

# THE INTERNATIONAL REGIME ON LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE: RECENT DEVELOPMENTS

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## **Background note**

### **1. Introduction**

The international regime of compensation for damage caused by oil pollution from tankers is based on two international Conventions adopted in 1992 under the auspices of the International Maritime Organization (IMO), a specialised agency of the United Nations. These Conventions are the 1992 Civil Liability Convention and the 1992 Fund Convention. The International Oil Pollution Compensation Fund 1992 (1992 Fund) established under the 1992 Fund Convention follows an earlier Fund created under the 1971 Fund Convention, which still exists but is in the process of being wound up<sup><1></sup>. A Protocol establishing an International Oil Pollution Compensation Supplementary Fund (Supplementary Fund) entered into force on 3 March 2005.

The treaty instruments have been implemented into the national law of the States which have become parties to them.

The 1992 Civil Liability Convention governs the liability of shipowners for oil pollution damage. The Convention lays down the principle of strict liability for shipowners and creates a system of compulsory liability insurance. The shipowner is normally entitled to limit his liability to an amount which is linked to the tonnage of his ship. The limitation amount is 4.51 million Special Drawing Rights (SDR<sup><2></sup>) (€5.4 million) for ships not exceeding 5 000 units of gross tonnage, increasing on a linear scale as a function of the tonnage to 89.77 million SDR (€107 million) for ships of 140 000 units of gross tonnage or over.

The 1992 Fund compensates victims of oil pollution when the compensation from the shipowner/his insurer under the Civil Liability Convention is inadequate. The 1992 Fund is a worldwide intergovernmental organisation established for the purpose of administering the regime of compensation created by the 1992 Fund Convention. By becoming Party to the 1992 Fund Convention, a State becomes a Member of the 1992 Fund. States which are parties to the Supplementary Fund Protocol are Members of the Supplementary Fund.

As at 28 March 2006, 113 States had ratified the 1992 Civil Liability Convention, and 98 States had ratified the 1992 Fund Convention. The Supplementary Fund Protocol had been ratified by 17 States. The States Parties are listed in the Annex.

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<sup><1></sup> The 1971 Fund, the 1992 Fund and the Supplementary Fund are normally referred to as “the IOPC Funds”  
<sup><2></sup> The unit of account in the Conventions is the Special Drawing Right (SDR) as defined by the International Monetary Fund. In this paper, the SDR has been converted into Euros at the rate of exchange applicable on 27 March 2006, ie 1 SDR = €1.197810.

The 1992 Fund has an Assembly, which is composed of representatives of all Member States. The Assembly elects an Executive Committee comprising 15 Member States. The main function of this Committee is to approve settlements of claims. The Supplementary Fund has only an Assembly composed of all States members of that Fund. During the winding-up, the 1971 Fund is governed by an Administrative Council. The Funds' Secretariat, located in London (United Kingdom), is headed by a Director.

## **2. Maximum amount of compensation available for compensation**

The maximum amount payable by the 1992 Fund in respect of a particular incident is 203 million Special Drawing Rights (SDR) (€243 million), including the sum actually paid by the shipowner (or his insurer) under the 1992 Civil Liability Convention.

The Supplementary Fund will have available an amount of 547 million SDR (€655 million), in addition to the amount of 203 million SDR (€243 million) available in the 1992 Fund. As a result, the total amount available for compensation for each incident for pollution damage in the States which are Members of the Supplementary Fund will be 750 million SDR (€998 million).

## **3. Admissibility of compensation claims**

Oil spill incidents normally give rise to compensation claims in the following categories:

- Clean-up operations and preventive measures
- Property damage
- Fisheries and mariculture claims
- Tourism-related claims
- Environmental damage

Some of these categories can give rise to difficult legal issues, in particular as regards pure economic loss claims in the fisheries, mariculture and tourism sectors.

The policy of the Funds as regards admissibility of claims for compensation is set out in a Claims Manual which has been adopted by the 1992 Fund Assembly (April 2005 edition).

Decisions of the governing bodies of the Funds on the admissibility of claims and the outcome of legal actions against the Funds are set out in the IOPC Funds' website ([www.iopcfund.org](http://www.iopcfund.org)).

