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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Proposal based on IOPC Funds Secretariat costs' study

Submitted by the Oil Companies International Marine Forum (OCIMF)

Summary:	This document proposes a solution to the issue of shipowner liability based on the information provided by the IOPC Funds Secretariat costs' study of May 2004.
Action to be taken:	See section 6.

1 Introduction

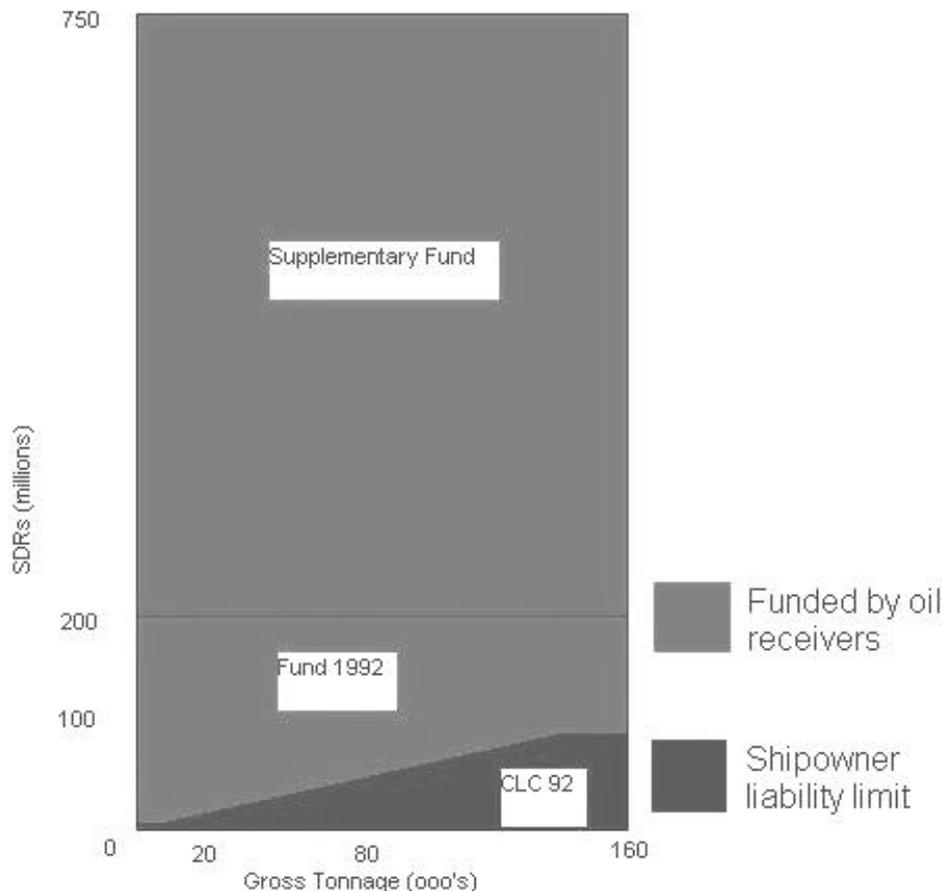
- 1.1 This document is intended to propose a solution to the important issue of shipowner liability based on the information provided by the IOPC Funds Secretariat costs' study of May 2004.
- 1.2 The Oil Companies International Marine Forum (OCIMF) has noted the proposals put forward by Australia and others in document 92FUND/A.10/7/5 and wishes to extend its support to those proposals. We support revision of those items proposed in section 3 of that document together with elimination from discussion of those items in section 2. In addition, OCIMF looks forward to further discussion in the Working Group (as proposed by the P&I Clubs) of areas where industry and States can work together to improve and encourage quality shipping and address the substandard transportation of oil.
- 1.3 In accordance with the proposal in section 4 of the document by Australia et al, the proposed OCIMF solution in this document is based on figures provided by the IOPC Funds' costs' study and from the Secretariat. It should be noted that OCIMF proposes a treaty solution. We do not favour voluntary agreements for the reasons given in previous OCIMF documents and those stated in the Australia et al document. In particular, the proposed voluntary agreements, suggested by the International Group of P&I Clubs:
- are subject to unilateral withdrawal;
 - do not cover all ships (and the percentage covered will fall if the P&I Clubs implement their proposals for targeting substandard ships); and
 - delay payment to the IOPC Funds until approx 5-10 years after an incident (ie after recourse action has been taken or discounted)

2 The birth of the Supplementary Fund

- 2.1 At the second meeting of the Working Group, in March 2001, a proposal was put forward which ultimately gave birth to the Supplementary Fund. It was the States of Australia, Canada, Denmark, the Netherlands, Norway, Sweden and the United Kingdom that proposed an optional

third tier of compensation with two layers. The first layer of the third tier was to establish higher limits of compensation paid by shipowners and the second layer paid by oil receivers.

