

 <p>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</p>	Agenda item: 8	IOPC/MAR11/8/8	
	Original: ENGLISH	10 March 2011	
	1992 Fund Assembly	92AES15	
	1992 Fund Executive Committee	92EC51	
	Supplementary Fund Assembly	SAES4	
	1971 Fund Administrative Council	71AC26	
	1992 Fund Working Group	92WG6/2	•

1992 FUND SIXTH INTERSESSIONAL WORKING GROUP

INFORMATION DOCUMENT – THE ROLE OF ITOPF

Submitted by The International Tanker Owners Pollution Federation Limited (ITOPF)

Summary:	This information document is offered to delegates in order to provide some background to the origin of ITOPF and its role in supporting the P&I Clubs and the IOPC Funds following incidents. It provides a description of ITOPF's funding and its objectivity in spill response and preparedness. The manner in which ITOPF works with other experts, both during an incident and as part of the claims assessment process is discussed, as well as ITOPF's role as an expert in the assessment of damages.
Action to be taken:	<u>1992 Fund sixth intersessional Working Group:</u> Take note of the information contained in this document.

1 **Background**

- 1.1 The International Tanker Owners Pollution Federation Ltd (ITOPF) was formally established in December 1968, primarily to administer the Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP). It may be recalled that this Agreement was one of two voluntary schemes set up in 1969 by tanker owners and the oil industry in order to pay compensation for pollution damage during the period of development and entry into force of the current international system of compensation, namely the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention. ITOPF was established with support from the oil companies, independent tanker owners and P&I Clubs and later supplemented its administrative role by establishing a technical department, able to provide 24-hour emergency, expert advice and assistance in the response to, and assessment of, oil and chemical spills from ships.
- 1.2 ITOPF's activities are overseen by an international Board of Directors representing the Federation's independent and oil company tanker owner Members, its non-tanker owner Associates and the P&I Clubs. Since its establishment over 40 years ago, ITOPF has evolved to become a primary source of objective technical advice, expertise and information on effective response to ship-source oil and chemical spills. To date, ITOPF's technical staff have responded to some 659 spills in 95 different countries in order to give objective advice on clean-up measures, environmental and economic effects, and compensation. In addition, it has provided advice remotely on many other incidents. ITOPF has observer status at both the International Maritime Organization (IMO) and the International Oil Pollution Compensation Funds (IOPC Funds) and regularly contributes to discussions on matters relating to accidental ship-source pollution.
- 1.3 ITOPF is a not-for-profit organisation. Over 90 per cent of its income comes from annual subscriptions (or dues) paid by the P&I Clubs on behalf of their ship-owning members (both independent and oil company owned). This income is received irrespective of the number of incidents actually attended. ITOPF's Membership comprises over 6 160 tanker owners and bareboat charterers, who between them own or operate about 10 770 tankers, barges and combination carriers with a total

gross tonnage of about 320 million GT. This represents virtually all the world's ocean-going bulk oil, chemical and gas carrier tonnage. Owners and bareboat charterers of other types of ship (ITOPF Associates) account for a further 532 million GT.

- 1.4 ITOPF's 24-hour technical support and advice is provided for the benefit of all parties involved in an incident on behalf of the shipping community and its insurers as a whole. ITOPF makes no charge for its services, except where the level of effort involved becomes disproportionate in relation to ITOPF's membership, as may sometimes arise during the assessment of claims following a serious incident and, in which case, a not-for-profit fee is applied. A not-for-profit fee is also applied when an incident involves a vessel or other source of pollution that is not from an ITOPF Member or Associate. The mechanism of funding that has been put in place provides ITOPF with the freedom to pursue those activities of greatest merit without the need to charge a commercial fee. This is of particular importance when ITOPF is asked to provide expert advice and training on oil spill preparedness and response by countries that cannot afford to pay.
- 1.5 The sustainable and equitable sharing of ITOPF's operating costs among the shipowners ensures independence from an individual shipowner and his insurer, and/or cargo owner, in the event of a particular incident. The ship-owning community and their insurers value ITOPF's objectivity on site during an incident and in the subsequent technical assessment of claims to ensure fairness in the application of the Pooling Agreement that exists between the International Group of P&I Clubs. Similarly, in an incident involving the IOPC Funds, Member States (and the entities paying contributions to the Funds) rely upon ITOPF's objectivity and its consistent application of the technical criteria established in the Conventions to help to ensure fairness, irrespective of the location of the incident and the many other non-technical factors that may be apparent.

