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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

UNIFORM APPLICATION OF THE CONVENTIONS AND OTHER RELATED ISSUES

Submitted by Japan

<i>Summary:</i>	Japan believes each claimant in any incident should be compensated in a fair and equal manner through strict and uniform application of the Conventions and the Claims Manual, and we should make every effort to achieve this goal.
<i>Action to be taken:</i>	See paragraph 4.

1 Introduction

Japan recognizes that the International Oil Pollution Compensation Fund has played a significant role as an international oil pollution victims' relief system since the establishment of the 1971 Fund. However, Japan also recognizes that there are some issues to be addressed as discussed in this Working Group. The purpose of this document is to make clear our position with regard to the proposals of the Working Group.

2 Uniform application of the Conventions

- 2.1 Japan recognizes that each claimant in any incident should be treated equally so that the compensation regime could function to the full extent. Therefore, Japan supports the initiative proposed by the 4th Working Group meeting that IOPC Funds should develop a database of Member States' court decisions on interpretation and application of the Conventions as well as important decisions by the IOPC Funds' governing bodies and that it should be made available on its web-site.
- 2.2 Japan also believes that it is necessary for the Fund to make its assessment of claims in each incident open and to secure transparency of the consideration process through strict and uniform application of the Conventions. In order to assure uniform application to all claimants, the Fund should set up specific and definitive criteria for the assessment of claims based on the Claims

Manual and should be consistent in considering claims from each new incident by referring to precedential cases.

- 2.3 Since there have been rather few cases involving pure economic losses in the tourism sector, Japan believes that in considering future claims such as from the *Prestige* incident it is particularly helpful to make information accessible regarding how the Fund assessed the claims from the tourism sector in past cases, including the *Nakhodka* and the *Erika* incidents. Therefore, Japan proposes that the Secretariat provide a report on this subject.

3 Mark-up on claims for equipment used to control and prevent oil pollution

- 3.1 There is a possibility that specialized response equipment would minimize the total cost of claims. However, Japan believes that mark-up on claims should be considered carefully because of the following.

- As the existing forum, OPRC has primary responsibility for oil pollution prepared measures. Therefore, Japan believes that OPRC is a more appropriate framework for discussion of incentives to maintain specialized response equipment.
- As defined in Article 1 of Civil Liability Convention and Fund Convention, “Pollution damage” means (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur and (b) the cost of preventive measures and further loss or damage caused by preventive measures. Claims of “Pollution damage” are related to any expense /loss which actually have been incurred as stipulated in the Claims Manual. It is clear that the ship owner and the Fund are only liable for pollution damage of victims and that the Conventions do not include promotion of maintenance of specialized response equipment. Therefore, if mark-up should be awarded to compensate for fixed costs, the Conventions should be revised.
- Since the criteria for awarding mark-up for claims seem to be ambiguous and not definitive, it is very difficult to expect uniform application of the criteria in each Member State, and thus it could undermine the principle of uniform application of the Conventions.

- 3.2 Japan believes each claimant in any incident should be compensated in a fair and equal manner through strict and uniform application of the Conventions and the Claims Manual, and we should make every effort to achieve this goal.

4 Conclusions

Japan invites the Working Group to:

- (a) agree to examine how to compensate claimants in each incident in a fair and equal manner through strict and adequate application of the Claims Manual, and to consider the recommendation that the IOPC Fund Secretariat undertakes a review of assessment regarding the tourism sector of past incidents;
 - (b) consider the proposed mark-up on claims carefully and deliberately based on interpretation of the Conventions.
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