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COMPENSATION
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**ASSEMBLY
19th session
Agenda item 22**

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INVESTIGATION INTO THE CAUSE OF INCIDENTS

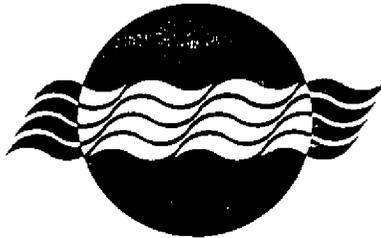
Note by the United Kingdom Delegation

- 1** At the 17th Assembly, the United Kingdom delegation offered to lead a correspondence group into ways in which Member States might assist the IOPC Fund in investigations into the causes of incidents.

- 2** This delegation reported at the 18th session of the Assembly that only a small number of responses had been received and asked for a clarification of the role and purpose of the correspondence group. The Assembly decided that the United Kingdom should continue to lead the correspondence group, with an unchanged mandate.

- 3** As only one further contribution has been received, the United Kingdom asks the Assembly to reconsider the role and purpose of the correspondence group as proposed in document FUND/A.18/17, copy attached.

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INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
18th session
Agenda item 20

FUND/A.18/17
2 October 1995

Original: ENGLISH

INVESTIGATION INTO THE CAUSE OF INCIDENTS

Note by the United Kingdom Delegation

1 Introduction

1.1 At the 17th Assembly, the United Kingdom delegation agreed to lead a correspondence group to look into ways in which Member States might assist the IOPC Fund in investigations into the causes of incidents. This paper describes the progress of the group to date.

1.2 This delegation firmly believes that Member States should cooperate to the maximum extent possible with the IOPC Fund Secretariat in the aftermath of an incident. 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, it would be helpful for the IOPC Secretariat to be given access to information collected by States during the accident investigations. Document FUND/A.17/22 recognised that there could be legal, procedural or practical limitations on the extent to which different States could assist the IOPC in this way. The UK delegation asked Member States to provide information on the situation in their jurisdictions.

2 Progress

2.1 This delegation is grateful to those States who have replied, either formally or with preliminary comments: Canada, the Netherlands, Liberia, and Sweden. Unfortunately, these responses, together with the UK's own input, do not provide a sufficiently representative sample of the 66 Member States of the IOPC Fund. This delegation considers that it is difficult to reach firm conclusions on the basis of five States.

2.2 It is clear, however, that there are significant differences in the positions of the small number of States who have provided information. If these are indicative of the entire membership of the IOPC Fund, it seems likely that some States will have little or no difficulty in making information available to the IOPC

Fund, whilst others would have significant legal and procedural problems. Some States may only be able to provide information gathered under certain circumstances, for example evidence given in public hearings might be made available, but witness statements taken in private might not. The divergent practices described in respect of five States suggests that it would be very difficult to reach conclusions which would apply to all Member States. The Assembly may therefore consider that there is little scope for further work on this topic.

3 Future work

3.1 If the Assembly decides that the work of the group should continue, the UK delegation is prepared to continue as lead state for this Correspondence group. If this is the case, the UK would urge other delegations to provide the information requested in document FUND/A.17/22. An extract is provided in the Annex to the current document.

3.2 The Assembly may wish to consider whether the remit of the group should be clarified, given the low response to the original request and the divergent responses received. It may be helpful if the correspondence group considered more general ways in which member States could assist the Secretariat in the event of an incident in their waters. This could include:

- (a) how States could ensure that the Secretariat were aware of the legal, practical and procedural limitations to the availability of investigation information in each State. Should there be a database of the situation in each State, or should States inform the Secretariat only once an incident has occurred?
- (b) the possibility that the State and the IOPC Secretariat could agree actions which either could take to improve the possibility of obtaining information at a later stage. For example, it may be possible for witness statements to be made available if the witnesses are clearly asked at the beginning of their interview if they are content for the statements to be given to the IOPC Secretariat.

3.3 If the Assembly decides that it would not be possible to reach conclusions which would be relevant for all Member States, then it may be that the most that could be achieved is for the Assembly to endorse the principle that States will cooperate with the IOPC Fund Secretariat to the maximum extent that is consistent with their national law and established procedures.

ANNEX

EXTRACT FROM DOCUMENT FUND/A.17/22

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.
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