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ANY OTHER BUSINESS

FUNDING OF ENVIRONMENTAL IMPACT STUDIES

Note by the United Kingdom delegation

Summary:

The Sea Empress Environmental Evaluation Committee (SEEEC) which studied the environmental impact of the *Sea Empress* oil spill, and associated clean-up operations, has recommended that the IOPC Fund should give further consideration to the funding of environmental impact assessments. This paper presents the views of the United Kingdom delegation on how this matter could be progressed.

Action to be taken:

Consider a proposal that the 1992 Fund should make it clear, at the beginning of a spill, that there may be resources available for impact studies (paragraph 3).

1 Introduction

1.1 After the *Sea Empress* oil spill in February 1996, the United Kingdom Government quickly announced the creation of the Sea Empress Environmental Evaluation Committee (SEEEC) with certain terms of reference. These, a summary of the findings of SEEEC, and the Government's response to these recommendations are provided in document 92FUND/A.3/25.

1.2 The recommendation that most concerns the IOPC Fund is the following:

“Further consideration should be given by the International Oil Pollution Compensation Fund to the possibility of funding properly designed and co-ordinated environmental impact assessments following major tanker spills that are in proportion to the severity of the pollution and predictable effects, and that take into account existing scientific knowledge.

The Committee's view was that the costs of environmental impact assessments of the type undertaken by SEEEC should be met by those responsible for the spill, or by those bodies which are required to pay compensation. Costs are currently only considered by the IOPC Fund for studies relating to damage that would fall within the definition of 'pollution damage' in the relevant international Conventions. The Committee had no desire to see this primary objective impaired but it believed that further consideration should be given to the possibility of funding environmental impact studies."

1.3 The Government's response to this was:

"The Government agrees with SEEEC that the first priority for compensation should be those that have suffered actual economic loss, including those involved in the clean-up operation. At meetings of the IOPC Fund, the United Kingdom representatives have previously argued that environmental impact studies over a reasonable time-scale can be useful in assessing the effectiveness of the clean-up operation and should therefore be eligible for funding. This would give effect to the polluter pays principle. The Government will bring SEEEC's recommendation to the attention of the Assembly of the IOPC Fund and press for funding to be made available for such studies."

1.4 The current guidelines for funding of environmental impact studies by the IOPC Fund are as follows (from the Claims Manual):

"Expenses for studies are compensated only if the studies are carried out as a direct consequence of a particular oil spill, and as part of the oil spill response or to quantify the level of loss or damage. The 1992 Fund does not pay for studies of a general or purely scientific character. [...]"

"Post-spill environmental studies are sometimes carried out to establish the precise nature and extent of the pollution damage caused by an oil spill and/or the need for reinstatement measures. The 1992 Fund may contribute to the cost of such studies, provided that the studies concern damage which falls within the definition of 'pollution damage' laid down in the Conventions as interpreted by the 1992 Fund, including reasonable measures to reinstate the environment. In such cases the 1992 Fund should be given the possibility of becoming involved at an early stage in the selection of the experts who will carry out the studies, and in the determination of the mandate of these experts. The studies should be practical and likely to deliver the required data. Their scale should not be out of proportion to the extent of the contamination and the predictable effects. The extent of the studies and associated costs should also be reasonable from an objective point of view and the costs incurred should be reasonable."

2 Practical lessons of oil spills

2.1 The priority at the beginning of an oil spill has to be to ensure that prompt and adequate compensation is made available to claimants, especially individuals and small businesses suffering hardship. However, this should not preclude the IOPC Fund from involvement in the selection of environmental experts to conduct an environmental impact study, or from having relevant input to determining the scope of the study.

2.2 Governments may wish to conduct environmental impact assessments which have a wider remit than that of the IOPC Fund. Therefore, while parts of environmental impact assessments may be eligible for compensation under the current IOPC Fund policy guidelines, others may not. It was noted in The Environmental Impact Of The Wreck of The Braer report that:

“the current rules of the IOPC Fund for the recompense of survey and monitoring costs are so ambiguous and uncertain as to make an effective and satisfactory impact assessment programme very difficult to launch and direct”.

2.3 With these factors in mind, the United Kingdom would like to suggest a different method for the funding of environmental impact assessments. *Despite incurring substantial costs the United Kingdom is not seeking retrospective compensation from the IOPC Fund for the studies it commissioned following incidents involving the Braer (in excess of £1 million) and Sea Empress (£2 million).*

2.4 The value of such studies to Governments in determining effective clean-up and restoration methods following a spill may have long term benefits for the IOPC Fund. A study may, for example, scientifically demonstrate that the impact on amenity may be less than that originally perceived. In contrast, public perceptions of the impact may remain for much longer thereby potentially increasing the total sum claimed from the Fund in compensation.

3 Suggested methods

3.1 The United Kingdom is aware of the difficulties involved in distinguishing survey and monitoring work which contributes to assessments of compensation for actual losses incurred from that which does not. However, the relevance for claims of some early monitoring information may only become clear as the spill or the monitoring work progresses. The accepted principle that the polluter should pay for damage caused indicates that it should not be for national taxpayers to pick up the cost of the work required to assess the impact of an oil spill. We propose therefore that the IOPC Fund make it clear at the beginning of a spill that there may be resources available for impact studies. The Fund will also need to agree criteria to predetermine what it will and will not pay for.

3.2 Those conducting the study would then be aware that they could claim some funding from the IOPC Fund, provided it met Fund criteria, and could undertake their assessment accordingly. In the United Kingdom's opinion, such funding should only be made available to national Governments or their delegated bodies, and should only be paid if this would not prevent the payment of full compensation in respect of other eligible claims. In other words, such costs would automatically stand last in the queue, or would have to be met nationally until such time that it is shown that the Fund's limit would not be breached.

3.3 In the United Kingdom's opinion, this issue is one of Fund policy. If agreed it could operate without amending the 1992 CLC or the 1992 Fund Convention. It would be based on an understanding between States Parties meeting within the Assembly of the Fund. The United Kingdom delegation invites the Assembly of the IOPC Fund 1992 to consider this suggestion, and to comment on whether it provides a way forward.
