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OIL POLLUTION
COMPENSATION
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THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by the Oil Companies International Marine Forum (OCIMF)

Summary:

At the second Meeting of the Third Intersessional Working Group in March 2001, most of those who spoke were in favour of establishing a voluntary “opt-in” third tier, on top of the existing CLC/IOPC Fund regimes. OCIMF recognised the possibility of a transitional optional “opt-in” third tier but emphasised that it was essential to maintain the principle of balancing risk between shipowner and cargo interests which is the foundation of the current regimes and is key to any long term solution. A third tier funded entirely by oil receivers, with no contribution from shipowners, would clearly distort that balance.

Recognising that there is a need to take prompt action as a means of preserving the global character of the existing system, OCIMF believes there may be scope for an **interim** solution, a third tier, initially funded entirely by oil receivers in the opt-in countries.

This is premised on the following :

- a fund limit that reflects the realistic worst case cost of oil pollution damage in the foreseeable future (which OCIMF believes should not exceed 400 million Special Drawing Rights, SDR) and a minimum contribution base of 450 million tonnes.
- a coincident introduction by shipowners and their insurers of a voluntary scheme to increase the 1992 CLC minimum liability threshold to 20 million SDR for all ships where they spill oil in the waters of a State Party to the Third Tier Fund.
- in parallel an assurance via an IOPC Fund Assembly Resolution to the effect that the Fund will continue to work as matter of urgency towards a solution that would give shipowners and their insurers a significant stake in the provision of additional compensation.

Action to be taken:

The Working Group is invited to consider the issues raised in this document and make such recommendations to the Assembly as appropriate.

1 Introduction

- 1.1 In his summing up of the second meeting of the Third Intersessional Working Group held in March 2001, the Chairman stated that while there was by no means unanimity on the need for an increase in the levels of compensation available, a number of States do believe that some increase is necessary. He also said that the majority of those who spoke in favour of an increase had also spoken in favour of developing an optional “opt-in” third tier. He mentioned that particular attention would have to be paid to the question of whether a third tier should consist of one layer or two, and that it was incumbent on those who have an interest to supply more detail to enable others to reach a decision.
- 1.2 The OCIMF delegation was one of those who spoke in favour of an increase in the levels of compensation available, but only if the increase did not distort the principle of appropriate balancing of risk between shipowner and cargo interests that is the foundation of the current regimes.
- 1.3 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 members therefore have an interest in this matter and are pleased to offer the following information to assist the Working Group in its deliberations.

2 Issues to be considered

- 2.1 Any solution must achieve the primary objective of making adequate compensation available to victims in a timely manner whilst ensuring the solution does not facilitate the continued operation of sub-standard vessels but rather provides incentives for good operation.
- 2.2 It is the sole responsibility of the shipowner to ensure that his ship is seaworthy; a long established principle that is enshrined in all the relevant International Conventions and against which there can be no rational or reasonable objection.
- 2.3 Owners and insurers of substandard ships should therefore not be protected from the financial consequence of pollution with that cost instead being borne directly by oil receivers.
- 2.4 Introduction of an optional third tier wholly funded by oil receivers will, in the event of a catastrophic incident, cause an immediate and significant distortion of the balance of risk between ship and cargo interests.
- 2.5 From the comments of the delegations at the IOPC Fund Working Group in March, the optional third tier would likely be a “thinly” populated fund where the number of contributors would be small and the cost impact on each contributor potentially very large indeed. Many of the contributors will be present in each of the States parties and will therefore be major contributors in each of those States and to the Fund as a whole. Thus there will be a loss of mutuality at State and at contributor level. It should also be borne in mind that some contributors in those States may find the cost burden too great to bear.
- 2.6 In the absence of any increase in the liability of tanker owners under CLC, the exposure of cargo interests in States that are parties to the third tier will be wholly disproportionate to that of the tanker owners.
- 2.7 Including a layer of further shipowner liability in the third tier would be entirely consistent with the balance and proportionality in the present structure. Initial review suggests that treaty law issues would not be insurmountable.
- 2.8 Some States consider that there is an urgent need to raise the limitation amounts beyond the increases already adopted by the IMO Legal Committee in October 2000. Failure on the part of

the IOPC Funds to deliver such further increases within a reasonable time frame may cause some of those States to seek regional solutions to secure higher limits.

