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COMPENSATION
FUND 1992

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WORKING GROUP
Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

SHIPOWNERS' LIABILITY

Submitted by Australia, Canada, Finland, New Zealand, Portugal and the United Kingdom

Summary:	<p>The 7th meeting of the 3rd Intersessional Working Group considered proposals to amend the international oil pollution compensation regime.</p> <p>The meeting concluded with a request for interested delegations to submit integrated proposals to the 8th meeting with accompanying treaty text, or the principles to be addressed by treaty text, with a view to focussing the discussions on a limited number of options. This paper presents treaty text, with explanatory notes, for options to amend shipowners' liability.</p>
Related document:	92FUND/WGR.3/19/1
Action to be taken:	See section 4

1 Introduction

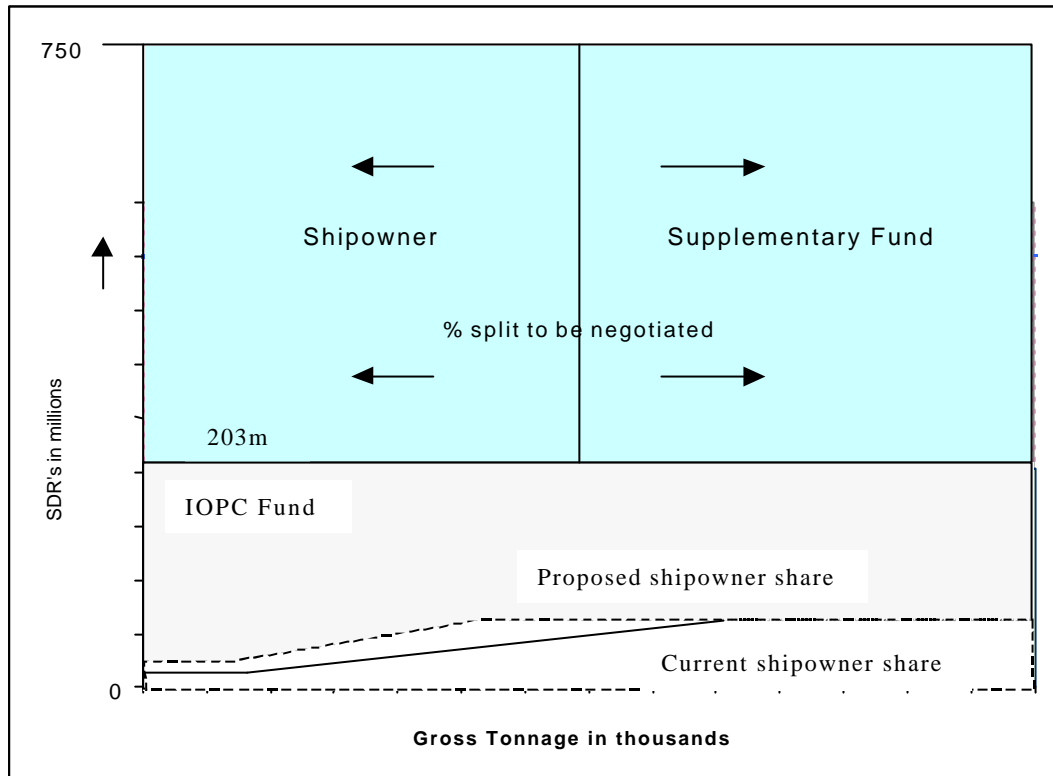
- 1.1 The 7th meeting of the Working Group considered various amendments to the 1992 Civil Liability and Fund Conventions, with particular emphasis on the balance of financial responsibility between the shipowner and contributors.
- 1.2 There was sufficient momentum in the Working Group to continue discussions intersessionally, and to convene a further meeting of the Group in May 2004. This continues to meet the terms of the Resolution adopted at the Supplementary Fund Protocol Diplomatic Conference to consider enhancements to the 1992 Conventions and to place a high priority on the work of the review.
- 1.3 The key issues for consideration are, undoubtedly, the extent of shipowners' liability and the substandard transportation of oil. The 7th meeting of the Working Group considered four papers containing various proposals to amend shipowners' liability.
- 1.4 The sponsors of each of those papers presented proposals on the basis that they would not affect or prejudice claimants seeking compensation for pollution damage under the existing system. The

co-sponsors of this paper believe that the prompt compensation of victims remains the primary purpose of the CLC/Fund system, and that the proposed improvements will help to meet this objective.

