



KIMO RESOLUTION 7/01

Presented by KIMO UK

IMPROVED COMPENSATION FOR VICTIMS OF MARINE OIL POLLUTION

Background

Compensation for oil spill victims is still often slow, inadequate, difficult and costly to obtain - or even absent altogether¹. Oil tankers do not carry all-risks insurance and the International Oil Pollution Compensation Fund (IOPCF) frequently resists claims in court and pays out less than 100% on accepted claims.

Despite a recent increase in the amount of money available, the current IOPCF compensation limit of £121.42 million per incident² (including the shipowner's share) is probably too low to cover the cost of a tanker disaster on the scale of the *Exxon Valdez* (which ran to over six billion US dollars, although the tanker spilt only a fifth of her cargo). It would certainly not be enough if compensation were extended to cover wildlife and habitat damage, as KIMO believes it should be.

The IOPCF, on its own admission, is only intended to "help" compensate those who have "suffered financial loss as a result of an oil spill from a tanker"³. Neither the IOPCF nor the Pollution & Indemnity (P&I) Clubs that insure the shipowners provides comprehensive insurance to cover all the potential costs incurred by the victims of pollution, whether they be private individuals such as Breton hoteliers, public bodies such as Shetland Islands Council or commercial companies such as the seafood businesses affected by the *Aegean Sea*, *Braer*, *Sea Empress* and *Erika* disasters.

¹ For example: the IOPCF reports [<http://www.iopcfund.org/june01news.htm> & <http://www.iopcfund.org/erika.htm>] that, as at 24 July 2001, 5,155 claims for "clean-up operations, property damage and loss of earnings in the fishery and tourism sectors" had been submitted for a total of £77 million, after the December 1999 *Erika* fuel spill off western France. However, "...payments had been made in respect of 2,369 claims for a total of £10 million" [13%]. The IOPCF has only agreed so far to pay 80% of approved claims and is still "assessing" about one third of them. Similarly, a final draft agreement on a "global settlement" of outstanding claims from the 1992 *Aegean Sea* spill off Galicia was not approved by the IOPCF until June this year. Some £70 million of claims arising from the 1993 *Braer* incident in Shetland was never paid either. Leaving aside allegations of fraud in a small minority of *Braer* claims, the fact is that dozens of apparently valid claims were rejected by the IOPCF or dropped by claimants who could not afford to pursue them in court. The islands' tourist industry, which suffered a 14% drop in business immediately after the oil spill, received a derisory £19,000 in total. Most claims for consequential damages (such as loss of markets and lower prices for seafood) were rejected. When Shetland claimants went to court, they often found the IOPCF lawyers had an "excessively legalistic" interpretation of the rules and were "deliberately obstructive" – the words used by Shetland's new MP, Alistair Carmichael, himself a lawyer.

²IOPCF, 2001. Compensation Limits. London. <http://www.iopcfund.org/SDR.htm>

³IOPCF, 2001. Frequently Asked Questions. London. <http://www.iopcfund.org/FAQs.htm>

The conventional political piety is that “the polluter should pay”. In fact, it is the polluted that normally pay a significant part of the cost of being oiled, and sometimes all of it. This situation is unacceptable and requires immediate action, before yet another coastal community is left with a large bill and disrupted lives after a disaster caused by someone else.

The IOPCF’s Executive Council and working groups are currently discussing the following issues, in advance of the October 2001 annual meeting of the 66 member states:

1. Whether to set up a “Supplementary Fund” to provide compensation over and above the 1992 Fund Convention’s limit;
2. A proposed voluntary increase in the pollution liabilities of small oil tankers of up to 5,000 GRT;
3. The “admissibility of claims for environmental damage”;
4. The need for “longer-term amendments to the international compensation regime”⁴.

KIMO welcomes this belated move towards reform but notes with concern and apprehension the extremely slow progress since the 1992 Convention and believes more urgent action is required by the IOPCF member states.

The seriousness of the situation is underlined by the *Baltic Carrier* incident in the channel between Germany and Denmark earlier this year⁵, and by the massive and imminent expansion of Russian oil exports, by some 90 million tonnes a year, from ports on the Gulf of Finland⁶. This could generate around 1,000 extra loaded tanker movements a year in the Baltic Sea, the Great Belt, the Skaggerak and the North Sea. In view of the continuing world shortage of good quality tanker tonnage and crews, this 45% increase in Baltic tanker traffic may be expected to significantly add to the risk of a catastrophic pollution incident in European Union and Norwegian waters.

Purpose of Resolution

As previously noted in KIMO Resolution 1/98, the aim of any new compensation regime should be to ensure that pollution victims are promptly and fully reimbursed for the entire cost of an incident, restoring their lives, livelihoods, property and environment to, as near as possible, what they were before the pollution occurred. That, after all, is the purpose of insurance, as the term is normally understood outside the oil shipping industry.

