



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
11th session
Agenda item 21

FUND/A.11/20
21 October 1988

Original: ENGLISH

RECORD OF DECISIONS OF THE ELEVENTH SESSION OF THE ASSEMBLY

(held from 19 to 21 October 1988)

Opening of the Session

The 11th session of the Assembly was opened by Mr J Bredholt (Denmark), in his capacity as representative of the delegation from which the Chairman of the previous session was elected.

1 Adoption of the Agenda (Agenda item 1)

The Assembly adopted the Agenda as contained in document FUND/A.11/1.

2 Election of the Chairman and Two Vice-Chairmen (Agenda item 2)

The Assembly elected the following delegates to hold office until the next regular session of the Assembly:

Chairman:	Mr J Bredholt (Denmark)
First Vice-Chairman:	Professor H Tanikawa (Japan)
Second Vice-Chairman:	Mr A Al-Yagout (Kuwait)

3 Grant of Observer Status (Agenda item 3)

The Assembly decided to grant observer status to the Republic of Cyprus, in accordance with the request set out in document FUND/A.11/2.

4 Examination of Credentials (Agenda item 4)

The following Contracting States were present:

Bahamas	Netherlands
Denmark	Nigeria
Finland	Norway
France	Papua New Guinea
Germany, Federal Republic of	Poland
Greece	Portugal
Indonesia	Spain
Italy	Sri Lanka
Japan	Sweden
Kuwait	Tunisia
Liberia	Union of Soviet Socialist Republics
Monaco	United Kingdom

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

The following non-Contracting States were represented as observers:

Argentina	Cyprus
Belgium	German Democratic Republic
Brazil	Ireland
Canada	Mexico
Chile	United States of America
China	

The following inter-governmental and international non-governmental organisations participated as observers:

International Maritime Organization (IMO)
 Advisory Committee on Pollution of the Sea (ACOPS)
 CRISTAL Ltd
 Friends of the Earth International (FOEI)
 International Chamber of Shipping (ICS)
 International Group of P & I Clubs
 International Tanker Owners Pollution Federation Ltd (ITOPF)
 Oil Companies International Marine Forum (OCIMF)

5 Consideration of the Report of the Director (Agenda item 5)

5.1 The Director introduced document FUND/A.11/3.

5.2 The Assembly expressed its gratitude to the Director and the other members of the Secretariat for the efficient way in which they had administered the IOPC Fund.

5.3 The Assembly took note of the change in personnel that had taken place within the Secretariat of the IOPC Fund.

5.4 The Assembly noted with satisfaction the continued growth of the membership of the IOPC Fund. It instructed the Director to continue his efforts to increase the number of Member States, with emphasis on the strengthening of the financial basis of the IOPC Fund.

5.5 In view of the experience gained from 10 years of operation of the system of compensation established by the Civil Liability Convention and the Fund Convention, the Assembly considered that this system has proved to be a viable one, since it provides rapid compensation to victims of oil pollution damage and at low costs. The Assembly endorsed the view expressed by the Director that a uniform interpretation of the definition of "pollution damage" is essential for the functioning of the regime of compensation created by the Conventions. The necessity for a restrictive approach regarding "fixed costs" (ie costs that a State would have incurred even if the incident in question had not taken place) was stressed.

5.6 The Assembly congratulated the previous Director of the IOPC Fund, Dr R H Ganten, on having been awarded the 1987 Elisabeth Haub Prize for his contribution to the development of environmental law during his years as Director.

6 Consideration of the Report on Investments (Agenda item 6)

The Assembly took note of the Director's report on investments as contained in document FUND/A.11/4.

7 Consideration of the External Auditor's Report (Agenda item 7)

7.1 The Director introduced document FUND/A.11/5 containing the External Auditor's Report and the Financial Statements of the IOPC Fund for the period ended 31 December 1987. The Assembly took note of the information given and noted with appreciation the External Auditor's opinion contained in Annex III to that document.

7.2 The Assembly approved the accounts of the IOPC Fund for the financial period 1 January to 31 December 1987.

8 Report on Contributions (Agenda item 8)

The Assembly took note of the Director's report on contributions as contained in documents FUND/A.11/6 and FUND/A.11/6/Add.1. The Assembly expressed its satisfaction with the positive response of contributors in Member States regarding the payment of contributions.

9 Consideration of the Reports of the Executive Committee on its 19th and 20th Sessions (Agenda item 9)

9.1 The Chairman of the Executive Committee, Mr P Novia (Italy), informed the Assembly of the work of the Executive Committee during its 19th and 20th sessions and reported to the Assembly the decisions taken by the Executive Committee at these sessions (documents FUND/EXC.19/2 and FUND/EXC.20/6). The Assembly approved the reports of the Executive Committee.

