



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:

INTERTANKO recognises the value of the CLC and Fund regime, which on an international scale have been highly successful in achieving the goal of compensating victims of oil spills. In order to maintain the existing international regime and in recognition of the need for sufficient levels of compensation to be available in the event of a catastrophic INTERTANKO supports:

- The proposal outlined in the paper submitted by Australia, Canada, Denmark et al (92FUND/WGR.3/8/4) for the introduction of an opt-in third tier fund.
- The International Group of P & I Clubs' proposal for a voluntary arrangement for the increase in the limit for small ships limit as set out in their paper (92FUND/WGR.3/8/3).

Action to be taken:

The Working Group is invited to consider this document and proceed on the basis of the principles stated and the proposals made.

- 1 INTERTANKO has been a consistent supporter of the international oil spill liability and compensation regimes and has with increasing concern observed efforts to develop regional oil spill liability and compensation regimes outside the scope of the IMO/IOPC Fund. INTERTANKO recognises the need for proper compensation of oil spill victims also in future catastrophic cases where the nature of the cargo spilled, or particular sensitivity of the location where the effects of the spill materialise, necessitates even higher levels of compensation than the recently adjusted 1992 CLC and FC limits.
- 2 INTERTANKO accepts that the only practical solution in the short term to satisfy those states which, due to the nature of cargoes transported in their waters or particular sensitivity of their

waters, require higher levels of compensation is the introduction of an opt-in third tier. INTERTANKO thus supports the proposal outlined in the document submitted by Australia, Canada, Denmark et al (92 FUND/WGR.3/8/4).

- 3 INTERTANKO recognises that there is a legitimate concern that the limit of an opt-in third tier fund is realistic and INTERTANKO thus supports the statements regarding the overall limit (400 million SDR) by OCIMF (document 92FUND/WGR.3/8/2). INTERTANKO is also concerned that the long term balance between contributions from shipowners and cargo interests is not substantially altered in any contributor-group's disfavour.
- 4 INTERTANKO supports the International Group of P & I Clubs' proposal for a voluntary arrangement and is prepared to assist in the development of a voluntary increase in the limits for small ships as described in the International Group submission (document 92FUND/WGR.3/8/3) to address any perceived imbalance in contributions should an opt-in third tier be established. This support is, however, conditional upon shipowners not being involved in the financing of the third tier and the main features of the CLC being left intact.
- 5 INTERTANKO recognises that a catastrophic claim in an opt-in state could potentially disturb the hitherto equal sharing of oil pollution claims between ship and cargo interests and will therefore support the International Group proposal to increase the limit of liability of smaller vessels on a voluntary basis. It should, however, be kept in mind that over 95% oil spill cases are wholly paid for by the shipowners and the introduction of the new 1992 CLC limits in 2003 is likely to increase to percentage.
- 6 It would be premature to predict the effect an optional third tier would have on the sharing of costs between ship and cargo, but as a general observation INTERTANKO would note that the shipowners' liability under CLC and voluntary contribution in the first layer will actually be fully utilised every time before there is any exposure for the second and third tiers.
- 7 The effects of the adjustment of the 1992 CLC and FC limits, the potential establishment of a third tier and an additional voluntary contribution from the shipowners' side need to be properly assessed before final conclusions based on actual figures can be drawn and action be agreed upon at a later stage. INTERTANKO will be happy to work with other industry interests such as for example oil companies and governments to identify possible improvements to the system and also review how an equitable sharing may be maintained in the future.
- 8 It should be in the interest of governments and industry to preserve and develop the existing system whereby shipowners accept strict liability with a realistic right to limit this liability, the channelling provisions and mandatory insurance requirement making litigation on behalf of victims unnecessary and for an equitable sharing of responsibility between those making the controlling decisions.
- 9 In addition to concern that the overall limits under the CLC and FC regime may be unsatisfactory in the worst-case scenarios, speed of payments seems to be a driving factor in much of the external criticism levied against the existing regime. Shipowners through their P & I insurers and the International Oil Pollution Compensation Fund are working diligently and successfully to assist claimants and to process claims in a rapid fashion. There always remains the possibility of minor delays for any system put in place which:
 - requires assessment of claims
 - depends upon claimants submitting their claims
 - requires claimants to provide acceptable evidence to substantiate economic losses or costs
 - needs to avoid paying inflated or speculative claims

- 10** The tanker industry values the CLC and FC regimes, which on an international scale have been highly successful in achieving the goal of compensating victims, and clearly favours an approach that leaves the main elements of this regime in place. A voluntary increase in the small ships' limits may very well mean that the shipowners are accepting a significantly greater share of the liability exposure than before, particularly if a catastrophic accident does not occur in an opt-in third tier country. In this case the voluntary arrangement would represent a unilateral financial undertaking on behalf of shipowners.
- 11** We urge the Working Group to consider the points made by INTERTANKO.
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