



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 3

92FUND/WGR.3/2
20 June 2000
Original: ENGLISH

REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

PROPOSALS BY THE DELEGATIONS OF GERMANY AND IRELAND
AND THE OBSERVER DELEGATION OF INTERTANKO

Note by the Director

<i>Summary:</i>	Three proposals of issues which could merit further consideration have been received by the Director.
<i>Action to be taken:</i>	Note the proposals to be included in the Working Group's list of issues worthy of further consideration.

1 **Introduction**

- 1.1 At its 4th extraordinary session held in April 2000 the Assembly agreed that it would be appropriate to consider whether, in the light of experience, the international compensation regime established under the 1992 Civil Liability Convention and the 1992 Fund Convention needed improvements in order to meet the needs of the international community. To this end the Assembly decided to establish an intersessional Working Group with the following mandate:
- (a) to hold a general preliminary exchange of views, without drawing any conclusions, concerning the need to improve the compensation regime provided by the 1992 Civil Liability Convention and the 1992 Fund Convention;
 - (b) to draw up a list of issues which could merit further consideration in order to ensure that the compensation system meets the needs of society; and

- (c) to report to the Assembly at its 5th session, to be held in October 2000.
- 1.2 The Assembly decided that the Working Group would meet on 6 July 2000 in connection with the session of the Executive Committee to be held during that week.
- 1.3 In the light of the difficulties which some delegations might face in attending the session in July, States and Organisations were invited to submit proposals to the Director by 1 June 2000 of any issues they wished to be included in the list referred to in paragraph (b) of the mandate. It was agreed that any such proposals would be included in the Working Group's list.
- 1.4 The Director has received such proposals from the delegations of Germany and Ireland and from the observer delegation of INTERTANKO.

2 Proposal by Germany

The German delegation shares the view that the international liability and compensation regime established by the 1992 CLC and the 1992 FC for this purpose have to be considered as one consolidated regime. Therefore, the Working Group should study issues which relate to both instruments as well as issues which are limited to one of these instruments only. A list should be established of all relevant issues where past experience has shown shortcomings of the legal instruments in force. As such the German delegation identifies the following major groups of concern to be studied in the Working Group.

1 Ranking of claims

Recent practice has shown that in cases where the amount of admissible claims against the Fund might exceed the aggregate amount of compensation payable under the 92 FC there is no legal basis for hardship payments to suffering individuals, since under the present CLC and FC regime all admissible claims are ranked equally, and a final (and only proportional) payment cannot be made until all claims have been settled.

A ranking in limitation regimes is not unusual. In the Strasbourg Convention on the Limitation of Liability for Inland Navigation Vessels, 1988 (CLNI) and the Geneva Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail, and Inland Navigation Vessels, 1989 (CRTD), for example, claims for loss of life and personal injury are privileged. If the claims for personal injury exceed the limitation amount for such damage these claims compete on an equal basis with all other claims to be compensated from a second limitation fund established for claims other than for personal injury. For CLC and FC it might be considered whether it is possible to give preference to such claims of individuals and entities established under private law for which the claimant cannot gain compensation other than from the owner, his insurer or the IOPC Fund. This would provide a legal basis of full and rapid payment of this sort of claims which have been in recent years a source of permanent concern.

2 Uniform application and practice of CLC and FC

The CLC creates an exclusive and uniform liability law for oil pollution damage. Recent experiences have shown that a uniform application and practice is essential for the viability of the system but that this has not yet been achieved on all levels. Improvements seem to be possible in the national implementation law of States Parties to the conventions as well as in the international stage.

National legislations have to be requested, if they have not yet done so, to separate legal proceedings for oil pollution damage under the CLC and the FC from all claims and legal proceedings concerning other civil, criminal and administrative law issues resulting from an oil pollution damage.

