



## REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by INTERTANKO and the International Chamber of Shipping (ICS)

**Summary:**

INTERTANKO and the International Chamber of Shipping (ICS) support the recently revised international regime for liability and compensation for oil spills. The regime with its substantially higher levels of compensation (and the optional Supplementary Fund), which is truly international in its adoption is in the best interests of the victims of oil spills worldwide. INTERTANKO and ICS also support the principle that there should be an equal (50:50) sharing in the cost of claims between shipowners and receivers. Furthermore, the Associations support the elimination of the substandard transportation of oil.

**Action to be taken:**

The Assembly is invited to take note of this document during its deliberations on whether the current regime which has already been substantially updated requires further revision.

- 1 This document is made in support of the current international regime for the liability and compensation for oil spills, which has already been substantially revised by the increases in the levels of compensation available through the 1992 Civil Liability Convention (CLC) and 1992 Fund Convention (FC) and by the 2003 Supplementary Fund Protocol, which entered into force on 3 March 2005. We feel it is important to reflect on the elements of this regime which have attracted some 90 States to join it.
- 2 The regime was designed to provide a universally attractive regime for compensating the victims of oil spills recognising that there should be a sharing in the cost of spills between shipowners and oil receivers. Those entrusted with the drafting devised a regime that from the perspective of the victims of an oil spill was straightforward and effective. It was also important that the regime should be attractive to many States worldwide. Here again the regime succeeded with some 90 States adopting it. The principal concerns, we suggest, of the victim of an oil spill are how much compensation is available and how quickly the compensation is available. As a result of the *Erika* and *Prestige* incidents it was clear that through the passage of time the limits of compensation available had become outdated. INTERTANKO and ICS supported the 50% increase in the limits that took effect in November 2003. For some States the increased limits of SDR 8.77 million (US\$130 million) under CLC and, under the FC, SDR 203 million (US\$293 million) (including CLC) were not sufficient. Accordingly, States agreed upon an optional third tier or Supplementary Fund (SF), which would take the maximum amount of compensation available up to SDR 750 million (US\$1 083 million) (including CLC and FC). INTERTANKO and ICS supported this development to the regime. This solution of having an optional layer of compensation available allowed the broad support for the regime to be maintained.

- 3 The current regime has certain key characteristics which we feel it is important to keep in mind when discussing the merits of documents that call for a new regime or an opening up of the Conventions:

*Key features of the existing regime*

- Channelling of liability to the registered owner of the ship irrespective of fault.
  - Strict but limited liability for the registered owner.
  - Owner's right to limit liability is lost if it is proved that the spill was caused by *'his personal act or omission, committed with intent to cause such damage, or recklessly and with knowledge that such damage would probably result'*.
  - Shipowners have paid over 90% of all claims by number without any call on the FC
  - If compensation under CLC is insufficient to meet claims then a further layer of compensation under the FC is available which is financed by oil receivers and if the spill occurs in a State that is a party to the Supplementary Fund a further layer of compensation is available.
  - The statistics to date show an overall 50:50 sharing of the cost of claims between owners and receivers.
  - The IOPC Fund can take recourse action if damage is caused intentionally or recklessly.
- 4 We note the concern that the financing of the Supplementary Fund by oil receivers could upset the balance in the sharing of the cost of claims between shipowners and oil receivers. Consequently there is an ongoing discussion about how to address this issue. INTERTANKO and ICS remain firmly committed to the principle that the international regime should deliver an equal (50:50) sharing in the cost of claims between shipowners and oil receivers, and are committed to working with States to ensure the continuance of the current international regime.
- 5 In the wake of the *Erika* and *Prestige* incidents there was a heightened sensitivity and a belief by some States that the international regime and the shipping industry in general had let them down. These concerns were taken to heart by the shipping industry and maritime nations. In addition to the revisions that have been made to the international liability and compensation regime for oil spills, States will recall the response of the International Maritime Organization (IMO) and the shipping industry:
- The accelerated phase-out of single hull tankers.
  - The banning of the carriage of heavy fuel oils in single hull tankers.
  - Massive investment in new tonnage.
  - Introduction of Conditional Assessment Scheme (CAS) for all tankers over 15 years (this covers hull strength).
  - Pressure on port state control to better target sub-standard tonnage rather than operate on an arbitrary quota system.
  - Move by IMO towards flag state audits.
  - Increasingly vigorous vetting schemes by various organisations including the oil majors.
  - The International Group of P&I Clubs' response to the Report 'The Removal of Insurance from Substandard Shipping'
- 6 It is universally accepted that all elements in the industry, the regulators and the regulated alike, must play their part in seeking to ensure that there is no substandard transportation of oil. However, INTERTANKO and ICS remain of the view that the liability and compensation regime is not the appropriate vehicle for combating the substandard transportation of oil. While we do of course welcome any ancillary beneficial effect that the regime may have on safety and quality, the unfortunate consequence of amending the Conventions to include further specific safety and quality incentives would be fragmentation of the system, with different States parties to different 'editions' of CLC and FC. More productive, we believe, is the proposal of the International Group of P&I Clubs that an informal working group be established to consider further measures that could be

taken by all parties in the chain of responsibility to address the substandard transportation of oil. Notwithstanding the expertise of the IOPC Fund with respect to issues of certification, we also support the view most recently expressed in 92FUND/A.10/7/6 (submitted by Greece) that this issue would be more appropriately addressed under the auspices of IMO.

- 7 A number of States have advocated that the 1992 Fund third intersessional Working Group should continue and that it should be instructed to develop treaty text on certain housekeeping/technical issues, while at the same time allowing for discussions to continue on whether the Conventions should be revised to address the sharing of compensation between the shipping and oil industries (92FUND/A.10/7/5 submitted by Australia et al). It is important to emphasise that this would entail a new protocol to the regime and would therefore inevitably lead to a fragmentation of the regime and damage to its universal appeal. This would not only be to the detriment of claimants, but also of the industry, which is anxious to be seen to be responding promptly - in terms of compensation payments - to incidents. Accordingly, the shipping industry remains opposed to revision of the Conventions to address these technical points (some of which have already been the subject of lengthy debate (definition of 'ship') and others of which are widely recognised to be insoluble (uniform application of conventions)).
  - 8 On the issue of sharing, the shipping industry supports the proposals made by the International Group of P&I Clubs to address the matter by means of a voluntary binding agreement. This would not only avoid fragmentation of the existing system but could also be introduced immediately and thereby dispense with the need for a lengthy revision and ratification process. The Clubs' proposals, which are put forward as an alternative to revision, are of course based on the current system and therefore could not be maintained if the course of action recommended by Australia et al was followed.
  - 9 We remain convinced that the current regime has served the victims of oil spills well and that with the new limits of compensation available it will continue to do so. Consequently, we agree with and support those States that are opposed to a revision of the Conventions.
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