- 1.5 The two overriding goals of the co-sponsors are:
 - (a) to ensure the international viability of the regime and to introduce some necessary improvements in the operation of the regime to secure its long term future; and
 - (b) to address the potential financial imbalance of the system.
- 1.6 The co-sponsors submit two basic options on shipowners' liability for discussion that take account of the proposals submitted to the 7th meeting.
- 1.7 The co-sponsors recognise the need for the Working Group to narrow its focus on a limited number of options for consideration and, in response to the Chairman's request at the 7th meeting of the Working Group, have submitted accompanying treaty text on the shipowner liability options.
- 1.8 Whilst the proposals contained in this document represent a comprehensive revision, the co-sponsors do not believe that the proposals constitute *significant* drafting changes to the existing Conventions.
- 1.9 The co-sponsors recognise that the transition from the present system would give rise to a number of subsidiary and consequential issues. However, the co-sponsors firmly believe that these can be dealt with in due course, and should not distract the focus of the Group on consideration of the need to amend the existing regime.
- 1.10 It is not the intention of the co-sponsors to impose a new regime on States wishing to remain a contracting State to the 1969 Civil Liability Convention, or the 1992 Conventions. The adoption of the 1992 Conventions did not, initially, prevent States from remaining contracting States to the underlying 1969 and 1971 regimes, and the co-sponsors believe that this should remain the case in respect of the existing regimes if a decision is taken to develop a new treaty.
- 1.11 The views expressed in this paper should not be taken as representing the formal position of the sponsoring delegations or their governments on any item discussed. The options presented in this paper are for illustrative purposes only.

2 Extent of Shipowners' Liability

2.1 **Option (a): Increased level of shipowner liability for smaller oil tankers, and shipowner liability above the 1992 Fund**



Proposed Treaty Text: Amendments to CLC to allow increased level of shipowner liability for smaller tankers, and shipowner liability above the 1992 Fund

Article V paragraph 1 of the 1992 Liability Convention is replaced by the following text:

