



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

THIRD INTERSESSIONAL  
WORKING GROUP  
Agenda item 2

92FUND/WGR.3/8/5  
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## REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

### SHIPOWNER'S LIABILITY

**Submitted by Australia, Canada, France and the United Kingdom**

***Summary:***

At the second meeting of the Third Intersessional Working Group in March 2001, most of those who spoke were in favour of establishing a voluntary "opt-in" third tier, on top of the existing CLC/IOPC regimes. However, many of those speaking favoured a third tier funded entirely by oil receivers, with no contributions from shipowners. The co-sponsors of this document believe that a discussion paper on the options that might include contributions from shipowners would provide a dimension to the discussion that has not been covered elsewhere, and provide a focus for the work that should be considered after the initial "third tier" proposal is forwarded to the Legal Committee by the Assembly.

***Action to be taken:***

The Working Group is invited to consider the issues raised in this paper.

### **1 Introduction**

- 1.1 The co-sponsors of this paper see the development of a third tier level of compensation to the 1992 Fund as being of paramount importance. They also believe that there is a strong case for maintaining the concept of sharing the liability between shipowners and receivers. This paper does not set out to determine the degree to which the liability should be apportioned but rather to establish a means of overcoming the problems associated with providing additional liability for shipowners. It is intended that this paper gives an early view of the possible direction of the debate in the second phase of the work of the Third Intersessional Working Group after the initial "third tier" proposal is forwarded to the Legal Committee by the 92 Fund Assembly for consideration by a Diplomatic Conference.
- 1.2 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.

- 1.3 At the second meeting of the Third Intersessional Working Group in March the delegations of Australia, Canada, Denmark, the Netherlands, Norway, Sweden and the United Kingdom submitted a paper (92FUND/WGR.3/5/1) which, amongst other issues, considered a voluntary "opt-in" tier on top of the existing IOPC 1992 Fund consisting of two layers:

Layer 1: would establish higher limits of compensation paid by the shipowners,

Layer 2: would establish a supplementary fund paid by the receivers of oil.

- 1.4 At the second meeting of the Third Intersessional Working Group in March 2001 the majority of delegations that spoke expressed support for establishing an optional supplementary tier to the existing CLC and IOPC Fund regimes. This involved a supplementary tier funded entirely by oil receivers with no perceived contribution from shipowners. However, the issue of shipowners' contribution to the supplementary tier could be further explored. It is arguable that it will be harder to maintain the current 'mutuality' of the CLC/Fund regime if only cargo interests are responsible for the funding of the Third Tier - this could have longer term detrimental consequences for the regime.
- 1.5 On the other hand, any attempt at this stage to develop a shipowner component in the third tier, would almost certainly raise a number of complications, and could result in an unacceptable delay in the resolution of an interim solution that would at least meet the needs of the States which require an early and workable solution.

