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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Document submitted by the delegation of the United Kingdom

Summary:	The United Kingdom offers several proposals as possible improvements to the CLC/Fund regime for consideration by the Working Group. Some of these proposals would require changes to the Conventions while others are matters of Fund policy.
Action to be taken:	Note the proposed issues to be included in the Working Group's list of issues worthy of further consideration.

1 INTRODUCTION

1.1 The United Kingdom's first-hand experience of the *Braer* and the *Sea Empress* has demonstrated the benefits of the CLC/Fund regime. The introduction of the higher limits of compensation under the 1992 Protocols has gone some way to addressing a number of the particular compensation problems that arose in the United Kingdom.

1.2 However, we recognise that there are areas where consideration of further reform is justified. Some problems may be addressed through revisions to current Fund policy while others would require changes to the Conventions.

1.3 We support Ireland in the view that the initial efforts of the Working Group should be to ensure the most effective implementation of the existing regime. To this end we view the consideration of the proposal to increase the CLC and Fund limits of compensation as the most important issue needing urgent attention and we hope this can be satisfactorily resolved at the IMO Legal Committee in October.

2 PROPOSALS FOR CONSIDERATION BY THE WORKING GROUP

2.1 The United Kingdom proposes that the Working Group should consider the following potential reforms to the CLC/Fund regime:

2.1.1 Claims settlement:

Like Germany, the United Kingdom strongly supports devising a means of prioritising claims so as to provide a mechanism that will ensure early payment of claims following an incident through some form of priority for certain claims. The United Kingdom considers this to be the key defect with the present regime.

The aim of the Fund is to provide "prompt and adequate" compensation but at present this is often irreconcilable with the obligations to treat all claimants equally without the risk of breaking the Fund compensation limit.

The only practical alternative to a priority ranking system would be to set the limit of compensation so high that there will rarely be a risk that it would be exceeded. That option would very likely to lead to calls for a complete change to the present basis of mutuality within the Fund system, which is most undesirable.

With the prospects of the HNS Convention coming into force, the compatibility with the CLC/Fund regime should be maintained.

2.1.2 Claims handling:

From time to time problems have arisen on claims that have been considered and rejected, only for claimants to return to seek reconsideration. However, there is no requirement for a claimant to fully justify the case for resubmission, taking full account of the reasons for the original rejection by the Fund. Neither are there any time limits on resubmission. Given that the Fund tries to settle claims out of court, the lack of such rules can, ultimately, have detrimental consequences for claimants that have eligible claims but where consideration or payment of their claims has been delayed by the necessity to deal with less justified or ill-considered claims.

Consideration should be given to amending the Fund Convention to provide rules on submission and consideration of claims. This would ensure the best interests of all claimants can be met. All claimants should, of course, retain the right to pursue their claims through the courts.

2.1.3 Responsibilities of Member States:

The United Kingdom has always subscribed to the view that it is essential that the legal basis and the responsibilities underlying the CLC/Fund regime must be applied equally in all Member States. The laws in Member States should therefore faithfully reflect the spirit of the Conventions and the responsibilities of membership. In particular, the United Kingdom is concerned that there have been continuing problems in respect of contributions and reporting of oil receipts. The United Kingdom believes it would be worthwhile considering whether the Fund Convention needs to be amended to ensure key obligations have to be met in order to derive full benefit as a Member State.

Consideration should also be given to providing for a more 'efficient' transition from the present regime into a future one.

2.1.4 Environmental reinstatement and impact assessment:

At this stage the United Kingdom would not subscribe to the view that the CLC/Fund should provide coverage extending as far as claims for pure environmental damage.

However, the United Kingdom recognises that the 1992 Protocols provide for reasonable costs to reinstate the polluted environment. There is in our view scope to further develop the Fund's policy to this end or to consider whether changes to the Conventions may be needed.

The United Kingdom has on previous occasions argued that the regime should cover the costs of environmental impact assessment studies that have been previously agreed with the Fund. This is fully in line with the 'polluter pays' principle. The current policy is to restrict contributions from the Fund to such studies only if they will assist in the settlement of claims arising from the oil pollution. The United Kingdom believes this policy is far too restrictive. One option that was raised in previous discussion was that contributions for such studies might be met from the Fund's administrative costs.

Environmental impact assessment would be a suitable means of establishing how the Fund should best address environmental restoration.

2.1.5 Fixed costs:

Response to an oil spill is considerably enhanced when the Member State has provided suitable counter pollution resources. The Fund policy is to pay for the cost of using these resources throughout the clean-up operations. The State concerned clearly benefits by being able to respond more quickly and it is their own interests to do so. However, the Fund contributors benefit too, as the use of these resources should ensure that the costs of clean-up and the subsequent economic losses arising from the spill are generally greatly reduced. It is arguable as to whether this is simply a matter of policy or whether it needs to be addressed through changes to the Conventions.

Lord Donaldson's report 'Safer Ships, Cleaner Seas' referred to the precedent of salvage awards which include an 'uplift' which is intended to reward the salvor for incurring the overhead costs to maintain his ability to carry out an effective salvage operation. The report summarises the issue very well where it says, "Inadequate recognition of standing costs is a positive incentive to Governments to be improvident by not preparing for oil spills."

2.1.6 Compensation for salvage operations:

The current policy of the Fund is to compensate according to the so-called 'primary purpose test'. The United Kingdom believes that, in the context of considering reforms, the Fund should reassess its policy and if necessary consider whether a change to the CLC/Fund Conventions would be appropriate. So long as ***a*** purpose is pollution prevention, it is a preventive measure and there is therefore a case for compensation.

Consideration is also needed as to how the policy would apply in the event that a Member State intervened in a salvage operation in order to secure the over-riding public interest in minimising the risk of pollution, rather than salvage of property. The associated costs should be treated wholly as a preventive measure providing they met the usual test of reasonableness.