To establish a uniform application of the Fund Convention the IOPC Fund undertook considerable and successful efforts culminating in the development of criteria for the admissibility of claims. But the need to develop these criteria proves that by itself a uniform application of the uniform liability and compensation law laid down in the CLC and the FC in the State Parties is not guaranteed. This is due to the fact that national courts are exercising supreme jurisdiction over contested claims for oil pollution damage and do so usually within the understanding of their general national compensation law. On the other hand, it cannot be left out of sight that the operation of the IOPC Fund could easily be compared with the operation of a mutuality for which equal treatment is one of the elementary factors of its existence. For this reason it is suggested that the Working Group studies the question of whether the legal framework for securing a uniform application of the CLC and the FC can be strengthened. Two aspects have to be taken into account. One is the interdependency between the CLC and the FC, which recently became obvious while studying the definition of "ship" in Article I (1) of the CLC. The other aspect calls courts to take into regard not only this interdependency but also the fact that the IOPC Fund operates on a basis of international solidarity and mutuality which has its influence on the interpretation of these conventions as well. It might be recalled that other modern international instruments contain expressive provisions for such purpose.

3 Sanctions for Missing Oil Reports

The IOPC Fund has acknowledged several times that there are no effective sanctions in the FC for missing oil reports, while it is obvious that timely and reliable oil reports are essential for operating the IOPC Fund. As long as the FC contains no effective provisions in this respect, it is suggested that State Parties, if they have not yet done so, include in their national implementation law a provision which allows the competent authority which certifies the oil reports to make an estimate if a company fails to report in due time.

By amending the FC it could be considered whether the IOPC Fund should be authorised to invoice such companies on the basis of its own estimate. Another possible sanction could be that in the case of pollution damage claims (for clean-up costs and preventive measures) from public entities in State Parties with missing oil reports, such claims would not be accepted.

4 Dissolution and liquidation

As the situation of the 1971 IOPC Fund has shown, the provisions of Articles 41 to 44 of the 1971 FC [articles 34 to 37 of the 1992 FC Prot] are totally insufficient and ineffective for the dissolution, transition and liquidation of an entity such as the IOPC Fund. It has to be noted that the provisions for entry into force and for termination of the FC do not properly correspond. For operating the Fund system, more important than any number of State Parties is the total quantity of contributing oil. It could be considered whether termination should take effect when the total quantity of contributing oil falls below [300] million tons of contributing oil without any reference to any number of State Parties. For further consideration it is suggested that in a comparative way the basic rules of insolvency, dissolution and liquidation of an insurance mutuality should be studied.

3 Proposal by Ireland

Ireland considers that any assessment of the adequacy of the compensation regime should have regard to the role of the regime in the wider sphere of the protection of human life and health and of the marine environment and the shared aspirations of Governments and maritime communities and interests to bring about improvements in that respect.

In the circumstances Ireland suggests that the following issues should be included in the assessment:

- Payments (arrangements) – is the regime causing undue delay? Can arrangements be improved?
- Payments (levels) – are they realistic? (it is noted that a proposal to increase levels is to be considered by the IMO Legal Committee in October 2000)
- Prevention – does the regime inhibit preventive measures? Can this be improved?
- Co-operation (with shipowners and others) – can this be improved?

Ireland considers that efforts should in the first instance be made to effect improvements through the more effective implementation of the existing instruments rather than the introduction of new measures.

4 Proposal by INTERTANKO

We have registered serious concern among tanker owners following the clarification of the Fund Convention's (and CLC's) apparent non-application to offshore craft in many cases and in certain circumstances conventional tankers. We at INTERTANKO take the principle view that oil spills caused by tankers to the greatest degree possible should be covered by the international oil spill liability and compensation regimes provided through CLC and the FC. Although national or regional schemes in many cases provide cover where CLC and the FC do not apply this is not true in all jurisdictions.

We would thus welcome a discussion of how the CLC and FC coverage of offshore craft can be expanded and whether any new financing mechanisms would be necessary or opportune in efforts to facilitate such an expansion.

5 Action to be taken by the Working Group

The Working Group is invited to take note of the proposals by Germany, Ireland and INTERTANKO and, as agreed by the Assembly, to include these issues in the list to be drawn up in accordance with item (b) of the Working Group's mandate.
