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CRITERIA FOR THE ADMISSIBILITY OF CLAIMS FOR COMPENSATION

Note by the French Delegation

1 In document FUND/A.16/20, the Director of the IOPC Fund has proposed that the Assembly set up a Working Group to study certain issues raised in the Executive Committee at its 35th session which it considered should be submitted to the Assembly, in view of their importance.

2 With the HAVEN, BRAER and AEGEAN SEA incidents has come a development in the types of claims for compensation submitted to the IOPC Fund. In addition to claims for traditional damage caused by contamination by oil, a new type of claim is coming to the fore in respect of so-called "pure economic loss" or in respect of what might be called "abstract" preventive measures which are not linked to physical pollution, but rather to the economic consequences of pollution.

3 This type of pollution-related claim, which clearly constitutes an economic reality, should not be cast aside on the basis of a literal interpretation of the definition of damage by contamination laid down in the 1969 Civil Liability Convention.

The IOPC Fund has indeed already begun to grant compensation for these new types of damage.

4 The question is therefore not that of the principle of compensation for pure economic loss, but rather the necessary limits beyond which compensation would fall outside the legal framework applicable to the IOPC Fund.

5 In fact, it is possible both on the basis of the IOPC Fund's previous practice and through a strict application of the principles established by the 1969 and 1971 Conventions to define admissibility criteria which can reconcile fair compensation for victims of pollution with the legal safeguards which contributors may rightfully expect from the system.

6 The French delegation is therefore of the opinion that the proposal made by the Director to create a Working Group should be adopted by the Assembly.

7 The French delegation believes, however, that the examination which the IOPC Fund should thus carry out of the issues of pure economic loss and related preventive measures would not be complete unless the Working Group also considered other types of damage such as environmental damage, the nature of which is closely related to the nature of pure economic loss. The IOPC Fund has agreed in principle to pay compensation for environmental damage, which raises the same issues in terms of the definition of admissibility criteria.

8 The French delegation is aware of the difficulties which such a mandate would create for the Working Group, since the solutions which the IOPC Fund might adopt in relation to oil pollution will have implications in other fields covered by international conventions governing issues of liability and compensation.

9 Given the general principle established by Resolution N°3 of this Assembly and the conclusions reached by the Working Group which addressed this issue (document FUND/A.4/16), it might appear that compensation by the IOPC Fund for environmental damage has been clearly defined.

Furthermore, this first attempt at clarification is included in the text of the 1992 Protocols (new Article I.6 of the revised 1969 Convention).

10 However, some of the claims which are at present being examined by the IOPC Fund show that a development has taken place since 1980 in the legislation and jurisprudence in States Parties to the 1969 and 1971 Conventions. This development, which is only in its early stages and whose consequences in terms of domestic law and international conventions are already noticeable today, should not be ignored.

11 The IOPC Fund, whose innovative steps in the past have often brought about developments in the law concerning liability and compensation in environmental matters, has the experience to launch such a debate with due objectivity and realism.

12 The French delegation therefore proposes that the Assembly should:

- (a) approve the creation of a Working Group on the issue of compensation for pure economic loss and related "preventive measures", in accordance with the Director's proposal (document FUND/A.16/20); and
 - (b) extend the mandate of the Working Group to include the issue of compensation for environmental damage within the scope of the provisions of the 1969 and 1971 Conventions.
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