

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

“OLD” PRACTICE; RECENT DEVELOPMENTS; NEW CASES

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## COMPENSATION REGIMES

### Old regime:

1969 Civil Liability Convention/1971 Fund Convention

### **1971 Fund**

### New regime:

1992 Civil Liability Convention/1992 Fund Convention

### **1992 Fund**

2003 Supplementary Fund Protocol

### **Supplementary Fund**



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## **1992 CIVIL LIABILITY CONVENTION**

- 115 States Parties

## **1992 FUND CONVENTION**

- 99 States Parties

## **2003 PROTOCOL TO 1992 FUND CONVENTION**

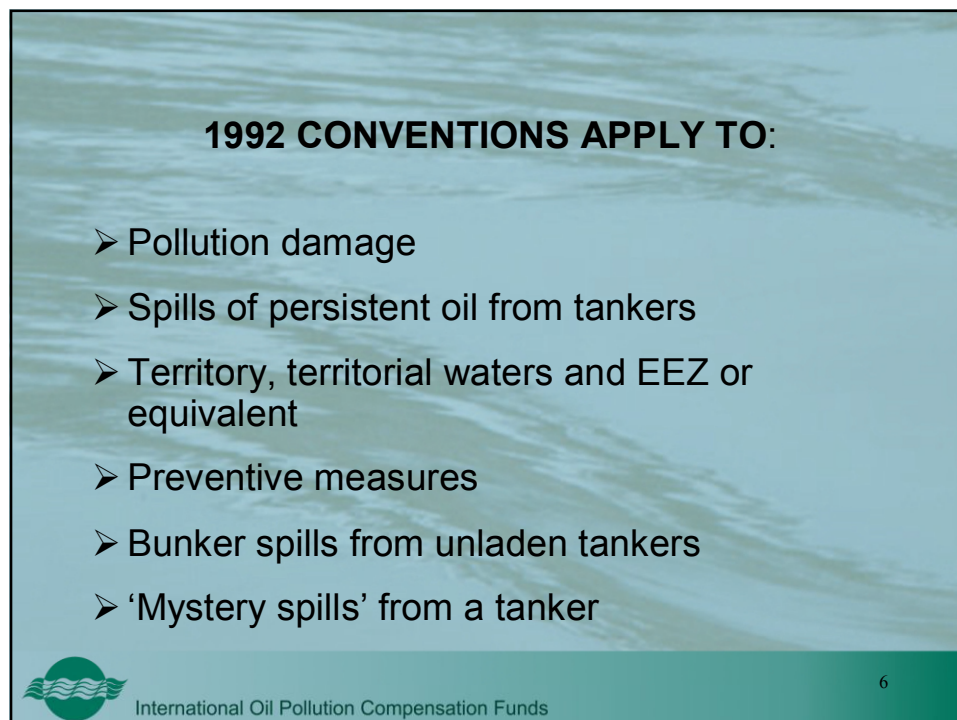
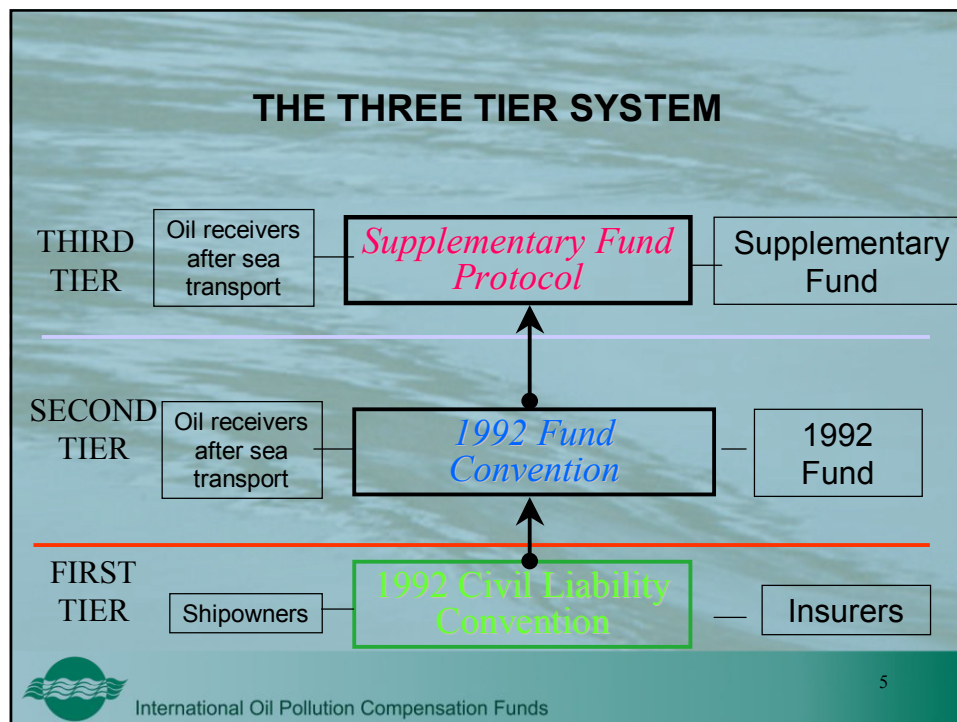
- 20 States Parties

