



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
3rd session
Agenda item 18

92FUND/A.3/16
30 July 1998
Original: ENGLISH

ALTERNATIVE DISPUTE SETTLEMENT PROCEDURES

Note by the Director

Summary:	Certain issues relating to alternative dispute settlement procedures are examined.
Action to be taken:	Consideration of whether the question of the 1992 Fund using arbitration, mediation and conciliation should be pursued further.

1 Introduction

1.1 At its 2nd session, the Assembly considered the question of alternative dispute settlement procedures on the basis of the Report of an Intersessional Working Group set up to examine this issue (document 92FUND/A.2/18). The Assembly also examined a preliminary study by the Director of the possibilities of the 1992 Fund using arbitration, mediation and conciliation to promote the out-of-court settlement of disputes (document 92FUND/A.2/19).

1.2 During the Assembly's consideration of these issues some delegations took the view that alternative dispute settlement procedures should be reconsidered once the external consultants who had been engaged to review the working methods of the Secretariat had completed their report. The Director undertook to prepare a short note for the next session of the Assembly on the legal issues arising from alternative dispute settlement procedures that would not be addressed by the external consultants.

2 External consultants' review of the working methods of the Secretariat

2.1 It will be recalled that the Report prepared by the external consultants referred to in paragraph 1.2 above was considered by the 1992 Fund Assembly at its 3rd extraordinary session and by the 1971 Fund Assembly at its 4th extraordinary session, together with a document on the subject prepared by the Director (cf document 92FUND/A/ES.3/21, paragraph 8). The external consultants did not deal with alternative dispute settlement procedures in their report, and informed the Director that they did not have the competence to address these issues.

2.2 The consultants expressed the view, however, that an effective promotion of the Fund could help to reduce the number of claimants resorting to litigation.

2.3 During the Assembly's examination of this issue it was generally considered that the IOPC Funds should strengthen their activities in the field of information and public relations. It was suggested that an increased knowledge of the international compensation system would in many cases facilitate claims handling. It was recognised, however, that there were limits to what the Funds could achieve in this respect and that the main responsibility for disseminating information within a Member State on the compensation system should lie with the competent authorities in that State (document 92FUND/A/ES.3/21, paragraph 8.16).

3 Director's consideration

3.1 The Intersessional Working Group studied three options for possible alternative settlement procedures outlined by a consultant, namely:

- 1 States would present claims for compensation on behalf of national claimants;
- 2 a special international body (tribunal) should be established to deal with all claims for compensation; and
- 3 an independent compensation board should be established to deal with all claims before their submission to national courts, if necessary.

3.2 The conclusions of the Working Group were as follows:

In conclusion, the Working Group considered that there was no support for Option 1, that some interest had been expressed in Option 2, but that that Option was not acceptable for many States *inter alia* for constitutional reasons, and that some interest had been shown in respect of Option 3, although there was not sufficient support to justify a further study of that Option at this stage. It was also generally considered that a cautious approach should be taken to any solution (such as Options 2 and 3) which would require amendments to the 1992 Civil Liability Convention and the 1992 Fund Convention, and that Options 2 and 3 should be considered only in the context of a general revision of the Conventions, if such a revision were to take place in the future.

3.3 Although the considerations of the Working Group's Report by the Assembly did not result in any decision being taken, it appeared that there was no support for studying further the three options outlined by the consultants.

3.4 In the light of the conclusions of the Working Group and the discussions in the Assembly, the Director takes the view that it would not be meaningful, at this stage, to pursue further any of these three options.

3.5 The Working Group also considered other methods of facilitating claims settlement, such as arbitration, mediation and conciliation. These methods were discussed by the Assembly at its 2nd session.

3.6 When considering alternative dispute settlement procedures, it is important to recall that the 1992 Fund Assembly has endorsed the policy of the 1971 Fund that it is necessary to abide by the definitions laid down in the applicable Conventions, as interpreted by the Funds' bodies. The Assembly decided therefore that it would not be appropriate for the 1992 Fund to take into account commercial factors, public relations aspects and the risk of unfavourable court decisions for the purpose of claims settlements.

3.7 Although the Assembly noted that arbitration might in many cases be a quicker and more convenient procedure for the settlement of disputes than court proceedings, it was recognised, however, that in many cases it would be difficult to use arbitration to settle disputes between the 1971 Fund/1992 Fund and claimants. The Assembly considered that this would be the case particularly where the need for speedy procedures was the greatest, namely in respect of incidents which gave rise to a large number of claims and where the total amount of the claims exceeded the maximum amount of compensation available. The Assembly took the view that the benefits of submitting claims to arbitration would be limited to certain particular cases. It was suggested that it might, for example, be appropriate, in respect of an incident where it was clear that the total amount of the claims would not exceed the maximum amount of compensation available, to submit to binding arbitration an individual large claim or a number of claims which gave rise to a particular question of principle. It was recognised that claimants might be reluctant to submit their claims to arbitration and might insist on having claims decided by the national courts in their own country. In view of the position taken by the Assembly and the Executive Committee of the 1971 Fund (and endorsed by the 1992 Fund Assembly) that a claim is admissible only if it falls within the definitions of 'pollution damage' or 'preventive measures' laid down in the Conventions as interpreted by the 1971 Fund bodies, the Assembly recognised that the scope for the 1992 Fund to submit claims to arbitration would be limited.

3.8 As regards mediation and conciliation, it was suggested that many of the techniques used in the context of mediation and conciliation were already employed by the 1971 and 1992 Funds in their efforts to reach out-of-court settlements. Although it was recognised that it might be difficult to use such procedures, it was nevertheless decided that this matter should be examined further. In the context of claims settlements, it was suggested that the external consultants' review of the Secretariat's working methods could provide input to this study. As stated above, the external consultants did not deal with the issues of claims settlement procedures.

3.9 In the light of the policy laid down by the Assembly as regards the admissibility of claims, the Director takes the view that it is not possible to pursue the question of using arbitration, mediation and conciliation beyond the conclusions of the Assembly at its 2nd session.

3.10 It should be noted that the Director shares the Assembly's view that arbitration could be used by the 1992 Fund in certain particular cases. He also agrees with the Assembly that the techniques normally used in the context of mediation and conciliation should be applied by the 1992 Fund in its efforts to reach out-of-court settlements, as has been the case in the past.

3.11 One area where the Director feels further measures could be taken by the 1992 Fund is in the field of disseminating information about the international compensation system. Improved information to claimants in this respect might in certain cases contribute to claims being settled out of court. The increased resources of the Secretariat resulting from the Assembly's decisions at its 2nd extraordinary session, will enable the 1992 Fund to strengthen its activities in this field. This issue will be considered by the Assembly under item 14 of the Agenda (document 92FUND/A.3/12).

4 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document; and
 - (b) to take such decisions on the issues dealt with in this document as it may deem appropriate.
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