2 The Role of ITOPF in spill response and preparedness

- 2.1 ITOPF's multi-national team of Technical Advisers all have second degrees or higher in a relevant scientific discipline. They are available 24-hours/365 days a year to respond to an oil or chemical spill anywhere in the world where it is safe to do so. ITOPF attends, on average, 20-25 new incidents each year. Very few incidents involve the IOPC Funds because the majority of incidents arise either from the spillage of bunker fuel from non-tankers, occur in countries that are not a Party to the 1992 Fund Convention, or are incidents that are unlikely to result in claims exceeding the shipowner's limit of liability under the 1992 CLC. Nevertheless, ITOPF has been assisting the IOPC Funds and Member States in the response to incidents and the subsequent assessment of claims arising under the Fund Conventions since the very first incident involving the IOPC Fund.
- 2.2 Irrespective of the regime under which claims may eventually be paid, ITOPF endeavours to apply the technical principles embodied in the 1992 CLC and Fund Convention to all incidents in recognition of the fact that the fate and behaviour of oil and the appropriateness of response techniques are independent of legislative or political factors. The longevity of involvement with the IOPC Funds provides reassurance insofar as ITOPF is able to draw upon these past experiences and ensure consistency of approach.
- 2.3 A Memorandum of Understanding (MoU) establishes co-operation between the IOPC Funds and the International Group of P&I Clubs in the event of an incident that may involve the IOPC Funds. The MoU, *inter alia*, provides that the P&I Clubs and the IOPC Funds will co-operate in the use of lawyers, surveyors and other experts necessary to advise on clean up or to evaluate claims for compensation. Not only does this approach minimise duplication of effort and costs but it ensures that the term 'pollution damage', is interpreted in the same way to avoid inconsistencies between the 1992 CLC and Fund Convention. Furthermore, the cost of experts that are jointly appointed is shared between the P&I Club and the IOPC Funds in the same ratio that claims are paid between them.
- 2.4 When ITOPF is asked to attend an incident (either by the P&I Club, the IOPC Funds or occasionally a government agency) the first objective of the ITOPF Technical Adviser when he/she arrives on site is to evaluate the scale and severity of the incident and to make contact with the government authorities in charge of the response. It is important for the Technical Adviser to gain the trust of the authorities quickly so that the parties can work together to minimise any pollution damage and respond in an

appropriate and effective manner. This can only be achieved if there is genuine intent from all parties to work openly and honestly together. In many situations, ITOPF will have previously attended an incident in the country, provided training courses or attended seminars or conferences, or, alternatively government authorities may have knowledge of ITOPF through its various publications and Technical Information Papers (TIPs). In which case, the time taken to gain confidence and trust is minimised. In other instances, the Technical Adviser may have to meet the various authorities to explain the role of ITOPF as well as demonstrate openness by ensuring that the same advice as is given to the P&I Clubs, the IOPC Funds and the shipowner, is also given to the government authorities.

- 2.5 In spite of the fact that ITOPF's role is often very difficult and, on some occasions, its advice unwelcome, ITOPF's staff are open and forthcoming with their advice from the outset (rather than waiting until the claims are submitted before indicating whether or not the actions taken were technically reasonable). In this manner, actions that may inadvertently cause greater damage to the environment than the oil itself can be identified and avoided. Similarly, actions that may result in expenditure that may not be recoverable from the P&I Clubs or the IOPC Funds can be identified and brought to the attention of the various agencies in good time. From the perspective of ITOPF, the actual expenditure involved is of less relevance than the need to ensure that the actions taken are technically reasonable and justifiable, and consistent with the admissibility criteria established under the 1992 CLC and Fund Convention.

3 ITOPF's work with other experts

- 3.1 In large incidents, such as those that fall under the 1992 Fund Convention, significant economic and environmental resources may be threatened. It is important for the ITOPF Technical Adviser to identify the most important resources at risk and to draw upon specific expertise as necessary. Almost without exception, ITOPF will seek to work alongside local experts in order to gain the benefit of their knowledge of the resource and the potential threat caused by the oil. By combining ITOPF's knowledge of the fate and effects of oil in the marine environment with the resource-specific knowledge of the local expert, ways to minimise or restore damage can often be identified.
- 3.2 In anticipation of claims arising from damage to sensitive resources ITOPF will initiate, or take part in, joint surveys of contaminated areas and facilities in order to assess the extent of the damage. As the area to be surveyed and the number of facilities, particularly mariculture facilities, in some incidents can be extensive, ITOPF will often recommend to the P&I Clubs and the IOPC Funds that additional experts are engaged to respond to issues quickly and to facilitate the surveys in a timely manner. However, given the unpredictable nature of incidents, it can sometimes be difficult to secure the assistance of other experts, especially for long periods, as they may have existing commitments to their regular clients. Care may also need to be taken to avoid local experts experiencing pressure, or in some cases, threats of physical attack or damage to their property, from a hostile public or claimant. Foreign experts working alongside local experts often provide an effective partnership.
- 3.3 The IOPC Funds, P&I Clubs and governments may identify experts that they wish to be involved in the surveys and eventual assessment of claims. ITOPF may be asked to co-ordinate the work of these experts to ensure that the information collected is systematic and meaningful in the context of the overall scale of the incident. Alternatively, ITOPF may work alongside experts who have been appointed to evaluate the extent of any damage. As ITOPF's primary service is emergency response and the provision of advice in oil and chemical incidents, once a system of surveying and reporting is properly established, ITOPF will usually adopt a liaison role with local or foreign experts in order to monitor and oversee the work on behalf of the insurers, the IOPC Funds and government authorities.

