



INTERNATIONAL
OIL POLLUTION
COMPENSATION
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WORKING GROUP
Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

Submitted by Italy and the Republic of Korea

Summary:	A draft resolution authorising the Director to make advance payments to victims against security provided by the State of the victims or by a first class bank in London.
Action to be taken:	The Working Group is invited to consider the issues raised in this document and to decide as appropriate.

1 Introduction

A document was introduced at the March 2001 meeting by Italy suggesting, *inter alia*, the way in which the payments of compensation should be more easily made against a guarantee offered by the victims. At the meeting, the Group regretted that it did not have sufficient time to consider the subject and suggested that it would review the matter at the next meeting on the basis of a more detailed proposal. This document is intended, in response to that comment, to elaborate further the original idea and invite the Group to address the matter more in detail once again.

2 The problem involved

In many major incidents, the extent of the damage by the spill is not clear at an early stage. It is also not clear what preventive measures should be taken after the incident. In such situations, the total amount of claims to be made against the Fund is always in doubt. In many cases, the total amount of claims is still in the air even 3 years after the incident, when the time bar period expires. Not knowing the exact amount of claims, victims tend to put forward claims for the highest possible amount to safeguard their position. Sometimes, the magnitude of the damage is exaggerated and the amount claimed is inflated in the hope that this would result in higher compensation. However, the total amount available for compensation is always limited by the Convention to 135 million SDR. The Fund invariably refuses to make full payment in many cases fearing a possible overpayment. Although the Fund is aware that many claims are not well founded or are inflated and therefore the possibility of overpayment is very remote, it is still reluctant to make full payment for the damage assessed or even agreed. Until the time when the total amount of the claims is established, the Fund has a limited choice in order to protect its

interests. Therefore, the payments have to be pro-rated. In the past this has been the cause of the delay in payments in many cases. This has sometimes brought about an absurd result in the eyes of the victims. As a way to solve the problem, several measures were tried but without much success. One of them is the option of payment by the Fund against a guarantee offered by the victim which is now under consideration.

3 Past practice

There is no clear practice established relating to such payments as far as the sponsoring nations are aware. In one case, such payment was endorsed by the Executive Committee. No doubt, such a system would facilitate the early payment of the claims, offering better protection to the victims. In any event, it would not harm the interests of the Fund. A similar request was considered later by the Executive Committee but was rejected. In the course of reaching this conclusion, fears were expressed about a flood of claims with requests for immediate payments. Concern was also expressed that such a system would favour victims with better means thereby giving less well-off victims unequal treatment. The Executive Committee, however, left open the possibility to make such a payment once a suitable formula is found to regulate it.

A new formidable ground was advanced later in favour of introducing such payments. Under the current system, the total amount of payments is limited, regardless the time of their payment, to an amount set by the Convention. It means that the amount of interest accrued up to the time of payment is included in the total amount. Consequently the delay in payment operates to the benefit of the Fund or its contributors as far as the limitation amount is concerned. Victims have argued that they are penalised through the delay in payments and the Fund and its contributors unfairly benefit from it.

4 Suggestions and solution

The Director should be given general authority to make advance payment in case the admissible amount of the claim is totally or partially agreed or fixed by a judgement not subject to appeal. Such a payment would not be made as of right at the request of the victims. Various factors should be taken into account in deciding whether to make payments, including the likely delay in ascertaining the total amount of the claims, the possibility of the total amount of claims exceeding the maximum amount of compensation available under the Conventions and the hardship and difficulties that the claimants experience. The security must in general be offered by the State of the victims or by a first class bank in London. The decisions made in this regard should be subject to review by the Executive Committee.

The sponsoring nations propose that the Working Group recommends the Assembly to adopt a resolution basically on the terms set out in the Annex.

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ANNEX

DRAFT ASSEMBLY RESOLUTION

Regarding payment against guarantee

The Assembly,

HAVING experienced in several recent incidents the delays in the Fund's payment of compensation due to the uncertainty as to the total amount of the established claims,

NOTING the difficulties involved in deciding the appropriate percentage, balancing on the one hand the desirability to make early payments to victims and on the other hand the Fund's obligation not to make payments over the maximum amount laid down in the Conventions,

BELIEVING in the necessity to make payments against guarantee to the extent that such payment does not prejudice the interests of other victims in order to ensure full and early compensation.

RECOGNISING the need for the Fund to have guidelines to follow in making such payment,

RESOLVES that

- 1 The Director is given the authority, in appropriate cases, to make payments against guarantees in total or in part, for claims the amount of which is agreed in total or in part or fixed by a judgement not subject to appeal, despite the possibility of the total amount of claims exceeding the amount available under the Conventions.
- 2 In deciding whether to make such payments, the Director shall take into account various factors including the likely delay in ascertaining the total amount of all claims arising from the incident, the possibility of the total amount of established claims exceeding the maximum amount of the compensation available under the Conventions and hardships and difficulties that the claimants experience.
- 3 The security offered must be issued by the State of the victims or by such person and contain such terms and conditions as to guarantee fully the repayment - even in the interest accrued from the not owed payment – to the satisfaction of the Director in the event that the claims later have to be prorated.
- 4 The Internal Regulations shall contain provisions regarding procedures for making requests for such payments against guarantee.
- 5 The decisions of the Director regarding such payments will be reviewed in the usual manner by the Executive Committee.