



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
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INVESTIGATION INTO THE CAUSE OF INCIDENTS

Note by the United Kingdom Delegation

1. Introduction

1.1 The United Kingdom delegation undertook to submit a paper to the Assembly on the investigation of incidents. Progress has been delayed, in part by the implications of the Braer and also because of a lack of information on the procedures and practices of other member States.

1.2 It remains the view of the United Kingdom delegation that member States should co-operate to the maximum extent possible with the Secretariat of the IOPC Fund in the aftermath of incidents. This should include rendering assistance to the Secretariat in the investigation of incidents and, in particular, in cases where the IOPC Fund may be considering challenging the right of a shipowner to limit his liability or taking recourse action against the shipowner. There may, however, be legal, procedural and practical limitations on the assistance a State may be able to give the Secretariat and specifically in the area of granting access to evidence collected for a particular purpose, eg accident investigation, for possible use in separate proceedings, eg to challenge limitation of liability.

1.3 The purpose of this paper is to seek the assistance of other member States in establishing their practices following incidents and any impediments that there may be in assisting the Secretariat in undertaking its responsibilities.

2. Proceedings Following an Incident

2.1 State practices differ, but there may be several distinct proceedings following a marine oil pollution incident. In some States these proceedings may be combined, to a greater or lesser degree, in others - as the United Kingdom - they may be separate.

The outcome of one set of proceedings may lead to the initiation of others. Proceedings may include :

- (a) an accident investigation (SOLAS) to establish the cause of an incident and to indicate how such an incident could be avoided in future;
- (b) an inquest or fatal accident inquiry in the event of fatalities;
- (c) disciplinary action against individuals under shipping law which could lead to the cancellation or suspension of certificates;
- (d) criminal proceedings alleging breach of shipping law or other breaches of national law which could lead to a criminal sanction;
- (e) limitation of liability or recourse action, and
- (f) civil action relating to loss or damage to cargo, eg under the Hague/Visby Rules or Hamburg Rules, where the seaworthiness of the ship may be at issue.

2.2 Though (a), accident investigation, and (e), limitation of liability/recourse, are our primary concern, the existence of combined, parallel or subsequent proceedings may influence, limit or complicate matters and in particular access to evidence.

3. Information Requested

3.1 The United Kingdom delegation would welcome information from other member States on the proceedings under their jurisdictions which can follow an oil pollution incident. We are particularly interested in establishing if :

(a) in obtaining evidence for the purposes of accident investigation limitations are placed, or undertakings given, regarding the use of such evidence in other proceedings;

(b) information obtained during an accident investigation from, eg, the flag state, classification society, marine (port state control) administrations, is released to others with or without the specific prior consent of the providers of the information;

(c) court action stemming from other proceedings has resulted in access being granted to evidence gathered for the purpose of accident investigation, and

more generally

(d) the extent to which accident investigation, disciplinary, criminal, limitation or other proceeding are combined and evidence gathered is equally available across the proceedings.

4. Future Work

4.1 Clearly this is a complex matter and the United Kingdom delegation considers that a submission based on the practices or perceptions of a single State may not allow full consideration of the likely problems or the identification of possible ways of overcoming them. In this connection the delegation would be willing to lead a "Correspondence Group" of interested member States with the intention of reporting on the progress made to the next Assembly. The next Assembly could consider whether the information gathered, and the difficulties identified, warrants the establishment of a Working Group to take matters forward.

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