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COMPENSATION  
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## REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

### TACIT ACCEPTANCE PROCEDURE

A discussion paper

**Submitted by Australia, Canada, Italy, New Zealand and the United Kingdom**

<b>Summary:</b>	The 7th meeting of the 3rd Intersessional Working Group considered proposals to amend the international oil pollution compensation regime.  These included a proposal to amend the existing tacit acceptance procedure. This paper presents treaty text for two options to amend this procedure.
<b>Related document:</b>	92FUND/WGR.3/19/2
<b>Action to be taken:</b>	See section 1.10

### **1 Introduction**

- 1.1 A number of previous meetings of the Working Group have now considered proposals to provide a suitable means to amend the tacit acceptance procedure in the CLC and IOPC Fund regimes. On each occasion there has been a general agreement that the existing tacit acceptance procedure needs amending, either:
- to allow an automatic revision of the limits in accordance with a suitable formula that would trigger any increase; or
  - to reduce the time periods in the current procedure.
- 1.2 The oil industry, shipping and insurance industries, have also consistently supported the need to amend the existing procedure.
- 1.3 Under the existing procedure contained in Article 15 of the 1992 Civil Liability Convention and Article 33 of the 1992 Fund Convention, any new proposal to increase the limits cannot enter into force for a total of 11 years since agreement by the IMO Legal Committee of a previous amendment to the limits. It is, therefore, not possible for any new proposed amendment to the existing limits to enter into force until 2011 as the previous increases, which entered into force on 1 November 2003, were agreed at the Legal Committee in 2000.

- 1.4 This creates a very real risk that the effectiveness of the regime can be eroded by inflation, with the risk that the worldwide mutual character of the existing regime may become less attractive to contracting States.

**Option 1:**

- 1.5 Document 92FUND/WGR.3/19/2 presented at the 7th meeting of the Working Group proposed a revision of the existing tacit acceptance procedure along the lines of the procedure contained in the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air (1999 Montreal Convention).
- 1.6 The 1999 Montreal Convention operates an arrangement whereby more modest, but regular increases of the limits, are provided through the tacit amendment procedure. That Convention provides for a review of the limits of liability to be undertaken at five-yearly intervals.
- 1.7 Under the 1999 Montreal Convention, each review is undertaken with reference to an inflation factor based on the average annual rates of increase (or decrease) in the Consumer Price Indices of the States whose currencies comprise the SDR, namely the US dollar, Pound sterling, the Japanese yen and the Euro. If the review concludes that the inflation factor has exceeded 10%, then State Parties are notified of a revision of the limits. Any such revision becomes effective six months after it has been notified to State Parties and if, within three months, a majority of States register their disapproval, the revision does not become effective.
- 1.8 This approach offers a useful precedent for revision of the CLC/IOPC Fund regime. The Working Group may wish to consider that the Montreal 'model' allows for inflation increases only. The Working Group may wish to consider whether this would fully suit the needs of the oil pollution compensation regime. For the purposes of illustration the following treaty text mirrors the existing provision in the Montreal Convention:

***Treaty text: Option 1***

1. *Without prejudice to the provisions of Article [...] of this [Convention] and subject to paragraph 2 below, the limits of liability prescribed in Article [...] shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this [Convention], or if the [Convention] does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the [Convention]. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right.*
2. *If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.*
3. *Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of*

*this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.*

**Option 2:**

- 1.9 The Supplementary Fund Protocol has already addressed these concerns by reducing the period by which an amendment to the limits may be considered since the entry into force of a previous amendment. This period has been reduced from 5 years in the existing 1992 Civil Liability Convention to 3 years in Article 24(6)(a) of the Supplementary Fund Protocol. Furthermore, the period in which such an amendment shall be deemed to have been accepted has been reduced from 18 months to 12 months, and the period by which such amendment shall enter into force has also been reduced from 18 months to 12 months.
  
- 1.10 Overall, the Supplementary Fund Protocol has reduced the time period in which any new proposal to amend the limits can enter into force from 11 years to 8 years. This option simply entails replacing the figures in the existing Articles with the figures where they differ in the Supplementary Fund Protocol text. The following treaty text reflects these provisions contained in the Supplementary Fund Protocol:

***Treaty text: Option 2:***

*[..] No amendments of the limit may be considered before the date of entry into force of this [Protocol] nor less than three years from the date of entry into force of a previous amendment under this article*

*[..] The amendment shall be deemed to have been accepted at the end of a period of twelve months after the date of notification, .....*

*[..] An amendment deemed to have been accepted in accordance with para [..] shall enter into force twelve months after its acceptance.*

**2 Recommendation**

The co-sponsors recommend that the Working Group considers the two option presented.

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