



# The international liability and compensation regime for tanker oil spills

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# Torrey Canyon incident

## *Background history*



Date: 18 March 1967

Cause of spill: Grounding

Quantity transported: 119 000 tonnes of crude oil

Quantity spilled: whole cargo

- Unprecedented scale of pollution damage, impacting coastlines, fishing waters and the livelihoods of many victims
- No international convention on liability and compensation in place
- Led to the establishment of a regime for compensation for victims of oil pollution





# The international liability and compensation regime

## *Legal framework*



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

### Previous regime

### Current regime



- 1992 Civil Liability Convention (1992 CLC)  
(136 Member States)
- 1992 Fund Convention  
(118 Member States)
- 2003 Supplementary Fund Protocol  
(32 Member States)





# Member States


## *State members of GI WACAF*



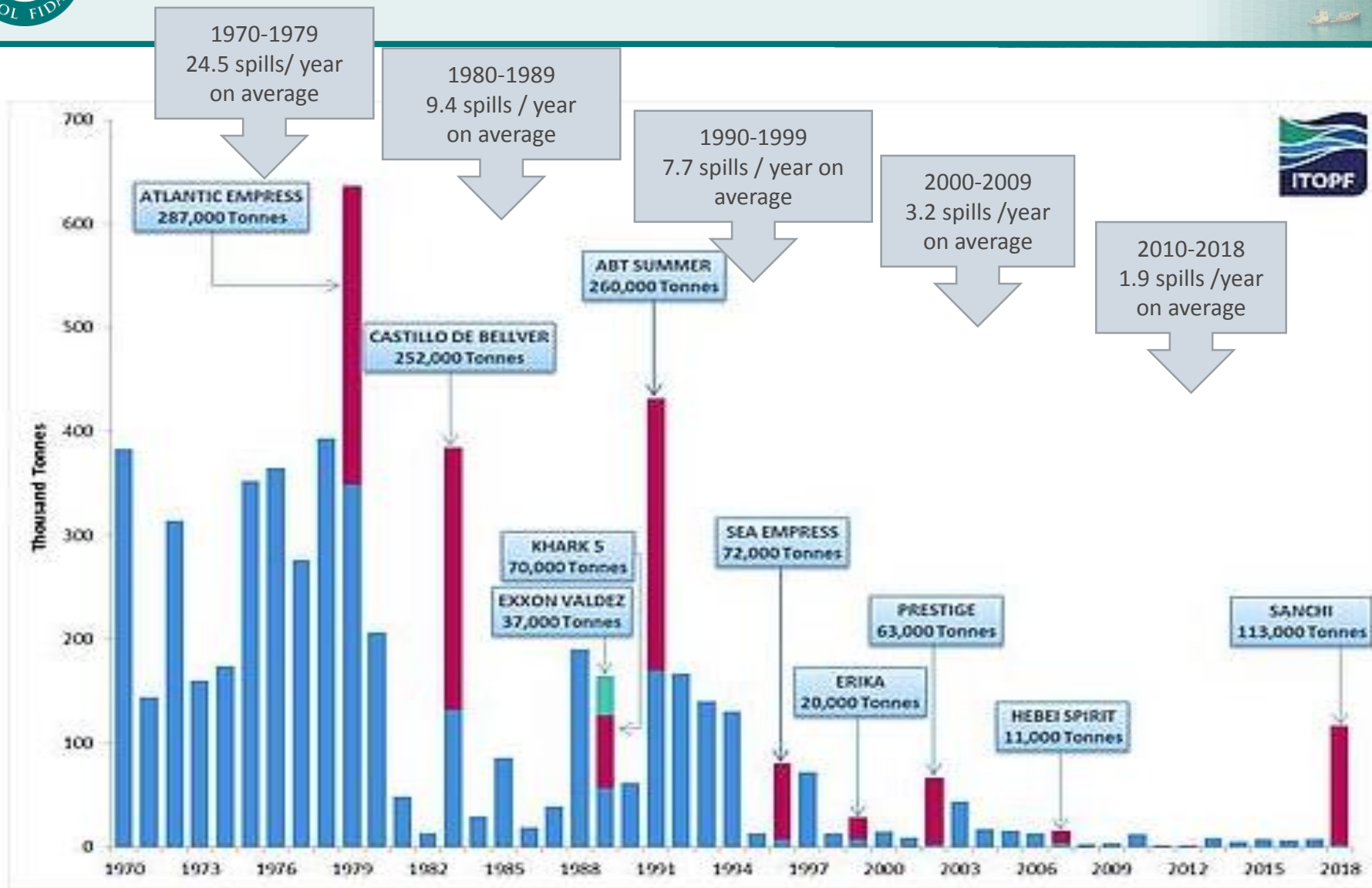
-  Supplementary Fund  
Congo
-  1992 Fund Convention
  - Angola
  - Benin
  - Cape Verde
  - Cameroon
  - Côte d'Ivoire
  - Gabon
  - Gambia
  - Ghana
  - Guinea
  - Liberia
  - Mauritania
  - Namibia
  - Nigeria
  - Senegal
  - Sierra Leone
  - South Africa

