

ASSEMBLY
1st session
Agenda item 18

CONSIDERATION OF CLAIMS FOR COMPENSATION

Note by the Director of the International Oil Pollution Compensation Fund

1 Introduction

The 1984 International Conference which adopted the 1984 Protocol to the Fund Convention decided to abolish the Executive Committee. The position on this point contained in the 1984 Protocol was maintained in the 1992 Protocol. The discussions at the 1984 Conference are reflected in the Official Records of the Conference (1984/1992 Official Records, Volume 2, pages 446–451 and 533–534). The question to be examined is which body of the 1992 Fund should consider claims for compensation.

2 Background to decision at the 1984 Conference

2.1 At the 1984 Conference, it was argued that experience in the administration of the 1971 Fund had shown that the existing structure of the Executive Committee was not suitable for the actual duties carried out by that body. In particular, it was considered a drawback that the composition of the Committee changed each year, whereas the Committee might deal with a major incident over a period of several years.

2.2 The Director of the 1971 Fund proposed that the Executive Committee be replaced by working groups which would be established by the Assembly. He suggested that the Assembly could set up a working group to deal with the settlement of claims resulting from one particular incident. Such a system would, in his view, allow much greater flexibility as regards the composition of the Committee and the term of office of its members.

2.3 The 1984 Conference approved the abolition of the Executive Committee and its replacement by subsidiary bodies to be set up under Article 18.9 of the amended Convention^{<1>}. In the light of the substantive function which the subsidiary body was expected to undertake, provisions regarding membership of this body were inserted in Article 18.9^{<2>}.

2.4 It should be noted that several delegations (including those of France and the United Kingdom) did not support the proposal to abolish the Executive Committee.

<1> IMO document LEG/CONF.6/C.2/SR.27, reproduced in 1984/1992 Official Records, Vol 2, p608

<2> IMO document LEG/CONF.6/C.2/WP.29, reproduced in 1984/1992 Official Records, Vol 2, p290

2.5 In deciding to abolish the Executive Committee, the 1984 Conference gave some indication of the type of body that might be appointed by the Assembly (as a subsidiary body) to perform the functions which, under the 1971 Convention, were carried out by the Committee. The delegations which participated in the discussions mentioned a number of criteria which the new body would have to meet. These criteria included:

- o it should provide for greater continuity of membership;
- o the membership should be tailored to particular requirements;
- o its membership should reflect adequate geographical distribution;
- o the Member States with the largest quantities of contributing oil should be represented;
- o it was essential to keep flexibility.

3 Consideration by the Assembly of the 1971 Fund

3.1 In October 1995, on the basis of a document presented by the 1971 Fund's Director (document FUND/A.18/13/7), the 1971 Fund Assembly considered the consequences of the 1992 Fund Convention not providing for an Executive Committee, and the need for the 1992 Fund Assembly to decide on the structure for the handling of claims for compensation. The 1971 Fund Assembly noted that in recent years the Executive Committee of the 1971 Fund had played a vital role in the consideration of claims. The Assembly took the view that it would not be practicable to set up separate working groups to deal with claims arising out of each major incident, as had been suggested at the 1984 International Conference which adopted the 1984 Protocols.

3.2 The Assembly of the 1971 Fund considered the Director's proposal for handling claims for compensation within the four-layer framework of the Director, a claims 'bureau', a claims subsidiary body and the Assembly. It was noted that the purpose of this proposal was to speed up settlements when no questions of principle were involved, while Member States would retain their role as policy makers.

3.3 The 1971 Fund Assembly considered that a claims subsidiary body should be established by the Assembly of the 1992 Fund and that its composition and role should be similar to those of the Executive Committee of the 1971 Fund. It did not support the Director's proposal to set up a claims 'bureau'.

