



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

INTRODUCTION OF A MECHANISM TO PROMOTE QUALITY SHIPPING

Submitted by Japan

Summary:	It is argued that the Supplementary Fund will result in an imbalance in the distribution of the financial burden between shipowners and oil receivers. This document considers specific options to make shipowners and oil receivers bear some additional burden beyond the current CLC/FC regime to promote quality shipping and reduce the risk of oil pollution damage.
Action to be taken:	The Working Group is invited to consider this proposal.

1 Introduction

- 1.1 The 3rd Intersessional Working Group has developed and achieved the adoption of the Supplementary Fund Protocol by the IMO in May 2003. The amount available for compensation to victims, which is the primary purpose of the international oil pollution compensation regime on which its reputation is based, has been greatly increased. At the same time, however, there remains the on-going task to reappraise the distribution of the financial burden between shipowners and oil receivers, since it is argued that the Supplementary Fund, which is funded by contributions only from oil receivers, causes an imbalance in this distribution.
- 1.2 Therefore, a reappraisal of the distribution of the financial burden should be carefully examined. As regards cases that will be fully compensated under the current CLC/FC regime, where the respective limits were increased by 50% last November through the tacit acceptance procedure, it is reasonable to argue that it is premature to focus on a discussion on the distribution of the financial burden with the aim of urgently revising the current CLC/FC regime based on an assumption that an imbalance between shipowners and receivers already exists as a matter of course. A thorough study of the sharing of this burden under the current CLC/FC regime is a prerequisite to a meaningful discussion. In this context, it is necessary to examine the outcome of the study being carried out by the Secretariat.

^{<1>} This document has been re-issued because the annex was omitted in error in the original

- 1.3 On the other hand, for cases where the Supplementary Fund actually pays compensation, it is reasonable to discuss options to make shipowners bear some burden beyond the current CLC/FC regime, including a revision of the current CLC/FC regime to the extent required for only these cases. This is in line with the argument that there is an imbalance caused by the introduction of the Supplementary Fund. It is very useful to continue to deepen discussions focusing on cases where the Supplementary Fund actually compensates.
- 1.4 This document proposes specific options to make shipowners bear some additional burden beyond the current CLC/FC regime by taking an innovative approach to introduce a mechanism to promote quality shipping that also reduces the risk of oil pollution damage. The discussion of quality shipping would not only contribute greatly to the improvement of the functioning of the international oil pollution compensation regime in the long run but is also considered a most appropriate and urgent agenda in view of the fact that disasters caused by substandard ships triggered the creation of the Supplementary Fund.
- 1.5 This approach should not be misunderstood as underestimating the value of and need for reviewing the current CLC/FC regime thoroughly so as to ensure its efficiency and fairness in the long term. However, the problem of financial burden sharing is primarily discussed in relation to the creation of the Supplementary Fund. As there has been no in-depth study and no agreed understanding of the situation in respect of the financial burden sharing under the current CLC/FC regime, it is considered to be fair and reasonable to discuss an immediate option that would not only lead to making shipowners bear some burden, in addition to oil receivers, in respect of cases where the Supplementary Fund actually pays compensation, but also to promote the reduction of the use of substandard ships, while also indemnifying good shipowners and oil receivers.
- 1.6 With regard to the quality shipping policy, opinions are expressed that it is more appropriate for the IMO than for the CLC/FC and the Supplementary Fund regime to tackle the problem of the elimination of substandard ships. However, it should be acknowledged that the international oil pollution compensation regime is based on two concepts, that is, both compensation and prevention of incidents. Therefore, it is meaningful to consider how contributions and shipowners' liability should be structured under the international oil pollution compensation regime from the concept of prevention of incidents. Especially, since this regime has functioned effectively owing to the collaboration between shipowners and oil receivers, it would be beneficial for shipowners and oil receivers to introduce a mechanism such as disciplinary actions in cases where substandard ships are used, and to develop this regime which has thus a unique character different from the IMO arena.
- 1.7 Options to take more effective disciplinary actions against substandard ships could be designed in various ways. Such options could include increasing the limit of liability and reviewing the criteria for the shipowner's loss of the right to limit his liability in cases where substandard ships are used.
- 1.8 However, the proposal described below does not refer to these criteria. The option of amending the criteria for depriving the shipowner of the right to limitation of liability would result in a fundamental change of the financial burden sharing for all parties concerned by the current CLC/FC regime. Therefore this document does not refer to these criteria or a thorough review of the CLC/FC regime for the time being, as there does not yet exist any agreed understanding as to the actual sharing of the burden under the current CLC/FC regime as discussed above.
- 1.9 In relation to the effort to promote the elimination of substandard ships, it is necessary to note that safety measures have become strengthened. On the one hand, shipowners have taken various measures in response to the strengthening of IMO regulations in this field, such as phasing out of single-hull tankers, and on the other hand oil companies have voluntarily made use of the CAP in collaboration with shipowners.