 1992 CLC only  
Togo

 1969 CLC  
Equatorial Guinea  
Sao Tome and Principe

 Without convention  
Guinea-Bissau  
Democratic Republic of  
Congo

# How big a problem are spills from tankers?



Number of large spills (>700 tonnes) from 1970 to 2018

# Outline of the regime

## *Scope of the Conventions*

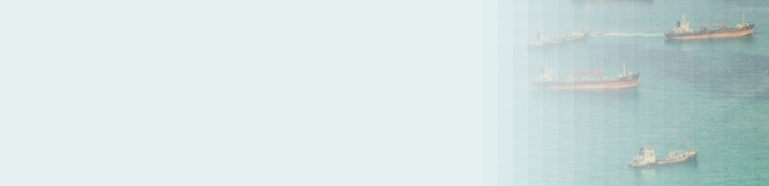
The purpose of this regime is to **provide compensation** to the victims through uniform international rules.

This regime provides compensation to:

- victims of '**pollution damage** (including preventive measures)' caused by '**persistent oil**' from '**ships (tankers)**'

This regime applies to damage caused in:

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



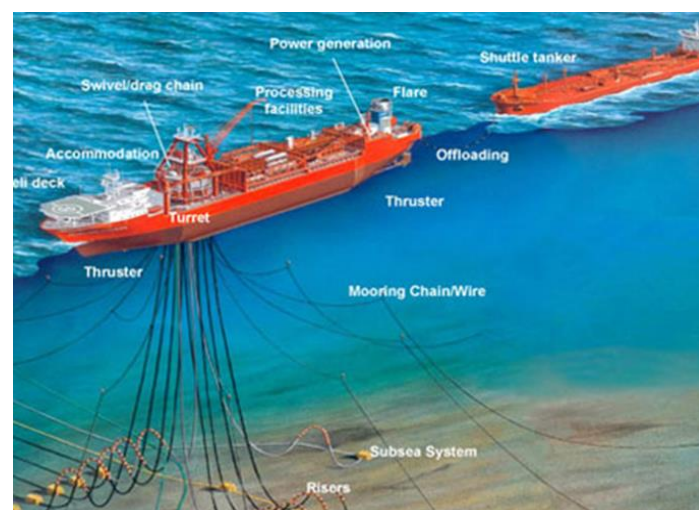


# The “modern” oil transaction

## *What is a “ship” under Art. I.1 of CLC?*



- Nowadays, more than 30% of the oil produced, is obtained from offshore sources:
  - FSOs (Floating Storage and Offloading);
  - FPSOs (Floating Production Storage and Offloading);
  - FDPSOs (Floating Drilling Production Storage and Offloading)
- What is a ‘ship’ under Article I.1 of the 1992 CLC?





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 . . .





# Definition of “ship”

*FSOs are not ships*



- Secretariat was instructed to provide legal analysis on interpretation of definition of ‘ship’ in Article I.1 CLC.
- Legal analysis: FSOs (in general) are not ‘ships’ because the term is linked to ‘**carriage of oil**’, which involves ‘**the navigation of the ship on a sea-going voyage**’
- Working Group was set up in 2011 to consider the implications of making a decision on the interpretation
- The Working Group met for its final meeting in Spring 2015
- ‘Hybrid’ solution adopted (Oct. 2015)
  - A) Agreed list of vessels in / out; +
  - B) Concept of ‘maritime transport chain’



## Civil Liability Convention (CLC)

- **Prompt Payment of Compensation**
  - ‘Strict liability’ on shipowner
  - ‘Limitation of liability’ for shipowner
  - ‘Time bar’
  - ‘Compulsory insurance’
- **Uniform Rule of Jurisdiction**

