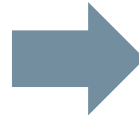






# Agia Zoni II incident

## *Before and After - Salamina island*





# Agia Zoni II incident

## *Management of claims*



- Claims Submission Office opened in November 2017
- Staffed by manager and assistant
- Assist claimants and their claims for compensation
- Assist the Secretariat with the management of the claims
- 130+ claimants / representatives visited the office





# Agia Zoni II incident

## Claims situation as at January 2020



	<i>Claims received</i>		<i>Claims approved</i>		<i>Claims paid by the Fund</i>	
<i>Claim Type</i>	<i>No. of claims</i>	<i>Amount (EUR)</i>	<i>No. of claims</i>	<i>Amount (EUR)</i>	<i>No. of claims</i>	<i>Amount (EUR)</i>
<i>Clean up</i>	29	83.2 million	13	11.27 million	12	10.81 million
<i>Environment</i>	5	100 303	5	95 963	4	95 963
<i>Fisheries</i>	165	6.27 million	152	38 572	38	37 426
<i>Property</i>	117	904 414	99	126 309	66	115 672
<i>Tourism</i>	57	5.17 million	42	417 643	25	417 385
<i>Other</i>	2	94 000	2	0	0	0
<b>TOTAL</b>	<b>375</b>	<b>95.74 million</b>	<b>319</b>	<b>11.95 million</b>	<b>145</b>	<b>11.48 million</b>



# Agia Zoni II incident

## *Current status*



- **Investigation** into the cause of incident is still **ongoing**
- Still early to determine the overall cost of the incident
- **Insurance** of EUR 5 million by Lodestar Marine Limited appears **insufficient**
- 1992 Fund Assembly has approved levies:
  - EUR 26 million in 2018 – paid
  - EUR 10 million in 2019 – invoiced
  - EUR 16 million in 2019 – deferred
- Incident raises a number of issues:
  - **Reliability of some insurers**
  - Local regulations applicable to old tankers
  - Is the CLC/Fund system there to deal with these types of incidents?





# Challenges facing the IOPC Funds

## *Non-IG insurers – Review by the Audit Body*

- The insurance issues of Agia Zoni II & other incidents in recent years have led to discussions in the Assembly.
- IOPC Funds increasingly becoming involved in incidents as a result of insufficient insurance cover
- Audit Body tasked with studying issues & presented potential measures in October 2019.







# Challenges facing the IOPC Funds

## *Non-IG insurers – Review by the Audit Body*



### Problem 1:

Inconsistency between documents provided by non-IG insurers and the underlying insurance policies.

### Possible solutions:

- A **template of an insurance card** to be furnished by non-IG insurers;
- A **list of non-IG insurers** with whom the IOPC Funds have encountered issues in the past on the IOPC Funds' website; and
- **Member State to inform** the IOPC Funds' Secretariat **of efforts to correct the situation.**



# Challenges facing the IOPC Funds

## *Non-IG insurers – Review by the Audit Body*



### **Problem 2:**

Insolvency of the non-IG insurer.

### **Possible solution:**

Maximise recovery in the liquidation procedure.

### **Problem 3:**

Uncooperative action of the non-IG insurer.

### **Possible solution:**

Develop MoU with non-IG insurers.




# Challenges facing the IOPC Funds

*Document submitted by India*

India has submitted a document for discussion at the March 2020 meeting.

Document presents interesting points and questions some of the key principles of the Conventions, such as:

- **Coverage for all Member States** without the need to make any payment of contributions
- **Lack of mandatory insurance** for vessels carrying less than 2000 tonnes
- **Claims record not linked to contributions** paid by a Member State



International Oil Pollution  
Compensation Funds

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Agenda Item 5	IOPC/MAR20/S/2	
Date	23 January 2020	
Original	English	
1992 Fund Assembly	92AES24	•
1992 Fund Executive Committee	92EC74	
Supplementary Fund Assembly	SAES8	

## REVIEW OF 1992 CIVIL LIABILITY AND FUND CONVENTIONS

Submitted by India

**Summary:** Proposal for amending the 1992 Civil Liability Convention and the 1992 Fund Convention.

**Action to be taken:** 1992 Fund Assembly

(a) Take note of the information contained in this document; and

(b) decide whether to establish a Working Group to meet in conjunction with the sessions of the 1992 Fund Assembly to examine the matters raised in this document.

