



INTERNATIONAL
OIL POLLUTION
COMPENSATION
SUPPLEMENTARY
FUND

ASSEMBLY
2nd extraordinary session
Agenda item 11

SUPPFUND/A/ES.2/9
2 March 2006
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RECORD OF DECISIONS OF THE SECOND EXTRAORDINARY SESSION OF THE ASSEMBLY

(held on 1 and 2 March 2006)

Chairman: Captain Esteban Pacha (Spain)
First Vice-Chairman: Mr Nobuhiro Tsuyuki (Japan)
Second Vice-Chairman: Mrs Birgit Sølling Olsen (Denmark)

Opening of the session

Procedural matters

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document SUPPFUND/A/ES.2/1.

2 Examination of credentials

2.1 The following Member States were present:

Belgium	Ireland	Norway
Denmark	Italy	Portugal
Finland	Japan	Spain
France	Lithuania	Sweden
Germany	Netherlands	

The Assembly took note of the information given by the Director that all Member States participating had submitted credentials which were in order.

- 2.2 The following States which were Members of the 1992 Fund but not of the Supplementary Fund were represented as observers:

Algeria	Greece	Republic of Korea
Angola	India	Russian Federation
Antigua and Barbuda	Kenya	Saint Vincent and the Grenadines
Argentina	Liberia	Singapore
Australia	Malaysia	South Africa
Bahamas	Malta	Sri Lanka
Cambodia	Marshall Islands	Tunisia
Cameroon	Mexico	Turkey
Canada	Morocco	United Arab Emirates
China (Hong Kong Special Administrative Region)	Nigeria	United Kingdom
Colombia	Panama	Uruguay
Cyprus	Papua New Guinea	Venezuela
Gabon	Philippines	
Ghana	Poland	
	Qatar	

- 2.3 The following States which had observer status with the 1992 Fund were represented as observers:

Brazil	Ecuador	Saudi Arabia
Chile	Iran (Islamic Republic of)	
Côte d'Ivoire	Peru	

- 2.4 The following intergovernmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:

European Commission
International Maritime Organization (IMO)
International Oil Pollution Compensation Fund 1971 (1971 Fund)
International Oil Pollution Compensation Fund 1992 (1992 Fund)

International non-governmental organisations:

International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P&I Clubs
International Tanker Owners Pollution Federation Ltd (ITOPF)
International Union of Marine Insurers (IUMI)
Oil Companies International Marine Forum (OCIMF)

Treaty matters

3 Status of the Supplementary Fund Protocol and the 1992 Fund Convention

- 3.1 The Assembly took note of the information contained in document SUPPFUND/A/ES.2/2 concerning the ratification situation in respect of the Supplementary Fund Protocol and the 1992 Fund Convention. It noted that at the time of the session there were fourteen Member States of the Supplementary Fund.
- 3.2 It was noted that the Supplementary Fund Protocol would enter into force for Barbados on 6 March 2006 and for Croatia on 17 May 2006.

- 3.3 The observer delegation of the United Kingdom stated that the ratification of the Protocol was currently being considered in Parliament and hoped that the United Kingdom would ratify the Protocol in April 2006. The observer delegation of Greece informed the Assembly that it hoped that Greece would ratify the Supplementary Fund Protocol in June 2006.
- 3.4 The Assembly noted that at the end of the 10th extraordinary session of the 1992 Fund Assembly there were 93 Member States of the 1992 Fund and that five more States would become Members by the end of 2006.