- 2.2 Due to treaty law difficulties, it was eventually decided, in the interests of speed, to develop a supplementary fund financed entirely by oil receivers and to deal with the question of shipowner liability at a later date. The Supplementary Fund, as we now know it, was created at a Diplomatic Conference in May 2003. The graph below depicts the international regime after the adoption of the Supplementary Fund.



3 **OCIMF support for Supplementary Fund as first phase of review**

OCIMF, whose members provide the large majority of the finance for the IOPC Funds, gave its support to a supplementary fund on an interim basis in the following context (see also 92FUND/WGR.3/8/2)

- A supplementary fund should have a maximum limit of 400 million SDR
- There should be an increase in liability under the Civil Liability Convention (CLC) to ensure a minimum liability of 20 million SDR
- There should be a resolution to the effect that the IOPC Fund would continue to work as a matter of urgency towards a solution that would give shipowners and their insurers a significant stake in the provision of additional compensation. OCIMF believes that the liability of the shipowner should be commensurate with its responsibility for operating safe and pollution free ships.

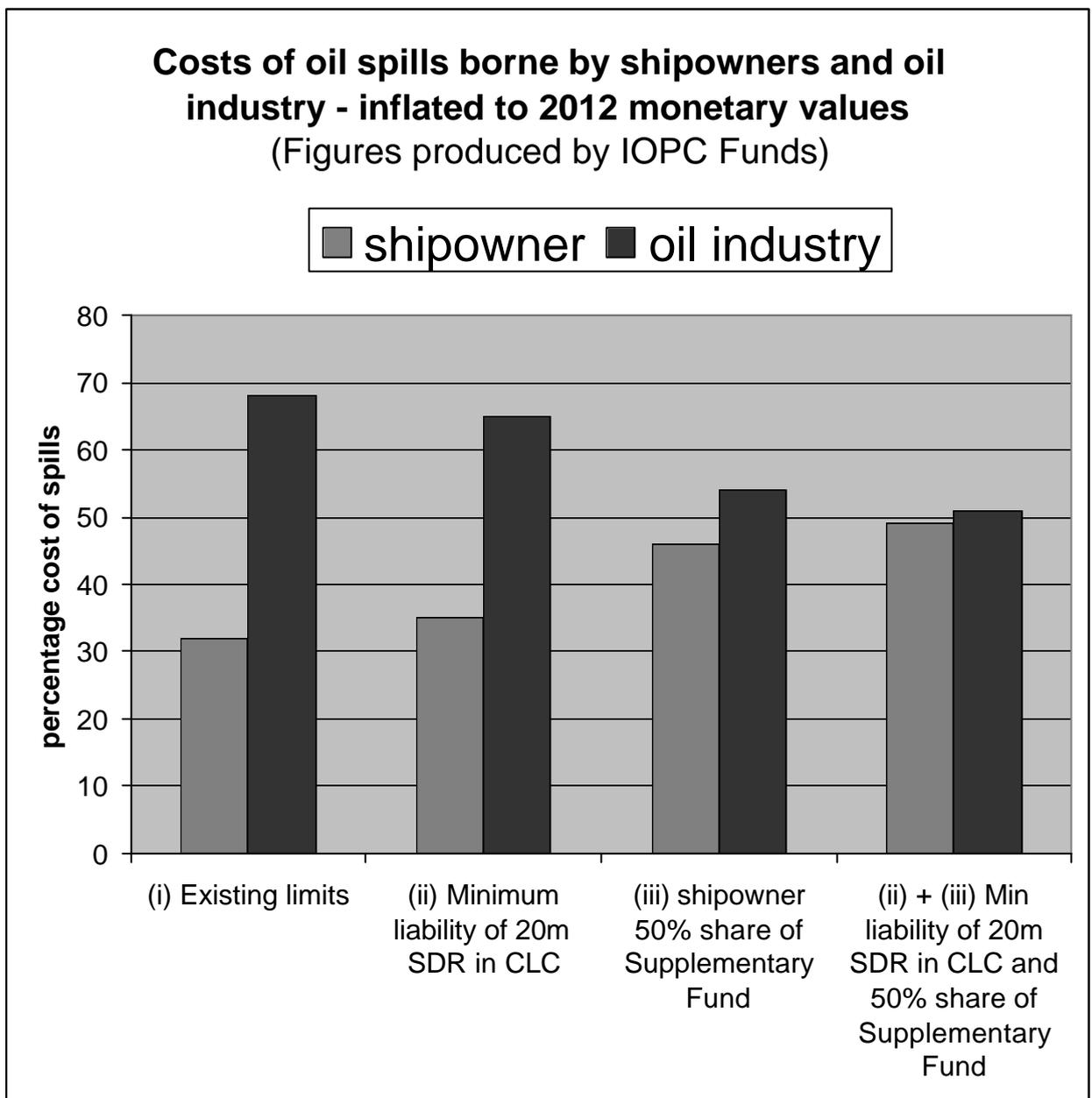
4 Working Group continues in accordance with resolution of Diplomatic Conference (May 2003)

