



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

92FUND/WGR.3/5
9 February 2001
Original: ENGLISH

REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by Oil Companies International Marine Forum (OCIMF)

Summary:

OCIMF believes that the existing compensation regimes have served the international community, particularly the victims of pollution, well over the years. OCIMF also believes that it is timely to assess the adequacy of the regimes in the light of experience and to identify any changes required to adapt them to the changing needs of Society. OCIMF supports proposals that would increase the amounts payable under International Conventions, to cover the realistic cost of worst case damages in the foreseeable future. OCIMF would not however support proposals that would have the effect of increasing the compensation burden on cargo interests such as to distort the balance of risk between the shipowner/operator and the cargo interests, and particularly those that ignore the underlying responsibility of the shipowner for the vessel's structure, maintenance and operation.

Action to be taken:

- (a) to take note of the information contained in this document;
- (b) to give due consideration to the issues raised when making recommendations to the Assembly.

1 Introduction

The oil companies are responsible for shipping about 30% of the estimated annual total of 2 billion tonnes of oil transported by sea and are very significant (about 60% of the total) contributors to the 1992 Fund. OCIMF is therefore mindful of its responsibilities and has actively supported initiatives to increase the limits of compensation under the CLC and Fund Conventions. OCIMF recognises however that further changes may be required to ensure that the compensation

regimes continue to meet the changing needs of Society. OCIMF strongly believes that any changes to the existing arrangements, which have served victims well over the years, should be addressed in an international context by IMO or the IOPC Fund as appropriate.

2 Issues for consideration by the Working Group

2.1 Maximum Compensation Levels

OCIMF would support an increase in the amounts payable under International Conventions to cover the realistic cost of worst case damages in the foreseeable future.

2.2 Restriction on conditions for the shipowner's right to limit his liability

OCIMF does not support proposals for relaxing the test for loss of limitation rights by the shipowner. OCIMF believes that this would result in lengthy delays in compensating claimants whilst liability is argued and apportioned through the Courts.

2.3 Channelling of Liability

OCIMF does not support proposals to remove the current mechanism for channelling all liability to the registered shipowner.

All of the international Conventions recognise that the shipowner is solely responsible for the seaworthiness of a ship, including its safe and efficient operation. The 1992 Civil Liability Convention deliberately channels liability through the registered shipowner and his liability insurers and this has proved to be very workable. Reasons why cargo interests are not made directly liable for oil pollution damage include their inability to inspect or otherwise check the internal condition of the ship that will carry their cargo and the fact that they have no direct control over the care or operation of the vessel. Changing the existing division of responsibility, to increase the burden on cargo interests, will ultimately lead to a dilution of shipowner's responsibility and will be a disincentive for insurers to take a pro-active interest in the condition and operation of the vessels they insure. It could even lead to a lowering of standards.

In this context it is pertinent to note that the Charterers' own voluntary inspections and screening processes are in addition to, not substitutes for, the diligent performance of the statutory obligations of Flag State, Class, Owner and Port State. Were the Flag, Port State and Class activities sufficiently diligent, the need for the Charterers' inspections would be greatly diminished.

2.4 Financial penalties and sanctions

OCIMF does not support proposals for introduction of financial penalties or sanctions that are punitive in nature and not insurable. This will encourage the creation of more one-ship companies and limited asset based oil-trading companies. Punitive measures are unlikely to influence the behaviour of those most likely to be negligent, prevent another *Erika* or deliver the safety imperative that we all want. Indeed, they will undermine rather than strengthen the international regimes.

2.5 Environmental Damage

OCIMF does not support the introduction of arbitrary and theoretical calculations of environmental damage; these are based on highly theoretical models and questionable science. They will have less to do with compensation and more to do with fines or penalties. The purpose of any compensation scheme should be to ensure that those who suffer real damage are placed in the same position as they would have been had the incident not occurred. The existing Conventions have a very broad definition of what constitutes environmental damage and the cost

of restoration is already defined as a class of claim admissible under the IOPC guidelines. There is no reliable means of defining contingent damage or evaluating environmental diminution. Experience in the US, where legislation of this type is in place, is that there are armies of lawyers and 'experts' employed arguing the issue. This can only mean that those who have suffered genuine loss, as a result of an incident, may suffer delays and/or reduction in the level of compensation received as they compete with claims for highly theoretical damages to the environment. This is surely counter to the entire thrust of improvements to speed up the processing of claims and to facilitate early payments to victims.

3 Action to be taken by the Working Group

The Working Group is invited:

- (a) to take note of the information contained in this document; and
 - (b) to give due consideration to the issues raised when making recommendations to the Assembly.
-