## **2 The case for shared responsibility**

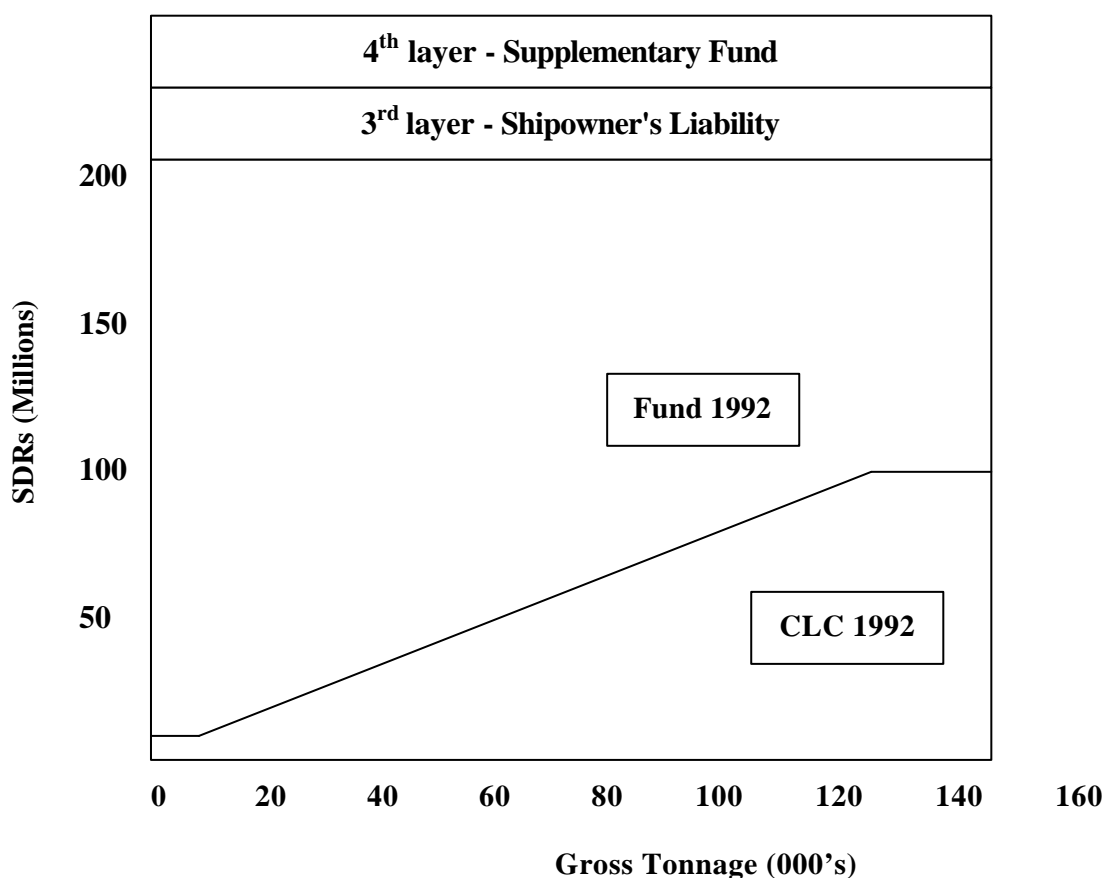
- 2.1 This document proposes some options for seeking to meet concerns of those who wish to maintain the present balance between shipping and oil interests in the international regime, particularly those States intending to move to the Third tier. Upsetting the concept of shared responsibility in the Third tier could weaken the underlying principles behind the international compensation regime, and the subsequent balance of risk between the shipowner and cargo interests.
- 2.2 Accordingly, the co-sponsors of this paper submit the following proposals for consideration by the Working Group::

## **3 Options**

- 3.1 **Option 1 (Voluntary):** At a recent informal meeting to discuss the third tier 'supplementary fund', the representative of the International Group of P&I Clubs presented a proposal outlining a 'voluntary' limit of liability for shipowners/insurers at the lower end of the scale of liability under the 1992 CLC regime. This 'voluntary' limit would apply to those States parties to the third tier only. Although the Clubs did not propose a figure for this limit, OCIMF have stated in their paper on the issues which could merit further consideration that the limit of liability for "small ships" should not be less than 20 million SDRs.
- 3.2 Essentially, this proposal would provide for an increase in the CLC limit for incidents involving small tankers.
- 3.3 This proposal would, from the outset following the introduction of a third tier supplementary fund, provide a more balanced approach to the sharing of liability for incidents occurring in third tier states between receivers and shipowners for smaller incidents and in all incidents in such states would provide a more equitable distribution of liability between shipowner and cargo owner interests. Option 1 may provide a short-term solution for those States who prefer the idea of 'shared' liability under the proposed third tier. In the long term however, a 'voluntary' regime may not be a complete solution.
- 3.4 **Option 2:** Table 1 shows the additional layer of shipowners' liability as a 3<sup>d</sup> layer of liability in the 3<sup>d</sup> tier, as initially proposed in document 92FUND/WGR.3/5/1 co-sponsored by Australia,