### 1 Introduction

1.1 The 1992 Civil Liability Convention and the 1992 Fund Convention have been in existence for almost 28 years. The earlier 1969 Civil Liability Convention was amended after a period of 23 years in 1992. Similarly, the 1971 Fund Convention was also amended after a period of 21 years in 1992. Since almost three decades have elapsed after the adoption of the earlier amendments, it is essential to deal with the flaws and bring about clarity in both instruments by amending both the Conventions.

1.2 The Indian delegation made statements during the meeting held in May 2018 (document IOPC/APR18/9/1, paragraphs 3.4.8 and 4.1.11) and during the meeting held in October 2018 (document IOPC/OCT18/11/1, paragraphs 3.12.22 and 9.2.7). However, both the instruments are yet to be taken up for amendments.

1.3 The Indian delegation also submitted a document for review of both the Conventions during the April 2019 meeting (document IOPC/APR19/S/2 dated 21 February 2019). However, once more it could not be taken up for discussion during the session.

### 2 Reasons for proposing amendments to the Conventions

2.1 Coverage is available to all Member States without the need to make any payment of contributions

2.1.1 The Fund Convention is a commercial international instrument where a victim of oil pollution damage in a Member State obtains compensation for damage within its territory from oil carried as 'cargo' on a ship, with the receiver of oil cargo by sea within its territory paying contributions to the Fund. It is therefore akin to a Member State obtaining insurance cover against pollution damage in its territory, with the premium for such insurance being paid by its citizens through the receiver of cargo, as the oil company recovers its costs from the buyers of its products.



**INTERNATIONAL LIABILITY AND COMPENSATION REGIMES ARE IN PLACE FOR:**

**OIL AS CARGO**



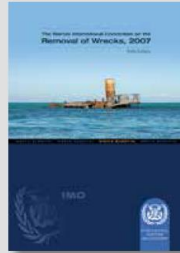
**BUNKER FUEL OIL**



**PASSENGERS**



**WRECK REMOVAL**



**BUT, NO COMPREHENSIVE AND INTERNATIONAL REGIME IS IN PLACE FOR AN HNS INCIDENT.**

HNS Convention is the last gap in the compensation regime from ship-source pollution, providing compensation for loss or damage to persons, property and the environment arising from the carriage of HNS by sea.

### Tasks assigned to the IOPC Funds:

- To carry out the administrative tasks for setting up the HNS Fund
- To give all necessary assistance to IMO
- To make the necessary preparations for the first Assembly of the HNS Fund



# Current status of the Convention

## Current status

- 5 contracting States:
- Norway (21/4/17)
  - Canada (23/4/18)
  - Turkey (23/4/18)
  - Denmark (28/6/18)
  - South Africa (16/7/19)

4 Signatories:  
France,  
Germany,  
Greece,  
Netherlands



Source: IMO

## Requirements

When minimum of  
**12 States** ratify

Protocol enters into  
force  
**18 months later**

1. **Including 4 States** each with fleet greater than **2 million** gross tonnage  
✓ Achieved
2. Total general account's contributing cargo volume at least **40 million** tonnes





