INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
52nd session
Agenda item 4

71FUND/EXC.52/9/1
11 February 1997

Original: ENGLISH

ADMISSIBILITY OF CLAIMS RELATING TO SALVAGE OPERATIONS AND SIMILAR ACTIVITIES

Note by the International Group of P & I Clubs

1 The International Group of P & I Clubs welcomes the effort by the IOPC Fund to try and resolve difficult issues of the admissibility of salvage costs and has read the paper 71FUND/EXC.52/9 with interest.

2 The International Group is pleased to be able to contribute to the debate and offers the following comments on the paper.

3 The 1989 Salvage Convention made a fundamental change in the law of salvage; recognising explicitly the desirability of avoiding damage to third parties, particularly as regards preventing or reducing pollution. The original debate leading up to the 1989 Convention was conducted against a background of demands for 'liability salvage'. In other words salvage awards based not on the value of property saved but on third party damage prevented. This extreme view was rejected for good practical and theoretical reasons, but nonetheless since the 1989 Salvage Convention has come into force it is no longer possible to say that salvage is solely concerned with saving property.

4 The outcome of the debate as to whether salvage was about the saving of property or the prevention of third party damage was a pragmatic rather than totally logical compromise. Because of the difficulty of separating motive or primary cause it was agreed to use an arbitrary split between property and liability interests. Where a salvage was successful in saving property then the whole of any award (Article 13) was to be paid by property interests, including any uplift for efforts to save the environment. Equally any 'liability' award under the safety net (Article 14) was to be paid entirely by the shipowner and his liability (P & I) underwriters even though much of the work paid for would have been done to save property and only incidentally prevented environmental damage. The "liability" underwriter was to be responsible only for any amount by which the Article 14 award exceeded the Article 13 award.

5 This compromise has been agreed by both property and P & I underwriters and means that the P & I Clubs are only required to pay compensation to salvors when two conditions are fulfilled (i) a threat of damage to the environment and (ii) an insufficient property fund. The obvious course would be for the IOPC Fund also to accept it and to pay no part of any Article 13 award, but to agree that the whole of the excess part of an Article 14 award can be brought into account when calculating 'Pollution Damage' for the purpose of deciding when the shipowner has paid the CLC limit and reached the level where the IOPC Fund gets involved. Obviously claims under this heading would require the same co-operation between the P & I Club and the IOPC Fund as any other.

6 In the light of this general background we should like to make the following comments on the draft paper:

Paragraph 3.4
The sentence at the bottom of page 2 and top of page 3 is not entirely accurate. The motive was to ensure that salvors would accept salvage contracts where there was danger to the environment but little or not chance of successful property salvage under the old 'no cure no pay' principle.

Paragraph 4.5
The correct interpretation of Article 14, following the recent House of Lords decision in the NAGASAKI SPIRIT, is that the salvor is entitled to basic costs only. These are then augmented under Article 14 to take account of the level of service in preventing damage to the environment. There is therefore no double profit merely a legal formula for calculating it and no-one pretends that clean-up contractors do not make profits in normal oil spill operations.

Paragraph 5.3
The comments in this paragraph are true only in so far as they relate to Article 13 awards. Article 14 is very definitely case specific.

Paragraph 5.5
Under the P & I Clubs proposals the right to claim against the Fund would not depend on the relative lack of success of the salvage services in saving property; rather it would depend on the degree of success in preventing damage to the environment under Article 14. The amount actually payable by the Fund would then be reduced by a contribution from property interests who had also received benefits.

Paragraph 5.6
It is not unusual to have liabilities determined by arbitral or judicial process. The Fund would certainly have the possibility of influencing the outcome through arguments presented by the shipowner following the co-operation normal between Shipowner, P & I Club and the Fund in all pollution incidents.

Paragraph 5.8
It can easily and correctly be argued that the sole purpose and, a fortiori, primary purpose of Article 14 is the prevention of damage to the environment. This Article serves no other purpose and it is only expenses under this Article which the P & I Clubs propose should be claimable against the Fund.

7 In the view of the International Group it would be correct in principle, entirely in keeping with the primary purpose test, and the simplest solution in practice, for the IOPC Fund to agree that claims under Article 14 can be made against the Fund to the extent that the shipowner is obliged to pay under Article 14, but that claims under Article 13 should be totally excluded.