



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by the International Group of P&I Clubs

Summary:	This submission attempts to make good certain misconceptions contained in the document submitted by the Oil Companies International Marine Forum (OCIMF) (document 92FUND/WGR.3/25/5).
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Action to be taken:	Information to be noted.
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1 Introduction

Although as a general matter it is not appropriate to comment on other submissions before they are considered by the Working Group, it was felt that much time could be saved at the meeting if some of the comments which we believe to be inaccurate in the document submitted by OCIMF (document 92FUND/WGR.3/25/5) could be pointed out beforehand. The comments below use the same broad headings and the same numbering as the OCIMF submission.

2 Level of shipowner's limitation amount and its relationship with the compensation funded by receivers

2.1 It is suggested that the original intention of the Fund Convention was to supplement the limit of the shipowner's liability fixed by reference to the capacity of the insurance market. While it is true that the original limit of liability in the 1969 CLC was fixed by reference to the capacity of the insurance market at that time, it was never the intention that the relationship between liability and insurability, which was born of necessity in 1969, should continue to determine the relationship between the two paying parties, the oil industry and the tanker industry. This is clear from the proceedings of the Conferences at that time and subsequent Conferences.

2.2 In paragraph 2.3 of the OCIMF document it is suggested that the carrier should have an appropriate financial stake in the regime. This is already the case; as the Secretariat's costs study demonstrates, cost of compensation is shared broadly by the oil and tanker industries. Moreover, the vast majority of spills are settled within the shipowner's limit of liability. An increase in the liability of the shipowner, which is already substantial, is unlikely to produce a higher standard of operation. This must be sought by other means.

- 2.3 Incentives for Clubs must also be sought elsewhere; the OECD report makes it clear that there is no correlation between ship condition and major claims. This is the point that Terence Coghlin is making in the extract quoted in paragraph 2.6 of the OCIMF document since the traditional method of underwriting looked exclusively at loss record which is, paradoxically, not a useful indicator of ship quality. This is why the Clubs have sought to bring into effect a number of measures (cf document 92FUND/WGR.3/25/3) aimed at improving the quality of entered tonnage. Incidentally, the Clubs' consideration of this matter began in 1989 with the formation of our Ships' Standards Sub-Committee, well before the process of revision had begun.

3 Supplementary Fund – an interim solution only

It may perhaps be worth pointing out that at the Diplomatic Conference which adopted the Supplementary Fund none of the Resolutions which were agreed characterized the Supplementary Fund as an interim solution. A 'comprehensive review' was mandated and this, it is submitted, has been achieved.

4 Compulsory Insurance

The absence of compulsory insurance for vessels carrying less than 2 000 tonnes as cargo has caused little difficulty in practice. The scale of this problem, which principally concerns vessels trading illegally and which therefore would not be insured in any event, has probably been exaggerated, but the problem falls away to the extent that STOPIA applies since this will in effect grant direct action to the claimant.

5 Voluntary solutions

- 5.1 Reference is made to the submission by the International Group of P&I Clubs on sharing (document 92FUND/WGR.3/25/2) to which is attached a copy of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA), which is underpinned by a Memorandum of Understanding between the 1992 Fund and the International Group. The overwhelming majority of the world tanker fleet is entered in the International Group P&I system, and whilst there may be a very small number of relevant tankers outside this system, this will not have any significant impact on the effectiveness of STOPIA, the purpose of which is to make a substantial adjustment to the apportionment of the overall financial burden between shipowners and oil receivers. In any event it is gratifying to note that a substantial number of small Japanese tankers have voluntarily agreed to join STOPIA even though they are not reinsured into the International Group's pooling system.
- 5.2 Similar problems were faced with the implementation of the TOVALOP agreement and were largely solved by the insistence of oil companies and traders that a suitable clause be inserted in all charterparties. If concerns do exist on the scope of STOPIA (even though some 6 000 tankers are expected to join) then a similar path could be followed in relation to STOPIA. Similarly, States could make adherence to STOPIA or a similar scheme a condition of entry to their ports. STOPIA took effect when the Supplementary Fund came into force on 3 March 2005, thereby substantially increasing shipowners' proportion of the overall burden of compensation. STOPIA provides legally enforceable rights to the IOPC Fund, backed by a guarantee of payment from Clubs. The alternative offer made by shipowners to share equally in claims falling on the Supplementary Fund uses a similar mechanism and could be put in place very quickly.

6 Action to be taken by the Working Group

The Working Group is invited to take note of the information contained in this document.
