



REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

REVISION OF THE 1992 CONVENTIONS

Submitted by Australia, Canada, Finland, France, Ireland, Japan, Netherlands, New Zealand, Portugal, Sweden and the United Kingdom

<i>Summary:</i>	This document proposes, and sets out the precise scope of, a limited revision of the CLC/Fund regime as well as the continuation of the Working Group.
<i>Action to be taken:</i>	See section 7.

1 **Introduction**

- 1.1 Substantial progress has been made within the 1992 Fund third intersessional Working Group on the revision of key policies and on the development of the Supplementary Fund Protocol. Nevertheless the co-sponsors of this document are deeply concerned about the division of views at the Working Group meeting in March 2005 when the report to the Assembly was being considered.
- 1.2 On one hand, it is conspicuous that most of the States that have suffered from major oil tanker incidents, as well as most of the States that have experience of working within the regime for many years, have supported a limited revision.
- 1.3 On the other hand, it is clear that some delegations are concerned that once the Conventions are opened for revision there is the possibility of radical changes to the very basis of the regime – this has been described as 'Pandora's box'.
- 1.4 The co-sponsors would wish all Contracting States to recall that the CLC/Fund regime is intended to meet the mutual interests of States. But if the interests and concerns of a sizeable number of States are not adequately addressed there must be a danger that this mutuality will eventually fragment.

2 **What revisions are not being proposed?**

- 2.1 The co-sponsors agree that the five years of work to date has demonstrated that the basis of the regime is basically sound and that there is no need for fundamental changes. The co-sponsors further believe that the current review should continue on the basis of revised terms of reference for the Working Group that clearly defines what issues will be and will not be considered as well as those issues that will be further debated. This approach will allow work to continue towards a revision of the Conventions in the foreseeable future but with the understanding that the basic provisions that have been incorporated into the Civil Liability and Fund Conventions and the Supplementary Fund Protocol should be maintained. Therefore, on this basis and for the sake of

clarity, the co-sponsors would wish to state that they are *not* proposing that the following should be revised, or changed, if the Conventions are reopened as part of the present review:

- overall limits of the regime;
- breaking of limitation of liability;
- revision of capping arrangements;
- cargo owner liability;
- minimum annual contribution to the 1992 Fund;
- merging of the Conventions; and
- problems faced by oil storage companies (to be revisited in the light of future experience with the HNS Convention).

2.2 **NOTE:** The co-sponsors are aware of some concerns among a number of States that the proposals for revision could lead to a change to the fundamental principle of the 1992 Fund Convention where the responsibility for contributions to the 1992 Fund could change the present obligation on receivers (importers) of oil to also include financial obligations for producers (exporters) of oil. The co-sponsors wish to state categorically that any change to the present financing arrangements would be totally unacceptable to them in the context of this revision exercise and it is not, therefore, an objective.

3 What revisions are being proposed?

3.1 The co-sponsors are convinced, however, that a limited revision is necessary and will ultimately serve the best interests of claimants and Member States. They believe that, due to the known shortcomings of the present regime, its effectiveness is at stake. There is already substantial support for revision in six key areas, though some areas need further discussion in order to agree on the content of the revision:

- tacit acceptance procedure;
- compulsory insurance;
- non-submission of oil reports;
- quorum for meetings of the 1992 Fund Assembly;
- definition of 'ship'; and
- uniform application of the Conventions.

3.2 It would be extremely damaging to the credibility of the regime not to implement any of the six key areas on which the necessity for revision has been identified. The Working Group gives a unique opportunity to finalise a sound, balanced and timely revision, acceptable to all stakeholders and protective of the future. A failure to achieve this limited revision may expose the international regime to calls for radical changes following a new incident that highlights the regime's inability to evolve in the light of known deficiencies. Failure to proceed with the proposed limited revision is, therefore, the *real* 'Pandora's box'!

4 Rebalancing of the financial burden

4.1 The issue that has caused a division in the Working Group is the rebalancing of the financial burden between the shipowner and contributors. The co-sponsors are of the view that while a discussion on this issue has taken place within the Working Group, policy options need to be further developed in a comprehensive and substantial manner, especially taking into account the effect of the measures to deter substandard transportation of oil.

