

Oil Spill Claims and Compensation

International Compensation Conventions

OPRC Level 3

CIVIL LIABILITY CONVENTION (1992 CLC)

The International Convention on Civil Liability for Oil Pollution Damage, 1992

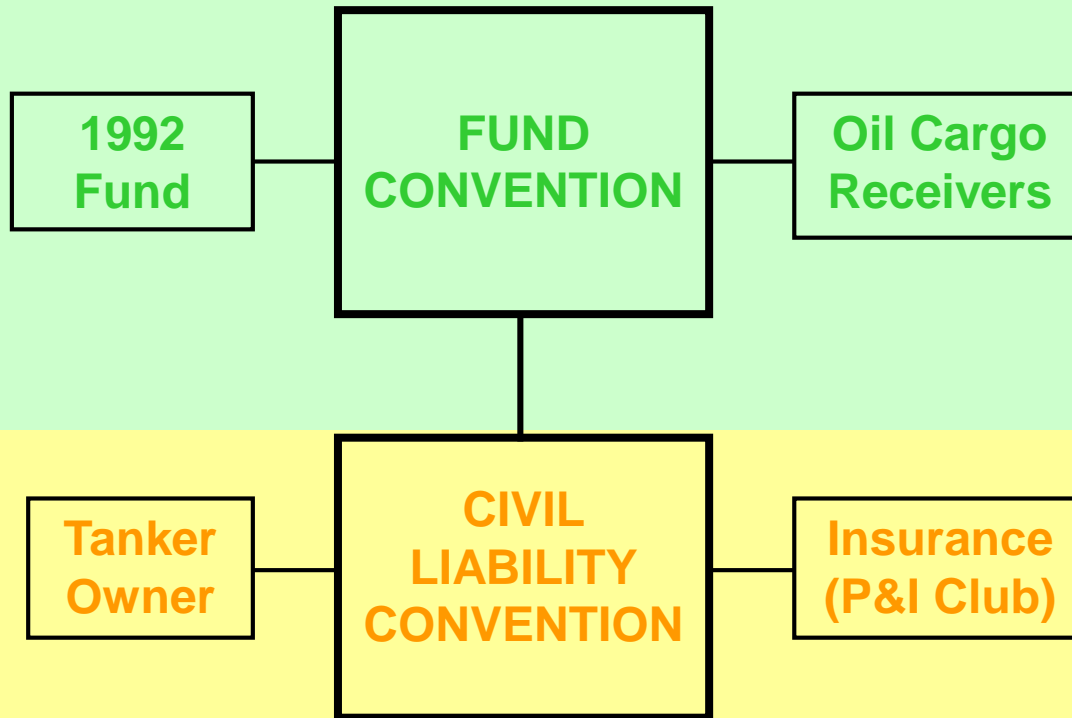
FUND CONVENTION (administered by 1992 Fund)

The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992

Compensation Conventions a two-tier system

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Supplementary Layer of Compensation



Primary Layer of Compensation

1992 CLC : Strict Liability~ Right To Limit Liability

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- Registered owner liable, regardless of fault with very few exceptions (e.g. act of war)
- Required to have insurance and certificate
- Enables direct action against insurer
- Right to limit lost if damage resulted from personal act or omission of owner done with intent or recklessly and with knowledge that damage would occur

Channelling of Liability

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- Claims 'channelled' to registered owner
- Servants, agents, any charterer, manager, operator, salvors or responders protected from claims for pollution damage
- Unless damage resulted from their personal act or omission done with intent or recklessly with knowledge that damage would occur (same test as for owner)
- Recourse actions not prevented