Financial matters

4 Joint Audit Body's Review of claims handling

- 4.1 The Assembly recalled that in 2005 a review of the claims settlement procedures had been carried out by the Audit Body, with the aim of enabling the Audit Body to form a view about the efficiency of these procedures. The Assembly also recalled that although the review had not identified any serious past weaknesses or failures by the Funds or the Secretariat, the Audit Body had made a number of recommendations relating to the time taken to handle claims, on interim payments and on the management of claims handling. It further recalled that in the light of these recommendations the governing bodies of the IOPC Funds had, at their sessions in October 2005, instructed the Director to submit a report to their next sessions setting out an action plan that the Secretariat had put in place.
- 4.2 The Assembly took note of the measures taken and to be taken by the Secretariat to address the recommendations of the Audit Body as contained in document SUPPFUND/A/ES.2/3.
- 4.3 A number of delegations expressed their satisfaction with the Secretariat's action plan and were pleased to note that many of the Audit Body's recommendations had already been implemented. Some delegations considered that it was important not to overburden the Secretariat with too much bureaucracy and that bearing in mind that the Funds' existing documents already received widespread circulation, further production of documents should be kept to a minimum.
- 4.4 One delegation referred to the enormous amount of claims documentation that had been generated in support of the French Government's claim for clean-up costs arising from the *Erika* incident and expressed its concern that this was not conducive to rapid and efficient claims handling. The Director stated that it was inevitable that any major incident would give rise to such voluminous documentation, which included all relevant receipts and invoices relating to expenditure, although presentation in an electronic format would facilitate claims processing.
- 4.5 One delegation asked whether it would be possible for the Secretariat to include in its incident documents data on the numbers of claims that had remained dormant for more than two months. That delegation also asked whether the new claims database, which was being developed by the Secretariat, would be accessible to Member States. The Director stated that providing information on claims for which no action had been taken for more than two months could involve a lot of work if the information was to be meaningful, but that he would give further thought to the request and report back to the Assembly. The Director stated that access to the new database would be restricted to the Secretariat, the P&I insurer involved in the incident, joint experts and claims office staff since the information recorded would to a large extent be confidential.
- 4.6 In response to a statement by one delegation on the need for a database of decisions by the Funds' governing bodies, the Director informed the Assembly that work on such a database was already progressing and that it was hoped that it would be completed some time in 2006.
- 4.7 One delegation noted that costs of legal advisers and other experts often appeared excessive and suggested that such costs needed to be managed carefully in future. That delegation proposed the creation of a database of lawyers in each Member State and the establishment of pre-contracts, including rates to be charged in the event that their services were required in response to a particular incident. The Director stated that a database of lawyers and experts had already been

created but that it was not always possible to find experienced lawyers and experts, particularly lawyers in the maritime field, in Member States. He further stated that it was difficult to agree pre-contracts since the Funds could never guarantee that services would be required in a particular State. He also pointed out that the Funds had often found itself competing with shipowners' insurers in securing the services of the most able maritime lawyers.

5 Appointment of External Auditor

- 5.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document SUPPFUND/A/ES.2/4 containing the Audit Body's considerations as regards the issue of the procedure for appointment of the External Auditor of the 1992 Fund, the 1971 Fund and the Supplementary Fund.
- 5.2 In his introduction Mr Coppolani pointed out that, under the 1971 and 1992 Fund Conventions and the Supplementary Fund Protocol, the External Auditor should be appointed by the respective Fund's Assembly. He reminded the Assembly that the Funds' Financial Regulations (Regulation 14.1) provided that the External Auditor should be the Auditor-General (or officer holding the equivalent title) of a Member State, to be appointed in the manner and for the period decided by the Assembly.
- 5.3 It was recalled that the Comptroller and Auditor General of the United Kingdom had been the External Auditor of the 1971 and 1992 Funds since these Organisations were created in 1978 and 1996 respectively, having been reappointed for successive periods of four years, and that his present mandate expired on 31 December 2006. It was also recalled that at its 1st session, held in March 2005, the Supplementary Fund Assembly had appointed the Comptroller and Auditor General of the United Kingdom as the External Auditor for the Supplementary Fund for an initial period up to 31 December 2006 in order that the expiry of the terms of office of the External Auditor of the three Organisations should coincide.
- 5.4 The Assembly recalled that at their October 2006 sessions the governing bodies of the 1992 Fund, the 1971 Fund and the Supplementary Fund would have to appoint the External Auditor of the Funds for a period to be determined by these governing bodies commencing with the financial period 2007.
- 5.5 Mr Coppolani informed the Assembly that it was normal business practice, where an Audit Committee or corresponding body existed, for such a Committee to review the performance of external auditors and to consider questions of reappointment or audit tender and explained that the Committee then reported to the body having the power of appointment.
- 5.6 Mr Coppolani informed the Assembly that the Audit Body was prepared to assume responsibility for making recommendations to the governing bodies with regard to the appointment of the External Auditor. He emphasised that, in the Audit Body's view, the present External Auditor had over the years always carried out his task in an efficient and competent manner, provided good value for money, and had given the Organisations valuable support, eg in respect of the development of better corporate governance. Whilst drawing attention to the fact that the Funds were under no obligation to open the nomination of External Auditor to competition, Mr Coppolani, on behalf of the Audit Body, invited the Assembly to consider whether it would wish to initiate a tendering procedure for the nomination of the External Auditor.
- 5.7 The Assembly noted that since the term of office of the External Auditor expired at the end of 2006, the Audit Body took the view that there would not be sufficient time for the governing bodies to consider proposals on new procedures for the appointment of the External Auditor for the next period.
- 5.8 The Assembly noted the Audit Body's intention to recommend that the present External Auditor be reappointed for a further term. All delegations supported the proposal that the Assembly should reappoint the existing External Auditor at its October 2006 session, although there were

some differences of opinion as to whether the appointment should be for the usual four years or for a shorter period.

