



INTERNATIONAL
OIL POLLUTION
COMPENSATION
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THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

92FUND/WGR.3/8/14
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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

ENVIRONMENTAL DAMAGE

Submitted by Sweden

Summary:

At the second meeting of the Third Intersessional Working Group in March 2001, the delegations of Australia, Canada, Denmark, the Netherlands, Norway, Sweden and the United Kingdom submitted a paper (92FUND/WGR.3/5/1) which, amongst other issues, considered the establishment of criteria for determining "reasonable measures of reinstatement" as provided for under the 1992 Protocols and to ensure uniform treatment of claims for environmental damage. Sweden believes that this issue should be considered further by the Working Group with the aim of submitting a more detailed paper with recommendations for consideration by the Assembly in October.

Action to be taken:

The Working Group is invited to note the intention to seek progress on the issues raised above and to develop a more detailed paper for consideration by the Assembly in October.

1 Introduction

- 1.1 At its second meeting in March in 2001 the Third Intersessional Working Group considered a number of documents on the issue of environmental damage and environmental studies. The document submitted by a group of States on a number of issues proposed that it may be preferable to review and widen the existing policy on compensation for admissible damages caused to the environment to include, at least, costs for assessing the environmental damage incurred as a result of any incident through Environmental Impact Assessments (EIAs), and other reinstatement measures. Simply amending the Convention for this purpose would seem superfluous. The paper also noted that the following criteria would need to be taken into account when considering any such proposal:

- agreement to the funding of an EIA should be undertaken on the basis that such a study will provide 'useful' lessons, ie tangible environmental restoration benefits;
 - the possibility in setting an overall cap on the costs of re-instatement measures and EIAs and whether such claims should be allocated lower priority;
 - a suitable definition of a 'measure of reinstatement';
 - the extent to which reinstatement measures would apply to restoration or introduction of '*identical*' or '*equivalent*' components, and the possibility of reinstatement measures in an adjacent area; and
 - the possible need for the responsibility for all costs relating to an EIA and any specific environmental remedial measures falling on the relevant Member State.
- 1.2 At the Working Group meeting in March a number of delegations expressed a good measure of support for proceeding on the basis of widening the existing policy on compensation for admissible damage caused to the environment, and the further development of the above criteria.
- 1.3 Sweden endorses the comments of the French delegation, as recorded in paragraph 6.3.8 of the report of the March meeting (document 92FUND/WGR.3/6), that the 1992 Fund needs to keep up with developments in the field of environmental liability. Sweden further notes the following criteria, as agreed by the 7th Intersessional Working Group of the 1971 Fund, and endorsed in principle by the 1992 Fund Assembly at its 1st session, for measures of reinstatement of the environment to be admissible for compensation:
- the cost of the measures should be reasonable;
 - the cost of the measures should not be disproportionate to the results achieved or the results which could reasonably be expected; and
 - the measures should be appropriate and offer a reasonable prospect of success.
- 1.4 Sweden agrees that these criteria, and those considered in document 92FUND/WGR.3/5/1, need further development before any formal recommendation can be made to the Assembly. The information and ideas contained in the submission by ITOPF to the Working Group meeting in March on admissibility of claims for compensation for environmental damage under the 1992 Civil Liability and Fund Conventions (document 92FUND/WGR. 3/5/2) will provide valuable input in that work. Sweden proposes to develop a more detailed paper on environmental damage for consideration by the Assembly in October.

2 Conclusion

The Working Group is invited to note the intention to seek progress on the issues raised above and to develop a more detailed paper for consideration by the Assembly in October.
