International Oil Spill Compensation Scheme and Damages for the Natural Resources

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1.United States (OPA 90)

1980 Pollution of soil : CERCLA(" Superfund Law ") was enacted.

1986 Natural Resources Damage Assessment Regulation was enacted by the Department of Interior

1989 State of Ohio vs. Department of Interior: Appeals Judgment

1989 Exxon Valdez incident

1990 Oil Pollution Act

1991 NOAA(Department of Commerce) Panel's Study of the feasibility of CVM(Contingent Valuation Method)

1993 Report of the Panel

1996 OPA 90 : Natural Resources Damage Assessment Regulation

1997 G.E. vs. Department of Commerce : Appeals Judgment

2.CLC Convention

(1) History

1979 Antonio Gramsci incident (Latvia)
Assembly Resolution: "Claim is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models."

1985 Patmos incident (Messina Straits)

1992 Haven incident (Genoa)

1992 Procol to CLC (in force in 1996)
Definition of the "Pollution Damage":
" provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken."

(2) Claims Manual of the IOPC Fund (adopted in 1994)

Note: CMI Guidelines on the Scope of Compensation for Claims for Oil Pollution Damage(adopted in 1994)

(3) Discussion on Environmental Damage in IOPC Fund (2000-2002)

- Revision of the Claims Manual

3. Europe

(1) Lugano Convention of 1993

(2) White Paper on Environmental Liability(2000)

(3) Erika incident (1999)

Movement of Europe
with regard to the Environmental Damage

1992 Rio Declaration regarding the environment and the development, which was adopted at the Earth Summit

1993 Lugano Convention (Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment)

(Movement of the EU)

1993 Green Paper on Remedying Environmental Damage

1994 European Parliament's Recommendation to the European Commission to adopt a Directive on the Civil Liability for the Environmental Damage

1998 Draft White Paper on Environmental Liability

Note: While admitting that there is no rules on Environmental Damage in each country, it is necessary that the legal framework of responsibility to the flora and fauna which are protected under the EU Law.

2000 (February)

White Paper on Environmental Liability

-Strict Liability

-Polluter Pay Principle

2000 (December)

Second Package of the Erika Proposal:

-Proposal of the COPE Fund (The Fund for Compensation for Oil Pollution in European Waters)

-Addressing the shortcomings of the CLC, FC Convention

-Compensation of damage caused to the environment should be reviewed and widened

Amendment to the 1992 Fund's Claims Manual

The Section "Environmental damage" on pages 31 and 32 of the June 2000 edition of the Claims Manual is replaced by the following text:

Environmental damage

In most cases a major oil spill will not cause permanent damage to the environment as the marine environment has a great potential for natural recovery. Whilst there are limits to what man can do in taking measures to improve on natural processes, in some circumstances it is possible to enhance the speed of natural recovery after an oil spill through reasonable reinstatement measures. The costs of such measures will be accepted by the 1992 Fund under certain conditions.

The aim of any reasonable measures of reinstatement should be to bring the damaged site back to the same ecological state that would have existed had the oil spill not occurred, or at least as close to it as possible (that is to re-establish a biological community in which the organisms characteristic of that community at the time of the incident are present and are functioning normally). Reinstatement measures taken at some distance from, but still within the general vicinity of, the damaged area may be acceptable, so long as it can be demonstrated that they would actually enhance the recovery of the damaged components of the environment. This link between the measures and the damaged components is essential for consistency with the definition of *pollution damage* in the 1992 Civil Liability and Fund Conventions (see page 9).

In addition to satisfying the general criteria applied to the admissibility of claims for compensation under the 1992 Fund Convention (see page 19), claims for the costs of measures of reinstatement of the environment will only be considered admissible if the following criteria are fulfilled:

- the measures should be likely to accelerate significantly the natural process of recovery
- the measures should seek to prevent further damage as a result of the incident
- the measures should, as far as possible, not result in the degradation

of other habitats or in adverse consequences for other natural or economic resources

- the measures should be technically feasible
- the costs of the measures should not be out of proportion to the extent and duration of the damage and the benefits likely to be achieved.

The assessment should be made on the basis of the information available when the specific reinstatement measures are to be undertaken.

Compensation is paid only for reasonable measures of reinstatement actually undertaken or to be undertaken, and if the claimant has sustained an economic loss that can be quantified in monetary terms. The Fund will not entertain claims for environmental damage based on an abstract quantification calculated in accordance with theoretical models. It will also not pay damages of a punitive nature on the basis of the degree of fault of the wrong-doer.

Studies are sometimes required to establish the precise nature and extent of environmental damage caused by an oil spill and to determine whether or not reinstatement measures are necessary and feasible. Such studies will not be necessary after all spills and will normally be most appropriate in the case of major incidents where there is evidence of significant environmental damage.

The Fund may contribute to the cost of such studies provided that they concern damage which falls within the definition *of pollution damage* in the Conventions, including reasonable measures to reinstate a damaged environment. In order to be admissible for compensation it is essential that any such post-spill studies are likely to provide reliable and usable information. For this reason the studies must be carried out with professionalism, scientific rigour, objectivity and balance. This is most likely to be achieved if a committee or other mechanism is established within the affected Member State to design and co-ordinate any such studies, as well as reinstatement measures.

The scale of the studies should be in proportion to the extent of the contamination and the predictable effects. On the other hand, the mere fact that a post-spill study demonstrates that no significant long-term environmental damage has occurred or that no reinstatement measures are necessary, does not by itself exclude compensation for the costs of the study.

The Fund should be invited at an early stage to participate in the determination

of whether or not a particular incident should be subject to a post-spill environmental study. If it is agreed that such a study is justified the Fund should then be given the opportunity of becoming involved in the planning and in establishing the terms of reference for the study. In this context the Fund can play an important role in helping to ensure any post-spill environmental study does not unnecessarily repeat what has been done elsewhere. The Fund can also assist in ensuring that appropriate techniques and experts are employed. It is essential that progress with the studies is monitored, and that the results are clearly and impartially documented. This is not only important for the particular incident but also for the compilation of relevant data by the Fund for future cases.

It is also important to emphasize that participation of the Fund in the planning of environmental studies does not necessarily mean that any measures of reinstatement later proposed or undertaken will be considered o~mira admissible.

TOPC Fund Claims Manual (Former Text)

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 Funds 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.

Costs for measures taken co 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 fulfill the following criteria:

* 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
* the measures should be appropriate and offer a reasonable prospect of success.

The measures should be reasonable from an objective point of view in the light of the information available when the specific measures are taken. In most cases a major oil spill will not cause permanent damage to the environment, as the marine environment has a great potential for natural recovery. There are also

limits to what man can actually do in taking measures to improve on the natural process.

Compensation is paid only for measures actually undertaken or to be undertaken

Post-spill environmental studies are sometimes carried out to establish the precise nature and extent of the pollution damage caused bv an oil spill and/or the need for reinstatement measures.

The 1992 Fund may contribute to the cost of such studies, provided that the studies concern damage which falls within the definition of *pollution damage* laid down in the Conventions as interpreted by the 1992 Fund, including reasonable measures to reinstate the environment. In such cases, the 1992 Fund should be given the possibility of becoming involved at an early stage in the selection of the experts who will carry out the studies, and in the determination of the mandate of these experts. The studies should be practical and likely to deliver the required data. Their scale should not be out of proportion to the extent of the contamination and the predictable effects. The extent of the studies and associated costs should also be reasonable from an objective point of view and the costs incurred should be reasonable.