As reported in an earlier website article, "Developments in the CLC/Fund Conventions", following the IOPC Fund Assembly meeting in October 2005, the question of sharing the burden of compensation for oil pollution liabilities was further discussed. To this end, a number of meetings took place between the International Group, the Fund Secretariat and OCIMF in order to find an acceptable mechanism to give effect to the offer made by shipowners that the overall cost of claims be shared equally with oil receivers. In addition, there were regular consultations with ICS and Intertank in order to ensure that the content of any new agreements was acceptable to as wide a cross section of the shipping industry as possible.

These discussions resulted in two new draft agreements, named STOPIA 2006 (Small Tanker Oil Pollution Indemnification Agreement 2006) and TOPIA (Tanker Oil Pollution Indemnification Agreement).

STOPIA 2006 largely mirrors the current STOPIA contract which has been in force since March 2005 and under which the owners of relevant tankers of 29,648 gt or less agree to indemnify the 1992 Fund for the difference between the vessels' limit of liability under CLC 92 and SDR 20 million. This has the effect of increasing the minimum limit of liability for smaller tankers to SDR20,000,000, as compared to the minimum limit if SDR4,500,000 applicable under CLC92.

STOPIA 2006 differs from the original STOPIA in that it contains a review mechanism whereby the agreement may be adjusted to compensate prospectively if after the first ten years of its operation (and after every subsequent five years) the proportion of claims paid by either shipowners or oil receivers under all three conventions (CLC 92, Fund 92 and Supplementary Fund Protocol 2003) since 20th February 2006 is greater than 60%. If that proportion is greater than 60%, the agreement must be adjusted.

In addition, STOPIA 2006 applies to all states party to the 1992 Fund whereas the original STOPIA only applied to such states as were also party to the Supplementary Fund Protocol 2003. Finally, there are also changes to the termination and recourse provisions of the agreement to meet objections raised by various states during discussion at the IOPC Fund meetings.

TOPIA is similar to STOPIA 2006, but has two substantial differences. Firstly, under TOPIA, tanker owners undertake to indemnify the Supplementary Fund in respect of 50% of the amount of any claim falling on the Supplementary Fund. Secondly, TOPIA applies to all relevant tankers regardless of size. TOPIA contains identical review and adjustment provisions to those set out in STOPIA 2006 so that any imbalance in the proportion of claims borne by shipowners or oil receivers may be adjusted prospectively by amending TOPIA or STOPIA or both.

Several years ago, the IOPC Fund carried out a statistical review of the cost of pollution claims falling under the Civil Liability and Fund Conventions between 1978 and 2003. The result of that study showed that whilst there were large variations in the proportion of the claims cost borne by oil receivers and shipowners in any one year, over the longer term the cost had been shared approximately equally.

The IOPC Fund secretariat more recently carried out a further analysis of the same statistical database which showed that, if the claims figures for the period from 1976 to 2003 are adjusted as if the current Convention limits had applied together with STOPIA and TOPIA as currently proposed, shipowners would have paid 51% and oil receivers 49% if the figures are inflated to 2002 values. This split is reversed if the claims figures are inflated to projected 2012 values. Whilst this equitable result for the past may not necessarily be repeated in the future, especially over the shorter term, it does provide justification for proceeding with STOPIA 2006 and TOPIA as proposed. Although there may well be considerable volatility in the apportionment of cost from year to year, especially if very large claims occur, the adjustment mechanisms will provide a means for progressively correcting any significant imbalance.

Following receipt of these two draft agreements by International Group Club Boards, they were submitted to the IOPC Fund Assembly meeting at the end of February 2006. At that meeting, all the proposals developed as a result of the aforementioned discussions were agreed with the following exception. At the express request of certain key states which were supportive of using shipowners’ revised offer as a means of halting revision, it had been proposed that the offer should be made to extend the benefits of STOPIA to all states party to CLC 92. Because STOPIA 2006 operates by indemnifying the 1992 Fund rather than by paying claimsants directly, a different contractual mechanism would have been required to extend a similar benefit to the small handful of states which are party to CLC 92 but not the 1992 Fund. However, at the IOPC Fund Assembly meeting it was agreed that this offer should not be extended to non-Fund states, given that it would act as a disincentive to them becoming signatories to the 1992 Fund.

Following the acceptance of both agreements by the IOPC Fund Assembly, STOPIA 2006 and TOPIA will take effect retroactively from 20th February 2006 and notice of termination of the original STOPIA has been given. The 2006 Club Rules have been amended to take into account the greater liabilities faced by Members as a result of the introduction of these new agreements.