4.2 The co-sponsors fully recognise that there has been reluctance on the part of a number of delegations to agree to revision for fear that it might lead to the raising of limits of liability, either

of shipowners or contributors – or both. It has instead been proposed that reliance should be placed on one or other of the two proposed voluntary agreements to offset the imbalance in the liability/contributions between shipowners and contributors.

- 4.3 It is not the goal of the co-sponsors to seek an increase in the overall limits of the 1992 CLC/Fund regime. They do maintain, however, that some rebalancing of the financial burden between the shipowner and the contributor is justified and that this should be considered on the basis of the information provided in the IOPC Funds' Secretariat study covered in paper 92FUND/WGR.3/22, dated 14 May 2004.
- 4.4 The current dilemma is that whilst there is not yet consensus on the sharing of the financial burden, a failure to agree to revision relatively soon on the basis of the known shortcomings of the current regime will in time be likely to lead to a breakdown of the regime.

5 Voluntary agreements

5.1 The co-sponsors have taken note of the proposals that have been made for possible voluntary STOPIA or TOPIA agreements but note that these have not been concluded to the satisfaction of all sides of industry. Apart from this fundamental objection, voluntary agreements would suffer from the following drawbacks:

- their scope of application would be limited to State parties to the Supplementary Fund Protocol only;
- they would be subject to withdrawal without prior notice;
- they would not offer a comprehensive solution but only a very limited adjustment of the financial responsibilities of shipowners and contributors;
- they could not guarantee a hundred percent coverage of ships; and
- they would ultimately prove divisive because they would not benefit all States in similar circumstances.

5.2 The co-sponsors are therefore of the view that it is in the interest of the whole membership to try and reach an agreement on a limited revision within the CLC/Fund regime, which will secure its continued effective functioning.

6 Substandard transportation of oil

6.1 The co-sponsors also recognise that the Working Group considered the issue of substandard transportation of oil and whether or not the 1992 Conventions should be amended to include measures to tackle that problem. When the issue of possible categorising of ships was introduced, many delegations supported in principle and showed their interest in discussing this issue further. There was also support for the proposal brought forward by the International Group of P&I Clubs that an informal working group be established to examine further measures in the realm of insurance to address the substandard transportation of oil. The co-sponsors firmly believe in the importance of this issue, they think both proposals are aiming at the same goal and merit further discussion. They, consequently, recommend adding this item to the Working Group's mandate.

6.2 Recognising the division on the main issue of rebalancing the financial burden between the shipowner and contributors, the co-sponsors urge the Assembly to reserve this decision until after the other six issues have been fully elaborated by the Working Group and draft treaty text has been submitted by the Working Group to the Assembly for consideration and decision. Additional time is required for all parties to further consider these issues and to work co-operatively to address the identified shortcomings in the CLC/Fund regime. This additional time will also allow the Working Group to further discuss the issue of substandard transportation of oil, including the insurance proposal by the International Group of P&I Clubs, and bring back to the Assembly any recommendations on this issue. The Working Group is thus the ideal forum for

such comprehensive discussions. However, States need to recognise that to indefinitely delay this debate and the decision by the Assembly may lead to serious repercussions for the regime.

7 Action to be taken by the Assembly

7.1 The co-sponsors urge the Assembly to instruct the Working Group to pursue its work. They believe that the Assembly, and the IOPC Funds as a whole, will thus demonstrate that they value the work and the efforts of the many delegations and Non-Governmental Organisations to the debate to identify and resolve potential problems in the Conventions. This approach also takes advantage of an existing and effective forum that the Working Group provides for discussions and drafting of amendments on important issues whose resolution would clearly improve the Conventions.

7.2 In the spirit of moving forward and making progress, the co-sponsors refer to the Working Group's recommendations to the Assembly and propose that the Assembly amend the Working Group's terms of reference and instruct it to:

- develop appropriate treaty text on the six issues that have gathered substantial support (ie tacit acceptance procedure; compulsory insurance; non-submission of oil reports; quorum for meetings of the 1992 Fund Assembly; definition of 'ship'; and uniform application of the Conventions);
 - further discuss the issue of substandard transportation of oil, including the insurance proposal by the International Group of P&I Clubs, and bring back to the Assembly any recommendations on this issue; and
 - reserve the decision on the rebalancing of the financial burden between the shipowner and contributors until after the Assembly has fully considered the treaty text on the six issues that have the support of members of the Working Group.
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