Scope Of Compensation

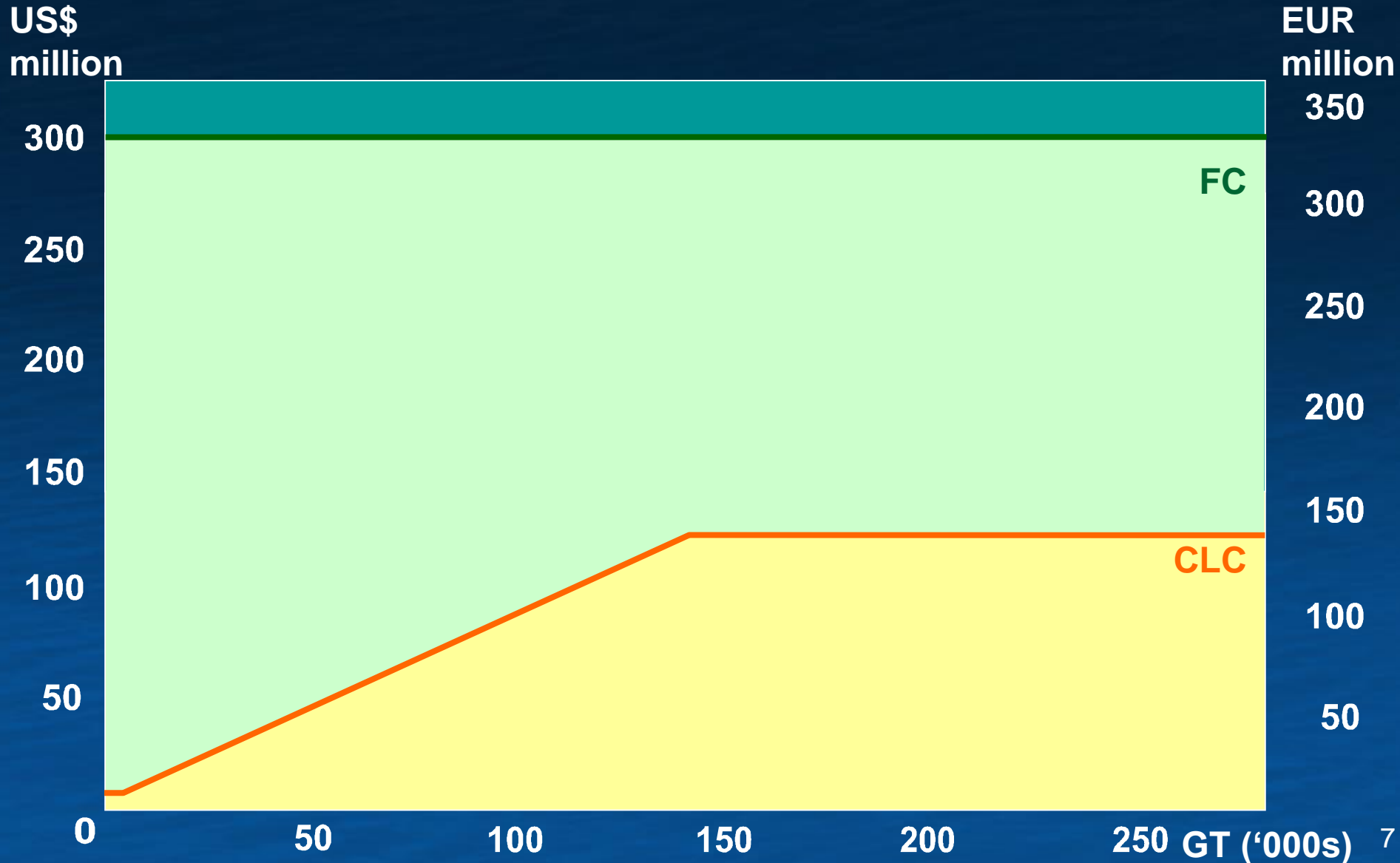
Reasonable costs associated with:

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- Preventive measures (clean-up)
- Property damage
- Economic loss
- Environmental damage (restoration)

1992 CLC and 1992 FUND Limits of Liability

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Supplementary Fund

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- Supplementary Fund: aggregate limit 750 million SDR ~ US\$ 1 billion financed by oil receivers
- Administered by IOPC Fund
- Will only apply in states ratifying the Protocol
 - minimum contribution ~ 1 million tonnes p.a.
- Entry into force: 3 March 2005

