THE INTERNATIONAL REGIME ON LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE

Overview and recent developments

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ERIKA
VALLETTA

PRESTIGE

OUTLINE OF PRESENTATION

- Brief overview of international regime and role of IOPC Funds
- Overview of additional voluntary industry arrangements (STOPIA & TOPIA)
- Developments in recent important incidents
- Developments HNS Convention & Protocol

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

1992 CIVIL LIABILITY CONVENTION

- 118 States Parties

1992 FUND CONVENTION

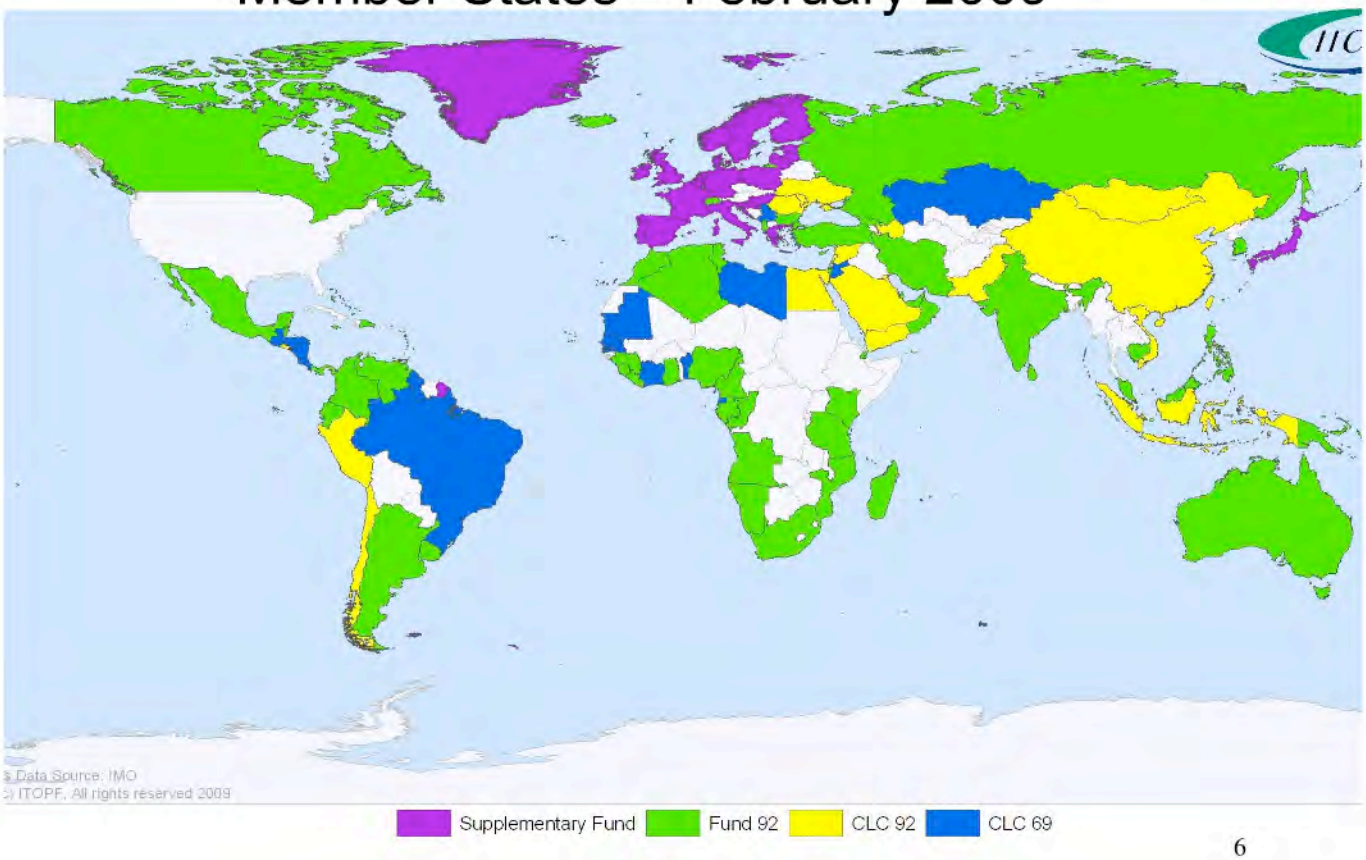
- 103 States Parties; 102 Member States

2003 PROTOCOL TO 1992 FUND CONVENTION

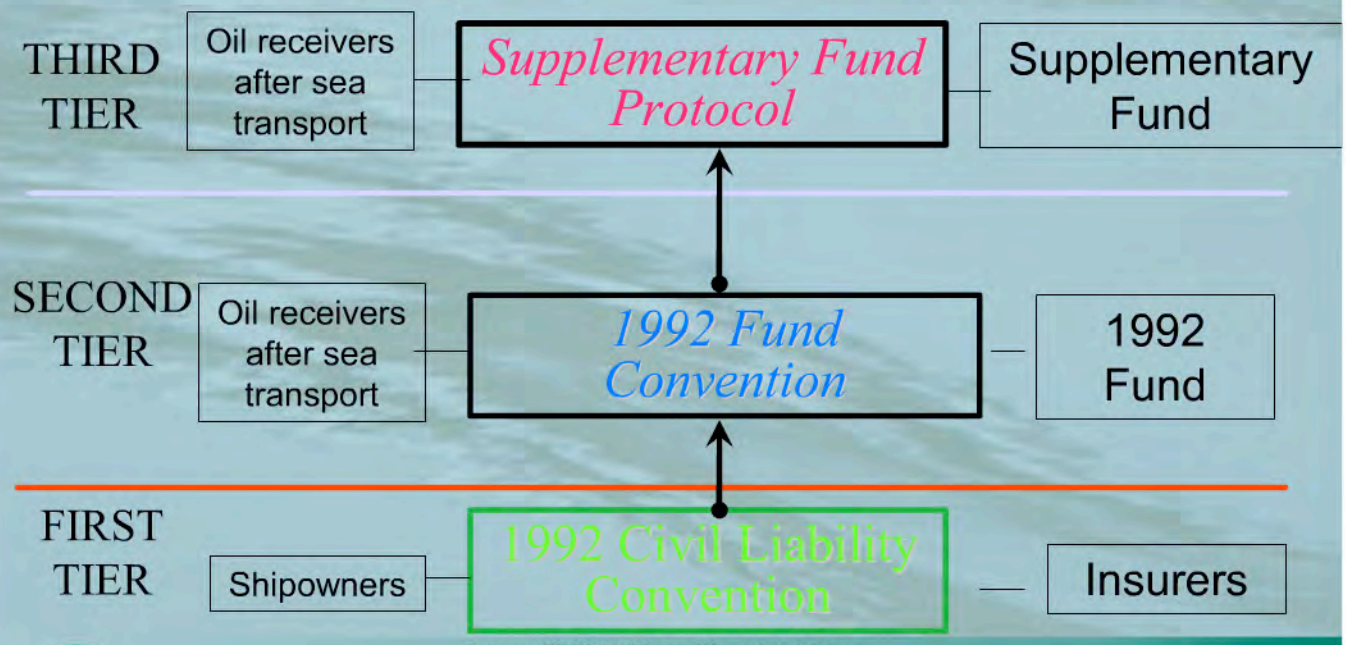
- 23 States Parties; 22 Member States

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

Member States – February 2009



THE THREE TIER SYSTEM



RATIONALE OF THE INTERNATIONAL REGIME

- Provide compensation to victims of pollution damage caused by spills of persistent oil from tankers
- Compensation through amicable settlements; court involvement avoided
- Uniform application
- Equal treatment

1992 CONVENTIONS APPLY TO:

- Pollution damage
- Spills of persistent oil from tankers
- Territory, territorial waters and EEZ or equivalent
- Preventive measures
- Bunker spills from unladen tankers (unless clean)
- 'Mystery spills' from a tanker

POLLUTION DAMAGE
Art. I.6, 1992 CLC

- 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.*
- The costs of preventive measures and further loss or damage caused by preventive measures

PREVENTIVE MEASURES
Art. I.7, 1992 CLC

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

INCIDENT
Art. I.8, 1992 CLC

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

1ST TIER
1992 CIVIL LIABILITY CONVENTION

- Strict liability of registered shipowner (no fault required; very few exceptions)
- Limitation of liability
- Shipowners may lose right of limitation
- Compulsory insurance
- Direct action against insurer

