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DIRECTOR'S AUTHORITY TO SETTLE CLAIMS

Note by the Director

Introduction

1 The Director's authority to make final settlement of claims for compensation and indemnification against the IOPC Fund is governed by Internal Regulations 8 and 9. These Regulations were adopted by the Assembly at its 2nd session in April 1979. The Director submits for consideration by the Assembly whether these provisions should now be amended, in the light of the experience gained by the IOPC Fund over the years, so as to enable the Fund to continue its policy of providing rapid compensation to victims of oil pollution.

Present Situation

2 Under Internal Regulation 8.4.1, the Director may make final settlement of any claim for compensation without the prior approval of the Executive Committee, if he estimates that the total cost to the IOPC Fund of satisfying all claims arising out of the relevant incident is not likely to exceed 25 million (gold) francs (1.67 million SDR), which corresponds to approximately £1.4 million. The same limit applies in respect of the Director's authority to settle claims for indemnification of the shipowner (Internal Regulation 9.5). The Executive Committee may authorise the Director to settle claims beyond this limit in respect of a particular incident (Internal Regulations 8.4.2 and 9.6, respectively).

3 The limit of 25 million (gold) francs was fixed by the Assembly in 1979 when the IOPC Fund had no experience of the settlement of claims. It should be noted that the value of this amount has since been eroded by inflation. Based on the Consumer Price Index used by the International Monetary Fund (IMF), consumer prices in the industrial countries rose by a factor of 1.73 during the period 1979 – 1989 ^{<1>}, the latter year being the last for which statistics are available. This would mean that in industrial countries an amount corresponding to 25 million (gold) francs would have lost on average over 40% of its real value during that period.

<1> Derived from the Consumer Price Index data in International Financial Statistics Yearbook 1990 published by the International Monetary Fund.

Director's General Limit

4 It has been the policy of the IOPC Fund that victims of pollution incidents should be compensated as soon as possible. In order to ensure that this policy can be continued, it is essential that the Director's authority to make final settlements of claims is maintained at a reasonably high level in real value. The Assembly may wish to examine whether the limit of the Director's authority to settle claims without the prior approval of the Executive Committee should now be increased, in view of the inflation which has taken place since 1979.

5 If the Assembly were to find that the limit of the Director's authority to make final settlements of claims should be increased to restore the real value which the present limit (25 million (gold) francs or 1.67 million SDR) had in 1979, it should be increased by a factor of approximately 1.8, bringing it up to 45 million (gold) francs or 3 million SDR, which corresponds to £2.4 million. The Assembly may consider, however, that such a limit is too high.

6 In the past the Director has submitted to the Executive Committee for consideration claims involving questions of principle, for example as regards the interpretation of the definitions of "pollution damage" and "preventive measures" in the Civil Liability Convention, even in cases where he would have been entitled to make final settlements under Internal Regulation 8.4.1. It goes without saying that the Director will continue this policy whether or not the limit of his authority to make final settlements is increased.

7 The Director does not consider that there is any need to increase the limit of his authority to settle claims for indemnification of the shipowner, laid down in Internal Regulation 9.5.

Claims from Individuals and Small Businesses

8 A special problem relates to the settlement of claims from individuals and small businesses, such as fishermen and hotel owners. Under the Internal Regulations as presently drafted, the Director is not authorised to settle and pay any claims from such claimants without the prior approval of the Executive Committee, if he estimates that the total amount of the payments to be made by the IOPC Fund for compensation in respect of the particular incident may exceed 25 million (gold) francs (1.67 million SDR). In the view of the Director, it is particularly important that claims of this kind are settled and paid rapidly. This has been recognised by the Executive Committee in several cases, for example in connection with the THUNTANK 5 and the AMAZZONE incidents. In these cases the Committee authorised the Director to settle claims from individuals arising out of the particular incident up to a specified aggregate amount which was SKr400 000 in respect of the THUNTANK 5 incident and FFr400 000 in respect of the AMAZZONE incident (in both cases approximately £40 000).