- 1.10 This document presents one of the options for the purpose of facilitating discussion in the Working Group, but is without prejudice to the final position of the sponsoring Government.

2 Proposal

- 2.1 If an incident caused by any substandard ship results in compensation being paid by the Supplementary Fund, the owner of the sub-standard ship shall bear an additional liability to that under the 92 CLC regime. The limit of the additional liability shall be either:

(a) [] SDR, or

(b) [] % of the compensation paid by the Supplementary Fund,

whichever is the lower.

In this respect, the 92 CLC should be amended to impose this additional liability under the above condition with respect to the owner of a ship registered in a Contracting State to the Supplementary Fund Protocol. Although the shipowner ultimately would owe this additional liability to the Supplementary Fund, the shipowner and the Supplementary Fund should be jointly liable to the victims.

- 2.2 In addition to the increased liability of shipowners, receivers of oil after a carriage in a substandard ship where the incident occurred should make an additional payment to the Supplementary Fund. Options may include that the receiver in a Contracting State to the Supplementary Fund Protocol should pay two types of contributions to the Supplementary Fund. The amount of the first contribution could be equal to the shipowner's additional liability or shipowner's increased liability in total (the original 92 CLC plus the additional liability). The amount of the second contribution could be calculated on the basis of the receiver's share of received oil and against the net balance of compensation from the Supplementary Fund, where the shipowner's additional liability and the first part of the receiver's contribution are reduced.
- 2.3 This proposed new scheme will give incentives both to shipowners to enhance the quality of tankers and to oil receivers to charter high-quality tankers. These incentives would eliminate the use of substandard ships and contribute to the prevention of incidents caused by such ships. In this regard, this proposed new scheme should apply to ships which are either registered in a Contracting State to the Supplementary Fund Protocol or chartered by a receiver in a Contracting State to that Protocol.
- 2.4 If it were to be difficult to define clearly the concept of 'substandard ship' or if it were to take a long time to apply the definition to any particular case resulting in difficulties in respect of prompt compensation to victims, there could be an option to use the age of the ship in order to identify 'substandard ship'. Taking into account the previous major incidents (e.g. *Nakhodka*, *Erika*, *Prestige*), the option could be to define as substandard a ship which is [] years of age (except [double-hulled], or [certified as CAP level 1 or 2]).

3 Review of the CLC / FC Regime

- 3.1 The above proposal provides options to review the distribution of the financial burden between shipowners and oil receivers in cases where the Supplementary Fund pays compensation as well as to enhance the functioning of the compensation regime in respect of incident prevention.
- 3.2 The ideas behind this proposal could be applied to the review of the current CLC/FC regime, provided a consensus were to be reached regarding this proposal for the Supplementary Fund and the number of the Contracting States to the Supplementary Fund Protocol increases. As a matter

of course, an agreement should be reached on the actual financial burden sharing under the current CLC/FC regime.