1992 CLC
Limits of Shipowner's Liability

GT	SDR	US $
≤ 5000	4 510 000	6 676 000
Per additional GT up to 140 000	631	934
GT ≥ 140 000	89 770 000	132 874 000

Exchange rate as of 24 February 2009

SHIPOWNER EXEMPT WHEN INCIDENT RESULTED FROM

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

CLC - SHIPOWNER CANNOT LIMIT LIABILITY

…if it is proved that the damage resulted from the owner's personal act or omission, committed with the intent to cause damage or recklessly with the knowledge that such damage would probably result

2ND TIER
THE 1992 IOPC FUND CONVENTION

- Provides compensation for pollution damage to the extent that the compensation available under the 1992 CLC is inadequate

- Creates an intergovernmental organisation: the IOPC Fund

2ND TIER
FUND CONVENTION APPLIES WHEN

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

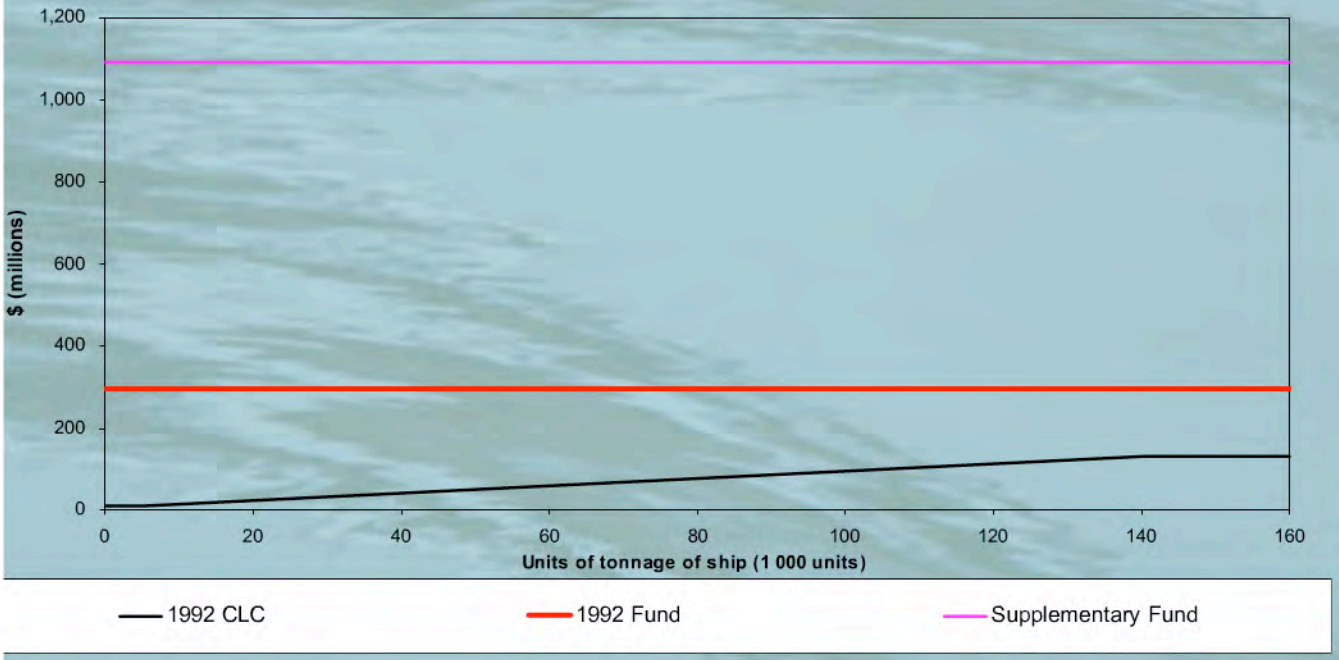
2ND TIER
FUND CONVENTION DOES NOT APPLY

- 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 ("mystery spills")