‘Exclusive jurisdiction’ in States where damage occurred

Claimants can only sue in their national court



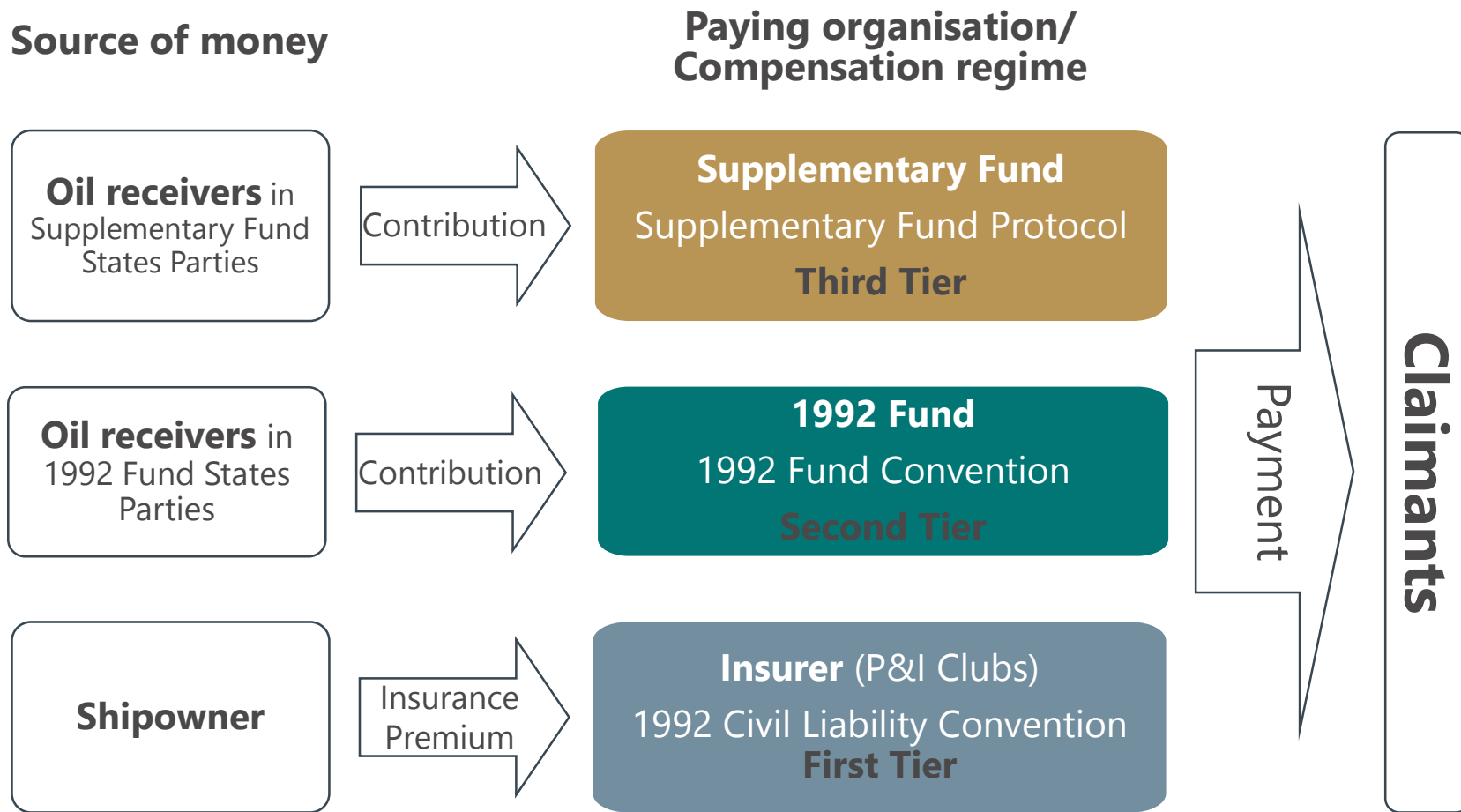
## Fund Convention

- To provide sufficient amounts of compensation



# How the regime works

## Three Tier system





# 1992 Civil Liability Convention

## *First Tier*

- Strict liability of registered tanker owner
- Limitation of liability based on the gross tonnage of the ship
  - Maximum: SDR 89.7 million
- Ship owners required to have compulsory, third party insurance and certificate
- Direct action against insurer
- Very limited exceptions





# Shipowner's liability

## Compulsory insurance



## Article VII of the 1992 CLC

1. The owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Article V, paragraph 1 to cover his liability for pollution damage under this Convention.

P&I Clubs cover shipowner's legal liabilities to third parties

2. A certificate attesting that the insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with. [Omitted]

**ANNEX**

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF CIVIL LIABILITY FOR OIL POLLUTION DAMAGE**

Issued in accordance with the provisions of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Name of ship	Distinctive number	Port of registry	Name and address

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Type of Security: \_\_\_\_\_

Duration of Security: \_\_\_\_\_

Name and Address of the Issuer(s) and/or Guarantor(s): \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

This certificate is valid until: \_\_\_\_\_

Issued or certified by the Government of: \_\_\_\_\_

(Full designation of the State)

At: \_\_\_\_\_ On: \_\_\_\_\_

(Place) (Date)

Signature and Title of issuing or certifying official: \_\_\_\_\_

Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of these should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry "Duration of Security" must stipulate the date on which such security takes effect.

