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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by Greece

Summary:

A revision of the international system would involve legal and practical complications which the Working Group has not discussed in detail, and which need to be weighed against any benefits that a revision could bring.

The prospect of a revision having disadvantages which outweigh any benefits has been underscored by developments over the last 12 months. There has been a continuing division of opinion among states, and a revision attempted in these circumstances could lead to a fragmentation of the present successful system.

Other relevant developments include alternative measures which have been taken to apportion the cost of oil spills, and to combat substandard shipping. These reduce any benefit to be gained from amending the current regime.

Action to be taken:

The Working Group is invited to refrain from recommending revision of the current regime in the absence of a much stronger case for changing the system.

1 Treaty issues - Transitional problems and fragmentation

- 1.1 Greece is not aware of any disagreement with its previous remarks on the process involved in changing the current regime contained in document 92FUND/WGR.3/22/1.
- 1.2 In particular, although reference has been made to the possible 'revision' of the 1992 Conventions, any instrument intended to modify the compensation system would have to take the form of a new convention or conventions, which may or may not be as widely accepted as the existing regime. The proposals for a modified regime embrace a number of issues which are far more controversial than those introduced by the 1992 Conventions. It should therefore not be assumed that any new conventions will necessarily supersede those of 1992 to the same extent that the 1992 Conventions have superseded those of 1969 and 1971.
- 1.3 Most of the proposals concern the possibility of a new CLC rather than a new Fund Convention. However it seems unlikely that it will be possible for the 1992 Fund to operate in conjunction

with two different versions of CLC, particularly if the liability limits are changed: its financial position would be different in each case, resulting in a lack of reciprocity as between different Member States. Accordingly, it seems likely that a new CLC would need to be accompanied by a new Fund Convention, and that there would need to be new IOPC Funds, with their own membership separate from that of the 1992 Fund.

- 1.4 It is likewise open to doubt whether the Supplementary Fund could operate in conjunction with two different IOPC Funds.
- 1.5 Consequently, the implementation of the proposed changes would be likely to involve an overhaul of the entire compensation system, possibly at all three levels. The complications would not necessarily be limited to a transitional period but could result in a longer-term fragmentation of the current uniform regime.
- 1.6 In conclusion, a 'revision' of CLC 92 would presumably involve a new Civil Liability Convention, alongside the 1969 and 1992 versions. A new Fund Convention might be needed to accompany the new CLC, thereby creating a separate IOPC Fund with its own Member States, and new third-tier arrangements might also be needed.
- 1.7 The experience of the 1992 Protocols has shown that the transition from one regime to another involves a number of problems. Though legal solutions are available, they involve significant administrative complications. These have to be faced not only during the transitional period but also in subsequent years, when different versions of the system apply in different States, and during the wind-down of the earlier system. In the case of the 1992 Protocols these complications were tolerable as the process was reasonably short, and it was clear that the new system would substantially replace the old. On this occasion it is not possible to be confident that the same would apply.
- 1.8 The changes made by the 1992 Protocols were concerned only with improvements to the compensation arrangements. They received strong and widespread support not only among governments but also from the industries providing the funds. Governments had every incentive to ratify, for in most cases it was clear that they and their citizens could only gain from the changes.
- 1.9 On this occasion governments are divided about the merits of the proposals. Even if a new regime is agreed, society is not well served unless ratifications are sufficient for it not only to enter into force, but indeed to replace rather than divide the existing system. This cannot be expected with confidence if a significant number of States (including contributory States) are either opposed to the changes, or see no benefit from going to the trouble of passing new laws.

2 Alternative measures

STOPIA

- 2.1 The STOPIA scheme, which has now been presented will adjust the sharing of the financial burden. Although it has been drawn up on a voluntary basis, it gives legal rights, which the 1992 Fund will be able to enforce against shipowners and also directly against their P&I insurers. It is understood that this will apply to all ships covered by the scheme, including those, which do not at present give rise to rights of direct action (because they are below the minimum tonnage for which CLC certificates are required).
- 2.2 It is noted that the overwhelming majority of the world tanker fleet (more than 95%) is under the International Group of P&I Clubs insurance cover. Thus, the overall cost of compensation will be appropriately shared over time between the industries involved, since STOPIA would appear to make a significant adjustment in favour of oil receivers.

- 2.3 Given that the Working Group's review of the regime has prompted STOPIA, it has produced a constructive result which removes any practical need for changing the legal liability limits.

Substandard ships

- 2.4 There is no disagreement that efforts to eliminate substandard ships serve an important object – the issue is whether the compensation regime is the place where they belong.
- 2.5 Moreover, the question is whether statutory amendment of the compensation regime would in practice bring any material benefits, beyond those attainable by other measures directly concerned with ship safety. Any such benefits need to be sufficient to outweigh the disadvantages of a revision, and should avoid complicating a system which owes much of its success to simplicity.
- 2.6 Though some interesting ideas have been explored, a recommendation of any changes to the Assembly requires careful consideration of their anticipated effect and of the drafting issues involved. Detailed written reasons have been given for doubting that amendments of this kind would in practice bring any significant benefit. At this stage of the debate, therefore, proposals for statutory amendments need to be supported by more than general statements of optimism that they would have a beneficial effect. A point-by-point response is needed to the counter-arguments. None has so far been given.
- 2.7 In the meantime, evidence has been given to the Working Group of the latest steps by industry bodies to review ways in which they can contribute to higher standards, and of their proposals for the way forward. In this area also, concerns expressed in the Working Group have encouraged positive measures, and any benefit from changing the compensation arrangements is correspondingly reduced.

3 Conclusions

- 3.1 The success of the current regime has been due in part to a satisfactory balance being struck between political and technical factors and this balance needs to be kept if the regime is to retain its widespread appeal.
- 3.2 This Organisation should remain a forum of expertise and long experience in all aspects of compensation arrangements.
- 3.3 If a strong uniform system of compensation is to be preserved, a revision should not be recommended unless there is a prospect of benefits, which are sufficient to justify the process, and to encourage States to ratify a new regime. A marginal decision to proceed with a revision is a recipe for fragmenting the system.

4 Action to be taken by the Working Group

The Working Group is invited to refrain from recommending a revision in the absence of a much stronger case for change than has so far been presented.
