



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

THIRD INTERSESSIONAL  
WORKING GROUP  
Agenda item 2

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## REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by the International Association of Independent Tanker Owners (INTERTANKO)

**Summary:**

While the *Prestige* accident and the resulting pollution are very much regretted, it is essential that consideration of the circumstances of this extremely unfortunate tanker incident and the measures that can effectively address safety and pollution prevention are separated from issues concerning liability and compensation.

Many IMO and industry initiatives to prevent oil spills from tankers that have been introduced over the past several years are already in place, with more currently being discussed. For this reason the liability and compensation regimes should focus on what they were designed to do, namely to provide prompt and adequate compensation to tanker spill victims. If it is accepted that the provision of timely and adequate compensation to victims is the main goal, we would submit that this will be achieved through the establishment of a third tier Supplementary Fund at an appropriate level at the Diplomatic Conference in May this year. This, together with the proposed voluntary increase in the small ships' limit, will be done without the need to experience the treaty law and transitional problems a major revision of the regime undoubtedly would entail.

**Action to be taken:**

The Working Group is invited to consider the information and views set out in the following submission.

### 1 Introduction

INTERTANKO's membership comprises some 2 000 oil and chemical tankers controlled by companies in 45 maritime nations. The membership is open to independent tanker owners who meet INTERTANKO's quality criteria. Members must as a minimum have their tankers classed

by an IACS member classification society, have their tankers entered into an International Group P&I Club and that do not have a Port State Control (PSC) record for any of their tankers, or combined PSC record for their fleet, that gives rise to concern that their operational procedures and practices are not meeting internationally accepted standards.

## **2. Measures to Improve Tanker Safety and Pollution Prevention**

- 2.1 The measures already agreed by the IMO on phase-out of single hulls and operational and technical quality, the oil companies' vetting regimes and control over tanker terminal calls worldwide, improvement to classification procedures, enhanced port state control and proper flag state implementation and enforcement of existing regulations, combined with owners' attention to standards and quality, are already paying dividends. In addition to this it is worthwhile noting that new proposed measures on phase-out and technical quality are in the pipeline. We are not by any means suggesting that one should be complacent about the situation, but the choice of measures to further improve the situation should focus on measures with a proven track record for making a difference. In combination these measures have resulted in a very comprehensive focus on quality in the tanker sector.
- 2.2 It is questionable whether tanker owners' focus on quality will increase further, or the conduct of the parties subject to liability will be influenced, by any changes to the liability regime, which seek to shift the financial exposure between different industries and their insurers. The tanker fleet replacement over the past several years has reached historic levels with more than USD 78 billion having been invested in double-hulled tanker tonnage by tanker owners over the last 10 years and the quality and safety focus is already at a very high level.
- 2.3 These comments are not intended to lessen the serious consequences that oil spill accidents like the *Prestige* and the *Erika* have for people in the affected regions. It should, however be remembered that accidents like this are the exception in a diminishing trend of accidents, as set out in Annex I to this paper based on ITOPF's statistics which clearly show a significant and sustained downward trend in oil spills from tankers since 1990. In the same period the activity in the tanker crude transportation has increased by almost 30% from 6 200 billion tonne-miles in 1990 to over 8 000 tonne-miles in 2001.
- 2.4 The tanker industry has engaged positively in discussions to find further measures to prevent such catastrophic accidents involving particularly polluting cargoes from occurring in sensitive areas or elsewhere and will continue to work with the administrations present in the months to come to find appropriate technical and operational measures that can really make a difference in rooting out the remaining high-risk transportation ventures.
- 2.5 We believe this background context is useful as it gives an indication of the measures that have a proven record of bringing about a reduction in accidental oil spills from tankers. It may also be useful as a backdrop to any forecasting on how the trend in accidental spills from tankers should be projected to develop in the future.