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS: Terms of the Conventions

17





### Article I(6)

- 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



# Scope of application

## *'Preventive Measures' and 'incident'*



### 1992 Civil Liability Convention

#### Article 1.7

'Any reasonable measure taken by any person after an incident has occurred to prevent or minimize pollution damage'



#### Article 1.8

'Any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage'



# Shipowner's liability

## *Few exceptions to shipowner's liability*



Shipowner is **exempt** from liability  
*if it is proved that*

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

Shipowner **cannot limit** liability  
*if it is proved that*

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





# 1992 Fund Convention

## *Second Tier*



### Main features

- Pays compensation when:
  - damage exceeds shipowner's liability under the 1992 CLC
  - shipowner financially incapable of meeting their obligations
  - no liability under the 1992 CLC
- Maximum compensation 203 million SDR, including CLC
- Contributions from oil receivers in State Parties to the 1992 Fund Convention
- Very limited exceptions
  - damage resulted from an act of war, damage caused by a State ship
  - claimant cannot prove that damage resulted from incident involving ship(s)



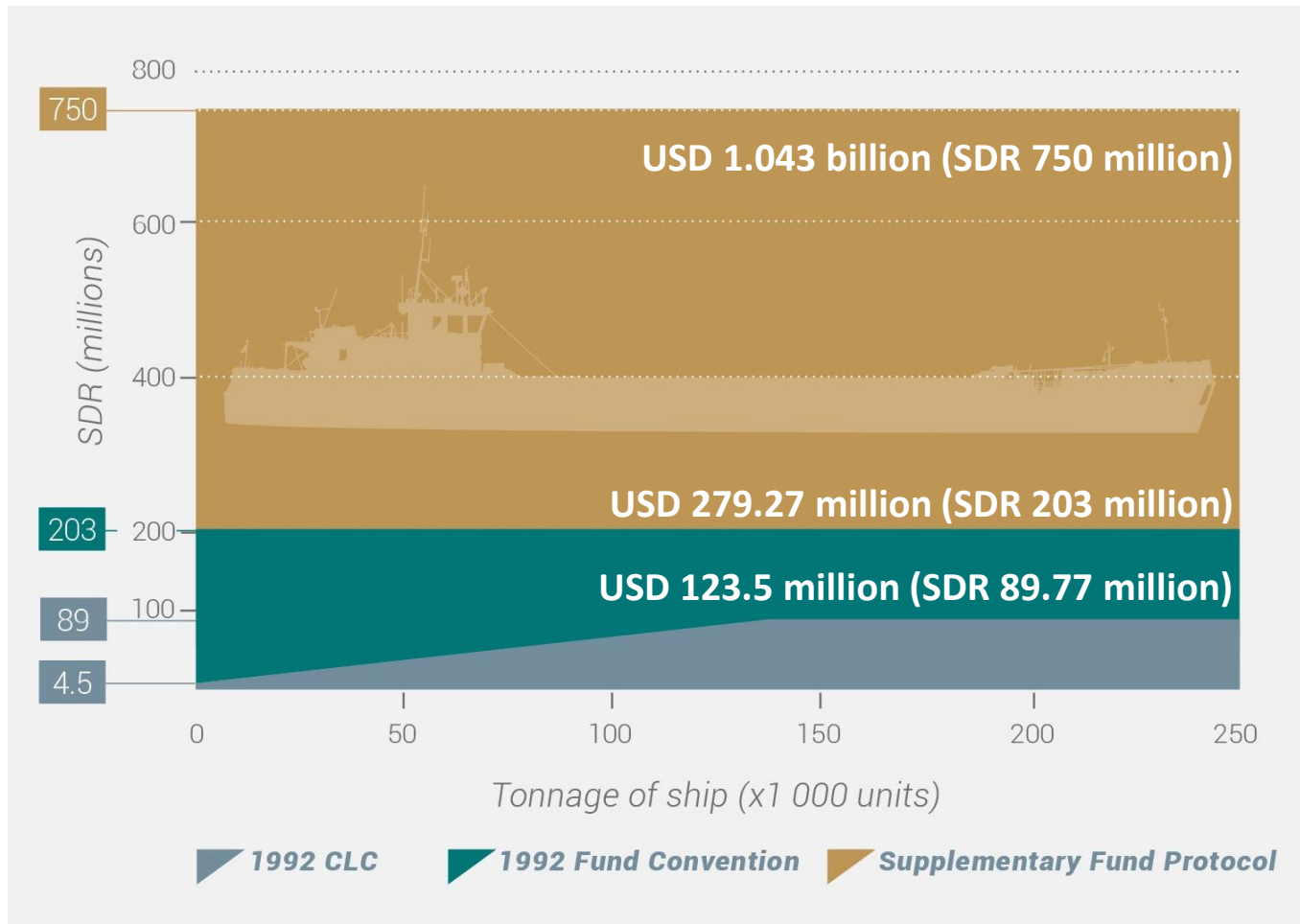
## Main features

- **Pay compensation** when:
  - damage exceeds, or there is a risk that it will exceed, the applicable limit under 1992 Fund
- Maximum compensation **750 million SDR**, including amounts payable under 1992 Conventions
- **Contributions** from oil receivers in State Parties to Supplementary Fund Protocol
- **Minimum contribution**: 1 million tons of contributing oil are deemed to be received in each State Party



# Compensation limits

## *Liability limits under the Conventions*



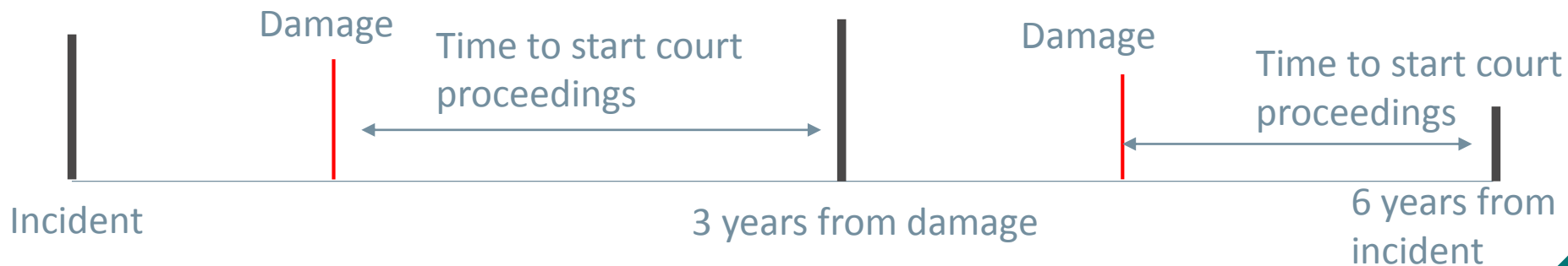
\*Exchange rates as at 30 June 2020



- Article VIII – 1992 CLC
- Article 6 – 1992 Fund Convention

‘Rights to compensation shall be extinguished unless’

- ‘Action is brought within **3 years** from date of damage’;  
or
- ‘In no case shall an action be brought after **6 years** from the date of the incident’



# Claims procedure

*National courts have final say*

