

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES  
DUS A LA POLLUTION PAR LES HYDROCARBURES

ASSEMBLY - 5th session  
Agenda item 17

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ANY OTHER BUSINESS

Note by the Director

1 The Director has been requested by the Commission of the European Communities to communicate to the Assembly the summary of a study on the concept and the scope of compensable pollution damage, prepared on behalf of the Commission by the Advisory Committee on Pollution of the Seas (ACOPS).

2 The Assembly is invited to take note of the attached summary of the study.

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ANNEX

## THE CONCEPT AND SCOPE OF POLLUTION DAMAGE SUBJECT TO COMPENSATION

Compensation for pollution damage by oil is currently covered by two international agreements (the Brussels Convention of 1969 (CLC) and the 1971 Convention establishing the International Oil Pollution Compensation Fund), and also by two private industrial agreements (shipowners and oil companies), which are due gradually to be replaced by the two above-mentioned conventions as and when they enter into force in other States. For several years a re-examination of this system of compensation has been in progress; a number of studies have been undertaken by the Legal Committee of IMO, by the Assembly and the Secretariat of the IOPC Fund as well as by the OECD Transfrontier Pollution Group.

The Commission of the European Communities has expressed a keen interest in this subject: better and more adequate compensation of claimants for pollution damage is included among the objectives of the programme of action adopted by the Council in 1978, concerning the abatement and control of oil pollution. In order to attain this objective it has seemed necessary to specify more clearly the scope of the concept of oil pollution damage as well as the compensation limits currently guaranteed by international treaty law in force and by private agreements.

In so far as there is a disparity between these two elements (namely the total damage sustained on the one hand and the possibility of compensation) there is a need to define the amendments that are desirable in the overall right to compensation and also the new regime which is to replace the earlier regime in accordance with the work currently in hand.

The study entrusted by the Commission to the Advisory Committee on Oil Pollution of the Sea (ACOPS) endeavoured to resolve this problem.

In the first place, the study specifies by category the damage generally suffered by claimants for oil pollution on the basis of the following classification:

- (a) the cost of clean-up incurred by the central government, by local authorities and by any other organisation or private individual;
- (b) the damage suffered by the tourist industry and tourism;
- (c) the damage caused to the fishing industry and to fishermen (including damage to fishing gear and loss of present and future earnings);
- (d) the damage caused to the marine environment as such (as distinct from rights of property that can be asserted).

In the second place the study draws conclusions as to the present possibility or impossibility of obtaining settlement of claims (enumerated above) before the courts and particularly the British, French and North American courts, as well as from insurers (the P & I Clubs), the International Oil Pollution Compensation Fund and lastly in the opinion expressed by the doctrine of specialist authors.

Thirdly, the study attempts to establish the types of claims for which compensation should be accepted or increased within the framework of future treaty law in order to ensure compensation of victims.

#### Methodology

A questionnaire was prepared in order to pinpoint the following factors in claims submitted by plaintiffs: type of damage, causal link between the damage and the oil spillage, method of calculating the damage (by the plaintiff, by the authority or organisation called on to make good the damage; direct or indirect link with the damage).

The questionnaires were filled in according to the following outline:

- (a) decision of the courts and tribunals;
  - (b) practice followed by the International Fund;
  - (c) P & I Club insurers.
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