4.1 Following the adoption of the Supplementary Fund Protocol, in May 2003, the Working Group continued its work which understandably focussed heavily on the issue of shipowner liability.

4.2 In May 2004, the IOPC Funds' Secretariat released its study on the costs of oil spills between the shipowners and oil industry. The study looked at the proportion of costs in relation to past, current and future limitation amounts. When the costs of past oil spills were compared with the current financial limits under the 1992 Conventions and the Supplementary Fund Protocol it showed that the shipping industry would contribute 32% and the oil industry 68% respectively. This disparity is shown in the bar chart below, under (i) 'existing limits'.

4.3 The bar chart also shows the effect on the proportions borne by the two industries if:

- (ii) the minimum liability of CLC were to be increased to 20 million SDR;
- (iii) the shipowner were to have an increased stake in the Supplementary Fund from 0% to 50%;
- (iv) the cumulative effect of (ii) and (iii)



- 4.4 It can be seen that an increase in minimum liability in CLC to 20 million SDR **AND** an increase in the shipowner stake in the Supplementary Fund from 0% to 50% produces a broadly equal share between the shipowning industry and the oil industry. Although equal sharing of costs is not a founding principle of the international regime, OCIMF believes that such an increased share by the shipowner is commensurate with its responsibility for operating safe and pollution free ships. This should provide an incentive to further improve safety standards.

5 OCIMF proposed solution

- 5.1 OCIMF's proposed solution, therefore, is to increase the minimum liability in CLC to 20 million SDR **AND** to increase the shipowner stake in the Supplementary Fund from 0% to 50%. This is depicted in the Annex.
- 5.2 Through specialist insurers, OCIMF has investigated the potential costs to the shipowner to insure such a liability. The insurance costs to the shipowner would be relatively minor and, significantly, would be much lower than the insurance cost of sending a tanker on a voyage to the US.
- 5.3 OCIMF believes that this solution, if implemented, would resolve the issue between the oil industry and the shipping industry and between flag States and large oil receiving States. It would also create a renewed foundation for the continued success of the international regime for many years to come.
- 5.4 It should be recognised that the international regime has to a large extent been successful because it has had the confidence and support of all parties concerned; the contracting States, the shipowners and their insurers, and the oil industry that finances the Funds. OCIMF fears that if the regime is unable to adapt, develop and improve to address the very real concerns of a significant number of States and other stakeholders then confidence and support for the regime may be lost. In such circumstances, the regime may, in future, be unable to withstand the challenge of alternative proposals for regional schemes. The Assembly must, therefore, make a crucial decision in order to avoid potential irrevocable damage to the only multilateral mutual system currently existing at the international level.

6 Action to be taken by Assembly

The Assembly is requested to take note of the proposals and views in this document and decide accordingly.

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ANNEX

OCIMF PROPOSED SOLUTION