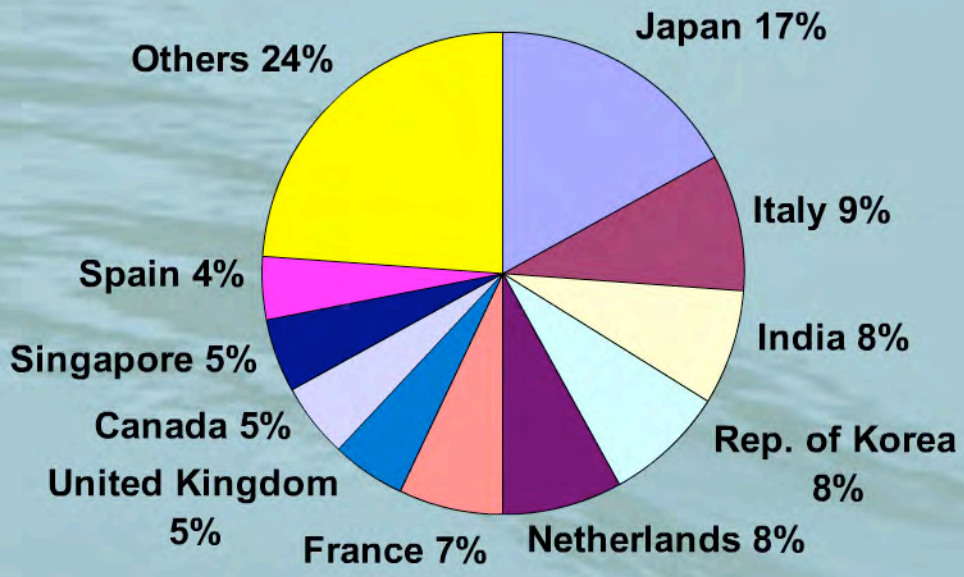
MAXIMUM AMOUNT OF COMPENSATION

- 1992 CLC/Fund Conventions
  - 203 million SDR
- 2003 Supplementary Fund
  - 750 million SDR

LIMITS LAID DOWN IN THE CONVENTIONS



1992 FUND: GENERAL FUND CONTRIBUTIONS 2007



IOPC FUND

- Administer Fund Conventions
- Assembly - Exec Committee - Secretariat
- Establish criteria for admissibility of claims
- Financed by contributions from oil receivers

WHO CONTRIBUTES TO THE FUND?

- Person receiving > 150 000 tons of contributing oil/year after sea transport
- Contributing oil = crude oil and heavy fuel oil
- Contributions decided by Fund Assembly
- Oil receivers pay, not governments

The *Haven* incident, Italy, 1991

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

ADMISSIBILITY OF CLAIMS - GENERAL CRITERIA

- Loss or damage caused by contamination (link of causation between the contamination and the loss)
- Claimant must prove loss or damage
- Loss must be economically quantifiable
- Any expense or loss must have been incurred
- Any expense must be for measures which are reasonable and justifiable

Main types of claims

Main types of claims

Preventive Measures

Main types of claims

Clean-up Operations

Main types of claims

Economic losses
Fishery, mariculture, tourism

Main types of claims

Environmental damage

costs of reasonable measures of reinstatement actually undertaken or to be undertaken

TIME BAR

Claimants will lose their right to compensation against the 92 Fund:

- Three years from the date the damage occurred
- And in any event six years from the date of the incident
- Unless they bring court action against the 92 Fund before those dates

3RD TIER SUPPLEMENTARY FUND

- Protocol establishing a Supplementary Fund in force in March 2005
- Maximum compensation 750 million, including amounts payable under 1992 Conventions
- Contributions to Supplementary Fund payable by oil receivers in States Parties to Protocol (= identical to 1992 Fund)

CONCLUSIONS INTERNATIONAL REGIME

- The international compensation regime based on the Civil Liability and Fund Conventions has in general worked well
- Handled ± 140 incidents in 30 years (incl. old regime)
- Paid well over a billion USD to victims (incl. old regime)
- Used as model in other fields (eg HNS)
- Developments to ensure it meets the needs of the international community in the 21st century have taken place and will have to take place again in future

The *Erika* incident, France, 1999

SHARING OF FINANCIAL BURDEN BETWEEN SHIPOWNERS AND OIL INDUSTRY; VOLUNTARY INDUSTRY ARRANGEMENTS

- Cost study; showed imbalance for smaller ships under present regime
- Impact of Supplementary Fund; potential exposure for contributors
- STOPIA / TOPIA 2006

