INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
10th session
Agenda item 8

92FUND/A.10/7/3/1
14 October 2005
Original: ENGLISH

REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by the International Group of P&I Clubs

Summary:	This submission provides updated comments from the International Group of P&I Clubs.
Action to be taken:	The Assembly is asked to take these comments into consideration.

1 The documents submitted by OCIMF (92FUND/A.10/7/7) and ICS/Intertanko (92FUND/A.10/7/8) have the virtue of raising the issue of shipowner liability which is notably down-played in the document submitted by Australia et al (92FUND/A.10/7/5). We share the view put forward in the Chairman's report to the last meeting of the Working Group that the so-called 'house-keeping' issues should only be pursued if the central issue of shipowner liability needs to be addressed through revision.

2 We share the view that was generally acknowledged at the last meeting of the Working Group that none of the so-called 'house-keeping' issues is crucial and would not justify revision of the Conventions. We can offer detailed comments on these issues if required to do so.

3 On the issue of shipowner liability we would suggest that the Assembly should proceed with great care. Two possible avenues have been proposed:

(a) Agreement to consider the 'house-keeping' issues followed by consideration of shipowner liability, or

(b) Acceptance of the existing structure bolstered by the proposals made by industry designed to maintain the virtues of the present system.

4 In relation to 3 (a) above the concern of shipowners is that a prolonged process of revision may lead to reconsideration of the test of limitation which lies at the heart of the sharing proposals embodied in the present regime. Naturally, oil receivers are aware of these possibilities, since a weaker test for limitation could mean in effect that the shipowner would in practice bear the burden of most claims as he does under OPA90 in the USA.

5 It has been suggested that contractually binding voluntary arrangements are inherently unreliable. The TOVALOP and CRISTAL schemes were different in nature but nonetheless serve to demonstrate that voluntary schemes work in practice. In relation to the other objections raised we would comment as follows:

- STOPIA would be applied in all 1992 Civil Liability Convention (CLC) States (paragraph 7 below)

- TOPIA would naturally only apply to those States party to the Supplementary Fund Protocol.

- As explained in our document 92FUND/A.10/31/1 the withdrawal provisions of both STOPIA and TOPIA are aimed principally at the situation where the Clubs would no longer be able to respond because of market conditions or because the Group had ceased to exist. In any event close contact would be maintained with the IOPC Funds Secretariat and advance warning given of these eventualities.

- With regard to the scope of application of STOPIA and TOPIA we have asked administrations if they are aware of any CLC Certificates issued by an insurer outside the International Group. No response has been received, which may indicate that all relevant vessels (ie those capable of carrying 2 000 tons or more as cargo) would be covered by STOPIA and TOPIA. As indicated in our paper 92FUND/A.10/31/1, we believe that the number of relevant international seagoing tankers which would not be covered is insignificant.

- As regards delayed payments under contractual schemes, we would like to point out that STOPIA contains provisions under Clause V which are designed to permit the early payment of indemnity to the 1992 Fund before any final decision on recourse has been taken by the Assembly. These provisions would be replicated in TOPIA.

6 In the belief that many of the issues before the Assembly derive at root from the substandard transportation of oil, we urge that a new and separate Working Group be established to consider this issue further in general before making specific proposals to the International Maritime Organization (IMO).

7 On the central issue raised by both ICS/Intertanko and OCIMF we confirm that in the interest of maintaining the existing system, the Clubs would be prepared, in order to ensure equal sharing in the cost of claims, to extend STOPIA to all States parties to 1992 CLC as well as to share in the financial responsibilities of all States party to the Supplementary Fund Protocol via an additional binding contractual agreement such as TOPIA. However, these proposals are made in order to preserve the existing system and would not be available if revision proceeds in relation to any issue. However, we would suggest that a review should take place in 2010 in order to determine that sharing has been equal in the interim so that adjustments can be made as necessary. In this context it may be worth pointing out that the percentage sharing quoted by OCIMF relies on the most extreme assumptions and that different assumptions would tend to show equal sharing of historic claims based on the Secretariat's findings. We refer to the statistical study submitted by the Director in May 2004 (document 92FUND/WGR.3/22), which shows that of the total net payments made in respect of 5 800 incidents between 1978 and 2002, 53% was paid by shipowners and 47% by oil cargo interests.

8 If States are not prepared to accept the contractually binding voluntary schemes which are offered, we believe it is inevitable that all the advantages of the existing system will inevitably be lost in the fragmentation that will result from the process of revision, particularly since many States have already indicated that they are not interested in adopting further changes to the existing regime.