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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

COMPULSORY INSURANCE AND ITS APPLICATION FOR SHIPS BELOW THE PRESENT LIMIT OF 2 000 TONNES OF CARGO OIL

Submitted by Australia, Canada, Italy, New Zealand and the United Kingdom

Summary:

The 7th meeting of the 3rd Intersessional Working Group considered proposals to amend the international oil pollution compensation regime. Document 92FUND/WGR.3/19/2, submitted to that meeting, presented a proposal for compulsory insurance for ships below the present limit of 2 000 tonnes of cargo oil.

A minor amendment is also proposed to extend this requirement to the area referred to in Article II of the 1992 Civil Liability Convention.

This paper presents treaty text with accompanying explanatory note for this proposal.

Related documents:

92FUND/WGR.3/19/2

Action to be taken:

See section 2

1 Introduction

- 1.1 The co-sponsors support the notion put forward to previous Working Group meetings that all ships, which carry oil in bulk as cargo, regardless of the amount, should be required to maintain insurance. As presently worded, Article VII of the 1992 CLC does not require the owners of ships carrying less than 2000 tonnes of oil in bulk as cargo to insure against oil pollution liabilities at all. Incidents such as the *Prestige*, *Erika* and *Nakhodka* have shown the extensive damage that can occur by spills of relatively low amounts of heavy oil.
- 1.2 The co-sponsors propose that all vessels governed by the 1992 CLC regime that carry oil in bulk as cargo shall be required to maintain insurance or other financial security in the same way as ships carrying more than 2000 tonnes of oil in bulk as cargo are currently required to do by Article VII of the 1992 CLC. This would require two minor amendments to Article VII of the 1992 CLC.

- 1.3 At the time the 1992 Civil Liability Convention was adopted, offshore facilities were generally located in the territorial sea. In today's operating environment, oil exploration and production has proceeded further offshore into areas of the exclusive economic zone (EEZ).
- 1.4 The co-sponsors propose to reflect this expanded area of operation by amending Article VII (11) of the 1992 CLC to require vessels entering or leaving a port in its territory, or arriving at or leaving an off-shore terminal in its territorial sea, EEZ or more generally in an area referred to in Article II, paragraph (a), to carry the required insurance.

Compulsory Insurance and its application for ships carrying less than 2 000 tonnes of oil in bulk as cargo: Changes to 1992 Civil Liability Convention

Article VII, Paragraph 1 is amended as follows:

'The owner of a ship registered in a Contracting State and carrying ~~more than 2000 tons of~~ oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Article V, paragraph 1 to cover his liability for pollution damage under this Convention.'

Article VII, Paragraph 11 is amended as follows:

Either:

*'Subject to the provisions of this Article, each Contracting State shall ensure, under its national legislation, that insurance or other security to the extent specified in paragraph 1 of this Article is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, **or arriving at or leaving an off-shore terminal under its jurisdiction**, if the ship actually carries ~~more than 2,000 tons of~~ oil in bulk as cargo'*

or

*'Subject to the provisions of this Article, each Contracting State shall ensure, under its national legislation, that insurance or other security to the extent specified in paragraph 1 of this Article is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, **or arriving at or leaving an off-shore terminal in the area referred to in Article II, paragraph (a)**, if the ship actually carries ~~more than 2,000 tons of~~ oil in bulk as cargo.'*

- 1.3 The co-sponsors recognise that a number of incidents have occurred involving vessels carrying less than 2 000 tonnes of oil in bulk as cargo where the consequences have been borne directly by the Fund eg *Osung N°3*, *Milad I* and *Vistabella*. The co-sponsors do not believe that the regimes should provide shipowners with an option to refrain from maintaining insurance cover to meet their liability under the Convention, effectively providing a gap in the shipowner's financial security that subsequently has to be met solely by the Fund.

2 Recommendation

The co-sponsors recommend that the Working Group consider this proposal as part of the review of the system.