## **3. The Problem of Multiple Instruments – Third Tier Solution**

- 3.1 Despite the very competent efforts by administrations and the IOPC Fund, the confusion and problems arising out of the transition from the 1969/1971 to the 1992 regime illustrate the level of difficulty that would exist in introducing major amendments to the existing compensation regime through new additional instruments. If it is accepted that the provision of timely and adequate compensation to victims is the main goal, we would submit that this will be achieved through the establishment of a third tier Supplementary Fund at an appropriate level at the Diplomatic Conference in May this year.
- 3.2 We reiterate that shipowners, through a voluntary adjustment of the small ships' limit as proposed by the International Group of P&I Clubs, have shown they are willing to address the concerns

with regard to a perceived imbalance of contributions from the oil and shipping industries. Both these changes can be made without having to open up the system to a process similar to that which took place when the 1969/1971 regime was phased out. Any major revision would necessitate the co-existence of multiple treaty instruments for a prolonged period pending the possible, but uncertain, accession by existing parties to the new regimes, although whether all existing parties would accede is a matter of conjecture.

4. **Channelling of Liability – Liability as a Measure to Influence Conduct**

- 4.1 INTERTANKO is on record as fully supporting the existing regime and any improvement and increases of limits that can be undertaken within the system. Notwithstanding the reaction from many tanker owners that note they are potentially made responsible for the actions of a range of other decision makers through the channelling provisions of the CLC, INTERTANKO has rigidly stuck to its belief that the only way to ensure that the victims of oil pollution damage are effectively and fairly compensated is to protect the channelling of the liability to the registered owner of the ship in the interest of obviating the need for victims of oil spills to first establish a guilty party and then seek compensation. With the cargo interests contributing through the cargo receivers' payments to the fund, tanker owners accept that the industries with the major economic interest in the oil transportation venture are contributing in broadly similar terms.

5 **Conclusions**

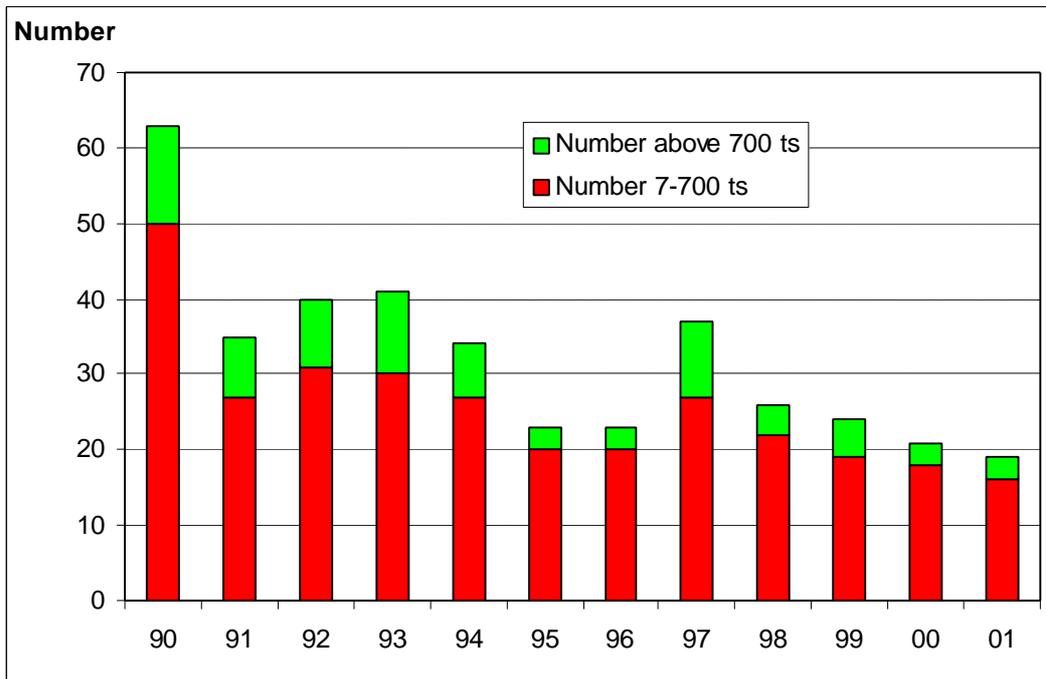
- 5.1 INTERTANKO's view is that the current system has worked very well in serving the interests of oil spill victims world-wide. With the added protection that will be available through the third tier Supplementary Fund, many concerns highlighted in the past several years will be addressed, most notably the overall level of compensation available to victims of oil spills in particularly sensitive areas and the ability to settle claims promptly. We are concerned that problems similar to those encountered during the transition from the 1969/1971 regime to the 1992 regime would arise in an even more complicated fashion if a new regime were to be introduced necessitating the co-existence of several new treaty instruments awaiting possible ratification by states or entering into force alongside the existing conventions.
- 5.2. Further reductions in the number and severity of oil spills will, in the tanker industry's view and as the current track record demonstrates, be best brought about through continued rigorous implementation and enforcement of the measures adopted by the IMO through its MSC and MEPC and other committees. Increased safety and pollution avoidance will also be effectively promoted through continued development, together with oil interests, of additional technical, operational and safety management measures.
- 5.3 Tanker owners remain committed to these measures and encourage administrations to similarly support these through the appropriate mechanisms at the IMO and elsewhere. To the extent that states may decide to continue the discussion on the liability system we would submit that if it is accepted that the provision of timely and adequate compensation to victims is the main goal, this will be achieved through the establishment of a third tier Supplementary Fund at an appropriate level at the Diplomatic Conference in May this year.