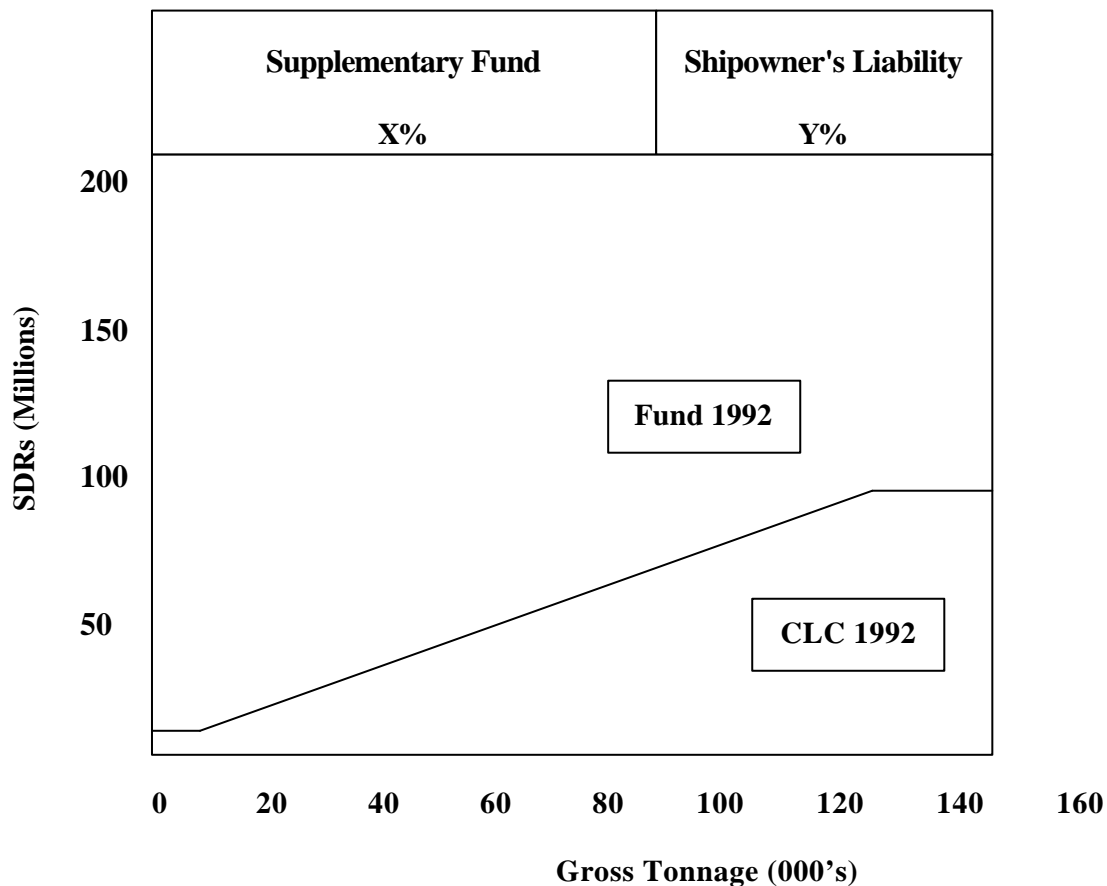
Canada, Denmark, the Netherlands, Norway, Sweden and the United Kingdom. This approach would effectively provide a four-layer system, with a 3<sup>rd</sup> tier split between receivers and shipowners, similar to the 1992 regime. For those States party to the 3<sup>rd</sup> tier, this would increase the limits of liability for both CLC and Fund regimes. Whilst the overall maximum amount would not differ from that presently envisaged (we acknowledge that a figure has yet to be discussed for the supplementary fund), the initial burden of any limit set above the 1992 Fund limit for those States parties to the third tier would be met by the shipowner, up to a limit. Above this limit the 3<sup>rd</sup> tier 4<sup>th</sup> layer, as provided by the receivers, would meet the remaining compensation costs. This proposal would not work any differently to the present regime under the 1992 Protocols.

**Table 1.**



- 3.5 **Option 3:** Table 2 shows an alternative means of meeting the shipowners liability which would apply in tandem with the receivers' liability as part of a 3<sup>d</sup> tier above the 1992 Fund limit. Essentially, if any compensation costs were required above the 1992 Fund limit from States party to the 3<sup>d</sup> tier these would be met by both the shipowner and from the receivers contributions at the same time, rather than any extra burden being placed, initially, on one single party. Although this deviates from the premise of staged liability behind the 1992 regimes it maintains the principle that the shipowner and the oil receivers are both liable for any compensation costs in excess of the 92 Fund limit, although not necessarily for the same amount.
- 3.6 The percentages to be shared by the shipowner and receivers have been left blank for the present. Option 3 may be preferred by those Member States that hold that by the time the Third tier would need to engage it would no longer be appropriate to have staged contributions from shipowners/insurer and receivers.

Table 2.



- 3.7 **Option 4:** The development of a third tier of compensation, with or without a shipowner's layer, should not prevent any future revision of the 1992 CLC regime. The co-sponsors recognise that the increases adopted by the IMO Legal Committee last year addressed a significant concern about the coverage under the current 1992 CLC/Fund regime. However, the Working Group has yet to consider in detail several issues that, if taken forward, would themselves require a revision of the 1992 CLC/Fund regime, and this will provide the opportunity to also update the limits of liability.

#### 4 Conclusion

The Working Group is invited to consider the issues raised above and to comment and decide as appropriate.