In the great majority of these incidents, all claims have been settled out of court. So far, court actions against the Funds have been taken in respect of only a handful of incidents. However, the *Erika* incident (France, 1999), which gave rise to 6 900 compensation claims, has resulted in a large number of court actions against the Fund, and most of these actions are still pending. The *Prestige* incident (Spain, 2002) has also given rise to a number of court actions.

## **4. Major incidents involving the IOPC Funds**

Since their establishment, the IOPC Funds have been involved in approximately 135 incidents and have made compensation payments totalling some €730 million.

The cases involving the Funds resulting in the largest total payments so far are as follows:

<b>Incident</b>	<b>Payments to claimants</b>
<i>Antonio Gramsci</i> (Sweden, 1979)	€3 million
<i>Tanio</i> (France, 1986)	€26 million
<i>Haven</i> (Italy, 1991)	€44 million
<i>Aegean Sea</i> (Spain, 1992)	€49 million
<i>Braer</i> (United Kingdom, 1993)	€68 million
<i>Keumdong N° 5</i> (Republic of Korea, 1993)	€6 million
<i>Sea Prince</i> (Republic of Korea, 1995)	€30 million
<i>Yuil N° 1</i> (Republic of Korea, 1995)	€23 million
<i>Sea Empress</i> (United Kingdom, 1996)	€45 million
<i>Nakhodka</i> (Japan, 1997)	€61 million
<i>Nissos Amorgos</i> (Venezuela, 1997)	€6 million
<i>Erika</i> (France, 1999)	€17 million
<i>Prestige</i> (Spain, France, Portugal, 2002)	€60 million

**Comment [JLM1]:** This is a euro figure and should always be checked with latha

## 5. Financing of the 1992 Fund

The 1992 Fund is financed by contributions levied on any person who has received during the preceding calendar year more than 150 000 tonnes of crude oil or heavy fuel-oil (contributing oil) in a Member State after sea transport. The Member States are not responsible for the payments of contributions unless they have voluntarily accepted such responsibility.

The contributors are generally oil companies. The Japanese oil industry is the major contributor to the 1992 Fund, paying 18% of the total contributions. The Italian oil industry is the second largest contributor paying 10%, followed by the oil industries in the Republic of Korea (8%), the Netherlands (8%), France (7%), India (7%), Canada (6%), United Kingdom (5%), Singapore (5%) and Spain (5%).

The Supplementary Fund's contribution system is similar to that of the 1992 Fund. However, contributions to the Supplementary Fund are only paid by persons who receive contributing oil after sea transport in Supplementary Fund Member States.

## 6. International solidarity

The international compensation regime is an expression of international solidarity in the sense that the shipping and oil industries in Fund Member States share the burden of the economic consequences of major tanker incidents by making funds available to compensate the unfortunate victims.

This regime is beneficial to all States, but in particular to less developed countries since their oil industries are likely to pay little or no contributions to the 1992 Fund. The regime ensures that funds are available to enable the Government and other public bodies to combat oil spills, thereby reducing the environmental impact, and to compensate individuals and small businesses, for example in the fishery sector, who belong to the most vulnerable groups of society.

## 7. HNS Convention

The present regime remains narrow in scope: it covers only oil spills from tankers. It has been used as a model for the adoption in 1996 of a Convention on liability and compensation for damage caused by hazardous and noxious substances (HNS Convention). When it comes into force, the HNS Convention will create a system very similar to that under the 1992 Conventions, including the establishment of an international fund maintained by contributions from receivers of hazardous and noxious substances to pay compensation for damage arising from incidents involving such substances.

**8. Possibility of creating similar regimes in other fields**

The experience gained by and expertise developed within the IOPC Funds could be used to create compensation regimes in other fields, one such field being the UNEP Regional Seas Programme which, with its broad-based approach to marine environmental protection, has shown that a preventive strategy need not be expensive to operate or too general to be practicable. Another area could be the funding through public and/or private subscriptions of search and rescue services by the shipping and aviation sectors or compensating victims suffering the economic consequences of major natural disasters. The future will show whether the international community is prepared to take that step.