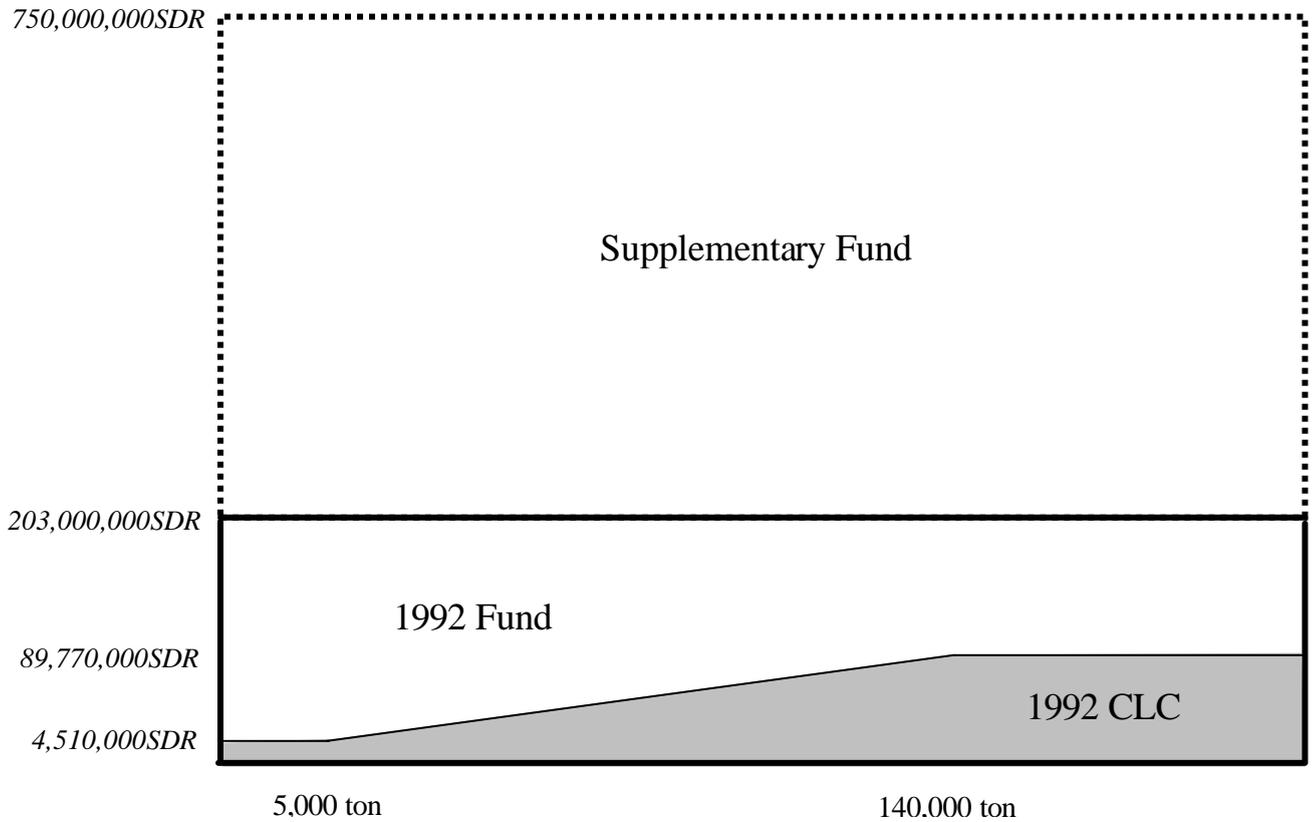
3.3 The application should be as follows:

- the limit of liability of the shipowner under the 92 CLC should be increased if the incident is caused by a substandard ship
- the level of additional liability would be established taking into account the actual financial burden sharing
- the definition of ship would be the same as above
- an amount equal to the additional liability of the shipowner should be levied in addition to the usual contributions, as additional contributions to the 92 Fund from oil receivers who charter substandard ships.

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ANNEX

(1) Cases within 1992 CLC / Fund Regime (including incidents by sub-standard ships)



(2) Cases where the Supplementary Fund provides compensation

