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Hon. Peter Morris, Chairman
International Commission on Shipping
P.O. Box 162
Civic Square
Canberra, ACT 2614
Australia

INTERNATIONAL COMMISSION ON SHIPPING

Dear Mr. Morris,

Thank you for your recent letter to our ExxonMobil CEO, Lee Raymond, regarding the captioned. He has noted the content of your letter and requested that I respond on his behalf.

ExxonMobil have owned and operated tankers for over 112 years. We have always been strongly committed to the highest standards of safety and environmental performance with respect to the ships we operate, the standards we expect of the ships we charter and our efforts directed at improving the quality and safety of ships across the tanker industry.

We note that the International Commission on Shipping has been established to recommend an appropriate compliance/enforcement strategy for regulating shipping safety. We believe that this fundamental review of the structures governing the shipping industry is appropriate and that improvements in the quality of shipping are in everyone's interest.

ExxonMobil participates vigorously within forums such as the International Chamber of Shipping and, of course, OCIMF where these issues are being actively addressed. We believe that working such issues through OCIMF is appropriate and that it leads to constructive and expeditious improvements in the quality and safety of shipping. OCIMF have, in fact, responded very positively to the recent shipping related proposals for legislation from the European Commission. OCIMF have expressed strong support for the vast majority of items in these proposals and have provided constructive suggestions on how to improve other segments.

I attach for your information a copy of the OCIMF submission on the basis that this very succinctly puts forward proposals for change that we fully support.

In the meantime, we look forward, with considerable interest, to the presentation of the findings of the Commission at the APEC shipping seminar in Sydney, in March 2001.

Yours sincerely,

W E Jenkins

An **ExxonMobil** Subsidiary

OCIMF

Oil Companies International Marine Forum

The Oil Companies International Marine Forum represents all the world's major oil companies on marine safety and technical matters. The OCIMF mission is to be the foremost authority on the safe and environmentally responsible operation of oil tankers and terminals, promoting continuous improvement in standards of design and operation. OCIMF welcomes the opportunity to present its position on the proposed Directive of the European Parliament.

OCIMF's comments on the EU proposals on Safety of Seaborne Oil Trade.

Executive Summary

The oil companies are responsible for shipping about 30% of the estimated annual total of 2 billion tons of oil transported by sea.

Existing international legislation governing shipping is extensive but fails to deliver the safety imperative because it is not consistently and rigorously enforced. That being the case, OCIMF believes that effort should be directed principally at proper enforcement of existing legislation, as well as the introduction of new regulations, where appropriate, of which the proposals to strengthen controls over Classification Societies is particularly welcome.

OCIMF therefore supports strengthening of Port State Control Legislation and will contribute by making the Ship Inspection Report Exchange (SIRE) more readily available to Port States.

OCIMF supports the measures to improve performance of Classification Societies. OCIMF strongly believes that Class should be liable to third parties in the event of a casualty resulting from a structural failure, if negligence is shown.

OCIMF supports the principle of an international and unified timetable for the earlier introduction of double hulls but strongly believing that the structure should be developed through IMO.

OCIMF strongly believes that structure of the existing Compensation Funds is adequate but recognises that a review of the fund levels may be appropriate.

A. PROPOSALS FOR IMMEDIATE LEGISLATIVE MEASURES

Regarding the Commission proposal for three draft Directives, OCIMF offers its support to the initiatives to harmonise controls and procedures of Port States and to exert

greater control over Classification Societies and offers qualified support to the proposals relating to single and double hull oil tankers.

1. Port State Control

Effective Port State Control will make a very significant contribution to enhanced maritime safety provided that the provisions are rigorously and consistently applied throughout the EU.

- Port State Control's statutory right to detain vessels that do not meet international safety and pollution prevention standards is probably the most powerful tool in enforcing standards.
- OCIMF fully supports the initiative to enforce the inspection of vessels with a higher target factor provided the Target Factor fully represents all aspects of the vessel's condition and history. Target Factors should be publicly available.
- The additional requirement to extend expanded Port State Control inspections to tankers over 15 years old will significantly increase the inspection burden and will require additional trained and competent resources if it is to be effective.
- OCIMF recognises that this will be an added burden on Port State Inspectorates and offers the services of its members to assist with training needed to bring the Port State Inspectors (PSI's) to the highest level of competence.
- OCIMF also notes that there is to be a programme of systematic inspection of vessels ballast tanks. OCIMF knows that this is a potentially hazardous operation and is able and prepared to advise PSI's on these hazards and ways to minimise them.
- SIRE is a voluntary database of factual non-judgemental reports that indicate the operational status of the vessel at the time of inspection. The reports draw no conclusions as to the fitness of the vessel for charter nor are they intended to address the structural condition of the vessel, which is a matter for Class.
- OCIMF has made access to the SIRE (Ship Inspection Report Exchange) programme available to Port State Inspectorates, free of charge, as part of a commitment to support PSI's and to help identify and target sub-standard ships. Similarly, OCIMF would be happy to coordinate with the ED as to how this offer can be more broadly promoted and supported within applicable legal constraints
- OCIMF has made SIRE access available to authorised users and others with an interest in safe shipping through the EQUASIS database.