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ANNEX

**States Parties to both the  
1992 Civil Liability Convention and the  
1992 Fund Convention**  
as at 28 March 2006  
(and therefore Members of the 1992 Fund)

<i>93 States for which 1992 Fund Convention is in force</i>		
Algeria	Germany	Papua New Guinea
Angola	Ghana	Philippines
Antigua and Barbuda	Greece	Poland
Argentina	Grenada	Portugal
Australia	Guinea	Qatar
Bahamas	Iceland	Republic of Korea
Bahrain	India	Russian Federation
Barbados	Ireland	Saint Kitts and Nevis
Belgium	Israel	Saint Lucia
Belize	Italy	Saint Vincent and the Grenadines
Brunei Darussalam	Jamaica	Samoa
Cambodia	Japan	Seychelles
Cameroon	Kenya	Sierra Leone
Canada	Latvia	Singapore
Cape Verde	Liberia	Slovenia
China (Hong Kong Special Administrative Region)	Lithuania	South Africa
Colombia	Madagascar	Spain
Comoros	Malaysia	Sri Lanka
Congo	Malta	Sweden
Croatia	Marshall Islands	Tonga
Cyprus	Mauritius	Trinidad and Tobago
Denmark	Mexico	Tunisia
Djibouti	Monaco	Turkey
Dominica	Morocco	Tuvalu
Dominican Republic	Mozambique	United Arab Emirates
Estonia	Namibia	United Kingdom
Fiji	Netherlands	United Republic of Tanzania
Finland	New Zealand	Uruguay
France	Nigeria	Vanuatu
Gabon	Norway	Venezuela
Georgia	Oman	
	Panama	
<i>5 States which have deposited instruments of accession, but for which the 1992 Fund Convention does not enter into force until date indicated</i>		
Maldives		20 May 2006
Albania		30 June 2006
Switzerland		10 October 2006
Bulgaria		18 November 2006
Luxembourg		21 November 2006

**States Parties to the Supplementary Fund Protocol**  
as at 28 March 2006  
(and therefore Members of the Supplementary Fund)

<i>15 States Parties to the 2003 Supplementary Fund Protocol</i>		
Barbados	Germany	Netherlands
Belgium	Ireland	Norway
Denmark	Italy	Portugal
Finland	Japan	Spain
France	Lithuania	Sweden
<i>2 States which have deposited instruments of accesión but for which the Protocol does not enter into force until date indicated</i>		
Croatia		17 May 2006
Slovenia		3 June 2006

**States Parties to the Civil Liability Convention  
but not to the 1992 Fund Convention**  
as at 28 March 2006  
(and therefore not Members of the 1992 Fund)

<i>12 States for which 1992 Civil Liability Convention is in force</i>			
Azerbaijan	Egypt	Kuwait	Solomon Islands
Chile	El Salvador	Pakistan	Syrian Arab
China	Indonesia	Romania	Republic Viet Nam
<i>4 States which have deposited instruments of accession, but for which the 1992 Civil Liability Convention does not enter into force until date indicated</i>			
Lebanon			30 March 2006
Saudi Arabia			23 May 2006
Peru			1 September 2006
Republic of Moldova			11 October 2006

**States Parties to the 1969 Civil Liability Convention**  
as at 28 March 2006

<i>40 States Parties to the 1969 Civil Liability Convention</i>		
Albania	Georgia	Mauritania
Azerbaijan	Ghana	Mongolia
Benin	Guatemala	Nicaragua
Brazil	Guyana	Peru
Cambodia	Honduras	Saint Kitts and Nevis
Chile	Indonesia	Sao Tomé and Principe
Costa Rica	Jordan	Saudi Arabia
Côte d'Ivoire	Kazakhstan	Senegal
Dominican Republic	Kuwait	Serbia and Montenegro
Ecuador	Latvia	Syrian Arab Republic
Egypt	Lebanon	United Arab Emirates
El Salvador	Libyan Arab Jamahiriya	Yemen
Equatorial Guinea	Luxembourg	
Gambia	Maldives	
<i>2 States which have deposited instruments of denunciation which will take effect on date indicated</i>		
Albania		30 June 2006
Luxembourg		21 November 2006

*Note: the 1971 Fund Convention ceased to be in force on 24 May 2002*