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## ANNEX I

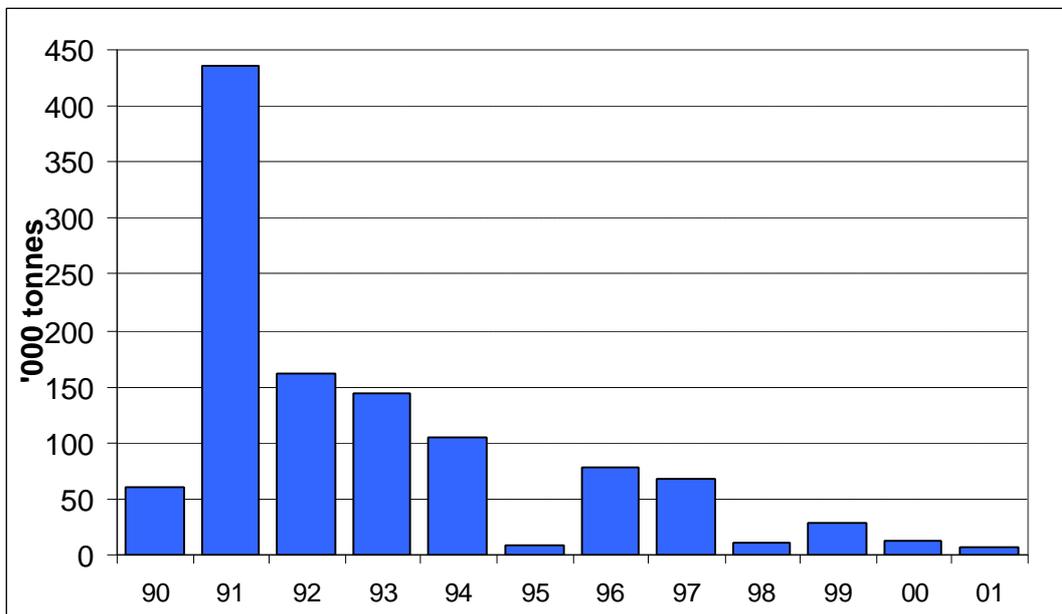
### Annual incidence of accidental tanker spills 1990-2001

Source: ITOPF



### Annual quantity of oil lost from tanker accidents 1990-2001 ('000 tonnes)

Source: ITOPF



In the same period the activity in tanker crude transportation has increased from 6 200 billion tonne-miles in 1990 to over 8 000 tonne-miles in 2001.