STOPIA 2006

- Basic concept is "Relevant Ship":
  - 29 548 GT or less;
  - Entered in Internat. Group P&I Club; and
  - Reinsured through Internat. Group's Pooling Arrangements
- Applies to pollution damage in 1992 Fund Member States
- Voluntary increase to 20 million SDR of limitation amount for relevant ships
- 1992 Fund remains liable to pay compensation to claimants over 4.51 million SDR
- 1992 Fund will be indemnified by the shipowner for difference between CLC limit and 20 million SDR

TOPIA 2006

- Basic concept is "Relevant Ship":
  - Entered in Internat. Group P&I Club; and
  - Reinsured through Internat. Group's pooling arrangements
- 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

The *Prestige* incident, Spain, 2002

Interspill 2009 Marseille, 12-14 May

HEBEI SPIRIT INCIDENT
Facts

- 146 848 GT; China (Hong Kong SAR) registered VLCC; carrying some 209 000 tons of crude oil
- Struck by crane barge on 7 December 2007; while at anchor off Taean (Republic of Korea)
- About 10 900 tonnes of crude oil escaped from three cargo tanks punctured by barge
- Three of the four provinces along the west coast affected (some 375 km of shoreline)

HEBEI SPIRIT INCIDENT
Response by IOPC Fund

- Contact with ITOPF mobilised
- Korean and international experts and surveyors appointed
- Hebei Spirit Center (Seoul) set up
- Contacts with Korean Government established
- Investigation into cause of incident

HEBEI SPIRIT INCIDENT
CLAIMS SITUATION (April 2009)
Clean-up and preventive measures

- Claimed 226; Won 163 billion (£ 82 mill)
- Approved 135; Won 50.5 billion (£ 25.4 mill)
- Paid 94; Won 41,2 billion (£ 20.7 mill)

HEBEI SPIRIT INCIDENT
CLAIMS SITUATION (April 2009)
Capture fisheries and aquaculture

- Claimed 427; Won 246 billion (£ 123.6 mill)
- Approved 3; Won 0.8 billion (£ 402.000)
- Paid 1; Won 0.76 billion (£ 382.000)

HEBEI SPIRIT INCIDENT
CLAIMS SITUATION (April 2009)
Tourism

- Claimed 3062; Won 86.7 billion (£ 43.6 million)
- Approved 678; Won 1.05 billion (£ 527.504)
- Paid 32; Won 328 million (£ 164.782)

HEBEI SPIRIT INCIDENT
CLAIMS SITUATION (April 2009)
Property damage; environmental damage and studies; miscellaneous

- Submitted 122; Won 2.6 billion (£ 1.3 mill)
- Approved 5; Won 265 million (£ 133.132)
- Paid 1; Won 167 million (£ 83.898)

HEBEI SPIRIT INCIDENT
CLAIMS SITUATION (April 2009)
Expected total exposure (bill. Won/mill. £)

➢ Clean-up/prev. meas.	163	/ 80
➢ Fisheries/aquacult	206	/ 101
➢ Tourism	198-233	/ 98-115
Total	567-602	/ 280-297

HEBEI SPIRIT INCIDENT
CLAIMS SITUATION (April 2009)
Amount available for compensation

- Rep. of Korea is party to 1992 CLC and FC
- 203 mill SDR at 13 March 2008
- Won 322 billion available
- Rep. of Korea is not party to 2003 SFP

HEBEI SPIRIT INCIDENT
CLAIMS SITUATION (April 2009)
Pro-rating; payment percentage

- March 2008: 60%
- June 2008: 35% based on revised figures
- October 2008: kept at 35%
- 35% based on Won 567-602 billion expected total exposure vs. Won 322 billion available

HEBEI SPIRIT INCIDENT
SPECIAL FEATURES

- Cooperation agreements between Club and Government:
  - 1st (Jan 2008)
  - 2nd (Jul 2008)
- Special Law (March 2008)
- Korean Government "standing last in queue"
- Number of claims expected

VOLGONEFT 139 INCIDENT
Facts

- 3 463 GT; Russian Federation registered; carrying some 4 077 tons of heavy fuel oil
- Broke in two during storm while at anchor in Strait of Kerch
- Between 1 200 and 2 000 tonnes of heavy fuel oil escaped
- About 50 km of shoreline in Taman Peninsula, Tuzla Spit and Chushka Spit (Russian Federation) and Ukraine was allegedly affected
- Ukraine not party to CLC 1992 and FC 1992

