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COMPENSATION  
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## REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

REVISION OF THE COMPENSATION REGIME, INCREASE OF MAXIMUM AMOUNT  
IN THE INTERNATIONAL REGIME ESTABLISHED UNDER THE 1992 CONVENTIONS

**Submitted by the French delegation**

<b>Summary:</b>	Further to the French memorandum sent to the IOPC Fund in 2000, the aim of this document is to set out the French delegation's thinking on the level of the maximum amount of compensation under the international regime.
<b>Action to be taken:</b>	Examination and discussion of these points by the Working Group.

1. The present compensation regime rests on two international Conventions dating from 1992, whose objective is to offer full and speedy compensation to all victims of oil pollution.
2. Experience stemming from the two main incidents with which the 1992 Fund has had to deal shows that, although the 1992 Conventions came into force recently, they fall short of these targets of rapidity and complete compensation, even when the quantity of oil spilt is comparatively small in relation to other incidents.

Although no final figure can yet be put on the cost of the *Nakhodka* incident, the facts known about the *Erika* incident likewise reveal that a ceiling of some FFr1 800 million, as decided at the last meeting of the IMO Legal Committee, would still be too low.

Furthermore, the question of taking ecological damage more into account is one of the issues submitted for the Working Group's consideration. If the Fund's policy were to be expanded on this subject, additional sums might be necessary in order to provide compensation for this type of damage.

3. The international regime must have available sufficient funds for compensation in order to ensure its smooth functioning and external credibility.

3.1 If resources are not enough to compensate victims, there is a risk that they will try to assert their rights in national courts and such a step would, on the one hand, expose the Fund to the application of national laws which diverge from the Conventions and, on the other, block a speedy payment of compensation.

3.2 Moreover a comparison should be made between the cover offered by the international regime and other existing regimes or those proposed by other fora.

- As far as existing systems are concerned, the Oil Pollution Act 90, in force in the United States, makes it possible to use US\$1 000 million for the compensation of victims.
- It should also be mentioned that the P & I Clubs offer cover for oil pollution damage amounting to US\$1 000 million.
- In view of these systems, the extraordinary session of the Assembly of the Fund was informed last January of the European Commission's proposal regarding a COPE fund, which envisages an amount equivalent to €1 000 million.

These various examples all seem to arrive at a maximum amount which is anyway higher than that established today under the 1992 Conventions.

4. It should also be kept in mind that the current rules on the revision of the maximum amounts laid down in the two Conventions do not permit rapid revision, especially as the minimum period of time which must elapse between two requests for a revision of these amounts is 11 years. Since a decision was taken last year, no new request for an increase could take effect before 2011. During that period, States could again find themselves in a situation in which the sums available would be inadequate, but where they would not then have the option of deciding to raise the upper limits.

5. For these various reasons, it seems necessary to review both the amounts of cover offered by the international regime and the procedure for adjusting them.

Two paths could be explored separately or at the same time. The first would consist in deciding on an increase in the current maximum amounts to bring them up to levels equivalent to those applying at the moment.

The second would consist in a stage-by-stage increase and would entail an amendment of the rules relating to the procedure for raising these amounts so as to introduce greater regularity. Any such amendment would, however, have to take account of the fact that these are two separate conventions and, while it might be possible to contemplate entrusting the examination of this matter to the Fund's annual Assembly, the question which arises is that of a method which would make it possible to maintain a balance between the first and second levels of compensation.

It should be noted that such an adjustment of the maximum amount need not be grounds for fearing a more lax approach of the IOPC Fund to the subject of compensation. The criteria adopted will still be left to the discretion of the Member States of the Fund. A higher maximum amount would simply enable the IOPC Fund to achieve fully the objectives set for it by the Convention.

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