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COMPENSATION
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THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

AMENDMENTS TO THE CIVIL LIABILITY AND FUND CONVENTIONS

Document presented by Italy

Summary:

Italy expresses concerns about the current system of burden sharing for accidents covered by CLC and 1992 Fund and the imbalance in the apportionment of liabilities among the Member States, resulting in some countries being penalised more than others.

Italy believes that the regime needs to be revised to address the key issue of a more equitable balance between shipowners and all the subjects interested in the cargo, foreseeing the application of a minimum entrance fee.

Action to be taken: See paragraph 3.

1 Introduction

- 1.1 The recent environmental disasters caused by the sinking of M/Ts *Erika* and *Prestige* indicate once again the need for an in-depth reflection on the legal system that regulates mechanisms of contribution and compensation for damages under the 1992 Civil Liability and Fund Conventions.
- 1.2 The huge cost of the economic, social, financial and environmental consequences of accidents at sea has meant, for contracting countries, the need to be able to meet, ever more frequently, the requests for compensation for damages, in amounts progressively higher and more elevated by far than the limits calculated, up to the point to require a continuous increase of the financial limits originally agreed, demonstrated recently by the setting up of the Supplementary Fund.

2 Considerations

- 2.1 Moreover, if we consider such progressive adaptation of a financial nature, we shall see that the original system of sharing responsibilities has not changed, nor has the system of contributions, with greater impact on a restricted number of countries (the major contributors). However, Italy

believes that it will not be possible for them to sustain forever and ever such system of penalties; in fact, having noticed for a long time a marked imbalance in the Fund's financing ways, Italy requests that this should correspond more fully to the criteria not only of efficiency, but also of equity, ensuring full accountability in clearly addressing the share of the responsibilities and the financial burden related to compensation procedures.

- 2.2 Only by satisfying these needs, will the present system continue to be 'politically sustainable' and shall continue to function adequately, avoiding the risk of being gradually weakened, due to the Contracting States' dissatisfaction.
- 2.3 Experience stemming from the *Prestige* and *Erika* accidents provide therefore the Working Group with an opportunity to carry out an in-depth analysis of the current contribution and compensation regime, in order to identify its flaws and rectify its consequences, under a global profile of 'political sustainability'

3 Proposals

3.1 *Liability of shipowners*

- 3.1.1 Based on the above considerations, a proposal has been put forward by a number of Fund Members, to be discussed during the seventh session of the third intersessional Working Group. The proposal is aimed at increasing the **liability of shipowners**, who should bear a higher percentage (yet to be negotiated) of the financial costs incurred, thus lightening the burden of the Fund contributors in the event of accidents.
- 3.1.2 This proposal merits careful consideration, firstly because it could induce shipowners to pay closer attention to the overall seaworthiness of their ships in order to reduce the risks of accidents and, secondly, it would improve the safety of the transportation of oil products.
- 3.1.3 In the delegation of Italy's opinion, however, **standing alone**, the proposal would be insufficient to redress the imbalance in the Fund contributions. All the more so since the institution of the Supplementary Fund, integrating the existing CLC and 1992 Fund and increasing - once implemented- the ceiling of coverage to 750 million of SDR, would expose member contributors to an even more marked imbalance.
- 3.1.4 Increasing only the ceiling of shipowners' liability would result in the mere shifting of the burden from one subject to another, hardly contributing to a redress of the contribution system among the Fund's Members.
- 3.1.5 Tightening financial liability only for shipowners would simply imply a transfer of a presumably minor entity for the contribution due to the Fund, and would not achieve the principal objective to be pursued, which is a meaningful and more equitable distribution of the burden.

3.2 *Liability concerning cargo owners*

- 3.2.1 For these reasons Italy, in line with what has already been pointed out during previous Working Group meetings, requests that the proposal to establish an additional tier of **liability concerning the cargo owners** (when not coinciding with the receivers), be considered beside the shipowners' and the Fund's financial liabilities.
- 3.2.2 Cargo owners (intended as the actors to whom the bill of lading is headed and different from the subjects that receive the cargo at the discharging port), through spot commercial operations, move great quantities of cargo, consequently an appropriate level of burden sharing, by means of financial guarantees or insurance cover, should be assessed and determined, in a manner at least equivalent to the ceiling established for the shipowners.

3.2.3 Only thus, the unfair imbalance currently existing among the Fund Member States would be significantly redressed, together with a more reasonable review of the shipowners' liability threshold, in accordance with a comprehensive logic of 'package'.

3.3 *Minimum entrance fee*

3.3.1 In addition, the already ventilated idea of a **minimum entrance fee** to the Fund to be established to an appropriate scale, remains a priority for the Italian Government.

3.3.2 In this context, the text of article 14 of the Supplementary Fund Protocol could be adopted mutatis mutandis, which establishes a minimum virtually received quantity of contributing oil in each Contracting State wishing to become member of the Supplementary Fund.

3.3.3 Even better it would be, taking in due account world-wide oil traffic fluctuations, not to establish a minimum ceiling of virtually received oil in absolute terms, but a membership fee fixed in a given percentage of the total amount of the financial burden to be shared.

4 Actions requested

Italy, as one of the major Fund contributors, expresses the wish that the Working Group give the proposals contained in this document its most careful consideration, both individually and globally. The aim is to reach an effective and satisfactory revision of the current system on which the international liability and compensation regime for damages related to the transportation of oil products by sea is based.
