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OIL POLLUTION
COMPENSATION
FUND 1992

THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

REFINEMENT OF THE CONTRIBUTION SYSTEM

Submitted by the Netherlands

Summary:

The Netherlands delegation believes that the contribution system of the IOPC Fund should be refined, in particular to take into account the specific position of persons or companies providing mere storage services. For that purpose it is proposed to incorporate some of the relevant provisions of the 1996 HNS Convention into the revised version of the Fund Convention. The proposal is twofold: a first proposal would be to enable these persons or companies, under certain conditions, to make their principals contribute to the Fund directly, secondly it would make sure that these persons and companies are not considered receivers in cases where the oil only passes through their storage tanks in the course of carriage from the port or terminal of original loading to the port or terminal of final destination.

Action to be taken: See paragraph 4

1 Introduction

At the second meeting of the Third Intersessional Working Group in March 2001, the Working Group considered document 92FUND/WGR.3/5/1, submitted by a group of states, containing *inter alia* a paragraph, dealing with the contribution system against the background of the (potentially) significantly higher contributions that would be introduced by the Supplementary Fund. Because certain contributors in some countries do not have any interest in the oil received other than providing mere temporary storage services (independent storage owners), these contributors face in many cases difficulties in charging their principals for any post-event levy and therefore have to pay the levy out of their own pockets. The conclusion reached by the Working Group was that this issue would be considered further on the basis of concrete proposals. This document contains such a proposal.

2 **Proposal**

- 2.1 The Netherlands delegation supports a refinement of the present system of the 1992 Civil Liability Convention and the 1992 Fund Convention. They are of the opinion that the opportunity of a revision of these Conventions should also be used to find a solution for the problems faced by these particular storage interests. In particular the magnitude of the possible levies under the Supplementary Fund is such that these problems will be highly aggravated. In view of the fact that similar problems were anticipated in the context of the liability and compensation system for damage in connection with the carriage of hazardous and noxious substances by sea, the 1996 HNS Convention contains provisions to mitigate the problems mentioned above. These provisions could be considered to reflect the more modern view on how to identify the actual cargo interests intended to contribute to a fund system.
- 2.2 A possible solution might therefore be to incorporate into the revised version of the Conventions to be developed, two of the relevant provisions of the 1996 HNS Convention: the first on the concept of 'receiver' (Article 1, paragraph 4(a), HNS Convention) and the second on 'contributing cargo' (cargo in transit; Article 1, paragraph 10, HNS Convention). The first proposal would give storage companies, under certain conditions, the possibility to pass the levy on to their principals, provided these are located in a State Party. The second proposal would end the present preferential treatment of a 'ship-to-ship' transfer of cargo between the port of original loading and the port of final destination vis-à-vis a 'ship-storage-ship' transfer of cargo under otherwise the same circumstances. From an environmental point of view the latter could be considered the safer option.

3 **Draft Convention text**

Draft text for changes to be made to the 1992 Fund Convention could read:

A:

Article 1, (new) paragraph 2bis:

“Receiver” means the person who physically receives contributing oil, provided that if at the time of receipt the person who physically receives the oil acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the Fund.

One consequential amendment would in any case have to be made:

Article 10, paragraph 1, would be amended to read:

Annual contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 12, paragraph 2(a) or (b), was the receiver of in total quantities exceeding 150.000 tons: (rest remains unchanged)

B:

Article 1, paragraph 3; add a sentence reading:

Crude oil or fuel oil as defined in subparagraphs (a) and (b) above in transit, which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port of terminal of original loading to the port or terminal of final destination shall be considered as contributing oil only in respect of receipt at the final destination.

Possibly minor other consequential amendments would have to be made.

4 **Action requested**

The Netherlands delegation considers that this document sets forth a workable proposal to appropriately take into account the position of persons and companies providing mere storage facilities. They invite the Working Group to consider their proposal and to make recommendations to the Assembly accordingly.