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



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## **1<sup>ST</sup> TIER 1992 CIVIL LIABILITY CONVENTION**

- Strict liability of registered shipowner
- Limitation of liability
- Shipowners may lose right of limitation
- Compulsory insurance



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## **SHIPOWNER EXEMPT WHEN INCIDENT RESULTED FROM**

- Act of war or a grave natural disaster
- Sabotage by a third party
- Negligence of public authorities in maintaining navigational aids



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## **2<sup>ND</sup> TIER FUND CONVENTION APPLIES WHEN**

- Shipowner exempt
- Shipowner financially incapable of meeting obligations
- Damage exceeds the shipowner's liability



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## **2<sup>ND</sup> TIER FUND CONVENTION DOES NOT APPLY**

- Damage in non-Member State
- Damage caused by an act of war or spill from warship
- Claimant cannot prove oil originated from a "ship" as defined in the Conventions



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## MAXIMUM AMOUNT OF COMPENSATION

### ➤ 1992 CLC/Fund Conventions

- 135 million SDR (US\$ 201 million)
- 203 million SDR (US\$ 301 million)

### ➤ 2003 Supplementary Fund

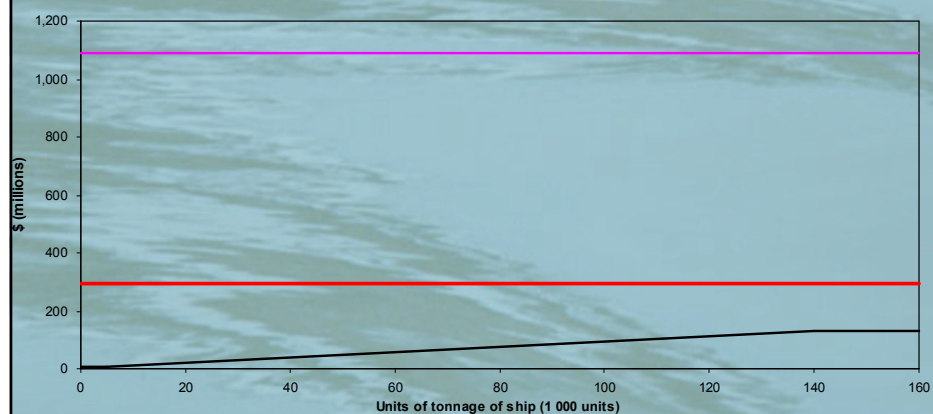
- 750 million SDR (US\$ 1 114 million)



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## LIMITS LAID DOWN IN THE CONVENTIONS



— 1992 CLC

— 1992 Fund

— Supplementary Fund



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## **RECENT DEVELOPMENT: SHIP-TO-SHIP TRANSFER OF OIL (1)**

- Study by independent expert
- Permanently and semi-permanently anchored vessels engaged in STS oil transfer operations
- Definition of “ship”
- Notion of “received”
- Relevant for cover & contribution