- 5.9 Some delegations expressed doubts about using an Auditor from outside the country in which the Funds were located unless there was a specific, compelling reason for change. The view was also expressed that an open competition involving the External Auditors of a large number of Member States was undesirable and that it was important to consider the likely time and cost implications for the Funds.
- 5.10 Some delegations, while stressing that competence was paramount, considered that the rotation of External Auditors was good in principle. One delegation made the point that since the 1992 Fund and the Supplementary Fund should have a common auditor it was important to take into account the composition of the two Funds so as to adhere strictly to Regulation 14.1 of the Funds' Financial Regulations, which required the External Auditor to be from Member States.
- 5.11 Most delegations were in favour of requesting the Audit Body to look at the procedure for the appointment of the External Auditor in future, including the possibility of competitive tender.
- 5.12 The Assembly decided to request the Audit Body to look into the procedure for the appointment of the External Auditor in future, including the possibility of competitive tender, and to report to the Assembly at its October 2006 session.
- 5.13 In response to a question as to whether the Audit Body's mandate needed to be revised the Chairman stated that the existing mandate allowed the Audit Body to make proposals to the Assembly on specific studies.
- 5.14 In response to a question as to whether the Audit Body should consider appointments other than the Director and the External Auditor, the Director stated that the Audit Body could, in his view, consider the procedures for the future appointment of other external persons such as the members of the Investment Advisory Body and the external member of the Audit Body.
- 5.15 It was noted that the 1992 Fund Assembly and the 1971 Fund Administrative Council had, at their 10th extraordinary session and 18th session respectively, endorsed the Supplementary Fund Assembly's decisions set out in paragraph 5.12 above.

Secretariat and Headquarters matters

6 Headquarters Agreement

- 6.1 The Assembly noted that the Director had entered into consultations with the United Kingdom Government as to whether the Headquarters Agreement between the United Kingdom Government and the 1992 Fund should be revised. It was also noted that the Director had submitted to the United Kingdom Government a draft text of a revised Headquarters Agreement for the 1992 Fund and a draft text of a Headquarters Agreement for the Supplementary Fund. The Assembly further noted that consultations with the United Kingdom Government on the draft texts were continuing and that whilst representatives of the United Kingdom Government had, at meetings held with the Director in January and February 2006, agreed with the approach proposed by the Director, ie to follow the structure of the Headquarters Agreement between IMO and the United Kingdom Government, certain important substantive issues were still to be resolved, in particular in respect of the exemption of staff from certain taxes.
- 6.2 One delegation made reference to the mention in document SUPPFUND/A/ES.2/5 of the issue of exemption of staff for certain taxes. That delegation stated that, since the IOPC Funds' staff in respect of salaries and other benefits followed the IMO, it had assumed that the IOPC Funds' staff were treated from a taxation point of view in the same way as the staff of IMO.
- 6.3 The Director stated that under the 1992 Fund's Staff Regulations the salaries, allowances and grants and the conditions of entitlement thereto for all members of the Secretariat conformed

whenever appropriate with the United Nations (UN) common system as applied by IMO under its Staff Regulations and Staff Rules. The Director mentioned that when a review was carried out in 2002 of the grading of posts within the 1992 Fund Secretariat, the consultant used was familiar with the UN system and the grading applied by IMO, in order to ensure that the level of post grading in respect of the 1992 Fund Secretariat corresponded to that within IMO for posts with similar levels of responsibility. He informed the Assembly that although all 1992 Fund staff were, like all IMO staff, exempt from income tax on their salaries, there was, however, a difference between the treatment of IMO staff and that of the Fund staff in respect of certain other taxes. He mentioned that whereas under the IMO Headquarters Agreement IMO staff in the professional category (other than British citizens) were exempt also from certain other taxes, in particular local taxes, under the 1992 Fund's Headquarters Agreement only the Director had been granted exemption from such taxes.

- 6.4 The Assembly noted that it would be invited to consider the text of the Headquarters Agreement relating to the Supplementary Fund once a provisional agreement on a text had been reached between the United Kingdom Government and the Director.