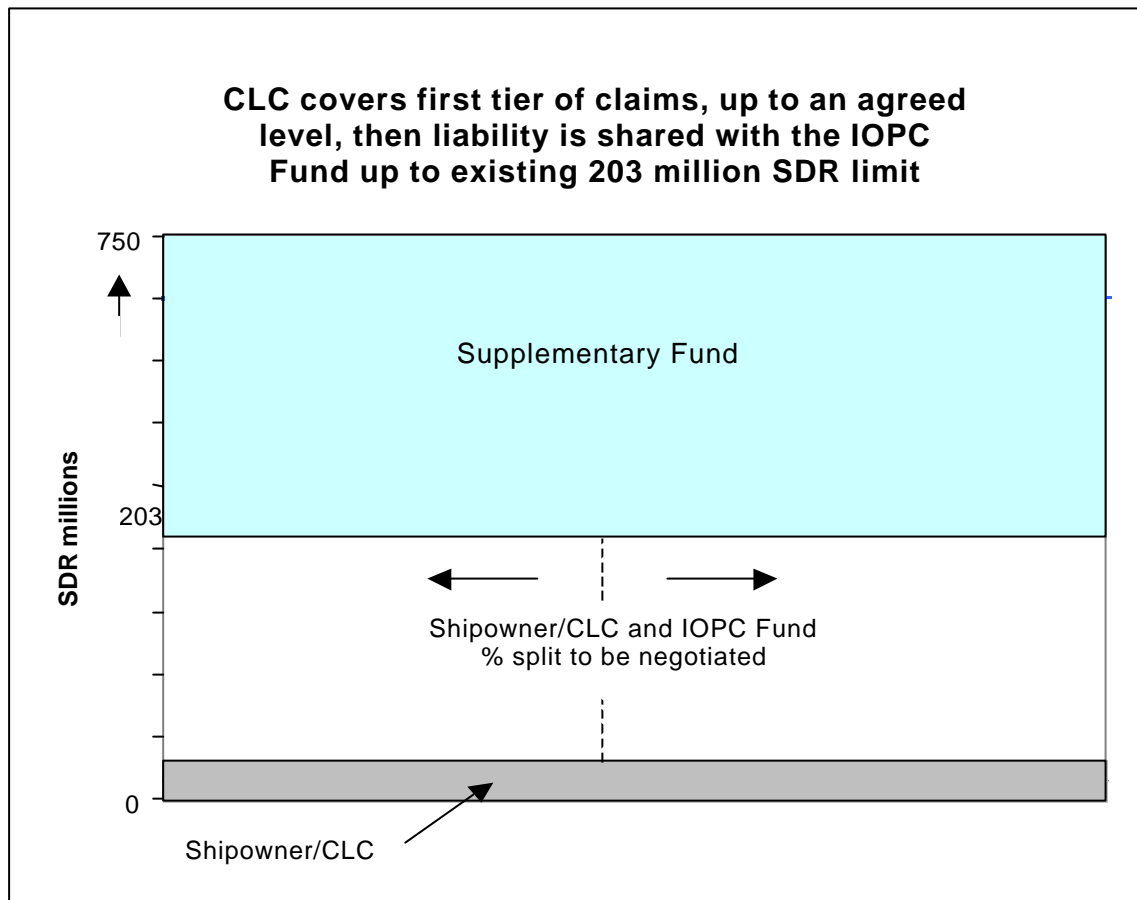
“Subject to paragraph 1 bis, the owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

- (a) *[..] million units of account for a ship not exceeding [x] units of tonnage;*
- (b) *for a ship with a tonnage in excess thereof, for each additional unit of tonnage, [y] units of account in addition to the amount mentioned in sub-paragraph (a);*

provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account.

1 bis. In addition to the limit of liability under paragraph 1 above, the owner of a ship shall be liable to pay to the Supplementary Fund [z] % of any contributions levied for that ship’s incident under to Article 11 (1)(i)(b) of the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (“Supplementary Fund Protocol”)

2.2 Option (b): Shared Liability between the shipowner and contributors



Amendments to the 1992 Civil Liability Convention to provide for Shared Liability between the shipowner and contributors

Article V paragraph 1 of the 1992 Liability Convention is replaced by the following text:

“Subject to paragraph 1 bis, the owner of a ship shall be entitled to limit his liability for claims falling under this Convention in respect of any one incident to [x] million units of account.

1 bis. In addition to the limit of liability under paragraph 1 above, the owner of a ship shall be liable to pay the 1992 Fund [y] % of any contributions levied for that ship’s incident under to Article 12 (1) (i) b and c of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (“1992 Fund Convention”).

Article VII of the 1992 Liability Convention is amended as follows:

Paragraph 1 is replaced by the following text:

“The owner of a ship registered in a Contracting State shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Article V, paragraphs 1 and 1 bis to cover his liability for pollution damage under this Convention.”

Paragraph 11 is replaced by the following text:

Subject to the provisions of this Article each Contracting State shall ensure, under its national legislation, that insurance or other security to the extent specified in paragraph 1 of this Article is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore terminal in its territorial sea, if the ship actually carries any oil in bulk as cargo.”

In Article VII paragraphs 8 and 12:

References to paragraph 1 shall be amended to read paragraphs 1 and 1 bis.

