

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES  
DUS A LA POLLUTION PAR LES HYDROCARBURES

ASSEMBLY - 4th session  
Agenda item 13

FUND/A.4/10/1  
15 July 1981

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CONSIDERATION OF THE CHAIRMAN'S REPORT OF  
THE FIFTH INTERSESSIONAL WORKING GROUP

Note by the Director

1. At the fifth Intersessional Working Group, set up by the Assembly at its first extraordinary session, the Director was requested to submit to the Assembly a paper explaining the circumstances which he believed would justify the Fund, as an exception, being allowed to make payments to claimants, on the basis of an agreement between parties, before the limitation fund under Article V of the Civil Liability Convention is established. A paper containing the required explanation, together with a proposed amendment to the Internal Regulations, is at Annex I.
2. The Director was also requested to propose an amendment of the Internal Regulations allowing the Fund to make part payments to claimants before final agreement is reached on their claim. This proposal is at Annex II.
3. The Intersessional Working Group agreed to ask the Assembly to adopt a resolution, directed at IMCO, expressing the IOPC Fund's desire that amendments to the Civil Liability Convention and the Fund Convention, to be elaborated by IMCO's Legal Committee, should make it clear that expenses for preventive measures taken before an actual spill of persistent oil, if any, has occurred are covered by the Conventions. A draft resolution, prepared by the Director, is at Annex III.
4. The Assembly is invited to consider the proposals contained in Annexes I, II and III.

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ANNEX IPAYMENTS BY THE IOPC FUND BEFORE THE ESTABLISHMENT  
OF THE LIMITATION FUND UNDER ARTICLE V.3  
OF THE CIVIL LIABILITY CONVENTION

1. At the fifth Intersessional Working Group most States agreed that the Director could make payments of compensation only after the shipowner had established the limitation fund according to Article V.3 of the Civil Liability Convention. However, delegates were of the opinion that a somewhat increased flexibility might be justified under certain circumstances, if the establishment of the limitation fund was likely to take some time and immediate payment was required in order to avoid financial hardship to claimants. The Director was asked by the Working Group to submit to the Assembly a document explaining the nature of the extraordinary circumstances which he believed would justify the Fund being allowed to make payments to claimants before the establishment of the limitation fund.
2. Article V.3 of the CLC provides that the owner, for the purpose of availing himself of the benefit of limitation of his liability, has to constitute a fund for the total sum representing the limit of his liability. The provisions in Article V of the CLC do not set out in detail the procedure regarding the establishment of this limitation fund. Therefore, it is left to Contracting States to adopt in their national legislations procedures setting out the details to be followed by the shipowner when he wishes to establish the limitation fund. The procedures adopted by Contracting States of the CLC differ considerably and it appears that some do not have any legislation at all in this respect. In some cases this has resulted in considerable problems for the owner to limit his liability under the CLC.

3. With respect to all incidents for which the Fund has been, or may be, held liable the Director tries to maintain close contact with the owner and potential claimants regarding the establishment of the fund and the procedure to be followed at the limitation proceedings. In several cases agreements have been concluded between the IOPC Fund and the owner and his insurer dealing, inter alia, with this question.

4. If, in a given incident, the limitation fund can be established only a considerable time after the incident, the IOPC Fund is barred from making payments, including provisional payments as foreseen in Internal Regulation 8.6. The Director is of the view that the exceptional cases foreseen in Internal Regulation 8.6, i.e. where the delay of payment would cause undue financial hardship to victims of pollution incidents, should also allow for payments by the Fund before the establishment of the limitation fund. The limits set in Regulation 8.6 should also apply. Such payments should be made only if it is ensured that payments made by the IOPC Fund will be refunded by the owner or his insurer in case it is held at a later stage that the owner is not entitled to limit his liability under the CLC.

5. The Director suggests that Internal Regulation 8.6 be amended as follows:

Add the following sentence to Regulation 8.6 of the Fund's Internal Regulations:

"Such provisional payments may be made before the shipowner has established the limitation fund in accordance with Article V.3 of the Civil Liability Convention."

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ANNEX II

## AMENDMENT OF INTERNAL REGULATIONS

1. At the fifth Intersessional Working Group it was agreed by all participants that the Fund should endeavour to make payments to claimants as soon as possible. The Fund's Internal Regulations dealing with the claims settlement procedure have to provide the legal framework for such quick settlements.
2. Internal Regulation 8.6 provides that, under certain defined circumstances, provisional payments can be made before the final settlement of a claim if the Director views this necessary in order to mitigate undue financial hardship to victims. Provisional payments are limited to 60% of the claim or a total of 90 million (gold) francs, i.e. approximately £3.4 million. These limits can be exceeded only if the Assembly so decides in respect of a particular incident. So far, the IOPC Fund has not made any provisional payments under Regulation 8.6 since it has always been possible to make final payments before financial hardship could arise.
3. The situation has arisen, and is bound to arise again, when agreement has been reached on most of the items included in a claim made against the Fund but some items still have to be investigated. This investigation may take some time to be concluded. In such a situation the IOPC Fund would not be entitled under the Internal Regulations to make any payment to the claimant if the requirements of Regulation 8.6 were not fulfilled.
4. In view of the agreement reached by the fifth Intersessional Working Group, the Director feels that it would be advisable if the Internal Regulations were amended in such a way as to allow the Director to make part payments, to the extent that the claims

have been agreed between the claimant and the Fund, if queries as to the remainder of the claims could mean a considerable delay of the final settlement. Such a part payment could lead to a substantial satisfaction of a claim and, by that, constitute a means of expediting claim settlements. In addition, it could save the Fund from paying interest to claimants which may be higher than the interest gained on investments made by the Fund. It is understood that such payments would be made only with respect to incidents which do not lead to an aggregate amount of claims against the IOPC Fund exceeding 25 million (gold) francs.

5. The following amendment to the Fund's Internal Regulations is suggested:

Add the following new paragraph 8.4.4 to Regulation 8:

"8.4.4 Subject to 8.4 where a claim has been submitted to the Fund and agreement has been reached between the Fund and the claimant as to the value of the majority of items of the claim, but further investigation is considered necessary with respect to the remaining items, the Director may make payment in respect of the agreed items. Regulation 8.4.3 applies correspondingly."

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ANNEX III

DRAFT RESOLUTION

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

AWARE of the difference of views held in Contracting States regarding the question of whether the Civil Liability Convention and the Fund Convention cover expenses for preventive measures taken before an actual spill of persistent oil has occurred or in cases where no spill of persistent oil occurs at all,

NOTING that these differences in the interpretation of the two afore-mentioned Conventions by Contracting States could lead to differing decisions in the various Contracting States regarding the Fund's liability,

CONSCIOUS of the need in a specific pollution incident for all parties concerned to do their utmost to prevent an actual spill of oil,

RECALLING Assembly Resolution 2, adopted by the Fund's Assembly at its second session in April 1979, requesting IMCO to consider the desirability of revising the 1969 Civil Liability Convention and the 1971 Fund Convention,

REQUESTS IMCO to bear in mind, when elaborating amendments to the two Conventions, the need to ensure that the cover for preventive measures provided for in the two Conventions clearly includes cover for measures taken before an actual spill of persistent oil, if any, has occurred.

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