Compensation matters

7 Incidents

The Assembly noted that, since the Supplementary Fund Protocol had entered into force on 3 March 2005, there had, at the time of the session, been no incidents which would or might involve the Supplementary Fund (document SUPPFUND/A/ES.2/6).

Other matters

8 STOPIA and TOPIA

- 8.1 The Assembly took note of the information contained in document SUPPFUND/A/ES.2/7 concerning the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.
- 8.2 It was noted that at its March 2005 session, the 1992 Fund Assembly had considered the offer by the International Group to the 1992 Fund to increase, on a voluntary basis, the limitation amount applicable to small tankers, by means of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA), which came into force on 3 March 2005, the date of the entry into force of the Supplementary Fund Protocol (document 92FUND/A/ES.9/24).
- 8.3 It was further noted that at the 1992 Fund Assembly's October 2005 session the International Group had proposed that if the decision was taken to revise the 1992 Conventions, STOPIA would only apply in States that were parties to the Supplementary Fund Protocol, but that if the decision to revise the Conventions were to be put on hold, the Clubs would then be prepared to:
- (a) extend the contractually binding STOPIA to all States parties to the 1992 Civil Liability Convention; and
 - (b) apply TOPIA to States parties to the Supplementary Fund Protocol.
- 8.4 It was noted that the Director had been instructed to collaborate with the International Group of P&I Clubs, acting on behalf of the shipping industry, and OCIMF before the voluntary agreement package was submitted to that Assembly for consideration at its next session and provide technical and administrative advice with a view to consolidating the package and ensuring that it was legally enforceable (document 92FUND/A.10/37, paragraph 8.31). The Supplementary Fund Assembly noted that the Director had facilitated meetings between the International Group of P&I Clubs and OCIMF.

- 8.5 The Supplementary Fund Assembly noted that as a result of these meetings, the International Group had developed a revised STOPIA, to be referred to as Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006), and a second agreement, the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006). It was noted that the International Group had submitted these agreements to the Director on 1 February 2006 and that the agreements had entered into force on 20 February 2006.
- 8.6 The Assembly expressed its appreciation to the International Group of P&I Clubs and to the other industries involved for the work undertaken to bring the work to a positive conclusion.
- 8.7 The Supplementary Fund Assembly focused its attention on TOPIA 2006 since STOPIA 2006 was primarily a matter for the 1992 Fund Assembly to consider.
- 8.8 The Assembly noted that the Supplementary Fund would, in respect of incidents covered by TOPIA 2006, continue to be liable to compensate claimants as provided in the Supplementary Fund Protocol and that if the incident involved a ship to which TOPIA 2006 applied, the Supplementary Fund would be entitled to indemnification by the shipowner of 50% of the compensation payments it had made to claimants. The Assembly noted that the shipowner's payment of indemnification to the Supplementary Fund would be made at the same time as the Fund levied contributions in respect of the incident in question. The Assembly also noted that this procedure would avoid the Supplementary Fund having to levy contributions for the full amount of compensation in excess of the 1992 Fund limit, 50% of which would be repaid to the contributors many years later when the incident was closed.
- 8.9 It was also noted that, although the Supplementary Fund would not be a party to TOPIA 2006, the agreement would confer legally enforceable rights on the Supplementary Fund for indemnification from the shipowner involved.
- 8.10 It was also noted that TOPIA 2006 provided that a review should be carried out after 10 years of the experience of pollution damage claims during the period 2006-2016, and thereafter at five-year intervals, in consultation with representatives of oil receivers and the 1992 Fund and the Supplementary Fund, to establish the approximate proportions in which the overall cost of oil pollution claims under the international compensation system had been borne respectively by shipowners and by oil receivers and consider the efficiency, operation and performance of the agreements. It was further noted that the agreements also provided that, if the review were to reveal that either shipowners or oil receivers had borne a proportion exceeding 60% of the overall costs of such claims, measures would be taken for the purpose of maintaining an approximately equal apportionment.
- 8.11 In introducing document SUPPFUND/A/ES.2/7/1, the observer delegation of the International Group of P&I Clubs expressed his appreciation of the efforts by the Director, OCIMF, ICS and INTERTANKO, as well as the boards of the P&I Clubs in bringing about the entry into force of the voluntary agreements on 20 February 2006.
- 8.12 The observer delegation of OCIMF expressed its appreciation to the Director and staff of the Fund Secretariat and the representatives of the International Group for the friendly and co-operative atmosphere in which the discussions on STOPIA and TOPIA had taken place and also expressed its thanks to ICS and INTERTANKO for their assistance in the process. The OCIMF observer delegation emphasised that equal sharing of the financial burden was not a founding principle of the international compensation regime and that the International Group had put forward STOPIA 2006 and TOPIA 2006 as a compromise solution. That delegation gave its support to the agreements and expressed its hope that the Assembly would do likewise.
- 8.13 A number of delegations, whilst welcoming the coming into force of STOPIA 2006 and TOPIA 2006, stated that they still had reservations regarding their voluntary nature and were still prepared to work towards a revision of the Conventions if the agreements proved unsatisfactory. Some delegations expressed their disappointment that the review period of STOPIA 2006 and