- 2.9 Such regional solutions have the potential to cause serious damage to the international CLC and Fund Conventions.
- 2.10 Many of the delegations who spoke at the second meeting of the Third Intersessional Working Group emphasised the importance of preserving the global character of the system.
- 2.11 The amounts payable under International Conventions should be sufficient to cover the realistic worst case cost of oil pollution damage in the foreseeable future.

3 The Way Forward?

- 3.1 OCIMF fully recognises the role to be played by oil receivers in this area and is keen to find solutions that give the best results, as quickly as possible, and with the full support of all stakeholders involved, while maintaining the essential balance between shipowner and oil receiver interests.

3.2 In the medium term

- 3.2.1 Having considered all of the issues in 2 above, OCIMF strongly believes that the optional third tier should consist of two parts so as to share the burden of contributions equitably between shipowner and cargo interests. This will also give shipowners and their insurers a stake in the consequences of pollution.
- 3.2.2 Initial legal review indicates that there is no bar to amendments to the CLC and Fund Conventions to permit both shipowner and oil receiver to participate in a third tier. It would, however, require a more broad ranging ratification process by States parties to the existing conventions. Since such a process would typically be a lengthy one, OCIMF believes that an interim solution based on contributions from oil receivers could provide a transitional step towards a long term solution involving shipowners and oil receivers.

3.3 Interim Solution

- 3.3.1 Recognising that there is a need to take prompt action as a means of preserving the global character of the existing regimes OCIMF acknowledges that there may be scope for an **interim** solution based on the following: -
 - 1) An “opt-in” third tier, initially funded entirely by oil receivers in the opt-in countries;
 - 2) The total amount of compensation available in respect of pollution damage in Contracting States to the third tier to be limited to a total of 400 million SDR in respect of any one incident, including the 1992 CLC contribution and 1992 Fund contribution.
 - 3) The opt-in third tier to enter into force twelve months after the first calendar year in which persons, who would be liable to contribute to the opt-in third tier, have received a total quantity of at least 450 million tonnes of contributing oil. This is the same provision as for entry into force of the 1992 Fund but would give a contributions base to the opt in third tier of only some 40% of that of the present contribution’s base of the 1992 Fund. (See 2.5 above).
 - 4) A coincident introduction by shipowners and their insurers of a voluntary scheme to increase the 1992 CLC minimum liability threshold, as proposed by the shipowners and their insurers at the ad hoc work group meeting on 23 May 2001. OCIMF believes that the minimum limit of the shipowners liability should not be less than 20 million SDR irrespective of the ship’s gross tonnage for all ships where they spill oil in the waters of a

State Party to the Third Tier Fund. This contribution and its fulfilment is central to OCIMF's position as it maintains, during the interim period, a partial balance between shipowners' and oil receivers' interests. In the current structure the CLC limits applicable to small ships spilling persistent cargoes have in any case proven to be unrealistically low.

- 5) In parallel with the above a Resolution that the IOPC Fund will, as a matter of urgency, continue to work towards a third tier fund which will restore an equitable balance between the contributions of the shipowners and the oil receivers. Shipowners and their insurers should have a significant stake in the consequences of pollution.

3.3.2 OCIMF would hope that significant progress could be made on the drafting of treaty provisions for insertion in the relevant treaty instruments within the next year.

4 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 recommend to the Assembly a Resolution setting a time table for developing a solution that will equitably share the burden of oil pollution between shipowners and oil receivers and thereby give shipowners and their insurers a stake in the consequences of pollution – paragraph 3.3.1 (5). OCIMF would be pleased to participate in discussions to develop this solution.
 - (c) to note the possibility of an interim arrangement consisting of an optional opt-in third tier for those 1992 Fund Member States that want it, initially wholly funded by oil receivers in the opt-in countries based on the following :-
 - (i) Aggregate amount of compensation payable by the Fund in an opt-in country limited to 400 million SDR in respect of any one incident – paragraph 3.3.1 (2); and
 - (ii) Contribution base of at least 450 million tons of contributing oil in opt-in countries – paragraph 3.3.1 (3); and
 - (iii) Coincident introduction by shipowners and their insurers of their proposal to voluntarily increase the 1992 CLC for all ships where they spill oil in the waters of a State Party to the Third Tier Fund. OCIMF believes the minimum liability threshold should be 20 million SDR - paragraph 3.3.1 (4).
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