



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

SHARING OF FINANCIAL RESPONSIBILITY

Submitted by the International Chamber of Shipping and INTERTANKO

Summary:	This document offers support for and comments on the International Group of P&I Clubs' submission contained in document 92FUND/WGR.3/25/2.
Action to be taken:	Information to be noted.

1 Introduction

The purpose of this paper is to comment on, and offer support in principle for, the document submitted by the International Group of P&I Clubs on 'Sharing the Burden' (document 92FUND/WGR.3/25/2).

2 Background

- 2.1 One of the principal topics of debate in the Intersessional Working Group has been the appropriate sharing of financial responsibility under the CLC and Fund regime between the shipping and oil industries. Studies have been conducted both by International Tanker Owners Pollution Federation Limited (ITOPF) and, more recently, by the Fund Secretariat which indicate an approximately equal historical sharing of the burden between the two industries.
- 2.2 Discussion about the overall levels of compensation available after a spill seems to have been resolved to the satisfaction of administrations by a combination of the increase in CLC and Fund limits of just over 50%, in force since November 2003, and the Supplementary Fund, now available to those States which elect to adopt it. But there clearly remains a belief on the part of some administrations that the introduction of the Supplementary Fund, funded by oil receivers, may upset the balance of financial responsibility between the shipping and oil industries. Only time will tell whether this supposition is correct.
- 2.3 The legal structure of the CLC/Fund regime (primary responsibility on the shipowner, who is strictly liable but can limit his liability, secondary responsibility on oil receivers once the shipowner's liability is exceeded) is such that the Supplementary Fund had to be imposed on the

oil industry alone. But the impact of the Supplementary Fund is purely theoretical until and unless there is a large enough spill to bring it into play.

- 2.4 Nonetheless, the shipping industry recognises that there is a perception that the concept of 'equitable' sharing has been potentially upset, and has therefore engaged constructively in discussions with its oil industry partners and the International Group of P&I Clubs on sharing the financial burden, firmly believing that agreement on this issue is infinitely preferable for all parties - not least the victims of oil pollution damage - to the uncertainties of reopening the 1992 Conventions.

3 The Clubs' Proposal

- 3.1 The International Group's proposal contains two options:

(a) STOPIA, an agreement whereby countries Members of the Supplementary Fund would see the 'small ship minimum' under CLC raised to SDR 20 million. STOPIA, which addresses the stated belief of some administrations that smaller tankers do not always contribute 'fairly' to oil spill compensation, is additional to the CLC increases referred to in paragraph 2.2 above, and will ensure that an even higher proportion of claims are met by shipowners alone. STOPIA will clearly have an impact on the overall sharing between shipowners and oil receivers.

(b) TOPIA, a similarly constructed binding agreement to indemnify the Supplementary Fund in respect of 50% of its claims.

- 3.2 ICS and INTERTANKO fully support the concept underlying this proposal, believing that it will resolve a contentious issue with speed, simplicity and transparency. A formal commitment from the International Group to stand behind STOPIA will ensure that virtually every internationally-trading oil tanker would be covered; oil receivers will benefit from the outset; there will be no disruption to the existing compensation regime and thus no disadvantage to pollution victims; and several years of potentially destructive debate about revision of the Civil Liability and Fund Conventions will be obviated. A similar mechanism would underpin TOPIA and similar advantages would result therefrom.

- 3.3 It bears repeating that the proposal is structured as a binding but voluntary measure based on the existing CLC/Fund regime. It is not, and cannot be, put forward as an interim scheme, since reopening the conventions would change its basis and negate its rationale. ICS and INTERTANKO fully subscribe to this understanding.

4 Conclusion

ICS and INTERTANKO firmly commend the principles underpinning the International Group's proposal, convinced that it represents a real opportunity to set to rest a divisive issue without the need to embark on revision of the current successful liability and compensation regime leading to a most uncertain outcome in several years' time.

5 Action to be taken by the Working Group

The Working Group is invited to take note of the information contained in this document.
