



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

92FUND/WGR.3/14/8
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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

NON-SUBMISSION OF OIL REPORTS

Note by Canada

1 AIM

To ensure equitable treatment of all contributors to the 1992 Fund, it is essential that all Member States fulfill their obligation as Parties to the Fund Convention and submit, on time, their reports on oil receipts.

2 PROBLEM

2.1 The Assembly has considered on various occasions the fact that some Member States do not submit their oil reports. In particular, during the 3rd Assembly, where this issue received considerable attention, the Assembly noted some of the options for possible action in respect non-reporting States (see document 92/FUND/A.3/27).

2.2 The list of options included:

1. inviting non-reporting States to denounce the Convention.
2. withholding compensation payments to claimants in non-reporting States.
3. removing eligibility of such States for election to Executive Committee.
4. removing voting rights of such States in the Assembly.
5. terminating the treaty or suspending its operation in whole or in part in respect of such States.<1>

<1>

This issue was considered in the context of the Vienna Convention on the Law of the Treaties to the effect that non-submission of oil reports might be a "material breach of a multilateral treaty" as it could be construed as a "violation of a provision essential to the accomplishment of the object or purpose of the treaty" (cf Article 60.3 of the Vienna Convention on the Law of Treaties) and that such non-submission could therefore be invoked as a ground for terminating the treaty or suspending its operation in whole or in part.

- 2.3 In the end, however, the Assembly declined to pursue any of the above options. Instead, it requested the Director to contact those States that failed to submit their oil reports and express to them the concerns of the Assembly.

3 SOLUTION

- 3.1 It is clear that this issue cannot be kept forever as a standing item on the Assembly's agenda. While the efforts of the Director have had a few positive results, the practice of non submission of oil reports by some states continues. At this point there is no indication that this will not be a reoccurring problem year after year, and the whole cycle of debate will be repeated at future meetings of the Fund.
- 3.2 In February of 2001, Canada, along with Australia, Denmark, the Netherlands, Norway, Sweden and the United Kingdom, submitted a document for the March 2001 meeting of the Third Intersessional Working Group called *Review of the International Compensation Regime*. In this paper a solution was put forward for the problem of non-submission of oil reports as follows:
- A) **firstly**, as part of any future amendments to the 1992 Fund Convention, all Contracting States would be required to pay an **annual membership fee** to the Fund. For states having imports of contributing oil in quantities which make them eligible for invoices to be issued to their contributors, the administrative fee will continue to be included in the General Fund as now occurs. For those Member States having "nil reports" or failing to lodge such reports, the fee will be set by the Assembly on an annual basis having regard to the level of administrative costs required for the coming year. This fee would spread the administrative costs of the Fund more equitable in respect of the states that currently enjoy the protection of the Fund but do not make any financial contributions to it.
- B) **secondly**, a companion provision should be adopted to the effect that if no reports are received or membership fee remains unpaid at the end of the specified period, the Fund Convention would **cease to be in force** in respect of that State.
- 3.3 At its first reading in March 2001, this proposal did not receive sufficient support. However, no other solutions to address the problem were identified. Moreover, as late as the last IOPC Fund Assembly, in October 2002, it was clear that the problem of non-submission of oil reports remains.
- 3.4 The Working Group is therefore encouraged to review the above solution or any other solutions that may be identified with the aim of achieving full accountability of all member states for their obligations under the 1992 Fund Convention. What should be avoided is repetitive and time-consuming debate of this problem at future meetings of the Fund that, as the record shows, has not thus far led to any concrete solutions.
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