



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

AMENDMENTS TO THE CIVIL LIABILITY AND FUND CONVENTIONS

A discussion paper

Submitted by Canada, Italy and Spain

Summary:	The co-sponsors express concerns about the current system of contribution for incidents covered by the 1992 Fund Convention, resulting in a great impact on a solely limited number of financing Countries. They believe that the regime needs to be revised to address the key issue of a more equitable balance between rights and obligations.
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Action to be taken:	See paragraph 4
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1 Introduction

- 1.1 The aim of the IOPC Funds is to promptly compensate the victims of oil pollution damage at sea and is consistent with the general objectives of improving maritime safety and reducing the occurrence of oil spills, thus enhancing the protection of the marine environment and preserving coastal states and their citizens from future potential incidents.
- 1.2 To be satisfactorily addressed, such requirements need the full involvement and commitment of the contracting Parties, based on the principles of equality, partnership, solidarity and mutuality.
- 1.3 In particular, with reference to the protection of the environment, it is unanimously recognised that the marine habitat is a common asset, whose protection is in the interest of all countries, without geographical limits or borders due to the uniqueness of the environment, and therefore should not admit a financial regime based on selectivity.
- 1.4 To this end, all parties concerned should be involved and every safeguard measure be performed so as to ensure an acceptable level of environmental liveability. A goal which entails indispensable financial contribution without exemptions.

- 1.5 The views expressed in this paper should not be taken as representing the formal position of the sponsoring delegations or their governments on any item discussed.

2 Considerations

- 2.1 In this context, in case of marine incidents, experience shows that all contracting States, without exception, rely upon the principles of mutuality and solidarity, requesting the IOPC Funds' immediate action in order to adequately compensate the victims of damage and to speed up the restoring of the habitat.
- 2.2 However, these principles are normally based on the '*do ut des*' concept, which means that, in order to receive benefits and claim the same guarantees as other contributors, parties should pay their dues.
- 2.3 In general terms, the possibility of taking advantage of the benefits deriving from the membership of a club entails the payment of a joining fee. The Fund's members enjoy the same guarantees, but with different obligations, while the equality of advantages cannot be separated from the minimum fee needed to gain access to them.
- 2.4 In other words, the Fund should not depart from a general recognised rule significantly applied by the United Nations Organization, subject to the conditions of a scale of assessment graduated according to the contributors' economic conditions.

3 Proposal

- 3.1 The co-sponsors are of the opinion that, as a consequence of this concept, all participants to the Fund should contribute to the protection of the environment helping an effective functioning of the management of the Secretariat, which performs an indispensable task in the operational activities of the Fund and needs the financial support of all members.
- 3.2 In order to satisfy this exigency, a minimum entrance fee should be levied at a level to be determined. This basic principle has already been accepted, *mutatis mutandis*, in Article 14 of the Supplementary Fund Protocol, which establishes a minimum virtually received quantity of contributing oil in each contracting State wishing to become a member of the Supplementary Fund.
- 3.3 Even better it would be, taking in due account the world-wide oil traffic fluctuations, not to determine a minimum ceiling of virtually received oil in absolute terms, but a membership fee fixed as a given percentage of the total amount of the financial burden to be shared.

4 Actions requested

- 4.1 The co-sponsors express the wish that the Working Group give the above proposal its most careful consideration. The review of the present regime of liability will offer an opportunity for a proper amendment to improve the contributing system, introducing a more equitable burden sharing and enforcing the partnership with the full and factual involvement of the parties concerned, providing them with a more concrete right to claim the same benefits.
- 4.2 The minimum entrance fee will be a tangible, positive signal in that direction and will redress the existing imbalance based on an unsatisfactory principle of selectivity.
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