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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

COMPENSATION FOR ECOLOGICAL DAMAGE WITHIN THE FRAMEWORK OF THE CLC AND FUND CONVENTIONS

Document submitted by the French delegation

Summary:

This document, based on the study by Professor Piquemal, suggests making editorial changes to the Claims Manual in order to highlight the specific nature of environmental damage and of claims for compensation for this type of damage under the Convention.

Action to be taken:

The Working Group is invited to consider amending the Claims Manual

- 1 In order to keep in step with a number of international instruments, it would seem necessary to take greater account of environmental damage within the international compensation system.
- 2 Given that this can be done by modifying the Fund's policy relating to this issue, without amending the text of the Conventions, interested delegations were invited to submit proposals for modifications.
- 3 As a follow-up to Professor Piquemal's study, delegations will find hereafter proposals for amendments to the Claims Manual.

These amendments relate to two sections of the Claims Manual

Firstly, in the third section of the Manual, dealing with the admissibility of claims, it is proposed to add a subparagraph to the paragraph on "General criteria" for the purpose of highlighting the very specific nature of claims for compensation for environmental damage and of referring the reader to the section of the Manual dealing with that category of damage.

Secondly, a number of amendments are suggested to the pages dealing with environmental damage. If these amendments were accepted, they would amount to a broadening of current practise in two respects:

- Deletion from the present text of the sentence linking compensation for environmental damage to economic loss and of the paragraph excluding the use of theoretical models.
- Introduction of the concept of compensation for environmental damage as a violation of collective property. This would recognise that the coastal State has the right to claim compensation on the basis of international rights under other Conventions to which it is a party. However, to be admissible, such a claim would need to be based on the conclusions of an environmental impact study conducted according to procedures accepted by the Fund.

- 4** Action to be taken: Delegations are invited to take note of these proposals and to consider whether they want to consider them in the context of the adoption of an Assembly Resolution, as proposed in document 92FUND/WGR.3/6.

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ANNEX

PROPOSAL FOR AMENDMENTS TO THE CLAIMS MANUAL

1 Page 17^{<1>}, General criteria

It is suggested that a new paragraph be added indicating that damage to the environment is subject to rules which are different from those relating to the treatment of other claims.

This paragraph, which should be inserted at the end, could be worded as follows:

However, with respect to alleged damage relating to the category of damage to the environment reference is made to pages 27 to 29 of the Claims Manual where this particular issue is dealt with.

2 Page 27^{<2>}, Environmental damage

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Environmental damage

~~Claims for impairment of the environment are accepted only if the claimant has sustained an economic loss which can be quantified in monetary terms.~~ The definition of *pollution damage* in the 1992 Conventions provides that compensation for impairment of the environment is payable only for costs incurred for reasonable measures to reinstate the contaminated environment.

~~This definition of *pollution damage* clarifies and codifies the 1971 Fund's interpretation of the term *pollution damage* as contained in a Resolution of the 1971 Fund which stated that "...the assessment of compensation to be paid by the International Oil Pollution Compensation Fund is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models".~~

The 1992 Fund accepts claims for loss of profit (net income) resulting from damage to the marine environment suffered by those who depend directly on earnings from coastal or sea-related activities, such as fishermen or hoteliers and restaurateurs at seaside resorts.

The 1992 Fund does not pay damages of a punitive nature, calculated on the basis of the degree of the fault of the wrong-doer and/or the profit earned by the wrong-doer.

The 1992 Fund recognises that Member States which exercise, pursuant to other international instruments, sovereign rights relating to the protection of their economic zone and the exploitation of the resources therein, have the right to claim compensation for violation to these interests of which they are custodian under the instruments. This compensation shall be based on an environmental impact study which assesses the amount of compensation awarded to the State in accordance with methods accepted by the Fund.

Costs for measures taken to reinstate the marine environment after an oil spill may be accepted by the 1992 Fund under certain conditions. To be admissible for compensation, such measures should fulfil the following criteria:

- the cost of the measures should be reasonable.

The rest of page 28 and the whole of page 29 remain unchanged.

<1> The French document refers to the June 1998 version of the Claims Manual. The page references for the English Claims Manual are page 16 for the 1998 version and page 17 for the 2000 version (the text is identical).

<2> Page 26 in 1998 version, page 27 in 2000 version.