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OIL POLLUTION
COMPENSATION
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Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by the International Group of P & I Clubs

Summary:	The following submission outlines matters of general concern in relation to the revision of the Oil Pollution Conventions and offers further detail with regard to the voluntary proposal made by shipowners and P&I Clubs
Action to be taken:	The Working Group is invited to take note of this development.

1 The thirteen P&I Clubs which are members of the International Group of P&I Clubs are mutual liability insurers that cover the third party liability of shipowners, including liability in respect of oil pollution. The Clubs in the International Group cover over 90% of the world's tankers and are the principal providers of the certificates of financial responsibility which are required under the Civil Liability Convention (CLC). The Clubs have therefore been involved in paying compensation in virtually all of the major oil spills of the last thirty years.

2 The high degree of co-operation that has existed between the Clubs and the IOPC Funds has enabled the CLC and Fund Conventions to be operated smoothly and very successfully to the benefit of claimants. We believe that it is of paramount importance that the Conventions continue to operate in this way and offer the comments that are set out below in order to counter a number of suggestions which we believe would render the Conventions less effective. We recognise that these suggestions may have been put forward for the best of motives but nonetheless are obliged to point out that their effect on the operation of the Conventions would be damaging.

3 **<u>Shipowner's liability</u>**

i. The suggestion has been made that the existing test for establishing the right to limit in Article V.2 of CLC 1992 may permit a shipowner to limit his liability even though he has been at fault. Whilst some may view this as an undesirable consequence of the way in which the Conventions operate, as we argued more comprehensively in our submission to the second meeting, it is necessary for the sake of the claimant that the Convention draws a clear

line (document 92FUND/WGR.3/8/3). If a more liberal test were employed the consequence would undoubtedly be that compensation to the claimant would be delayed while the matter of liability was litigated since the IOPC Fund would be obliged to protect its interest in any case where the responsibility of the carrier was called into question. The language defining the test of limitation in the 1969 CLC was changed for precisely this reason and it would be a retrograde step to re-introduce that test.

ii. The suggestion has also been made that the limit of a shipowner's liability should be increased or the criterion for limitation varied if a sub-standard vessel or a particularly dangerous cargo is involved. Again, there may be merit in this idea as an abstract notion but in practice it is extremely difficult before the event to identify a sub-standard vessel or a particularly polluting cargo. If this issue is pursued after the event then again the position of the claimant will certainly be prejudiced by protracted litigation over these questions.

iii. The same arguments apply in relation to the issue of channelling. Under the existing language of CLC all liability is channelled to the registered owner and all other parties to the venture, managers, operators and charterers, are exonerated. Again the reason is that the victim will be compensated more quickly and efficiently if issues of liability are put to one side.

It is appreciated that some may find it unpalatable that a party who is at fault in any of the three examples given above may nevertheless escape liability. However this stance misunderstands the nature of the pollution Conventions, the prime purpose of which is to provide an efficient compensation system, not to punish the "guilty" party. Other methods have been devised in order to ensure that all those involved in the carriage of oil operate to an appropriate standard, for example, Port State Control and ISM. These and other methods could be further developed to achieve the desired result. However great care must be exercised in order to ensure that the efficient compensation system which is now in place continues to operate satisfactorily.

4 Sharing the Burden

We attached to our submission to the second meeting of the Working Group (document 92FUND/WGR.3/8/3) a booklet containing an analysis of 360 tanker spills which took place between 1990 – 1999 (further copies available on request). This study demonstrated that the application of the 1992 CLC and Fund limits to all 360 spills would have resulted in the equitable sharing of the total cost of compensation by ship and cargo interests. This accords with the principle of sharing between shipping and oil industries which guided those who drafted the original instruments. Great care should therefore be taken not to undermine any features of the existing liability system which has operated well in practice in compensating the victim promptly and in sharing the cost between the two industries that have been identified as the polluters. Nonetheless, circumstances change and we welcome the increases in the limits of both Conventions which will come into effect in November 2003. We do not expect the shipowners' share of the burden to reduce as a result of these increases, bearing in mind that approximately 95% of all claims in the last ten years would have been paid entirely by shipowners within the current 1992 CLC limits.