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## **RECENT DEVELOPMENT: SHIP-TO-SHIP TRANSFER OF OIL (2)**

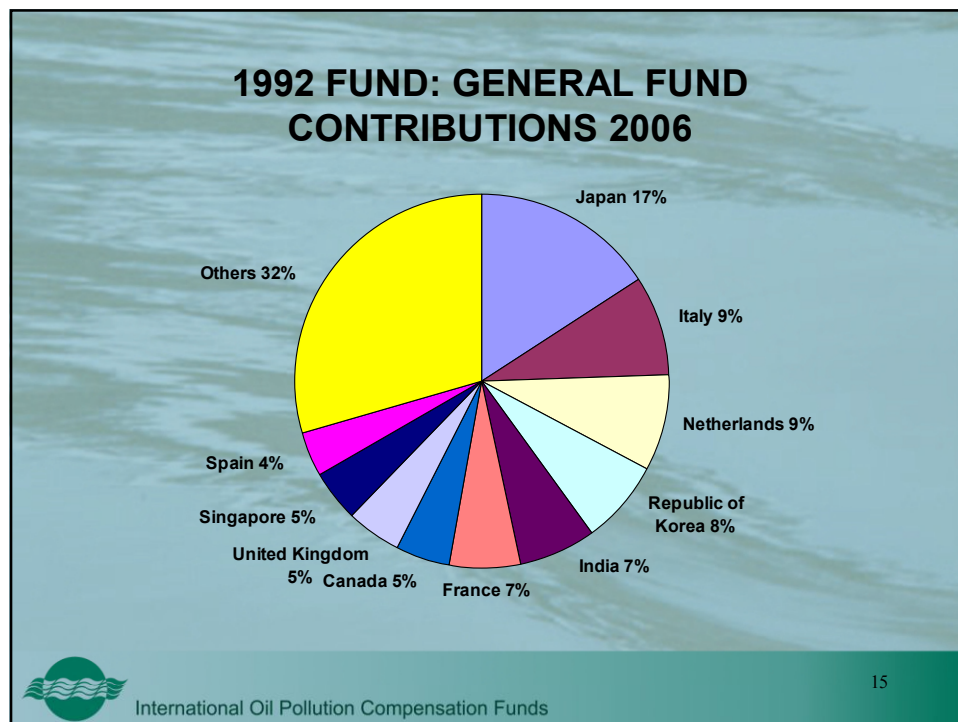
- Permanently & semi-permanently anchored vessels engaged in STS transfer of oil
- “Ship”: only when carrying oil as cargo on a voyage to or from a terminal outside the location where they normally operate (but taking into account particular circumstances; case-by-case)
- “Received”: all contributing oil



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## SOME MAJOR SPILLS INVOLVING THE FUNDS

<i>Antonio Gramsci</i> (Sweden)	1979	US\$18 M
<i>Tanio</i> (France)	1980	US\$36 M
<i>Haven</i> (Italy)	1991	US\$58 M
<i>Aegean Sea</i> (Spain)	1992	US\$65 M
<i>Braer</i> (United Kingdom)	1993	US\$87 M
<i>Keumdong N° 5</i> (Republic of Korea)	1993	US\$21 M
<i>Sea Prince</i> (Republic of Korea)	1995	US\$40M
<i>Yuil N° 1</i> (Republic of Korea)	1995	US\$30 M
<i>Sea Empress</i> (United Kingdom)	1996	US\$60 M
<i>Nakhodka</i> (Japan)	1997	US\$212 M
<i>Nissos Amorgos</i> (Venezuela)	1997	US\$21 M
<i>Osung N° 3</i> (Republic of Korea)	1997	US\$16 M
<i>Erika</i> (France) (so far)	1999	US\$145 M
<i>Prestige</i> (Spain, France and Portugal) (so far)	2002	US\$154 M



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## 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



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## RECENT DEVELOPMENT: ADMISSIBILITY CRITERIA FOR PREVENTIVE MEASURES (1)

- Background: pumping operations *Prestige*
- Examination of admissibility criteria by Director
- Existing criteria: Claims Manual
- Reasonableness; objective criteria; relationship between costs and benefits
- Discussion in Assembly October 2006



## RECENT DEVELOPMENT: ADMISSIBILITY CRITERIA FOR PREVENTIVE MEASURES (2)

- Reasonableness is overarching criterion for all preventive measures
- Take into account potential environmental damage with direct or indirect economic effect
- No social or political considerations
- Determine sub-criteria by combining proposal by Director and France/Spain



## **POSSIBLE SUB-CRITERIA FOR REMOVAL OF OIL FROM SUNKEN SHIPS (Director)**

- Vulnerability of shoreline; likely economic damage following release of remaining oil
- Likely damage to environment
- Likelihood of a release reaching shoreline
- Quantity, type and characteristics of the oil
- Alternative methods for containing or rendering harmless of the oil?
- Likely cost of operation and likelihood of success
- Likelihood of significant release during extraction



## **POSSIBLE SUB-CRITERIA FOR REMOVAL OF OIL FROM SUNKEN SHIPS (Fra & Spa)**

- Risks associated with situation of ship
- Risks associated with volume of oil in ship
- Technical viability of operation
- Reasonable cost; including per tonne recovered







The *Erika* incident, France, 1999

## DEVELOPMENT OF THE INTERNATIONAL COMPENSATION REGIME

- 1992 Civil Liability and Fund Convention
  - Adopted in 1992
  - In force 1996
- Increase in limits
  - Decided 2000
  - In force 2003
- Supplementary Fund Protocol
  - Adopted 2003
  - In force 2005



