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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

PROPOSED AMENDMENTS TO THE CIVIL LIABILITY AND FUND CONVENTIONS
THE SHIPPING INDUSTRY'S PERSPECTIVE

Submitted by the International Chamber of Shipping (ICS) and the International Association of Independent Tanker Owners (INTERTANKO)

Summary:	The shipping industry believes that increases in the levels of compensation available under the Civil Liability and Fund Conventions have been properly addressed, and that any concerns about the impact of the Supplementary Fund on the concept of equitable sharing of the costs of compensation between shipowners and cargo interests can be addressed through voluntary industry solutions. The shipping industry further believes that the international compensation regime is not the appropriate vehicle to address issues regarding substandard transportation of oil. Such issues are addressed in other international instruments developed by IMO's technical committees and nothing should be allowed to undermine the primary purpose of CLC and Fund to ensure the prompt compensation of claimants. Accordingly, the shipping industry urges States to agree that further revision of the regime is not justified.
Action to be taken:	The Working Group is urged to defer further consideration of the issues until the results of the Director's study on the costs of spills, and the industry's proposals to address equitable sharing, are available, with a view to bringing the work to an early close thereafter**.**

1 Introduction

1.1 The possible revision of the Civil Liability and Fund Conventions was originally prompted primarily by concerns on the part of some administrations about the overall amount of compensation available in major incidents. In a small number of major spills, including

Nakhodka, *Erika* and - most recently - *Prestige*, the payment of claims was delayed by the need to pro-rate payments because it was not known at the outset whether the overall compensation limit would be exceeded.

1.2 Certain administrations, as well as the European Commission, have also expressed concerns about other features of the system, such as the criteria governing the shipowners' right to limit, and the channelling of liability to the registered owner, thereby exonerating other parties in the chain from producer to consumer.

1.3 A number of further issues have been identified by some administrations as points that might be addressed if it were decided to revise the Conventions. These include the problem of non-submission of oil reports by some Member States, possible refinement of the contribution system, and the definition of 'ship'. However, it has been generally accepted that these issues would not in themselves justify revision of the Conventions.

2 Overall Amount of Compensation

The concerns about the amount of compensation available in major incidents have been comprehensively addressed. First, the Contracting States agreed in October 2000 to increase the limits of the Civil Liability and Fund Conventions according to their own terms by some 50%. The new limits came into effect in November 2003, raising the maximum shipowners' limit to SDR 90 million (approximately) and the Fund limit to SDR 203 million. Secondly, a proposal developed by the Working Group to establish an international third tier of compensation was adopted by IMO in May 2003. States that join the Supplementary Fund (third tier) will have access to a total of SDR 750 million. This optional third tier seems likely to come into force shortly for those States that elect to adopt it.

3 Limitation and Channelling

3.1 During an exchange of views at the last session of the Working Group on proposals to change the present criteria governing the shipowners' right to limitation and the present provisions on channelling of liability to the registered owner, many States recognised that the prompt compensation of claimants might be jeopardised if such proposals were pursued.

3.2 However, the possible revision of the Conventions has been kept alive primarily by concerns on the part of the oil industry about the relationship between shipowners' liability and oil receivers' contributions, and also by its belief that the regime should somehow be used to enhance ship safety and quality. These views are shared by some administrations.

3.3 ICS and Intertanko believe these arguments are misplaced.

3.4 The 1969 version of the Civil Liability Convention (CLC) contained a provision whereby the shipowners' right to limit his liability would be lost in cases where negligence could be proved. The operation of this provision led to extensive litigation and delays and when CLC was revised in 1992, the Contracting States decided to introduce a more stringent test whereby the right to limit would only be lost in cases of intentional or reckless personal acts or omissions. The 1992 amendment has had the desired effect of reducing litigation and consequent delays in the settlement of claims. Moreover, it must be noted that a sustained downward trend in the number and size of oil spills from tankers has continued after the implementation of this amendment. The argument that anything would be achieved in terms of increased safety and environmental protection by reverting to the original 1969 limitation test is flawed and runs contrary to the experience gained after the 1992 amendment. While the argument may have superficial and emotional appeal it does not reconcile with experience and statistical data.

4 Sharing the costs of compensation

4.1 ICS and Intertanko continue to accept the principle of equitable sharing of the costs of compensation between the shipping and oil industries. Figures compiled by the International Group of P&I Clubs in 2000 showed that such costs had been shared fairly equally between shipowners and oil receivers over the past decade (92FUND/WGR.3/8/3). To verify and update these figures a further study on the costs of oil spills is currently being undertaken by the Fund Secretariat.

