



KIMO RESOLUTION 1/05

Presented by KIMO International

A Convention on Liability and Compensation for Damage in Connection with the Carriage of Non-Toxic Substances.

Introduction

At the 4th Ministerial Conference in Esbjerg in 1995 Ministers agreed that the liability and compensation regime for marine pollution was insufficient and action should be taken to improve it.

Paragraph 8.1 of the Ministerial Declaration states:

*“8.1.1 The Ministers **AGREE** that there is a whole range of problems related to insufficient compensation of damage as a result of shipping accidents, and will take further initiative within IMO with a view to extending the liability of ship owners and to introduce rules on general compulsory insurance...”*

In Paragraph 8.1.2 Ministers also agreed, inter alia, to secure adequate and effective compensation, by:

“Considering whether requirement for compulsory insurance and strict liability for pollution damage should be extended to other ship owner liabilities.”

At the 5th Ministerial Conference in Bergen Ministers again agreed that problems still remained with the liability and compensation regime and in paragraph 39 of the Ministerial Declaration stated that;

“Although, when these various instruments (HNS Convention, LLMC 96 Protocol) have come into force, progress will have been made with regard to compensation of victims of marine pollution, some problems will remain. The Ministers therefore agree:

To make coordinated efforts within IMO to review, strengthen and introduce, if appropriate, further compensation and liability regimes.”

However Ministers have yet to follow up on these commitments as the HNS Convention has still not come into force and there is still no convention relating to Non-Toxic pollution. Non-toxic pollution is only covered by the Convention on Limitation of Liability for Maritime Claims (LLMC 96). The LLMC 96 does not contain a requirement for compulsory insurance or place strict liability on the ship owner, unlike the International Convention on Civil Liability for Oil Pollution Damage (CLC) or HNS Convention. The LLMC 96 requires proof in a court of law that there was fault on the part of the ship owner before a claim can be made. This so-called “Pay to be paid” rule can make the cost of pursuing a claim prohibitive due to protracted court cases and the difficulty in proving fault.

Background

On the 26th March 1997 the container ship MV CITA¹ ran aground off Newfoundland Point on the Isles of Scilly in the south west of England. The CITA had been on route from Southampton to Belfast with 207 TEU's (145 containers) on board when she sank. The cleanup operation following the grounding was co-ordinated by the Isles of Scilly Council. The removal of containers and detritus from damaged containers started immediately but was made more difficult as much of it was covered in oil. The cleanup cost reached £94,786 before it was stopped prematurely due to the high expenditure.

In July 2005, eight years later, the case for compensation, which the Isles of Scilly Council was pursuing jointly with the UK Department of Transport (DfT), under the LLMC 96 convention, was heard in the German Courts. The Courts ruled that there was no liability on the ship owner and that the DfT and Isles of Scilly Council would be liable for their court fees. Due to the size of the Council, in order to recoup the cleanup cost local Council Tax would have had to go up by £90 per household. This figure does not include the Council's legal fees and the potential long-term damage to the islands tourism industry, which relies on a pristine environment and is the islands main employer.

KIMO is of the opinion that there are still areas where there is inadequate cover in the compensation and liability regimes for pollution from shipping and believes the commitments made by the Ministers in the Esbjerg and Bergen Declarations should be honoured.

¹ UK Coastguards Marine Pollution Control Unit's report “ The ‘CITA’ Incident”

Therefore KIMO, in recognition of the need to improve the compensation regime for coastal communities in relation to Non-Toxic pollution, and having regard to KIMO Resolution 4/94 (amended 96):

Urges

All European governments to act in unison at the International Maritime Organisation to establish a Convention on Liability and Compensation for Damage in Connection with the Carriage of Non-Toxic Substances including strict liability on ship owners for pollution from their vessels, compulsory insurance for all vessels and a reserve fund to cover any shortfalls in compensation.

KIMO members:

Agree to submit this Resolution to all National Governments, the European Commission and other relevant organisations.

*This Resolution was agreed unanimously by Delegates at the 15th KIMO International Annual General Meeting in Lerwick, Shetland, UK on October 16th 2005 and became KIMO policy upon that date.