3 Explanatory Notes on Options (a) and (b)

Option (a)

- 3.1 Option (a) combines the proposals considered at the 7th Working Group meeting that contained the introduction of a higher minimum limit of liability for vessels up to a given tonnage, and shipowner involvement in the Supplementary Fund.
- 3.2 The proposal does not seek to increase the existing maximum shipowners' limit of liability.
- 3.3 The proposal introduces a more progressive tonnage increase than that contained in the 1992 CLC regime in order that the maximum limit of shipowners' liability (currently 89.9 million SDRs) is reached at a lower tonnage than the existing 140 000 gross registered tonnes.
- 3.4 This takes account of the fact that tonnage is not necessarily the major factor in the total cost of claims arising from an incident governed by the regimes. An increase in the shipowner's minimum limit would ensure that there is not such a wide range between the minimum (from 4.51 million SDRs) and maximum (89.77 million SDRs) shipowners' limit of liability, based on the tonnage of the vessel. This also recognises the International Group of P&I Clubs' development of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA), and reflects that approach as an integral part of the system. The introduction of a higher limit for smaller tankers, equivalent to the amounts under STOPIA, within the framework of the Conventions would ensure legal certainty for Contracting States and claimants in all incidents, and would not be dependant on voluntary industry agreements.
- 3.5 The proposal also addresses the potential imbalance created by the entry into force of the Supplementary Fund Protocol. Discussions in the 1992 Fund Executive Committee indicate that the Protocol is due to enter into force in the second half of 2004.
- 3.6 The co-sponsors note that it was originally the intention of the proponents of the voluntary third tier system to involve the shipowner in a Supplementary Fund. The co-sponsors refer to document 92FUND/WGR.3/5/1 (co-sponsored by Australia, Canada, Denmark, the Netherlands, Norway, Sweden and the United Kingdom) discussed at the 2nd meeting of the Working Group in March 2001.
- 3.7 This third tier of compensation was intended to involve a first layer of compensation to be paid by shipowners, with a second layer to be paid by oil receivers. However, the involvement of both industry sectors could not be incorporated into the Supplementary Fund Protocol because of the need to deal with treaty law issues. In view of the political necessity to take prompt action following a number of high profile, serious oil tanker incidents, the optional third tier proposal under the Supplementary Fund Protocol proceeded on the basis that it would be financed entirely by oil receivers.

Option (b)

- 3.8 This option replicates option 2 contained in document 92 FUND/WGR.3/19/1 at the 7th meeting of the Working Group, and entails a clearer sharing of responsibility between the shipowner and the contributors through the system, above an initial layer of liability solely met by the shipowner.
- 3.9 This option seeks to remove the sliding scale limit of liability, and introduce a percentage share of the costs of all incidents, above an initial shipowner layer of liability, to be met by the Fund and shipowner. This percentage split would not be negotiated on an incident-by-incident basis, but finalised at a Diplomatic Conference.
- 3.10 The initial layer of shipowner liability would be established at a negotiated level by a Diplomatic Conference. The co-sponsors do not envisage that this level would be in excess of the level identified by the International Group of P&I Clubs in the Small Tankers Agreement (STOPIA). This would ensure that the Fund remains detached from smaller incidents currently settled by shipowner and insurer.
- 3.11 This option offers a more visible burden sharing of the costs between the shipowner as the party primarily responsible for the quality of their ships, and the oil contributors as the parties with the greatest economic interest in the transportation of the cargo.
- 3.12 This option also recognises that spills from small vessels can be as expensive as spills from larger vessels, and that the economic and environmental consequences of all incidents above a lower level will be borne, in part, by the oil cargo interests.
- 3.13 The proposal in option (b) does not change the Supplementary Fund.

4 Action required

- 4.1 Under both options it would be necessary to consider how the changes proposed to the 1992 Civil Liability Convention could be reflected in the Supplementary Fund Protocol and 1992 Fund Convention in order to ensure that there is no treaty conflict.
 - 4.2 However, in summary, the co-sponsors believe that the options put forward in this paper provide a suitable basis from which discussions on the review of the regime can proceed. By proposing these two models for revision, the question of whether or not changes are made to the Supplementary Fund Protocol is kept open. There is scope within either model to incorporate changes to the Supplementary Fund Protocol, if there is a will within the Working Group to proceed in this direction.
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