Introduction:

Governments of Maritime Nations have agreed to put in place an international oil pollution compensation regime to ensure the prompt and reasonable settlement of pollution damage claims. These place strict liability on the owners of oil tanker vessels up to a limit. On the rare occasions this limit is exhausted, oil receivers (which are mainly oil companies) globally contribute to a second tier fund up to a higher limit.

How do compensation schemes work?

The international oil pollution compensation regime is based on two International Conventions:

♦ The Convention on Civil Liability for Oil Pollution Damage (CLC) and,
♦ The Convention on the Establishment of an International Fund for Oil Pollution Damage (Fund Convention)

These compensation schemes cover all sea-going vessels constructed or adapted to carry persistent oil in bulk as cargo, on loaded and unloaded movements. They apply to pollution damage within the waters of countries subscribing to the Conventions, regardless of where the casualty occurs, the flag of the tanker or the ownership of the oil.

• The schemes are designed to compensate any person who suffers loss or damage caused by contamination resulting from a spill including immediate clean-up action, preventive measures, reinstatement of impaired environments and reasonable compensation for subsequent economic losses such as loss of tourism, fishing etc.

• These Conventions are funded in the first instance, under CLC, by the ship-owner up to a limit determined by the size of the vessel and up to a maximum of
59.7m Special Drawing Rights (about US$84m); supplemented when necessary under the Fund Convention by oil receivers in contracting States up to a combined maximum of 135m SDR (US$185m).

- The individual ship-owner insures his strict liability with a “Protection & Indemnity Club” or other specialist insurer. For ships carrying more than 2000 tons of persistent oil in bulk as cargo, this coverage is compulsory under CLC. It is a usual practice for charterers to require the ship-owner to be a member of the International Tanker Owners Pollution Federation Limited (ITOPF) giving access to its expertise and capability for prompt advice on handling oil spill response.

- A second tier of the compensation regime is provided under the Fund Convention through the IOPC Fund and is financed by oil receivers and therefore mainly oil companies. The IOPC Fund is governed by an international regime elaborated under the auspices of the International Maritime Organisation (IMO).

- Where the ship-owner’s limit of liability under CLC is exhausted or where, because of specific exoneration, CLC does not apply, the Funds financed by oil companies and other oil receivers in participating countries have always met claims and other expenses that had to be covered after an oil spill. In this context, it is important to note that the IOPC Fund limit is constant for all vessels regardless of vessel size.

**Why should compensation regimes be international?**

- These international oil pollution compensation regimes have been in place in one form or another for over twenty-five years. They have served the international community, particularly pollution victims, well over these years. They ensure that the responsibility for handling the spill is directed to the individual ship owner (at fault or not) and that the financial burden is shared by the global oil receivers whose product has been carried by sea.

- The current regime also provides for a mechanism whereby the limits of compensation can easily be raised under the auspices of IMO.

- This regime provides for a well ordered international system of fair compensation which ensures a balanced spread of responsibilities between the different operators as well as equal compensation in case of damage in all regions of the world.

- It is precisely the international nature of these Conventions that has allowed a balanced and fair system of compensation to be achieved. Introducing regional schemes will automatically undermine the effectiveness and ultimately the existence of the international regime and will risk introducing significant inequalities in the way pollution victims receive compensation from one region of the world to the other.
• The introduction on a regional basis of a third tier to the Fund would not only undermine the current international regime but it would also put at risk the established principle of shared responsibility between ship-owners and oil interests. The Commission’s proposed third tier would apparently be based on funding entirely by the oil industry who already fund, in total, the contributions to the IOPC Fund; and who, in addition, fund pollution compensation from “Dollar one” when ship owner’s insurance fails to respond. (See diagram below).

![Limits Laid Down in the Conventions](image)

• Breaking the existing balance in the spread of responsibility which was progressively achieved over the years, could ultimately lead to a dilution of ship-owners’ responsibility and a disincentive for insurers to take a proactive interest in the condition and operational standards of the vessels insured.
A SHORT GUIDE TO THE INTERNATIONAL OIL POLLUTION COMPENSATION REGIMES

This short Paper is intended to provide an overview of the International Conventions on Liability and Compensation for Oil Pollution Damage.

- **The international oil pollution compensation regime is based on two International Conventions:**
  - The Convention on Civil Liability for Oil Pollution Damage (CLC) and,
  - The Convention on the Establishment of an International Fund for Oil Pollution Damage (Fund Convention)

- **The CLC governs the liability of shipowners for oil pollution damage and provides for:**
  - Compulsory insurance for ships carrying more than 2000 tons of “persistent oil” (crude oils, fuel oils and lubricating oils) as cargo
  - Strict Liability
  - A limit of liability to an amount linked to tonnage of ship (maximum 59.7m Special Drawing Rights, about US$84 million)
  - Claims can only be made against the registered owner of the tanker concerned or directly against his liability insurers.

- **The Fund Convention or IOPC Fund is:**
  - Supplementary to the CLC and:
  - Applies when: -
    - I. compensation under CLC is insufficient
    - II. the shipowner is exempt from liability (e.g. incident caused by Act of God)
    - III. the shipowner is financially incapable of meeting his obligations

- **Main elements of IOPC Fund are:**
  - Oil receivers in Fund States, which are mainly oil companies, contribute to the Fund
- Maximum amount payable for any one incident is 135 million Special Drawing Rights (about US$185 million including the amount actually paid by the shipowner under the CLC (up to 59.7 million SDRs or US$84 million).

- 43 Member States are Members with 11 more States in the process of becoming Members (04/2000)

- It is administered by a Secretariat which is based in London (IOPC Fund).

- It is financed by contributions levied on receivers of more than 150,000 tons of persistent oil (contributing oil) in one calendar year in a State which is party to the Convention.

- Major contributors are the oil companies in industrialised nations – 86% of total contributions came from 10 countries in 1999.

- States communicate details of contributors (name, address and quantities of contributing oil received) to the Fund Secretariat.

- The Fund Secretariat issues invoices direct to individual contributors.

- Each contributor pays a specified amount per ton of contributing oil received in the previous year.

- Each major incident has its own separate “claims fund” and contributions are levied to pay claims plus administrative expenses of the Fund.

- **Conventions apply:**

  - to claims for pollution damage including costs of immediate clean-up action, damage to property, preventive measures, reinstatement of impaired environments and reasonable compensation for subsequent economic losses such as tourism and fishing; and

  - in States which are party to the Convention regardless of the flag of the tanker or the ownership of the oil.

- **Claims:**

  - Since the Conventions came into force in 1978, there has never been a case where the admissible claims have exceeded the total amount of compensation available under the Conventions.

  - In cases where there is initial doubt as to whether total amounts available under the Conventions will be exceeded by the total number of claims, each claimant is paid a pro rata percentage of the total amount claimed until final settlement can be made.

  - In Europe (and some other areas), Governments are responsible for oil spill clean-up. Costs incurred by Government are then reimbursed under the Conventions provided they are admissible and reasonable.
• Claimants must submit claims against the Fund within 3 years of the date on which damage occurred and within 6 years from date of the incident that caused the damage.

• In a major spill, a claims office is usually established at the spill site manned by both Shipowners’ Liability Insurers and the Fund staff to assist in preparing and submitting claims.