TOPIA 2006 had been extended from five to ten years, recognising that this did not affect the enduring rights of States to call for a review of the 1992 Conventions at any time.

- 8.14 The delegation of the International Group explained the reason for the review period having been extended, namely that a five-year period would not give sufficient data to make a review of the cost sharing between the industries concerned meaningful. However, that delegation undertook to provide the Funds on a regular basis with information on costs of oil pollution incidents.
- 8.15 Some delegations recommended that the Assembly be kept informed about the working of the agreements and reviewed their effectiveness after the first five years.

9 Co-operation with P&I Clubs

- 9.1 The Assembly took note of the information contained in document SUPPFUND/A/ES.2/8 and in particular the proposed text of a revised Memorandum of Understanding between the 1992 Fund/Supplementary Fund and the International Group of P&I Clubs as contained in Annex II to that document.
- 9.2 The Assembly approved the proposed text of the revised Memorandum of Understanding between the 1992 Fund/Supplementary Fund and the International Group of P&I Clubs, which took into account STOPIA 2006 and TOPIA 2006. The Director was authorised to agree with the International Group on minor editorial amendments to the text and sign the Memorandum on behalf of the Supplementary Fund.
- 9.3 The Assembly noted the Director's intention to discuss with the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) whether there was a need to supplement the new Memorandum of Understanding with the International Group with an exchange of letters between JPIA, on the one hand, and the 1992 Fund and Supplementary Fund, on the other.
- 9.4 It was noted that at its 10th extraordinary session the 1992 Fund Assembly had approved the Memorandum of Understanding.

10 Any other business

10.1 Venue for October 2006 and spring 2007 sessions

- 10.1.1 The Director drew the Assembly's attention to the fact that the IMO building would be closing for refurbishment for 14 months from 1 July 2006 and that as a result, whilst the IOPC Funds would be able to hold its sessions in May 2006 at the IMO building as usual, the October 2006 and spring 2007 sessions would need to be held at an alternative venue.
- 10.1.2 The Director informed the Assembly that the autumn 2006 meetings of the governing bodies of the IOPC Funds would take place at Inmarsat during the week of 23 October 2006. He stated that the venue had good facilities and that it was reasonably-priced, compared with other venues which had been considered, some of which would cost in the region of £20 000 per day.
- 10.1.3 The Director informed the Assembly that further details in respect of the venue and general meeting arrangements would be provided nearer the time.

10.2 Premises of the IOPC Funds' Secretariat at Portland House

The Director drew the Assembly's attention to the fact that the IOPC Funds' Secretariat had moved into its current premises at Portland House in June 2000 and that in consultation with the United Kingdom Government, the Funds had signed a ten-year lease. The Director informed the Assembly that the Funds were made aware at the time of signing the lease that the landlord intended to carry out external refurbishment of the building at some point during the coming ten years. The Director also informed the Assembly that, contrary to what he had been led to believe at that time, he had recently been informed that the necessary work could not be carried out whilst

the tenants were in the building and that, as a result, the landlord was negotiating with the tenants to obtain their agreements to terminate the lease so as to enable him to carry out the refurbishment, which was expected to take two or three years. The Director mentioned that the landlord had offered the tenants alternative office space in two new office buildings close to Portland House. The Director stated that he was considering the issue in consultation with the United Kingdom Government. He mentioned that he had only very recently been informed of this situation and that, as a result, had been unable to assess the possible implications. The Director stated that he would submit a document on this issue to the next session of the Assembly.

11 Adoption of the Record of Decisions

The draft Record of Decisions of the Assembly, as contained in document SUPPFUND/A/ES.2/WP.1, was adopted, subject to certain amendments.
