



INTERNATIONAL
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COMPENSATION
FUND

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PROCEDURES THAT THE IOPC FUND SHOULD APPLY IN EVALUATING AND SETTLING CLAIMS FOR COMPENSATION

Note by the French delegation

1 This document, which refers to paragraph 4 of the mandate of the Intersessional Working Group, makes no claim to be exhaustive. It is designed solely to submit to the Group some major principles for which practical methods of application will need to be found.

2 By this means, the French delegation wishes to draw attention to four points.

2.1 The Obligation of Proof

Whether it is the existence of a claim or a link of causation that is involved, the burden of proof should in principle lie with the claimant.

If this principle is considered too strict in certain circumstances, there must be pre-established criteria on the conditions under which the IOPC Fund Secretariat can intervene.

The IOPC Fund should identify its own scientific tests so that it can judge whether claims such as those for pure economic loss or damage to the environment are genuine.

However, these tests should not restrict Member States, which may use any other evaluation method of equivalent value to substantiate claims for compensation.

2.2 Substantiation of Claims

Claims submitted to the IOPC Fund should not be admissible if they are not accompanied by conclusive supporting documentation.

If the IOPC Fund Secretariat has any doubt about the conclusive nature of the supporting documentation produced, and when payment of the compensation is urgent, part payments may be made.

Likewise, when rapid preventive measures or measures to reinstate the marine environment are necessary, the IOPC Fund may provide a financial guarantee so as not to delay the measures.

2.3 Promptness of Compensation Payments

Strict attention must be paid to the criterion of diligence in the payment of compensation.

The two main cases in which the IOPC Fund is likely to pay immediate compensation are:

- the case of small claimants;
- the case of a situation which necessitates urgent measures which cannot be financed by the responsible party.

On this point, it should be recalled that the IOPC Fund must not take the place of the claimant in decision-making.

The opening by the IOPC Fund of local offices where incidents occur should be encouraged if the pollution affects a great number of persons.

2.4 Consideration of Claims

When claims are considered by the Executive Committee, States whose territory is affected by the pollution should try to limit their interventions in the discussions.

It does not seem advisable that individuals should be granted right of access to Executive Committee's meetings, in view of the effects that such a measure might have on the length of the sessions.