Supplementary Fund

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Million US\$

Million SDR

1000

750

750

500

500

250

250

200

100

50

0

50

100

150

200

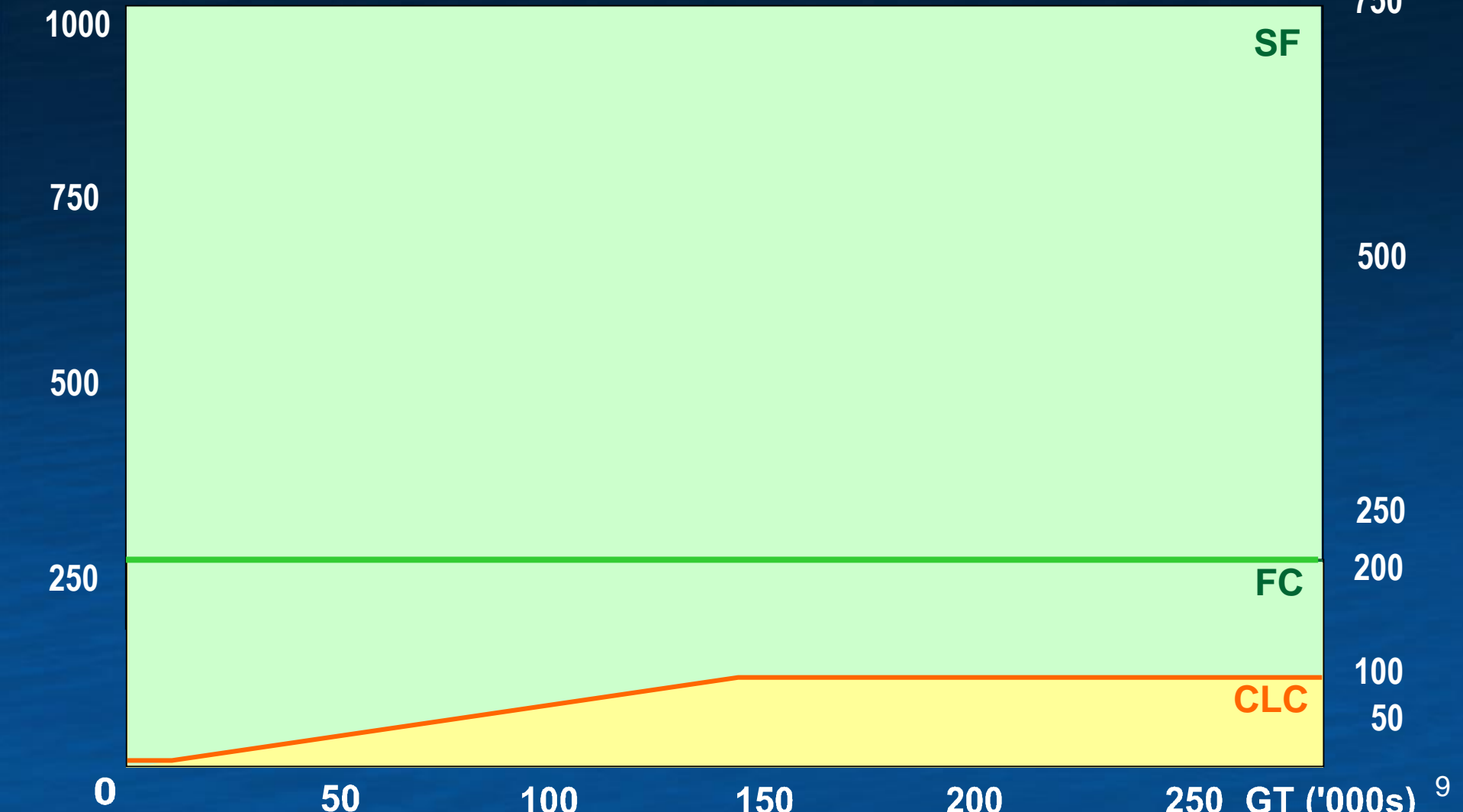
250

GT ('000s) ⁹

SF

FC

CLC



Pollution Damage

“Pollution damage” covers:

- Loss or damage causing contamination from the escape or discharge of oil from a tanker
- The costs of preventive measures and further loss or damage caused by preventive measures
- Costs of reasonable measures for reinstatement of impaired environment

Preventive Measures

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- Measures to prevent or minimise *pollution damage*
- Compensation for cost of *reasonable measures*:
 - To combat the oil at sea
 - To defend sensitive resources
 - To clean coastlines and coastal installations
- Loss or damage caused by such measures

Reasonable Measures

Reasonable means that measures should:

- be based on a technical appraisal
- seek to enhance natural processes
- entail proportionate costs
- Technical *reasonableness* is assessed on the basis of decisions taken *at the time* – not with the benefit of hindsight

