



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by the Italian delegation

<i>Summary:</i>	Proposal for issues to be considered in the context of the revision of the 1992 Civil Liability and Fund Conventions.
<i>Action to be taken:</i>	Note the issues which are proposed to be included in the Working Group's list of items which merit further consideration.

1 Introduction

- 1.1 The main purpose of the integrated system introduced by the Civil Liability and Fund Conventions is to ensure adequate compensation to the victims of oil pollution at sea.
- 1.2 In order for compensation to be equitable and adequate, it should not only relate to the amount of the damage, but also be paid promptly.
- 1.3 The experience of 30 years' operation of this integrated system has shown, anyway, some malfunctions in the work of the Fund. There have been delays, sometimes of many years, in the payment of compensation to the victims, particularly in respect of "major incidents", when victims are more numerous and the damages suffered are very heavy. The delay in the payments, besides being a damage itself, can cause further damage that cannot be compensated.
- 1.4 When the amount of compensation claimed exceeds the ceiling of the Fund, not only will the amount of the compensation be reduced, but the accrued interest and monetary devaluation cannot be indemnified. The payment procedures will also be excessively expensive, the legal actions will take a very long time, and there will be an unacceptable increase of such actions.
- 1.5 It is the opinion of the Italian delegation that if the main purposes that led to the adoption of the above mentioned Conventions are to be achieved, these malfunctions must be eliminated.

2 Proposals

2.1 Reduction of the time-bar periods

2.1.1 The main reason for the delays in the payments of compensation is the long time periods for the presentation of claims according to Article VII of the Civil Liability Convention and Article 6 of the Fund Convention. These periods on the one hand give the victims more time to claim compensation but do not on the other allow the Fund to determine the global amount of the approved claims before the ultimate deadline, thus delaying all payments beyond acceptable limits, also because of the risk of overpayments which would be difficult to recover.

2.1.2 The Italian delegation is of the opinion that:

- one year, starting from the date when the damage occurred, should in principle be sufficient to evaluate the damage and to reach an agreement on the amount of compensation;
- two years (or maximum three years) should be sufficient in respect of damages which have not yet occurred or are not yet known or are not quantifiable soon after the incident (i.e. damages quantifiable only after one season or more).

2.2 Reduction in the duration of legal proceedings

The other reason for the delay in the payments is the excessive duration of legal proceedings. Though it is not possible to do very much to reduce this problem, the Italian delegation suggests nevertheless in that regard that steps should be taken:

- to encourage the use of arbitration – if possible in accordance with the legal system of each Member State, in order to reduce costs;
- to stipulate, in other cases, that judgements cannot be appealed, except for infringement of the law (for example – in Italy – only by lodging an appeal to the Supreme Court of Cassation).

2.3 Introduction of a guarantee in favour of the Fund to cover the risk of overpayments

2.3.1 In order to eliminate the main reason of delay in payments, ie the risk of overpayment by the Fund, it could be useful to introduce a system of financial securities in favour of the Fund for that purpose if the State of the victims for any reason does not give a guarantee to cover that risk.

2.3.2 The cost of such a security could be shared provisionally between the claimant (by reducing the amount of the compensation) and the Fund, the cost to be borne finally by the party which loses the case.

2.4 Raising of the limit of compensation of the Fund, by adding interest accrued on the amounts paid by the contributors

In the cases where the amount of compensation claimed by the victims exceeds the ceiling of the Fund, the delay in payments causes additional damage to the victims. Even if payments are delayed for years, the victims will not get any compensation for interest as the ceiling of the Fund remains the same. It seems equitable in such cases that interest on the amounts that the contributors have paid to the Fund should be used in favour of the victims.

2.5 Interruption of time-bar periods by mean of a simple formal request

In order to avoid the proliferation of legal proceedings which are detrimental because they are expensive and difficult and may last years, there could be introduced a possibility to interrupt the time-bar period by a simple formal request and not require the commencement of legal proceedings in the national courts, as provided under the present system (Article VIII of Civil Liability Convention and Article 6 of Fund Convention). Such an action should be the “ultima ratio” when all efforts to settle the dispute have failed.

2.6 These are the main items that in the view of the Italian Government should be taken into consideration in the context of the review of the Civil Liability and Fund Conventions.

2.7 If the Working Group were to decide to take into consideration the above mentioned proposals, it would be necessary to start a feasibility study on the specific modifications to be introduced in the integrated system of the Conventions and in the rules for their enforcement.