4 Damage Assessment and Claims Analysis

- 4.1 As the voluntary schemes (now terminated) and the current 1992 CLC and Fund Convention operate on principles of fairness, both in regard to those who are victims of oil pollution damage and to those who ultimately pay the compensation, ie the shipowners and oil importers, the uniform and consistent application of the principles that have been established and agreed by Member States is readily acknowledged as being extremely important. When the original IOPC Funds Claims Manual was being drafted, ITOPF assisted the IOPC Funds and Member States with the technical interpretation of pollution damage to help to ensure that it was based on a sound, scientific understanding of the fate and effects of oil spills in the marine environment. Over the years that the 1992 CLC and Fund Convention have been in force, Member States have repeatedly reinforced the need to uphold the principles of the Conventions and, at the same time, sought to identify pragmatic solutions to enhance the efficiency of the assessment and payment of claims for compensation.
- 4.2 Support to the P&I Clubs, the IOPC Funds and Member States through the assessment of the technical merit of claims for compensation is a natural extension of ITOPF's role on-site following incidents. The relationships that the ITOPF Technical Advisers have established with the government agencies and other potential claimants during the response stage of the incident can be carried forward into the eventual submission and assessment of claims to the benefit of all parties.
- 4.3 When claims are eventually submitted to the P&I Clubs and/or the IOPC Funds, ITOPF is usually asked to make an assessment of the technical merit of the claims based upon ITOPF's knowledge of the circumstances, response actions and potential damages. As previously noted in document IOPC/JUN10/5/6, the quality of the claims submission can vary enormously and this will have a bearing on the speed with which claims are processed. In an ideal situation, parties will have worked together during the response and potential claimants will have received guidance on the admissibility of claims. Surveys of any damage will have taken place together and documents supporting any loss of income or expenditure will have been provided. In which case, claims are usually assessed and paid relatively quickly.
- 4.4 However, many claims are not sufficiently well supported to enable payment to be made immediately. Given the magnitude and complexity of some claims, several iterations of the assessment are usually necessary before sufficient information is received from the claimant to enable compensation to be paid. ITOPF will normally be asked to facilitate obtaining additional supporting information and subsequently to provide an evaluation of this. The number of iterations and the speed with which additional information is provided dictates the speed with which claims can be assessed and paid. The situation becomes even more complicated when it has not been possible to work co-operatively, for whatever reason, where documents to support financial loss are not available, or where the scale of the incident is such that it is impossible to survey, collate and assess the numerous claims that have been received in a timely manner.
- 4.5 ITOPF makes every effort to ensure that the Technical Adviser who attended the incident is involved in the assessment of the claims arising from that incident. This minimises the risk of assessing claims 'with the benefit of hindsight' as the Technical Adviser will often have been involved in the discussion of the technical merit of activities taking place with the claimant and will have an awareness of the circumstances that may have led to the claim being made. The Technical Adviser is supported during his/her assessment by ITOPF's Technical Support Co-ordinators.
- 4.6 However, sometimes ITOPF is asked to provide an assessment of the technical merit of claims for compensation for incidents that ITOPF did not attend. Attendance on-site may not have been possible for many reasons but usually this situation has arisen because the P&I Club or IOPC Funds were only made aware of the claims after the costs or losses were incurred. In these situations the primary task of the Technical Adviser will be to establish as full a picture of the incident, the response and the alleged damage as possible, either from documentation supplied or by visits to the claimants, in order that a fair assessment of the claim can be made.

4.7 ITOPF's role in damage assessment and claims analysis is limited to providing advice on the technical merit of claims. Ultimately, the final decision on settling any claim rests with those who will pay the compensation.

5 Action to be taken

1992 Fund sixth intersessional Working Group:

Take note of the information contained in this document.
