



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS

ASSEMBLY  
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Agenda item 8

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## REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

**Submitted by the International Group of P&I Clubs**

<b>Summary:</b>	This submission provides the response from the International Group of P&I Clubs to the two questions posed at the March 2005 meeting of the Working Group on the application of STOPIA and TOPIA.
<b>Action to be taken:</b>	The Assembly is asked to consider the information contained in this paper.

### 1 **The issue**

- 1.1 At the March 2005 meeting of the Third Intersessional Working Group (the Working Group) the International Group of P&I Clubs confirmed that from 3 March 2005 the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) would be applied in all States in which the Supplementary Fund Protocol is in force. This agreement has the effect of increasing the limit of liability of small tankers to SDR20 million in those States.
- 1.2 At that meeting the International Group also offered, as an alternative to STOPIA, to put in place an agreement (TOPIA) under which shipowners would undertake to meet 50% of the claims falling on the Supplementary Fund.
- 1.3 At the conclusion of the discussion, the Chairman asked if two questions could be put to Club Boards:
  - Would Club Boards be prepared to extend the operation of STOPIA to all parties to the 1992 Fund Convention and not merely to parties to the Supplementary Fund Protocol?
  - Would Club Boards be prepared to implement TOPIA in addition to STOPIA?
- 1.4 In considering these questions Club Boards have paid close attention to the discussions which took place at the last meeting of the Working Group on the issue of whether to revise the Conventions. As indicated in the Chairman's paper (document 92FUND/WGR.3/25/1), the issue of revision turned in the first place on whether States thought it necessary to revise the Conventions in order to increase the limit of liability of the shipowner. The proposals made by the International Group had been made in this context with the intention of preserving the best features of the existing system while allowing claims experience to develop. In this way it was hoped that it would be possible to avoid the upheaval which would inevitably follow if a full-scale revision of the Conventions was undertaken. In the event, as indicated in the report from the Working Group, States were divided on whether to follow this approach, and the issue will therefore have to be determined by the Assembly.

- 1.5 The discussions that took place at the meeting of the 1992 Fund Working Group in March have not changed the basis on which the International Group's proposals were made. Any offer to share voluntarily in the third tier, either in conjunction with STOPIA or as an alternative to STOPIA, will cease to have any relevance if the Assembly decides to proceed with revision since the purpose of the International Group's proposals is to provide an alternative to revision. In the absence of any clear indication from States at the March 2005 meeting that their central concern about revision can be adequately addressed by adjusting the sharing of the burden of compensation without formal revision, it is plainly not appropriate to make any further proposals at this stage and Boards have therefore given a negative response to both the questions posed by the Chairman. However, if the Assembly should reach a different conclusion then a different conclusion might be reached by Boards.
- 1.6 Some proponents of revision have claimed that a limited revision is possible whereby only a selected handful of topics would be considered. For this purpose the following subjects are mentioned, as discussed at the March meeting of the Working Group:
- tacit amendment procedure;
  - compulsory insurance for smaller vessels;
  - non-submission of oil reports;
  - quorum;
  - definition of 'ship'; and
  - uniform application of the Conventions.
- 1.7 It is recognised that the meeting of the Working Group in March decided to recommend to the 1992 Fund Assembly that if the Conventions were to be revised, the first five issues above should be addressed and that uniform application of the Conventions was sufficiently important to remain on the Agenda. However, in addition to these matters which are, in themselves, relatively non-contentious, States may wish to address the issue of shipowner limits either in the 1992 Civil Liability Convention or by way of contribution to the Supplementary Fund. It seems very likely therefore that the revision process is likely to involve revision of all three instruments, the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol. This is a complex undertaking which will inevitably involve a great deal of time and effort. Moreover, it is difficult to imagine how the result will be better for the claimant than the existing system. If the Assembly decides to embark on the process of revision States may at some future stage share this assessment and may wish to postpone the revision process in reliance on the proposals of the International Group. At that stage it may be appropriate to put the Chairman's questions to Club Boards once more.

## **2 Action to be taken by the Assembly**

The Assembly is asked to consider the information contained in this paper.

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