- European Port State Control must be viewed by shipowners in the same light as the US Coast Guard "a force to be reckoned with". This requires:
 - quality and consistency of inspectors
 - adequate time allocation for inspections
 - detailed inspections
 - appropriate financial resourcing.
- OCIMF supports the proposal that the shipowner or captain pre-notifies the inspection authority at the next port of certain operational information as a means of facilitating the organisation of inspections within the port.

OCIMF supports the proposals that a copy of the inspection report be retained on board the ship and that a copy be forwarded to both Flag State and Classification Society.

2. Classification Societies

OCIMF fully supports the Commission proposal to strengthen controls on Classification Societies and the enhanced procedures for ensuring compliance with their obligations when acting on behalf of a Flag State. In particular: -

- OCIMF believes that Class should be liable to third parties in the event of a casualty resulting from a structural failure, if negligence is shown.
- OCIMF welcomes the Commission proposals to make Classification Societies liable to third parties in case of negligence or fault.
- OCIMF believes that structural integrity failures and Class related detention are the main criteria for measuring the safety and pollution prevention performance of Class, when acting on behalf of the Flag State.
- OCIMF supports the Commission proposal to strengthen its power to withdraw or suspend the recognition of Class. This is perhaps the most important tool that the Commission has in promoting and ensuring responsible work by Class.
- OCIMF supports the proposals regarding more stringent provisions for Transfer of Class (TOC). New Classification certificates should only be issued after all conditions of Class have been properly dealt with to the satisfaction of the losing Society. It follows that TOC should normally only take place on completion of dry-docking for Special Survey.

- OCIMF believes that the Commission, not Class, should set the criteria by which Classification Societies can measure their own performance and that the results be publicly available.
- OCIMF supports in principle the proposals for simplifying the procedure for monitoring the recognised Classification Societies but believe these need to be strengthened. In particular, both of the assessments referred to should be carried out jointly by the European Commission and the Member State. OCIMF agrees with proposals for deleting unnecessary duplications of provisions within the Directive on Port State Control whilst maintaining the obligations for Member States to report all cases of negligent acts.

OCIMF would also suggest additional measures to strengthen accountability of Class

- The relationship between Class, Flag State and owners should be examined and re-defined in the context of their potentially conflicting objectives.
- Class should bring forward proposals to IMO to incorporate all safety enhancing aspects of the voluntary notation of CAP into the Enhanced Survey Programme process.
- New Enhanced Surveys should be conducted at intervals of between 2 and 3 years for vessels over 15 years.
- Port State Inspectors should have the power to detain vessels that do not have the statutory survey documentation on board.

3. Single and Double Hull Oil Tankers

- OCIMF has commissioned research to determine the effect on tanker tonnage and the application of MARPOL 13G. We have shared the results of this work with the Commission.

OCIMF's research suggests that some 306 pre-MARPOL and about 310 post Marpol tankers would be excluded from trading into Europe with immediate effect of the EC legislation. OCIMF members are particularly concerned to ensure that the full impact on specialist North Sea shuttle tankers, which cannot be easily or readily replaced is properly understood as part of an economic impact analysis which should be carried out by the European Commission, The study should be publicly available and considered before any decision is taken on whether to proceed with the accelerated phasing in of double hulls ahead of the schedule already agreed at IMO.

- Conflicts between the EC proposals and MARPOL may have implications for States, which are already signatories to MARPOL. OCIMF suggests that, rather than developing a regional measure that will have the effect of moving older tonnage to other trading areas (thereby introducing double standards at global level), the Commission should urge IMO to unify its timetable for the introduction of double hulls with that of the US Coast Guard, thus providing a global and fair solution to the problem
- There are many factors that determine quality and age of vessel is but one.
- Industry can accommodate change but if these proposals are not to impact the competitiveness of European business, will need time to adjust because of lead times in acquiring new tonnage.

B. PROPOSALS FOR FUTURE MEASURES:

General:

OCIMF has a number of substantive comments on the Commission proposals for future initiatives and, in the case of EQUASIS, is able to bring a direct contribution to the Commission work. OCIMF regrets that these issues were not discussed with industry prior to publication of the Communication.

