



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

92FUND/WGR.3/8/10
14 June 2001
Original: ENGLISH

REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by Spain and the United Kingdom

Summary:	The co-sponsors of this document propose that it would be in the interests of shipowners, insurers and receivers to allow a modest 'mark-up' on claims for the use of certain fixed facilities providing it can be demonstrated that they had a beneficial effect in reducing pollution. This would provide a modest mark-up of costs to States maintaining specialised high cost capability to respond to pollution.
Action to be taken:	The Working Group is invited to consider the issues raised in this document and to decide as appropriate.

1 Introduction

- 1.1 The United Kingdom presented a document (FUND/WGR.7/20/2) on fixed costs to the Seventh Intersessional Working Group of the 1971 Fund in April 1994. The document proposed that the IOPC Fund should increase its contribution towards the standing costs of maintaining facilities for pollution prevention and clean-up to promote the adoption of better, and more effective, facilities throughout the world.
- 1.2 At that Working Group the majority of Contracting States were not in favour of amending the existing Fund policy. The Working Group Report records that "a reasonable proportion of fixed costs were admissible provided that they corresponded closely to the clean-up period in question and did not include remote overhead charges." The co-sponsors of this document remain concerned that this policy might discourage States from maintaining an effective response capability. This document discusses the benefits of maintaining effective pollution prevention and clean-up measures but proposes a more modest policy change than that suggested in the United Kingdom's original document in 1994. Specifically it addresses the high capital costs, or alternatively the annual expenditure, to maintain response capability beyond that that might be regarded as normal provision for shore-line clean-up, such as at-sea recovery vessels, aerial spraying capacity or emergency towing vessels.

- 1.3 The co-sponsors of this document believe the IOPC Fund should play a more positive role in encouraging the establishment of similar capability in Contracting States by providing a modest incentive to States to provide the capability to respond more effectively to the threat of oil pollution, reflecting the likelihood of this reducing claims against the Fund.

2 The basis of financial incentive to provide specialist pollution response capability

- 2.1 Many States already provide basic facilities to respond to pollution as part of their contingency planning. Others, however, may provide facilities that go beyond the norm. These may include aerial dispersant capacity, vessels capable of recovering oil at sea, emergency towing vessels etc. The annual costs of such additional response capacity can be considerable. Given that such resources are costly to provide and will generally be used only very rarely – if at all –, most governments will inevitably face other fiscal pressures which make it difficult to sustain the expenditure needed to maintain a fully effective pollution response capacity. It can be argued that those governments that maintain such resources do so because of their wish to ensure that they can effectively respond to the perceived threat of pollution around their coastlines. However, once those resources are effectively deployed they can have a marked effect on reducing the costs of an incident for both insurers and receivers. Often, without the local response, the costs falling on insurers and contributors could be significantly higher.
- 2.2 It is reasonable to expect that Contracting States should endeavour to maintain a response capability commensurate with the risks to their coastlines and their economic ability. Therefore, the co-sponsors can accept the argument that the Contracting State concerned should normally fund normal contingency planning and should be expected to make basic provision of standard beach cleaning equipment, stockpiles of suitable materials etc and that, while these may be beneficial in reducing the overall costs, no additional incentive should be needed if that remains the view of the majority of the Working Group.
- 2.3 However, given the financial advantage to be obtained by the insurers and contributors, the co-sponsors believe that at least some economic incentive to the State concerned is more than justified to provide more specialised capability beyond the basic provisions. As previously proposed in the United Kingdom's document to the 1971 Fund's Seventh Intersessional Working Group, it is recommended that the additional incentive should be set at a limit of 10% of the admissible costs. For example, this might work as follows:

*an assumed annual contract for a particular response capability (eg aerial dispersal aircraft) ,
(divided by) 365 (days per year)*

X (multiplied by)

the number of days the particular response capability is in use for the specific incident (plus any other admissible costs).

This will create a figure for the cost of such facilities in responding to an incident. The proposal is that the 10% mark-up be calculated from this resulting figure.

It is suggested that an additional 10% incentive should apply beyond daily costs of maintaining the capability and the deployment but this should only be paid on condition that it can be demonstrated that the *use* of this capability had a marked and beneficial effect in reducing the costs of an incident. Simply deploying the particular capability would not be sufficient to justify the incentive payment. Costs of deploying specialised equipment provided by neighbouring states or by industry would also not qualify for the 'uplift' of 10%. If there are concerns that the limit of compensation available may be breached the State concerned may prefer not to pursue such an additional payment in the interests of securing higher payments for its citizens who have claims.

3 Conclusions

- 3.1 The co-sponsors believe that current Fund policy towards fixed costs does little to encourage coastal States to maintain a fully effective response capability. A 10% mark-up for specialised response capability would go some way to providing an incentive – albeit that it would only be paid when the resources are shown to have been beneficial if an incident occurs. The current review of the 1992 Fund and the prospective introduction of a supplementary third tier would lessen the likelihood that a 10% mark-up would jeopardise full payment of compensation to small claimants.
- 3.2 The co-sponsors also believe that there is a good precedent for this proposal. Under Article 14 of the Salvage Convention, salvage awards can include an “uplift” which is intended to reward the salvor for incurring the overhead costs involved in keeping a salvage vessel or other specialised equipment on station during an incident where there is a reasonable prospect of reducing pollution. The salvage award may be commensurate with the costs of damage prevented: the proposed 10% additional incentive for Contracting States is very modest by comparison.
- 3.3 The Working Group is invited to consider the 1992 Fund policy in the light of this document.
-