5 Third Tier

We also welcome the introduction of a third tier of compensation which will give comfort to those States which feel that the 2003 limits will still be inadequate. We recognise that the third tier potentially increases the Fund's financial exposure in major oil spill cases in those States that ratify the third tier Protocol and that, if borne out, this would increase the cost to oil receivers in those States. Whether this materialises will, of course, depend on the future pattern of oil spill cases in those States. Nonetheless recognition of this potential led us to propose in our earlier submissions a voluntary increase in the minimum limits of CLC within those States that ratified the third tier Protocol (documents 92FUND/WGR.3/8/9 and 92FUND/A.6/4/3). However, as was

pointed out in the detailed description of the scheme which was set out in document 92FUND/A.6/4/3, the voluntary increase would operate to the benefit of all contributors to the IOPC Fund, not only in those States which opted for the third tier. Moreover the voluntary increase would operate whether or not the third tier was brought into play in a State that had ratified the third tier Protocol. Shipowners would therefore be paying more on a regular basis (as well as paying the on-going cost of insurance in order to satisfy their existing obligations under the 1992 CLC), whereas the cargo interests contributing to the third tier would do so only when a sufficiently large incident occurred – a rare event given that only one claim of those examined has the potential to exceed the 2003 limits.

We remain committed to equitable sharing and believe, based on the last decade's claims figures, that this will be achieved through this voluntary initiative. However, we would also suggest that this should be reviewed in three to five years after the entry into force of the third tier in the light of claims statistics at that time.

6 Voluntary minimum limit for tankers

The proposed scheme was outlined in our submission to the October session (document 92FUND/A.6/4/3) as follows:

i. The Scheme would only apply in the event of a tanker spill affecting a State Party to the third tier when liability was imposed under CLC92. The scheme would come into effect at the same time as the entry into force of the third tier. The flag of the vessel or the ownership of the cargo would not be relevant.

ii. The CLC limit (including the increases which come into effect in 2003) would have to be exceeded, but the scheme would operate even if claims do not reach the third tier.

iii. The tanker owner's liability under the scheme would not exceed the CLC limit plus the voluntary tranche.

iv. The tanker owner would contract with the IOPC Fund to reimburse claims paid in excess of the amended 92CLC limit. All contributors to the 1992 Fund would therefore benefit in circumstances where the scheme applied.

v. Attempts will be made to find a mechanism which will avoid the necessity for tanker owners to sign up individually to the scheme.

vi. Clubs would guarantee the contractual liability to the Fund under the agreement subject only to the defences available to shipowners and insurers under CLC.

Since the last session we have been developing the agreements necessary in order to put the scheme into effect. These draft agreements are very nearly in final form and it is hoped that they will have been considered with the Director of the 1992 Funds in advance of the April session. In the light of informal contacts at the last meeting of the Working Group and in subsequent meetings with States it has been decided to ask Club Boards to consider the OCIMF proposal of SDR 20million for adoption as the voluntary minimum limit of shipowners' liability under CLC.

It should however be emphasised once more that this proposal is made in the context of the 1992 Conventions. It follows therefore that if any essential element of the 1992 Conventions affecting tanker owners' liabilities were to be amended shipowners and their Clubs reserve the right to withdraw the scheme.

7 Conclusion

At its earlier meetings the Working Group has identified a number of issues which were thought to require further consideration in the longer term. Many of these issues have become less pressing with the prospect of increased limits, both those which will come into effect in 2003 and those which will come into effect thereafter. Other items which are included on that list have been considered above and also in earlier papers submitted by the International Group as well as other delegations. In regard to these issues it seems plain that in all cases the claimant's position will be worsened if the Conventions are re-opened. We would therefore respectfully urge States to consider whether further revision should be undertaken once the Protocol introducing the third tier has been agreed and the voluntary minimum limit put in place.