Although the IOPC Funds apply the criteria adopted by Member States uniformly, the final judgment of each Member State national court binds the claim settlement dispute

- **No international court** involved
- Implementation of Conventions is crucially important

## Member State

National Court



judgment

dispute

Insurer



apply criteria uniformly



Claimants

## International

International Court



judgment

dispute

Insurer



apply criteria uniformly



Member State judgment

# Who contributes to the Funds?

## Definition of 'contributing oil'



Contributing Oil	Non-Contributing Oil
<b>Crude Oils</b> <ul style="list-style-type: none"> <li>• All naturally occurring crude oils*</li> <li>• Condensate</li> <li>• Topped crudes</li> <li>• Spiked crudes</li> <li>• Reconstituted crudes</li> </ul> <b>Finished Products</b> <ul style="list-style-type: none"> <li>• N°4 fuel (ASTM)</li> <li>• Navy special fuel</li> <li>• Light fuel oil</li> <li>• N°5 fuel (ASTM) – light</li> <li>• Medium fuel oil</li> <li>• N°5 fuel (ASTM) – heavy</li> <li>• Bunker C fuel oil</li> <li>• Heavy fuel oil</li> <li>• N°6 fuel oil (ASTM)</li> <li>• Blended fuel oils by viscosity or sulphur content</li> <li>• Bituminous emulsions and fuel oil emulsions**</li> </ul> <b>Intermediate or Process Stocks</b> <ul style="list-style-type: none"> <li>• Fuel oil blend stocks</li> </ul>	<b>Crude Oils</b> <ul style="list-style-type: none"> <li>• Natural gas liquids</li> <li>• Condensate*</li> <li>• Casinghead naphtha</li> <li>• Natural gasoline</li> <li>• Cohasset-panuke</li> </ul> <b>Finished Products</b> <ul style="list-style-type: none"> <li>• LNG and LPG</li> <li>• Aviation gasolines - Motor gasoline (petrol, essence)</li> <li>• White spirit</li> <li>• Kerosene</li> <li>• Aviation kerosene - Jet 1 A and N°1 fuel (ASTM)</li> <li>• Gas oil</li> <li>• Heating oil</li> <li>• N°2 fuel (ASTM) - Lubricating oil</li> <li>• Marine diesel</li> </ul> <b>Intermediate or Process Stocks</b> <ul style="list-style-type: none"> <li>• Straight run naphtha</li> <li>• Light cracked naphtha</li> <li>• Heavy cracked naphtha</li> <li>• Platformate</li> <li>• Reformate</li> <li>• Steam-cracked naphtha</li> <li>• Polymers</li> <li>• Isomers</li> <li>• Alkylates</li> <li>• Catalytic cycle oil</li> <li>• Reformer feed</li> <li>• Steam cracker feed</li> <li>• Gas oil blend stocks</li> <li>• Catalytic cracker feedstock</li> <li>• Visbreaker feedstock</li> <li>• Aromatic tar</li> </ul>

