
GUIDELINES CONCERNING REIMBURSEMENT OF ASSISTANCE COSTS IN THE CONTEXT OF BILATERAL AGREEMENTS

33.1 Introductory considerations

- .1 There is no contradiction between the text of the Bonn Agreement and the texts of the various existing bilateral conventions that provide for mutual assistance without reimbursement of the costs by the assisted States.
- .2 The existing bilateral mutual assistance conventions were originally drafted to address major accidents and natural disasters. However, they will necessarily apply if pollution threatening the territory of one of the signatory States is serious enough to be considered catastrophic.
- .3 With most of the bilateral multi-assistance conventions, when they do apply, the cost of the assistance operation cannot be the responsibility of the assisted Party. There is no choice.
- .4 The way in which some of the bilateral conventions are implemented could be in contradiction with the OECD "Polluter Pays Principle" which has inspired Article 9 of the 1983 Bonn Agreement. Real cases have occurred where the assisting Party claimed no reimbursement of its costs because of the gratuity provisions in the bilateral convention; neither the assisted Party nor the polluter was presented with a claim.
- .5 It is recognized, however, that the existing bilateral conventions do not in any way prevent the assisting Party from presenting a claim for reimbursement to the polluter, nor do they prevent the assisted party acting as a surrogate for the assisting Party.
- .6 It is confirmed that any person (or Party) taking preventive measures is entitled to compensation under the CLC and the Fund Convention. It suffices that:
 - measures are taken to prevent pollution of the territory or territorial sea of Contracting Party to those conventions;
 - the measures are reasonable.
- .7 The above considerations can also be applied to reimbursement questions arising in cases of tanker accidents not covered by the CLC and Fund, as well as those which could arise in non tanker accidents (chemicals, bunker oil, etc.)

33.2 Guidelines

- .1 The "Polluter Pays Principle" should not be jeopardised in the implementation of either the Bonn Agreement or other bilateral conventions.
- .2 It is recommended that, in all situations of mutual assistance, including those taking place in the framework of bilateral conventions, the assisted Contracting Party should act as a surrogate for assisting Contracting parties in compensation claims.