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### **3<sup>RD</sup> TIER SUPPLEMENTARY FUND**

- Protocol establishing a Supplementary Fund in force in March 2005
- Maximum compensation 750 million SDR (US\$1 114 million), including amounts payable under 1992 Conventions
- Contributions to Supplementary Fund payable by oil receivers in States Parties to Protocol



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### **SHARING OF FINANCIAL BURDEN BETWEEN SHIPOWNERS AND OIL INDUSTRY**

- Cost study
- Impact of Supplementary Fund
- STOPIA / TOPIA 2006



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### **STOPIA 2006**

- Applies to pollution damage in 1992 Fund Member States
- Voluntary increase to 20 million SDR of limitation amount for ships up to 29 548 gross tonnage
- 1992 Fund remains liable to pay compensation to claimants over 4.51 million SDR (US\$6.7 million)
- 1992 Fund will be indemnified by the shipowner for difference between CLC limit and 20 million SDR



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### **TOPIA 2006**

- Applies to pollution damage in Supplementary Fund Member States
- Supplementary Fund will continue to pay compensation to claimants in accordance with Supplementary Fund Protocol
- Shipowner will indemnify the Supplementary Fund for 50% of the compensation it has paid to claimants



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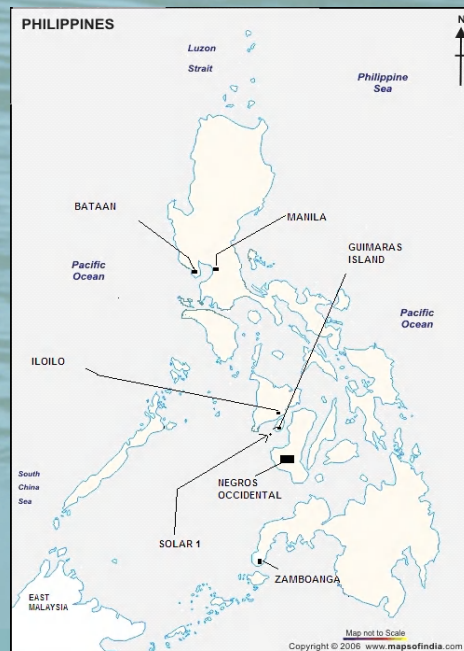
## NEW CASE: SOLAR 1

- Sank on 11 August 2006 in heavy weather in Guimaras Straits (Philippines)
- Around 124 km shoreline and 500 hectares of mangrove polluted
- Clean-up claims: totalling GBP 3.2 million



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### **NEW CASE: SOLAR 1 (2)**

- ± 7000 persons engaged in small-scale fisheries directly affected
- ± 4000 persons engaged in small-scale fisheries indirectly affected
- ± 90 fishponds; ± 77 seaweed farmers
- ± 70 tourism businesses
- Restaurants, retailers, transport services etc.
- Fund conducted series of claims workshops to explain functioning of international regime and Fund



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## **SUBSISTENCE FISHERY CLAIMS**

- 11,200 claims assessed & approved
- Assessments based on information provided by fisherfolk
- Claims entered into database & grouped into different fishing categories
- Average daily incomes per category compared with published data and results of field surveys



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## **SUBSISTENCE FISHERY CLAIMS (2)**

- Assessed losses ranged from £25-£300 depending on fishing category
- Total amount to be paid  $\pm$  £1.3 million
- Payments being made to individual claimants



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### **NEW CASE: SOLAR 1 (3)**

- At sea response: dispersants, booms
- Shoreline clean-up: 1500 persons; 63 000 man-days
- Removal of oil from wreck?
- Underwater survey: majority of oil may still be on board
- Seismically active area; proximity to sensitive economic and environmental resources



## **NEW CASE: SOLAR 1 (4)**

- Executive Committee Oct. 2006: removal of oil admissible in principle
- First STOPIA-case
- Complication: P&I Club reserved right under Article III, para 3 CLC 1992 (contributory negligence)
- Different for Fund: Article 4, para 3 FC 1992
- Fund reserved its position regarding contributory negligence



## **CONCLUSIONS**

- The international compensation regime of the 1992 Conventions has in general worked well
- 135 incidents in 28 years (including old regime)
- US\$ 1 060 million paid to victims (including old regime)
- Used as model in other fields
- Developments to ensure it meets the needs of society in the 21st century





*The Prestige* incident, Spain, 2002