VOLGONEFT 139 INCIDENT
Response by IOPC Fund

- Contact with ITOPF mobilised
- Contact with Government of Russian Federation; offered assistance and experts; unfortunately not accepted
- Investigation into cause of the incident

VOLGONEFT 139 INCIDENT
Claims situation (April 2009)

- Clean-up and preventive measures:
  - Contractor RUB 64 mill
  - Shipowner RUB 5 mill
  - Min. of Emergencies RUB 4 mill
  - Regional Governments RUB 208 mill

  Total RUB 281 mill

  (£ 5.64 mill)

VOLGONEFT 139 INCIDENT
Claims situation (April 2009)

- Tourism; private industry; RUB 21.5 mill
- Fisheries; private industry; RUB 22.4 mill

Total: RUB 43.9 mill
(£ 881 751)

VOLGONEFT 139 INCIDENT
Claims situation (April 2009)

- Reinstatement measures; Regional Government; RUB 1 820 mill (£ 36.6 mill)
- Environmental damage; Ministry of Natural Resources; RUB 6 049 mill (£ 121.5 mill)
- Environmental monitoring; Ministry of Natural Resources; RUB 0.5 mill (£ 10 043)
- Total: RUB 7870 mill (£ 158 mill)

VOLGONEFT 139 INCIDENT
SPECIAL FEATURES

- "Old" shipowner (CLC-)limit; 3 mill SDR; should have been 4,51 mill SDR
- Defence of natural phenomenon of exceptional, inevitable and irresistible character ("force majeure")
- Methodika claim for environmental damage; not admissible
- Claims submitted: RUB 8 195 mill (£ 165 mill); exceed the Fund's limit (but mainly Methodika; £ 121.5 mill)

Hazardous and Noxious Substances

- HNS – any substance that, spilt into the marine environment, is likely to create a hazard to human health or other living resources, to damage amenities or interfere with other legitimate uses of the sea
- HNS spills currently not as frequent as oil spills
- Quantities spilled can be small
  - Chemical tanker: 40,000 m^3 – 150,000 m^3 (many products onboard)
  - Container: 10m^3
  - ICB: 1m^3
  - Drum: 200 litres

Interspill 2009 Marseille, 12-14 May

HNS - Risks

- Response can be complex and dangerous
- Effects can be serious

  - Wide variety of products, toxicity and behaviours
  - Effects on marine environment not well known
  - Potential effects on population more severe than oil
  - Response technologies not as developed as for oil
  - Substances can be 'invisible' (evaporate, dissolve, float, sink)

    e.g.: 1 tonne chlorine = 4.8 km safety zone

HNS CONVENTION

- Complements and modelled after CLC & Fund regime; two tiers
- 1st tier:10 mill SDR up to 2000 GT; max 100 mill SDR
- 2nd tier: 250 mill SDR
- Claims for death & injury have priority (2/3 reserved)
- Covers "fire & explosion" risks for oil as well
- Entry into force:
  - 12 States, incl 4 with >2 mill GT
  - >40 mill tons in general account
- 13 states ratified so far, but only 2 with >2 mill GT

HNS CONVENTION; RECENT DEVELOPMENTS (1)

- Main concerns:
  - Lack of reporting (espec to major contributing states)
  - "Receiver" definition (espec for packaged)
  - LNG contributions (if titleholder in non-Member State)
- HNS Focus Group established by IOPC Fund Assembly in Oct 2007
- To develop draft Protocol text by 15 Feb 2008 with solutions for the main concerns
- Ideally Jun 2008 Extraord Assembly to submit to IMO/LEG (Oct 2008); Dipl Conf asap

HNS CONVENTION; RECENT DEVELOPMENTS (2)

- 1992 Fund Assembly approved draft Protocol in June 2008; submitted to IMO
- IMO Legal Committee discussed in Oct 2008 and decided to recommend a Dipl Conf asap in 2010
- IMO Council endorsed recommendation in Nov 2008
- Dipl Conf planned for early 2010

Thank you for your attention!

For further information

www.iopcfund.org