# Functions of the Secretariat

*Information services, online*

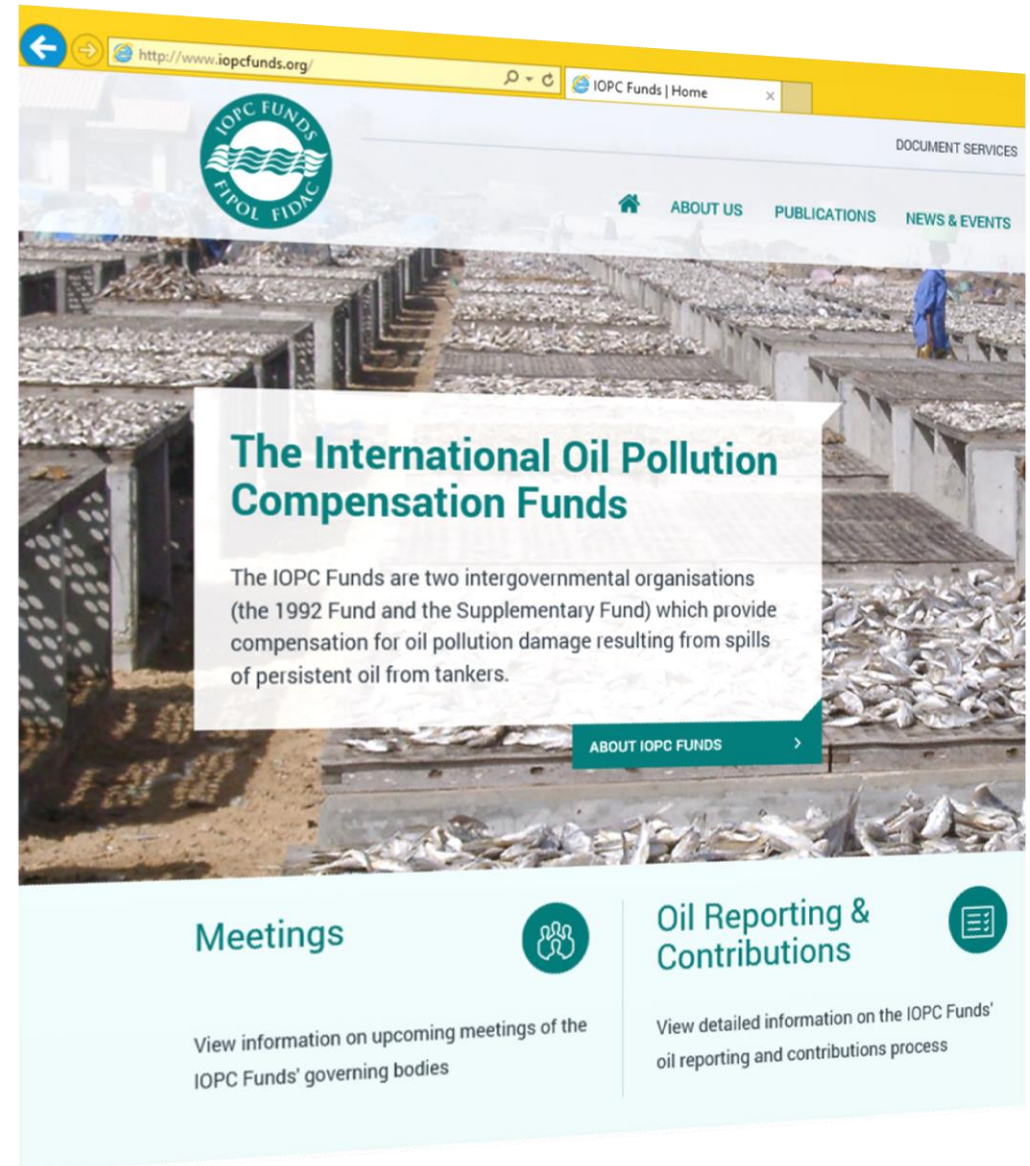
[www.iopcfunds.org](http://www.iopcfunds.org)

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

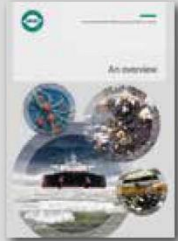
Meeting documents (past and present) available to search and download from Document Services portal





# Publications

## General



An Overview



Annual Report



Text of Conventions



2018 Financial Reviews

## Claims information pack



Claims Manual



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



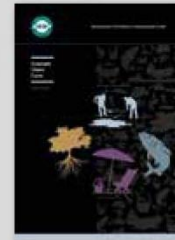
Guidelines for presenting claims in the tourism sector



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'



**NEW:** Claims for environmental damage: An overview

*Available to download or in hard copy upon request*



# General Public Information

## *Website and social media*