4.2 That study, when available, will give an indication of what has happened in the past. Looking to the future, it is not possible to predict whether the third tier, to be funded solely by oil receivers, would distort the present balance because that will depend on many factors, including the number and cost of individual incidents, as well as the tonnage of the tankers involved. Crucially, it will also depend upon the location of spills since this will determine the applicable liability and compensation regime, some States having ratified CLC but not the Fund Convention.

4.3 On the other hand, the November 2003 increases in the 1992 CLC limits may be expected to have a significant impact on the current balance between shipowners and oil receivers. The shipowner alone meets the great majority of tanker oil pollution claims (some 95% of such spills historically) without recourse to the IOPC Funds. The 2003 CLC limits may be expected to result in even more claims being met by the shipowner alone.

4.4 ICS and Intertanko therefore continue to believe that time should be allowed for the effects of the 2003 increases in the limits and the impact of the Supplementary Fund to be seen before further changes are contemplated.

4.5 However, in recognition of the oil industry's concerns about the possible effects of the Supplementary Fund on the concept of equitable sharing of the costs of compensation between shipowners and oil receivers, ICS and Intertanko have supported the International Group of P&I Clubs' proposal to increase voluntarily the limits of liability for small ships under the 1992 CLC in those States which opt to join the Supplementary Fund. To that end an increase of the minimum limit for small tankers to SDR 20 million was proposed by OCIMF and accepted by the shipping industry and the Clubs.

4.6 It is reasonable to hope, on the basis of claims history, that a third tier over and above the 2003 CLC and Fund limits will rarely be called upon. Nevertheless, as an alternative to voluntarily increasing the limits for small tankers, the shipping industry is willing to explore other voluntary proposals to address the oil industry's concerns about the impact of the Supplementary Fund on the concept of sharing if that issue is also a concern to administrations. Voluntary but binding industry solutions on sharing would avoid the legal and practical problems that would arise if the Conventions were formally amended.

5 Substandard Oil Transportation

5.1 It goes without saying that ICS and Intertanko strongly support the continuing enhancement of ship safety and quality standards. That objective is absolutely fundamental to the purpose of both organisations. However, in our view it is not appropriate to attempt to adapt the oil pollution liability and compensation regime to further this end. The purpose of the CLC and Fund regime is the prompt compensation of claimants. The regime was never directed at the punishment of ship operators or cargo interests. Other specifically tailored international instruments exist to eliminate substandard shipping, not least SOLAS (including the specific provisions on ISM) and MARPOL which are directed at the enhancement of safety and environmental protection, together with classification certification, Port State Control and other inspection regimes such as oil industry tanker vetting procedures.

5.2 Technical discussions in IMO have led to the recent introduction of wide-ranging changes in the IMO tanker safety and environmental protection regimes. Particularly damaging cargoes will in future only be carried in double hull tankers. Single hull tankers are being phased out at an accelerated pace. Tanker owners have invested close to US$100 billion in double hull tankers since the early nineties and the shipping industry is continuing to address concerns regarding substandard oil transportation.

5.3 It is measures such as these which influence the quality of shipping services, not changes in the liability regime. Proposals to curtail the shipowners' right to limit his liability in certain circumstances can only encourage increased litigation and provoke delay in the prompt settlement of claims. This cannot be to the benefit of those interests which the CLC and Fund regime was set up to serve.

5.4 We share the view of most delegations at the fifth meeting of the Working Group that it is inappropriate to lower the threshold for breaking the shipowners' right to limit liability as a means of trying to improve the overall quality of shipping and that quality issues are best dealt with through other international conventions.

6 Conclusion

6.1 The Civil Liability and Fund Conventions must be ranked among the most successful treaties ever adopted by IMO. Some 90 States are parties to both Conventions. The international oil pollution liability and compensation regime established by the Conventions is strongly supported by the shipping industry and has generally served oil spill claimants well over the years. ICS and Intertanko believe that nothing should be allowed to put in jeopardy the continuation of this highly successful regime.

6.2 The adoption of the Supplementary Fund has addressed concerns about the overall amount of compensation available in major incidents. We are confident that the industry can effectively address through a voluntary arrangement with the oil industry any concerns about inequitable sharing of the costs of compensation. By contrast, any continuing discussion about a general review of the Conventions just creates confusion and uncertainty. We therefore urge the Working Group to pause until the results of the Director''s study on the costs of spills, and the industry's proposals to address equitable sharing, are available. Thereafter we believe that the Working Group's revision exercise should be drawn to an early close.