3.4 The 1971 Fund Assembly was of the view that it would not be necessary to establish the claims subsidiary body at the 1st session of the 1992 Fund Assembly, since there would be only nine Member States at that time. The 1971 Fund Assembly considered that, if the 1992 Fund Assembly were to hold an extraordinary session in October 1996, the 1992 Fund Assembly might wish to consider at that session, in the light of the progress in ratifications, whether to establish a claims subsidiary body.

4 What body should approve claims in the 1992 Fund?

The function of approving the settlement of claims must either be performed by the Assembly, or by a special body, to the extent that the Director has not been authorised to make final settlements.

4.1 Assembly

4.1.1 In accordance with Article 18.7 of the 1992 Fund Convention, one of the functions of the 1992 Fund Assembly is to approve the settlement of claims. This provision, which is identical to Article 18.7 of the 1971 Fund Convention, reads as follows:

The functions of the Assembly shall be:

.....

7 to approve settlements of claims against the Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 4, paragraph 5, and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of pollution damage are compensated as promptly as possible;

.....

4.1.2 It might be practicable for the 1992 Fund Assembly to approve settlements of claims during the period immediately following the entry into force of the 1992 Fund Convention, when there will be only a limited number of Member States. As the number of Member States increases, however, it would soon be difficult for the Assembly to hold meetings frequently enough to allow the prompt settlement of claims. In addition, frequent meetings of the Assembly would be costly for Member States. There would also be a risk that a quorum would not be obtained at extraordinary sessions.

4.1.3 It would be possible for the 1992 Fund Assembly to extend the Director's authority to make final settlements. The Assembly could require him to submit claims to the Assembly for approval only in certain well-defined cases, or in cases where he considered that special circumstances made it appropriate to seek the views of the Assembly. Although this would allow most claims to be agreed promptly by the Director, Member States might prefer not to reduce their own influence by giving the Director such extended authority. Furthermore, even with this approach, the Assembly might have to meet several times a year.

4.2 Subsidiary body or bodies

4.2.1 In the view of the Director of the 1971 Fund, experience gained in recent years has shown that there is a need for a subsidiary body which deals with the settlement of claims for compensation. If a subsidiary body is to be set up, its composition should fulfil the requirements of Article 18.9 of the 1992 Fund Convention which reads:

The functions of the Assembly shall be:

.....

9 to establish any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the Contracting States, in respect of which the largest quantities of contributing oil are being received, are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;

.....

4.2.2 Pursuant to Article 18.9 of the 1992 Fund Convention, the Assembly is empowered to delegate the settlement of claims for compensation to a subsidiary body.

5 Possible structure for the consideration of claims

5.1 In the light of experience gained by the 1971 Fund, and taking into consideration the views expressed at the 18th session of the 1971 Fund Assembly, it might be appropriate to consider whether claims for compensation could be handled by the 1992 Fund within a three-layer framework of the Director, a claims subsidiary body and the Assembly. This framework for claims handling would speed up settlements when no questions of principle are involved, while Member States would retain their role as policy makers.

The Director

5.2 The Assembly of the 1992 Fund will have to determine the extent to which the Director is entitled to make final settlement of claims without prior approval of the Assembly or any subsidiary body.

5.3 The Director of the 1971 Fund is entitled to make final settlement of any claim if he estimates that the total cost to the 1971 Fund of satisfying all claims arising out of the relevant incident is not likely to exceed 37.5 million (gold) francs (2.5 million SDR, or approximately £2.4 million). The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of 10 million (gold) francs (666 667 SDR or approximately £645 000) in respect of any one incident (cf Internal Regulation 8.4.1 of the 1971 Fund).

5.4 The Assembly might wish to consider extending the Director's authority to settle claims where no questions of principle arise, beyond that given to him in the 1971 Fund. This would allow straightforward claims to be settled promptly, without having to wait for approval from a body which meets infrequently. It would in any case be necessary to consider at that session how to define the limits of the Director's authority, in particular whether his authority should be limited in amount.