\* To be considered as 'non-contributing oil' if more than 50% by volume distills at a temperature of 340°C and at least 95% by volume distills at a temperature of 370°C, when tested by the ASTM Method D 86/78 or any subsequent revision thereof.

\*\* Quantity of emulsion received should be reported with no allowance for its water content.



# Oil Reports

## Who pays contributions?

- To be filled by all entities receiving contributing oil above the threshold (150,000 tonnes/year)
- Need to specify origin of receipt (eg direct by sea or pipeline, etc.)
- Signed by competent authority from entity **AND** competent Government authority
- Information compiled and sent to the Funds by competent Government authority
- Physical oil reports and online reports
- To be submitted by 30 April each year

### Submit Oil Reports

On this page, you can report tonnage of your contributors. As the Online Oil Reporting evolves into the next phase, this reporting function will become the responsibility of your contributors. Please don't forget to send a signed hard copy of the oil report to:

Highlighted rows in the oil report summary grid indicate associated companies

CTR/61/1 - SOL Petroleum

On this page, you can update or amend contact information and status of your contributors and notify the IOPC Funds Secretariat. "Inactive" contributors do not require any tonnage report, but remain open in case there are deferred losses or outstanding oil reports.

### 2015 Oil Report Summary (4 Outstanding)

Contributor	Received Directly after Carriage by Sea
CTR/61/2 Natl Oil Co.	
CTR/61/10000 Oil Company	
CTR/61/9999 Oil Importer plc	
CTR/61/1 SOL Petroleum	

### Contributor Details

Code:	Short Name:	Full Name:	Status:	State:
CTR/61/1	SOL Petroleum	SOL Petroleum Properties Holdings Ltd	Active	No

### Associated Companies and Entities

Code:	Short Name:
ADD	

### Contacts

Name	Contact Type	Organisation	Job Title
David Bowie	Invoice Contact	SOL Petroleum Properties Holdings Ltd	Accountant
Tom Jones	Oil Report Contact	SOL Petroleum Properties Holdings Ltd	Accounting & Finance Mgr

### Oil Reports

Year	Received Directly after Carriage by Sea	Coastal Movements within the Same State	Received from non-Member States	Total	Submitted	Approved
2015	123 456	Nil	Nil	123 456		
2014	250 000	Nil	Nil	250 000	✓	
2013	160 000	Nil	Nil	160 000	✓	✓
2012	Nil	Nil	Nil	Nil	✓	✓