To achieve this goal, we propose the following alterations to the IOPCF 1992 Convention and to the insurance arrangements for oil tankers (and other vessels carrying large quantities of hazardous and/or polluting cargoes and fuel):

⁴ IOPCF, 2001. Summary of June 2001 Sessions of the Governing Bodies. London.
<http://www.iopcfund.org/june01news.htm>

⁵ Klostermann, Dr. Henning, M.P. et al., 2001. *Current problems with regard to maritime safety on the Baltic Sea, presented by the Parliament of Mecklenburg-Vorpommern at the request of the Standing Committee of the Baltic Sea Parliamentary Conference*. Verbatim Report of the State Parliament of Mecklenburg-Western Pomerania Report No. 45, Environmental Committee, 25th April 2001. Schwerin, Germany.

⁶ Chernyaev Dr Roman N., 2001. Final Report for the Russian Federal Ministry of Transport on Vessel Traffic Management and Information System Network [for the Gulf of Finland]. St Petersburg, Russia.

Reform of the IOPCF

The IOPCF's constitution and operating procedures should be revised, to provide for:

1. The removal of the current upper limits on the total sum that may be paid out for each incident, and their replacement by compensation that reflects the actual cost of the pollution rather than the financial concerns of the transporters and receivers of oil;
2. Immediate, independent and impartial assessment of all claims;
3. Payment of claims in full within 10 working days of assessment;
4. Payments into a suspense account for the full amount of disputed claims, pending their resolution by mutual agreement or through the courts, the interest on such sums to be applied to the pursuers' legal costs;
5. Eligibility for compensation to be extended to:
 - "secondary" economic losses, such as damage to markets and prices for seafood enterprises;
 - subsistence and part-time fishing;
 - payments to affected communities for the value of damaged wildlife and habitats⁷, in addition to the costs of restoring polluted habitats;
 - emotional stress and trauma suffered by victims of pollution.

Compulsory and comprehensive marine insurance

To indemnify the IOPCF against the greatly increased costs of such a compensation regime, all tanker owners trading in European Union waters, irrespective of their vessels' flag states, should be required to carry and, when requested, to produce a valid certificate of insurance covering **all** potential risks and costs arising from a pollution incident involving the vessel, irrespective of the cause of the problem.

The IOPCF, rather than individual claimants, could then undertake the expensive and lengthy business of recovering all costs from the insurers, if necessary through the courts.

The shipowners would be obliged to pass on to their customers, the oil companies, the cost of the greatly increased insurance premiums. This might be expected to add a small amount to the retail price of petroleum products, but this could be insignificant if linked to government tax credits to help shipping companies comply with the law.

No government in Western Europe or North America would tolerate a road tanker leaving a fuel depot or refinery without a valid certificate of all-risks, third party insurance. Most road tanker owners insist on their vehicles having comprehensive insurance. Anything else is unthinkable on land because in an accident the danger to innocent bystanders and property is so obvious. It is time to extend to the marine oil transport industry this sound, simple and well-established principle of all-risks insurance.

Government assistance for claimants

To avoid the heavy financial burdens and prolonged stress suffered by private citizens obliged to go to court to win compensation, governments should either take over the cases on behalf of the claimants or provide them with legal aid to pursue

⁷ The provisions of the US Oil Pollution Act of 1990 may serve as a model.

claims which, in the opinion of an independent valuer, are reasonable and have a fair chance of success.

Therefore KIMO, in recognition of the clear need for improvements to oil pollution compensation arrangements, and having regard to KIMO Resolutions 2/94, 4/94 (amended 96) & 1/98:

- 1. urges the Governments of European IOPCF Member States to insist, at the October 2001 annual meeting of the fund, that the Director brings forward, by 31st January 2002 at the latest, detailed proposals to implement the reforms outlined above;**
- 2. urges the European Commission to compile a Draft Directive requiring all oil tankers to carry comprehensive, all-risks insurance when trading in the Exclusive Economic Zones (EEZs) of European Union Member States, with effect from October 2002;**
- 3. urges the European Commission and the Governments of EU Member States and Norway to pursue the question of compulsory, comprehensive, all-risks tanker insurance at the International Maritime Organisation (IMO), but not to delay unilateral action on this issue meantime;**
- 4. urges all IOPCF member governments to adopt the measures outlined above, to relieve pollution victims of the stress and financial hardship that currently accompanies attempts to win fair compensation through the courts.**

*This Resolution was agreed unanimously by Delegates at the 11th KIMO International Annual General Meeting in Göteborg, Sweden on October 14th 2001 and became KIMO policy upon that date.

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