9 In several cases the problem of rapid compensation to individuals and small businesses has been solved as a result of excellent co-operation with the P & I Club concerned. In these cases the P & I Clubs have agreed to pay compensation to individuals and small businesses, in spite of the fact that a limitation fund had been established, and the Clubs then claimed against the IOPC Fund in subrogation in respect of the amounts paid to these claimants.

10 In connection with recent incidents, problems have arisen because the shipowner was not covered by any P & I insurance. This was the case in respect of the VOLGONEFT 263 and the VISTABELLA incidents. The VOLGONEFT 263, which was owned by a USSR State-owned company, did not have any P & I insurance but was covered by a State guarantee, in accordance with Article VII.12 of the Civil Liability Convention. The VISTABELLA was carrying less than 2 000 tonnes

of oil in bulk as cargo and was therefore not obliged to have any insurance under the Civil Liability Convention. The VISTABELLA was covered by an insurance which had not been taken with a P & I Club and the insurer was not prepared to make rapid payments to victims.

11 The difficulties set out above may be partly overcome by the Director making provisional payments. Under Internal Regulation 8.6, the Director may make provisional payments to victims if in his view this is necessary in order to mitigate undue financial hardships to them. Such payments are at the discretion of the Director who shall endeavour to ensure that no person receiving such a payment receives more than 60% of the amount which he is likely to receive from the IOPC Fund in the event of claims being abated pro rata. Total payments under this Regulation shall not exceed 90 million (gold) francs (6 million SDR), corresponding to approximately £4.9 million, in respect of any one incident. However, for an individual it is very often not enough to receive 60% of his accepted claim. For example, a fisherman may have to replace polluted nets and would need money rapidly for this purpose.

12 In the light of the observations set out above, the Director submits for consideration by the Assembly whether he should be given the authority to settle claims made by individuals and small businesses up to a certain amount, independent of the aggregate amount of claims against the IOPC Fund. If this proposal were acceptable, the Assembly may wish to consider fixing the limit of the Director's authority in respect of such claims at a total amount of, say, 10 million (gold) francs (0.667 million SDR), which corresponds to approximately £540 000.

More Frequent Meetings of the Executive Committee

13 Rapid settlement of claims would also be facilitated if the Executive Committee were to hold sessions more often than has been the case in the past. Normally, the Executive Committee holds sessions in September/October in connection with the annual session of the Assembly. Extra sessions of the Executive Committee were held in May 1982 and April 1983 to discuss claims arising out of the TANIO incident. An extra session of the Executive Committee was held in March 1991 to discuss the RIO ORINOCO incident, and another extra session in June 1991 to discuss mainly the HAVEN and AGIP ABRUZZO incidents. The extra sessions in 1991 were held in connection with meetings of the Intersessional Working Group which had been set up by the Assembly. It could be envisaged that the Executive Committee should hold sessions twice a year, for example in March/April and in September/October, thereby reducing any delay in the settlement of claims exceeding the Director's authority. This would, however, impose additional costs on Fund Member States.

Amendments to the Internal Regulations

14 In view of the considerations set out above, the Director submits the following text for amendments to Internal Regulation 8.4.1 for examination by the Assembly (amendments underlined):

8.4.1 Where the Director is satisfied that the Fund is liable under the Fund Convention to pay compensation for pollution damage, he may, without the prior approval of the Assembly^{<2>}, make final settlement of any claim, if he estimates that the total cost to the Fund of satisfying all claims arising out of the relevant incident is not likely to exceed [X] million francs. The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of [Y] million francs in respect of any one incident. The relevant date for conversion shall be the date of the incident in question.

<2> Under Internal Regulation 1.6 the reference to the Assembly is in this case to be construed as a reference to the Executive Committee, since the Assembly has delegated to the Executive Committee the task of approving settlement of claims against the IOPC Fund.

Action to be Taken by the Assembly

15 The Assembly is invited to:

- (a) consider whether the general limit of the Director's authority to make final settlement of claims for compensation should be increased (paragraphs 4 and 5);
 - (b) consider whether the Director should be given authority to settle claims from individuals and small businesses up to a specified amount (paragraph 12); and
 - (c) adopt such amendments to Internal Regulation 8.4.1 as the Assembly deems appropriate (paragraph 14).
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