# Types of claims

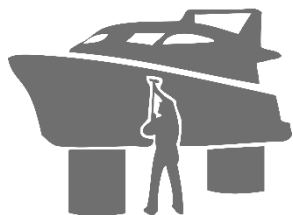
## *What is covered*



Costs of clean-up  
and preventive  
measures



Economic losses by  
fisherfolk or those  
engaged in mariculture



Property  
damage



Economic losses in  
the tourism sector

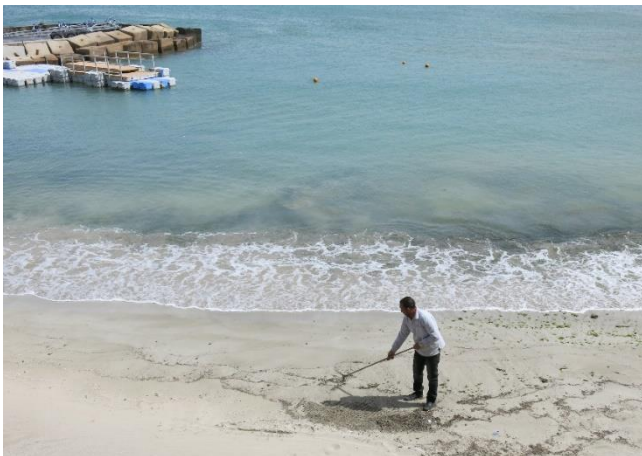


Costs of reinstatement  
to the environment

# Presenting a claim

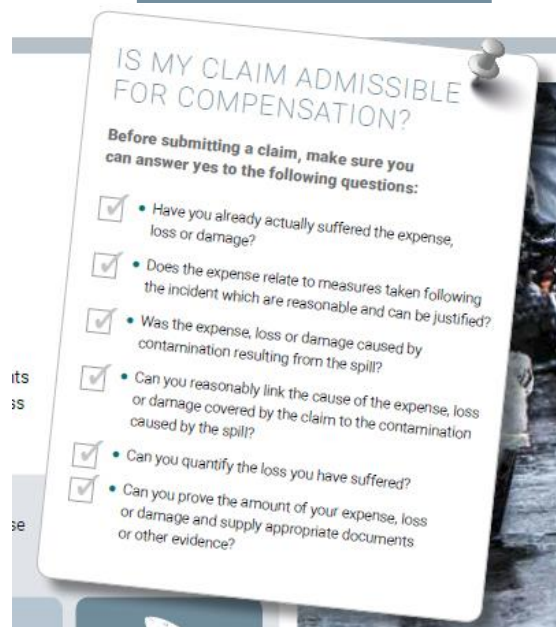
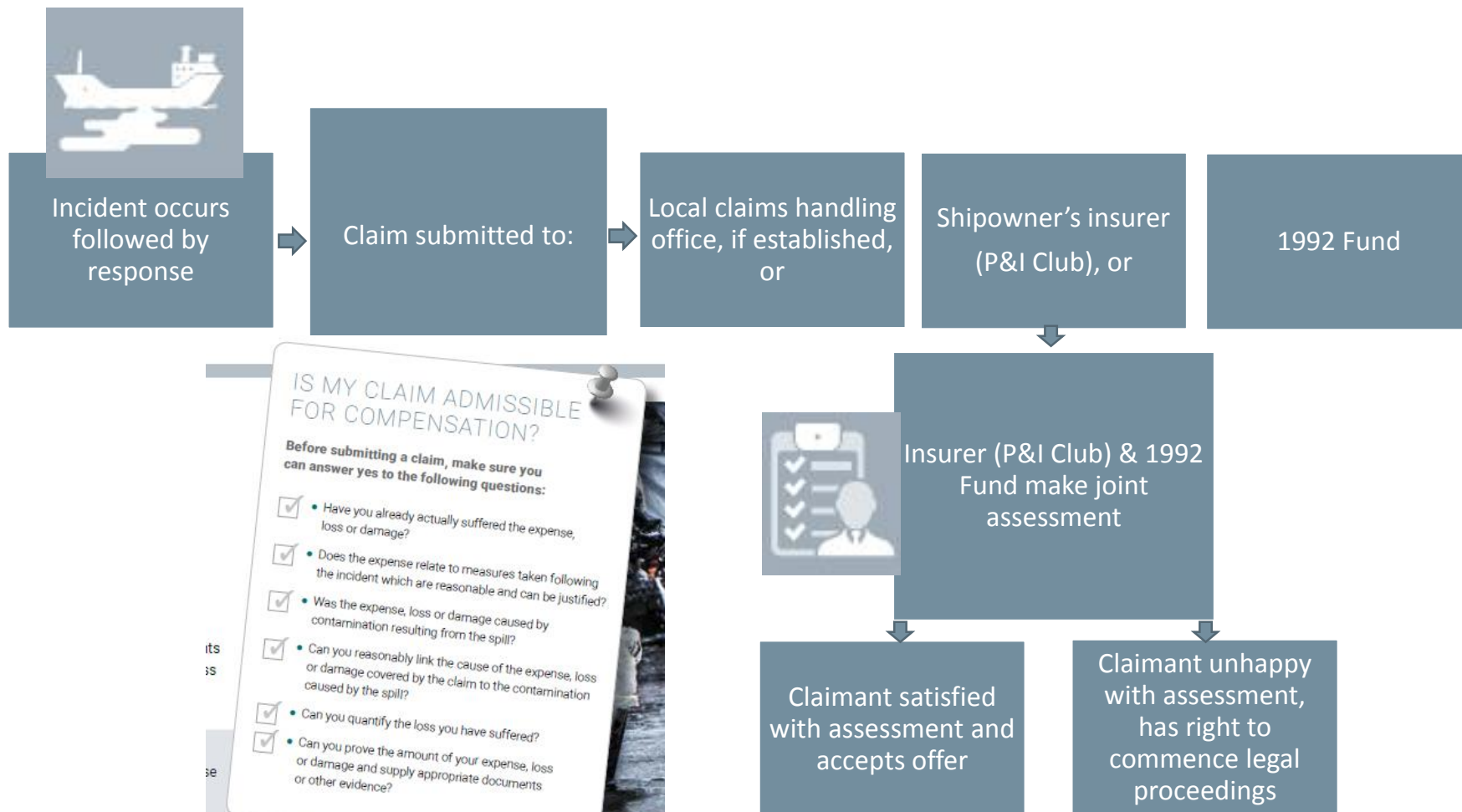
## *General criteria*