5.5 It is proposed however that, until the next session of the 1992 Fund Assembly, the Director of the 1992 Fund should be given authority up to the same limits as those laid down in the 1971 Fund's Internal Regulations. This would enable the Assembly to consider whether, in the light of developments, there was a need for an extension of the Director's authority.

Claims subsidiary body

5.6 The Assembly of the 1992 Fund could establish a claims subsidiary body. The role of this body would be to consider new issues of principle and general policy questions as they arise (and not in the abstract), and to take decisions on claims referred to it by the Director. In recent years in the 1971 Fund, the Director has in many cases been authorised to make final settlement in respect of all claims arising out of a given incident, except to the extent that questions of principle arise which have not previously been decided by the Executive Committee. The claims subsidiary body could also extend the Director's general authority in respect of a given incident, as has often been done by the Executive Committee of the 1971 Fund. If appropriate, the claims subsidiary body would make recommendations to the Assembly, for example on questions of principle of great importance.

5.7 The composition of the claims subsidiary body would have to be decided by the Assembly of the 1992 Fund in accordance with Article 18.9 of the 1992 Fund Convention (cf paragraph 4.2.1 above). It is suggested that the claims subsidiary body should be composed of a specified number of Member States appointed by the Assembly according to certain criteria, respecting the requirements laid down in

Article 18.9. It would be possible, for example, for the composition of the claims subsidiary body to correspond largely to that of the Executive Committee of the 1971 Fund as laid down in Article 22 of the 1971 Fund Convention. This approach was supported by the Assembly of the 1971 Fund (cf document FUND/A.18/26, paragraph 16.16).

5.8 If a claims subsidiary body were to be established, this body would take decisions of great importance for claimants, and these decisions would also have consequences for the level of contributions required. For these reasons it is proposed that credentials should be required for the representatives of those 1992 Fund Member States which were members of that body, as is the case in respect of the 1971 Fund Executive Committee (cf Rules of Procedure of the Executive Committee and Rule 9 of the Rules of Procedure of the Assembly).

Assembly

5.9 The Assembly would decide on general policy matters and important questions of principle regarding the admissibility of claims, as referred to it by the claims subsidiary body. In order to ensure the efficiency of the system, it will be important that the 1992 Fund maintains the policy of the 1971 Fund, viz that the role of the 1992 Fund Assembly should not be that of an appeal body.

6 When should a claims subsidiary body be established?

6.1 If the Assembly of the 1992 Fund were to decide that the 1992 Fund should have a claims subsidiary body, it would also have to determine when this body should be established. The question is whether this body should be set up from the outset or only when the number of States Parties to the 1992 Fund Convention reaches a certain figure.

6.2 In the case of the 1971 Fund, the Executive Committee was not set up until the number of Member States reached 15 (Article 21 of the 1971 Fund Convention).

6.3 It may not be necessary to establish the claims subsidiary body at the 1st session of the Assembly of the 1992 Fund, since there will be only nine Member States at that time. Within six months of the entry into force, however, there will be 15 Member States. As mentioned in document 92FUND/A.1/32, it is proposed that the 1992 Fund Assembly should hold an extraordinary session in October 1996. The 1992 Fund Assembly may wish to consider at that session whether, in the light of the progress in ratifications, to establish a claims subsidiary body. Until such time as the claims subsidiary body is established, it would fall upon the Assembly to take decisions on claims, to the extent that the Director would not be authorised to take the decisions required.

7 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in the present document;
- (b) to consider the structure for the handling of claims for compensation within the 1992 Fund, in particular whether the 1992 Fund should have a claims subsidiary body;
- (c) if such a body were to be set up, to decide its mandate, composition and when it should be established;

- (d) to consider whether credentials should be required for the representatives of Member States on the claims subsidiary body, if established; and
 - (e) to determine the limit of the Director's authority to make final settlement of claims without prior approval of the Assembly or a subsidiary body.
-