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COMPENSATION
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Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

REFINEMENT OF THE CONTRIBUTION SYSTEM

Submitted by the Netherlands

Summary:

At the second meeting of the Third Intersessional Working Group, the current contribution system of the 1992 Fund Convention was considered in the light of the need to maintain a proper balance between the contributions by different interests to the existing schemes, particularly in case a Supplementary Fund were to be established. In this regard particular concerns exist because certain contributors in some countries do not have any interest in the oil received other than providing mere temporary storage services (independent storage owners). The aim of this paper is to provide a proposal as to how these concerns could be addressed and further elaborates on how this issue could be dealt with in the near future.

Action to be taken:

The Working Group is invited to consider the issue of the contribution system, particularly in relation to the establishment of a Supplementary Fund and to decide as appropriate.

1 Introduction: mere storage services

- 1.1 At the second meeting of the Third Intersessional Working Group in March 2001, the Working Group considered document 92FUND/WG.3/5/1, submitted by a group of States, containing inter alia a proposal on the establishment of an optional fund to supplement the present 1992 Conventions. In this document a special paragraph was included, dealing with the contribution system against the background of the (potentially) significantly higher contributions that would be introduced by such a Supplementary Fund. Because certain contributors in some countries do not have any interest in the oil received other than providing mere temporary storage services (independent storage owners), these contributors face in many cases difficulties to charge their principals for any post-event levy and therefore have to pay the levy out of their own pockets. The conclusion reached by the Working Group was that this issue would be considered further on the basis of concrete proposals. This document contains such a proposal.

- 1.2 The delegation submitting this document supports a further improvement of the present system of the 1992 Civil Liability Convention and the 1992 Fund Convention, as well as the setting up of a Supplementary Fund. It is, however, of the opinion that this opportunity should be used to find a solution for the problems faced by these particular storage interests. Furthermore, the magnitude of the possible levies under a Supplementary Fund is such that these problems will be highly aggravated. Therefore, in the view of the sponsoring delegation, the contribution system will need some refinements in comparison to the system currently used for the 1992 Fund.

2 Possible solution

- 2.1 In view of the fact that similar problems were anticipated in the context of the liability and compensation system for damage in connection with the carriage of hazardous and noxious substances by sea, the 1996 HNS Convention contains provisions to mitigate the problems mentioned above. These provisions could be considered to reflect the more modern view on how to identify the actual cargo interests intended to contribute to a fund system.
- 2.2 A possible solution might therefore be to incorporate into the 1992 Conventions or a new instrument to be developed, the relevant provisions of the 1996 HNS Convention on the concept of “receiver” (art. 1, par. 4, under a, HNS Convention) and on “contributing cargo” (cargo in transit; art. 1, par. 10 HNS Convention). Firstly this would give storage companies, under certain conditions, the possibility to pass the levy on to their principals, provided these are located in a State Party. Secondly it would end the present preferential treatment of a “ship-to-ship” transfer of cargo between the port of original loading and the port of final destination vis-à-vis a “ship-storage-ship” transfer of cargo under otherwise the same circumstances.

3 Action requested

- 3.1 Although especially in the case of very high levies, following the kind of incidents for which a Supplementary Fund would be intended to provide coverage, such a more precise contribution mechanism is important, the sponsoring delegation considers this issue as one that can be decided upon separately from the issue of the establishment of a Supplementary Fund itself. The main purpose of this document is therefore twofold:
- a) to ensure that the issue is kept “on board” for further consideration by the Working Group, the Assembly and, eventually, the IMO Legal Committee, either within the framework of the further improvement of the system of the 1992 Conventions as a whole or in that of the development of a new instrument regarding a Supplementary Fund; and
 - b) to make a concrete proposal as to how the issue could be solved, in order to facilitate the discussion by the Working Group at this session.
- 3.2 The Working Group is invited to consider the issue of the contribution system, particularly in relation to the establishment of a Supplementary Fund, and to recommend to the Assembly to include the issue in any proposals regarding further improvement of the system of the 1992 Conventions or the development of a Supplementary Fund, to be presented to the IMO Legal Committee for consideration.
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