



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
6th session
Agenda item 6

92FUND/A.6/4/2
26 September 2001
Original: ENGLISH

REPORT OF THE THIRD INTERSESSIONAL WORKING GROUP

DRAFT PROTOCOL ESTABLISHING A SUPPLEMENTARY COMPENSATION FUND

Submitted by the Oil Companies International Marine Forum

Summary:	This document provides comments on the text of the draft Protocol on the Establishment of a Supplementary Compensation Fund.
Action to be taken:	The Assembly is invited to note the comments when considering the draft text and to take action as appropriate.

- 1 The Oil Companies International Marine Forum (OCIMF) has strongly supported the increases in the levels of compensation under the 1992 Protocols that will come into effect in November 2003. The desire to provide further increases by means of an international solution, so as to forestall unilateral regional proposals, is well understood.
- 2 It is now generally recognised that the further level of compensation can be provided most readily by provision of an optional third tier in excess of the 1992 Fund Protocol limit.
- 3 For its part OCIMF strongly believes that the optional third tier should consist of two parts so as to preserve the present proportional balance of contributions between shipowner and cargo interests that has been the foundation for the success of the existing framework. The maintenance of such an equitable sharing is essential; otherwise there will be a very significant transfer of risk away from the shipowner who has control over vessel safety and performance. This transfer will only impede the long-term progress in improving the quality of shipping. OCIMF recognises however that there is a need to take prompt action as a means of preserving the global character of the existing regimes. That being the case, OCIMF has accepted that the optional third tier would initially be funded exclusively by oil receivers but sees this only as an interim solution.
- 4 OCIMF's support for an optional third tier funded entirely by oil receivers has been premised on the belief that certain fundamental principles would be maintained. Having read the draft Protocol as set out in document 92 FUND/A.6/4/1, OCIMF is concerned that this may no longer be the case, to the possible detriment of the oil receivers, many of whom are affiliates of OCIMF Member Companies.

- 5 OCIMF believes that any limit of compensation under the Protocol should be set at a level that is sufficient to pay compensation in a worstcase foreseeable scenario and that it should be maintained at that level through the provisions of Article 23 (Amendment of Compensation Limits). That being the case OCIMF questions why a larger aggregate amount of contributing oil received by [] Parties to the Protocol should trigger a higher limit.
- 6 In summary OCIMF believes that Article 4 paragraph 2(b) is superfluous and should be deleted from the draft Protocol.
- 7 For consistency, the references to “citizens or residents” in the sixth and eighth lines of Article 14.2 should be expanded to include “bodies corporate incorporated in that State or having their place of business in that State”.
- 8 OCIMF does not believe that the Working Group accepted the principle that the limit of the Supplementary Fund was to be linked to, and moved in “lock step” with, changes in the underlying Conventions. If our understanding is correct, then the reference to Article 4, paragraph 4, of the 1992 Fund Convention in Article 23.5 is inappropriate and should be deleted.
- 9 A further and related concern for OCIMF is to ensure that an increase in the 1992 Fund limits does not result in a breach of the Article 23.6 (a) and (b) limits on the Supplementary Fund. As currently drafted Article 24 would allow the limits of the Supplementary Fund to be increased exponentially beyond those of the underlying Conventions and indeed beyond its own internal limits; we do not believe that was intended. On the contrary, we believe that the intention was to make it possible for the underlying Conventions to “catch up” with the Supplementary Fund over a period of time so as to make the higher levels of compensation more widely available. This also reflects our concerns as set out in paragraph 6 above.
- 10 In paragraph 2.5 of document 92FUND/A.6/4.1 the Director draws attention to the fact that the draft Protocol does not contain any provisions with regard to the circumstances in which the Supplementary Fund should start making payments. OCIMF believes that the Supplementary Fund should start paying claims only when payments under the 1992 Fund have commenced and the 1992 Fund Executive Committee has provided evidence satisfactory to the Supplementary Fund Executive Committee that the total amount of admissible claims will exceed the 1992 Fund limit. This should be set out in a new Article 4.5. Furthermore the wording of Article 4.4 of the Protocol should be amended to make it clear that a claim must first have been brought against the 1992 Fund and have been recognised by the 1992 Fund as admissible before a claim can be made against the Supplementary Fund. If the alternative text is adopted, the definition in Article 1.8 should be clarified accordingly.
- 11 Finally, OCIMF welcomes the proposal from the International Group of P&I Clubs to provide a voluntary increase in the minimum limit of liability for small shipowners in those States that opt for a third tier of compensation funded by oil receivers. OCIMF will however seek an assurance, by whatever means is appropriate (including IMO Resolution or recommendation), that shipowners’ liability will be amended at the earliest opportunity to bring it into line with cargo receivers’ liabilities under the Supplementary Fund. It would be wrong, in OCIMF’s view, to repeat what happened before the 1984 Protocol was adopted by the IMO, when the 1971 Fund’s limit was raised twice without any corresponding increase in shipowners’ liability. To avoid the Supplementary Fund from becoming a subsidy for sub standard shipping, it is essential that shipping interests have a meaningful share of any liability exposure.

12 **Action to be taken by the Assembly**

The Assembly is invited to note the comments when considering the text of the draft Protocol and to take action as appropriate.