Claims for Consequential Loss

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Property Damage

- Industrial facilities
- Ports, quays, harbours
- Fishing boats and nets
- Aquaculture facilities
- Pleasure boats
- Buildings

Claims for Consequential Loss

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Loss Mitigation

- Alternative fishing areas
- Farm & Hatchery management
- Early harvesting of stock
- Re-location of cultivation facilities
- Assist with clean-up
- Resume normal activities as soon as possible
- Campaigns to allay market fears

Claims for Pure Economic Loss

Link of Causation

- Demonstrate that the damage is caused by oil spilled from the vessel

Proximity (Remoteness)

- Geographical
- Economic

Environmental Damage

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- Physical damage and chemical contamination
- Smothering of flora and fauna
- Toxic effects on flora and fauna
- Community changes resulting from oil effects
- On key organisms
- Oil is degradable, so effects usually temporary

Claims for Environmental Damage

- Acceptable only if claimant has sustained *an economic loss which can be quantified in monetary terms*
- Compensation will not be paid *on the basis of an abstract quantification of damage calculated in accordance with theoretical models*
- Fund may contribute to *post-spill environmental studies* provided they fall within definition of *pollution damage*

Claims for Environmental Damage

Costs for measures to reinstate the environment may be accepted provided:

- The cost of the measures is *reasonable*
- The cost of the measures should not be disproportionate to the results achieved or which could reasonably be expected
- The measures should be appropriate and offer a reasonable prospect of success

Environmental Reinstatement

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- To enhance natural recovery and / or prevent further injury & pollution damage
- Measures may be taken at some distance from damaged area if it can be shown they would enhance recovery of damaged components
- Measures must be feasible and reasonable
- Costs must be actually incurred or committed

Post-spill environmental studies

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Studies should be practical and deliver data:

- monitoring natural recovery from oil & cleanup
- feasibility of reinstating habitat damaged by contamination or by preventive measures
- integrated large-scale physical, chemical & biological studies to assess impact of big spills

continued.

Post-spill environmental studies

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- Establishing terms of reference
- Selecting experts & appropriate techniques
- Avoiding unnecessary repetition of other work
- Documenting results
- Costs must be actually incurred or committed
- Liable party may participate in planning

Presenting a Claim

Civil Liability & Fund Conventions

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- In writing (in IOPCF working languages)
- Clearly & in sufficient detail to be understandable
- With invoices, worksheets & other support
- Basic information:
 - Claimant's name, address; Ship name; Incident date, location; Type of Damage; Claim amount

Presenting a Claim: General Criteria

Civil Liability & Fund Conventions

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- Expense / loss must actually have been incurred...
- ... and relate to measures that are reasonable
- Loss / damage must be caused by contamination
- Loss suffered must be quantifiable in economic terms
- Responsibility for proving the loss lies with claimant
- Consider appointing financial controller / recorder

Claims for environmental damage

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- Loss of profit resulting from damage to marine environment suffered by persons depending directly on coastal or sea-related activity
- Reasonable reinstatement costs & post-spill studies
- Loss or damage to be quantifiable & documented
- Current regime does not admit claims for introducing equivalent components in place of damaged areas, or the use of theoretical models to calculate loss

Documentation to support a Claim

Civil Liability & Fund Conventions

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- Identify area affected (maps, photographs)
- Analytical or other evidence linking pollution with ship
- Summary of events + daily worksheets
- Response personnel costs at each site...
- ... their travel, accommodation, living costs
- Cost of equipment and consumables at each site...
- ... and any remaining value at end of operations

Documentation to support a Claim

Civil Liability & Fund Conventions

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- Transport costs (no. & type, vehicles, vessels, aircraft)
- Cost of temporary storage & final disposal of oily waste
- Cost of cleaning, repair, replacement of damaged items
- Age of items to be replaced
- Cost of cleanup site restoration

More detail: IOPC Fund Claims Manual: www.iopcfund.org

Documentation to support a Claim Summary

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- Claimants are expected to mitigate loss
- Evidence of damage essential
 - joint inspections surveys can be helpful
- Proof of loss quantum
 - supporting documentation
- Test of Proximity applies to all claims
 - geographical and economic

Claiming under the terms of the Civil Liability & Fund Conventions

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More detail:
IOPC Fund Claims Manual
www.iopcfund.org