



REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by Greece

Summary:	The Assembly is invited to decide that there are insufficient grounds for undertaking a revision of the compensation regime, and that the work of the third Intersessional Working Group should be discontinued.
Action to be taken:	The Assembly is invited to decide against a revision of the 1992 Conventions and to terminate the activities of the Working Group.

1 Introduction

- 1.1 Greece proposes that the Assembly decide that there are insufficient grounds for undertaking a revision of the compensation regime, and that the work of the third Intersessional Working Group should be discontinued.
- 1.2 The following is a brief summary of the main reasons for this proposal.

2 Absence of sufficient support

- 2.1 The Working Group has agreed that a revision of the 1992 Conventions should not be undertaken without broad support. This followed observations during the debate that a 'revision' could not be accomplished by simple amendment of the existing Conventions but would require new treaties to be adopted and implemented in national laws. Attention was drawn to legal and practical difficulties to be expected, particularly if there were a division of opinion as to the merits of a revision, and to the prospect that this could lead to fragmentation of the current uniform system.
- 2.2 Summarising the debate, the Chairman stressed the importance of maintaining a global and universally applicable regime and stated that for a revision to succeed there had to be broad support. The Working Group agreed with this statement (cf document 92FUNDA.10/7 and 92FUNDWGR.3/26, paragraph 6.16).
- 2.3 Although a number of states are in favour of revision – and for this reason the Working Group has not recommended *against* revision – support for a revision falls well short of being 'broad'. The critical consideration is that there is no recommendation in favour. It can only be concluded that revision does not have sufficient support.

3 Absence of sufficient grounds

- 3.1 The Working Group has identified six items on which amendments should be considered if a revision were to take place. Agreement on these issues was without prejudice to the question whether there should be a revision.

- 3.2 From an early stage it has been accepted that if a revision were to take place then the opportunity should be taken to consider a number of items, which do not in themselves justify revision, but on which the text of the Conventions might usefully be improved in the course of any revision. The question whether a revision should take place was seen as depending primarily on certain issues of major importance, notably those discussed at length in relation to the shipowner's liability and substandard transportation of oil.
- 3.3 On these major issues the Working Group has recommended that there be no revision of the test for breaking limitation of liability; it has not recommended revision of the liability limit; and it has not recommended any amendment addressing the issue of substandard transportation of oil.
- 3.4 The six items referred to above are all in the category of those, which do not, either individually or collectively, justify a revision of the regime.

4 Limited revision

- 4.1 Notwithstanding the above, there have been suggestions that a 'limited revision' should be undertaken which is restricted to certain specified items.
- 4.2 The case against this course of action is not just that the items concerned do not warrant the upheaval of transition to a new regime. There is also the concern that once the Conventions are re-opened there can be no certainty what potential changes will be introduced until the process is over.
- 4.3 These concerns would apply in particular if it were to be decided not only to undertake a limited revision, but also in case that the Fund may decide to conduct a further review of other issues, notably those relating to the shipowner's liability limit, substandard transportation of oil and cargo owner's liability. Such a review would be conducted if the object was to consider the possibility of changes to the compensation regime.

5 Termination of Working Group's work

- 5.1 A number of positive developments have emerged from the Working Group's review, but it has agreed since May 2004 that its work could not continue indefinitely and that its report to the Assembly in October 2005 would be its final recommendation.
- 5.2 It has been proposed that the issue of substandard transportation be referred to an informal working group in order to be examined from the insurance point of view. This would be a quite different type of body from an Intersessional Working Group of the Fund. Furthermore the issue is of a technical nature and is better addressed under the auspices of IMO.
- 5.3 Given the revised limits of 2003 and the STOPIA scheme, which is already in effect, and constitutes an alternative to revision, we believe that this development allows an opportunity for claims experience to develop before any further changes are considered.
- 5.4 Furthermore, it should be stressed that STOPIA is not designed to benefit States and does not affect the compensation available to claimants. Although it applies only in States that are parties to the Supplementary Fund Protocol, it operates irrespective of whether compensation is paid by the Supplementary Fund. The indemnification paid by the shipowner benefits all contributors to the 1992 Fund, not just those in Supplementary Fund States (cf document 92FUND/A.10/7 and 92FUND/WGR.3/26, paragraph 6.1).

6 Conclusion

The Assembly is invited to decide against a revision of the Conventions and to terminate the activities of the Working Group.