Increased transparency:

OCIMF supports the creation and ongoing development of the database EQUASIS as this will significantly enhance maritime safety by improving transparency of information.

OCIMF also supports the European Commission's drive for transparency in shipping and, as stated elsewhere, has made access to the SIRE programme available to Port State Inspectorates, free of charge, as part of a commitment to support **PSI's** and to help identify and target sub-standard ships. SIRE access will also be available to authorised users through EQUASIS.

Surveillance of navigation:

OCIMF supports proposals to use modern communications technology to render more efficient and to simplify the monitoring of ships in Community waters.

The enlargement process:

OCIMF supports proposals for ensuring that candidate countries for accession to the European Union strengthen their Flag State Administrations and Port State Control systems to the extent necessary to bring them into line with existing European maritime safety standards.

A European structure for maritime safety:

OCIMF fully supports the proposals for the creation of a European structure for maritime safety as a means of ensuring efficient and uniform application of the International safety rules within the European Union.

Liability for maritime players:

i) Liability for Damage

All relevant international Conventions recognise that the shipowner is solely responsible for the seaworthiness of a ship, including its safe and efficient operation. 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 which will carry their cargo and the fact that they have no direct control over the care or operation of the vessel.

The Charterers' own inspections and screening processes are in addition to, not substitutes for, the diligent performance of statutory obligations of Flag State, Class, Owner and Port State. Were the Flag and Class activities sufficiently diligent, the need for the SIRE system would be greatly diminished.

ii) Sanctions for Gross Negligence

OCIMF believes that there is no case for additional deterrent sanctions.

The shipowners, if found to be grossly negligent, will likely be unable to limit liability under the CLC and will thus be penalised to the full extent of the law.

Currently P&I Clubs provide cover up to \$1 Billion (circa E 1 Billion) for pollution damage but the full limit is only available in cases where the Conventions do not apply or where the shipowner loses his right to limit his liability under the Conventions. The provisions of the Conventions are such however that it is very difficult to break the owner's limit of liability and as a consequence the \$1 billion is only available in very rare circumstances. OCIMF would support moves to reconsider the conditions under which this additional P&I oil pollution cover is available to compensate those impacted by a pollution incident, in particular when funds available under the Conventions do not fully compensate those impacted by the incident.

iii) Strengthening the international regime

The present compensation regimes have served the international community, particularly pollution victims, well over the years.

The limits contained in the 1992 CLC and Fund Protocols were originally set at the 1984 Diplomatic Conference. As these limits were set more than 20 years ago a review is probably timely.

There is a clear need to ensure that the limits available adequately reflect the costs of major oil spills.

As there is an extended period within which a claimant may progress a claim following a pollution incident and as a result of the uncertainty as to whether anticipated claims may exceed the limits, pro-rating of admissible claims has often had to be maintained for several years after the incident. An increase in limits should provide a more effective means by which claimants with admissible claims can receive timely compensation of such claims in full.

Therefore, OCIMF is consulting with its international membership with a view to reaching a consensus on the proposals before the IMO Legal Committee, which call for an increase in the present limits of compensation within the terms of the existing Conventions.

iv) Proposals for a suggested European Third Tier

The introduction, on a regional basis, of a third tier to the fund would not only undermine the current international regime but would also put at risk the established principle of shared responsibility between shipowners and oil interests. The Commission's proposed third tier would apparently be based on funding entirely by the oil industry who already fund, in total, the contributions to the IOPC Fund; and who, in addition, fund pollution compensation from "Dollar one" when ship owner's insurance fails to respond.

Breaking the existing balance in the spread of responsibility which was progressively achieved over the years, could ultimately lead to a dilution of shipowners' responsibility and would be a disincentive for insurers to take a pro-active interest in the condition and operational standards of the vessels they insure.

OCIMF believes that it is in the interest of the environment that shipowners remain responsible and liable for their actions. The current system of strict liability for shipowners, coupled with the increased levels of compensation proposed within the existing Conventions provides a balanced and effective solution.

In addition, OCIMF strongly believes that regional initiatives will result in the destabilisation of the present international liability and compensation regimes for tanker spills. This would be detrimental, principally to victims and Governments but

also to industry and should be avoided. It is precisely the international nature of these schemes that has allowed a balanced and fair system of compensation to be achieved. Introducing regional schemes would send the wrong signals to non-European States, which are already parties to the Conventions and provide a disincentive to joining by other States contemplating membership of the Fund. This will automatically undermine the effectiveness and ultimately the existence of the international regime. The existing regimes are socially responsible in a global manner, perfectly aligned to the "polluter pays principle", funded to a large extent by oil receivers in industrialised countries ensuring always that claimants receive equal and fair treatment wherever a spillage occurs in States which are signatures to the Convention.