- There must be a **link of causation** between damage/loss and contamination
- Claimant must **prove** loss or damage
- Loss must be economically **quantifiable**
- Any expense must be for measures which are **reasonable and justifiable**
- Any expense or loss must have been incurred



# Claims process

## *From incident to settlement of claim*





# What has been paid

1978 – 2020



## Supplementary Fund

- No incident
- No compensation paid

## The 1992 Fund

- Has been involved in 47 incidents
- Paid about £413 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 £744 million in compensation and/or indemnification

Figures as at 30 June 2020

# Other functions of the Secretariat

## *Engagement with Member States*

In the event of an incident, **cooperation and frequent communication** are essential between the affected State and the Secretariat.

The Secretariat establishes and maintains **good communication with Member States** by engaging in various activities (workshops, conferences, visits, meetings etc.).

### Implementation

Transposition of the Convention into the domestic legal system, including

- developing and enacting national implementing legislation
- setting up of the administrative system







# Other functions of the Secretariat

## *Information services, online*



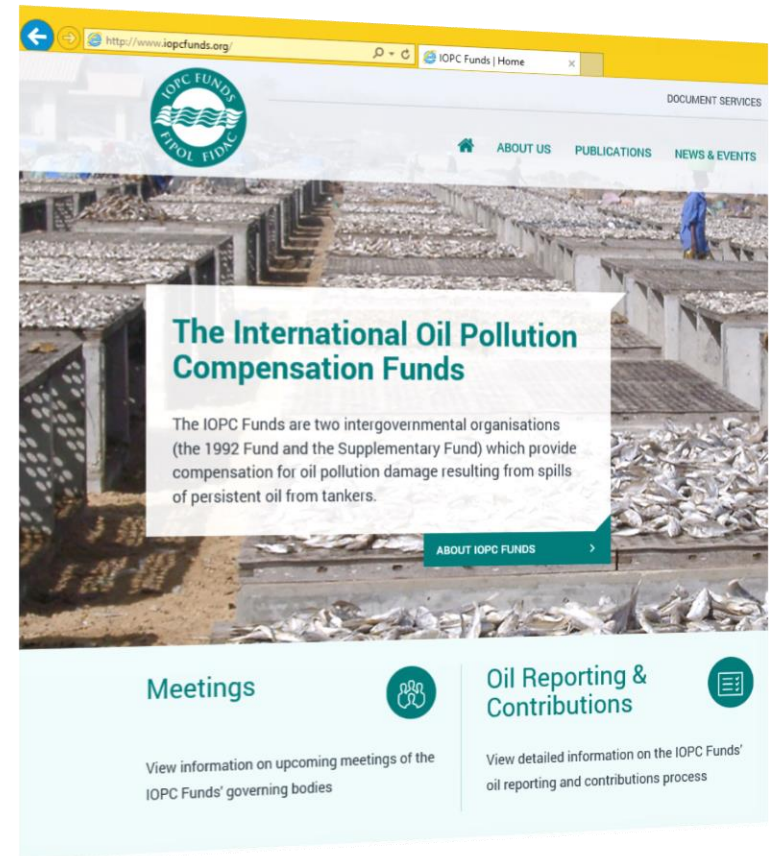
[www.iopcfunds.org](http://www.iopcfunds.org)

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

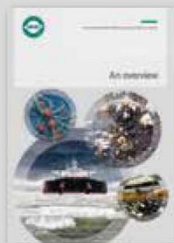
Meeting documents (past and present) available to search and download from Document Services portal



# Other functions of the Secretariat

*Publications - available to download or in hard copy upon request*

## General



An Overview



Annual Report



Text of Conventions



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'



Claims for environmental damage: An overview



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

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