



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992**

ASSEMBLY
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Agenda item 11

92FUND/A/ES.12/13
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ANY OTHER BUSINESS

CO-OPERATION WITH P&I CLUBS (STOPIA & TOPIA)

Submitted by the Netherlands

Summary:

At the February/March 2006 sessions of the 1992 Fund and Supplementary Fund Assemblies a Memorandum of Understanding was approved between these Funds and the International Group of P&I Clubs regarding joint claims settlement procedures and the undertakings by the Clubs in respect of the new voluntary arrangements of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) and the new Tanker Oil Pollution Indemnification Agreement (TOPIA).

The operability of both STOPIA 2006 and TOPIA 2006 could be strengthened by further amendments, for example, as suggested in paragraph 3.2 of this document.

Action to be taken:

Decide whether to instruct the Director to further investigate the possibilities to strengthen the operability of both the STOPIA 2006 and TOPIA 2006 agreements (see paragraph 3.2)

1 Introduction

- 1.1 At the 10th extraordinary session of the 1992 Fund Assembly and the 2nd extraordinary session of the Supplementary Fund Assembly, held in February/March 2006, a Memorandum of Understanding was approved between these Funds and the International Group of P&I Clubs regarding joint claims settlement procedures and the undertakings by the Clubs in respect of the new voluntary arrangements of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) and the new Tanker Oil Pollution Indemnification Agreement (TOPIA).
- 1.2 At the meetings in February 2006 the Director was authorised to agree minor editorial amendments to the text with the International Group of P&I Clubs and the results thereof were presented at the second session of the 1992 Fund Administrative Council, held in May 2006 (document 92FUND/A/ES.11/6). The point was then raised at that session of the Administrative Council (document 92FUND/AC.2/A/ES.11/8) about the possible consequences of the amendment to the last sentence of Clause 10F in the Memorandum of Understanding relating to TOPIA. The amended text would prevent the Supplementary Fund from making a claim against the Clubs not only if the Supplementary Fund had previously received notice of a Ship's cesser of entry in TOPIA, but also now, according to the additional text, in case of the Ship's non-entry at all in TOPIA 2006.

Clause 10F of TOPIA as originally drafted (document 92FUND/A/ES.10/14) reads:

'Where Pollution Damage is caused by an Incident involving a Relevant Ship which is not an Entered Ship at the time of the Incident, the Clubs agree that the Supplementary Fund shall enjoy the same rights against the Club insuring the Ship at that time as are set out in Clause 10E above, notwithstanding that there is no liability under TOPIA 2006 on the part of the Owner, unless the Supplementary Fund has previously received notice, whether under Clause 10D above or otherwise, of the Ship's cesser of entry in TOPIA 2006.'

Clause 10F of TOPIA as set out in document 92FUND/A/ES.11/6, which reads:

'Where Pollution Damage is caused by an Incident involving a Relevant Ship which is not an Entered Ship at the time of the Incident, the Clubs agree that the Supplementary Fund shall enjoy the same rights against the Club insuring the Ship at that time as are set out in Clause 10E above, notwithstanding that there is no liability under TOPIA 2006 on the part of the Owner, unless the Supplementary Fund has previously received notice, whether under Clause 10D above or otherwise, of the Ship's non-entry (or cesser of entry) in TOPIA 2006.'

- 1.3 As was pointed out at the Assembly's February/March 2006 session, STOPIA 2006 and TOPIA 2006 are unilateral offers by the shipowners (document 92FUND/A/ES.10/13, paragraph 8.1). In order to emphasise this aspect, the text of Clauses 9 and 10 have been drafted as undertakings by the Clubs and not as an agreement between the Clubs and the Funds (document 92FUND/A/ES.10/14 paragraph 2.9).

2 Background

During the previous discussions in the 1992 Fund Assembly on a possible revision of the compensation regime provided by the 1992 Civil Liability and 1992 Fund Conventions, the International Group of P&I Clubs has offered that, under the revised STOPIA 2006, the limitation amount applicable to small tankers would, on a voluntary basis, be increased to 20 million SDR for tankers of 29 548 gross tonnage or less for pollution damage in all 1992 Fund Member States. TOPIA 2006 would then result in the shipowner indemnifying, on a voluntary basis, the Supplementary Fund for 50% of the compensation amounts paid by it under the Supplementary Fund Protocol.

3 Further analysis of the non-entry and cessor clauses under STOPIA and TOPIA

- 3.1 Provision was originally made for non-entry and cessor clauses in STOPIA, but not for a non-entry clause in TOPIA. The consequences of the new amendments to TOPIA seem to be on a totally different scale to the contributors to the Supplementary Fund: potentially a maximum of 275 million SDR uninsured under TOPIA compared to a maximum of 15.5 million SDR uninsured under STOPIA.
- 3.2 The aim of the voluntary offer by the International Group of P&I Clubs as mentioned in paragraph 2 above is, apart from indemnification of the Supplementary Fund, to increase the limitation amounts applicable to small tankers. Therefore it would seem to be more consistent with this aim if the corresponding provisions in 9F of STOPIA on the non-entry and cessor clauses were amended in accordance with Clause 10F in the Memorandum of Understanding regarding TOPIA as originally drafted (~~ie~~ the other way around).
- 3.3 As stated above, the offer by the International Group of P&I Clubs relates to 50% of the compensation amounts to be paid under the Supplementary Fund Protocol and up to 20 million SDR for small tankers. Therefore at least some more clarification could be sought as to whether a better guarantee could be provided, for example, by amending the original versions of the STOPIA and TOPIA agreements as suggested in paragraph 3.2 above.

4 Operational aspects of STOPIA 2006 and TOPIA 2006

- 4.1 The operational aspects of at least STOPIA 2006 have also come to the attention of the 1992 Fund Executive Committee at its 36th session in view of the *Shosei Maru* incident (document 92FUND/EXC.36/10, paragraph 3.5). In that regard the International Group of P&I Clubs had agreed to submit a document outlining details on the operational aspects of STOPIA 2006, the number of tankers falling outside of STOPIA 2006 and the efforts that the Clubs were undertaking to encourage shipowners to enter their vessels into STOPIA 2006.
- 4.2 The operational issues related to entry into STOPIA 2006 as mentioned in paragraph 4.1 above, seem also relevant as regards entry into TOPIA 2006. Therefore it seems apparent to strengthen the operability of both STOPIA 2006 and TOPIA 2006. Both agreements could in this respect benefit from further amendments, for example, as suggested in paragraph 3.2 above.

5 Action to be taken by the Assembly

The Assembly is invited to:

- (a) take note of the information contained in this document; and
 - (b) decide whether to instruct the Director to further investigate the possibilities to strengthen the operability of both STOPIA 2006 and TOPIA 2006 (see paragraph 4.2).
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