9.2 The Chairman expressed the thanks of the Assembly to the Chairman of the Executive Committee for the work of the Committee achieved under his Chairmanship.

10 Election of Members of the Executive Committee (Agenda item 10)

The Assembly elected the following Contracting States as members of the Executive Committee:

<u>Elected under</u> <u>Article 22.2(b) of</u> <u>the Fund Convention</u>	<u>Elected under</u> <u>Article 22.2(a) of</u> <u>the Fund Convention</u>
France	Bahamas
Greece	Indonesia
Italy	Kuwait
Japan	Liberia
Sweden	Nigeria
Union of Soviet Socialist Republics	Sri Lanka
United Kingdom	Tunisia

11 Appointment of Member and Substitute Member of the Appeals Board (Agenda item 11)

The Assembly appointed Mr H Bergaoui (Tunisia) as member and Dr P Seidel (Federal Republic of Germany) as substitute member of the Appeals Board, replacing Mr M Kefi and Mr H Eckert, respectively.

12 Budget 1989 (Agenda item 12)

12.1 The Director introduced document FUND/A.11/9/1 regarding the levels of contributions to the Provident Fund. The Assembly decided to increase the levels of contributions to the Provident Fund to 7.4% and 14.8% for staff members and the IOPC Fund, respectively, with effect from 1 July 1988, and to 7.5% and 15%, respectively, with effect from 1 July 1989.

12.2 In a closed session, the Assembly took the following decision in respect of the grading of the posts of Director, Legal Officer and Finance/Personnel Officer of the IOPC Fund, with effect from 1 January 1989:

- (a) The post of Director shall be upgraded to that of Assistant Secretary-General in the United Nations system and he shall receive a salary equivalent to the holder of such office, subject to post adjustments; if eligible, he will receive the allowances available to staff members generally. He will also receive an annual representation allowance as decided by the Assembly at its 10th session.
- (b) The post of Legal Officer was upgraded to P5/D1, the point in the salary scale to be determined by the qualifications and experience of the incumbent. The salary of the present holder of the post, Mr K Wada, was fixed at D1, step V (increment date 1 January 1989).

(c) The post of Finance/Personnel Officer was upgraded to P2/P3, the point in the salary scale to be determined by the qualifications and experience of the incumbent. The salary of the present holder of the post, Mr S O Nte, was fixed at P3, step III (increment date 1 January 1989).

12.3 The Assembly adopted the Budget appropriation for 1989 as proposed by the Director in the Annex to document FUND/A.11/9, subject to the following amendments in Chapter I, Personnel:

	<u>Director's</u> <u>Proposal</u>	<u>Assembly's</u> <u>Decision</u>
I <u>Personnel</u>		
(a) Salaries	165 393	181 440
(b) Separation and recruitment	56 500	56 500
(c) Staff benefits and allowances	62 317	66 000
(d) Home Leave	3 000	3 000
	<hr/>	<hr/>
	287 210	306 940
	<hr/>	<hr/>

As a result of these amendments, the Assembly fixed the total appropriation for administrative expenditure at £446 840.

12.4 The Director informed the Assembly that he would be very honoured to continue to serve as Director after 31 December 1989 (the date when his contract with the IOPC Fund expires), if the Assembly were to decide to reappoint him.

13 Reimbursement to Contributors of the Balance on the TANIO Major Claims Fund (Agenda item 13)

13.1 The Assembly took note of the conclusion of the Executive Committee that the periods set out in Article 6 of the Fund Convention for bringing actions in respect of the TANIO incident had expired, that all claims arising out of this incident had been settled and paid and that all expenses had been met.

13.2 The Assembly decided that an amount of £13.9 million of the balance on the TANIO major claims fund should be reimbursed, on 1 February 1989, pro rata to the persons who had made contributions to that major claims fund, and that any amount in excess of £13.9 million should be transferred to the general fund, as proposed by the Director in document FUND/A.11/10/Add.1. In addition, the Assembly decided that each contributor should be given the option to choose whether the amount to which he is entitled should be repaid to him, or whether the amount should be credited to his account with the IOPC Fund for set-off against annual contributions that will be levied in subsequent years, provided that a contributor would only be entitled to request repayment on 1 February in any given year.

14 Increase of the Working Capital (Agenda item 14)

14.1 The Assembly considered a proposal by the Director to increase the working capital of the IOPC Fund from £2 million to £4 million, as set out in

document FUND/A.11/11. A vote was taken by roll-call on this proposal, with the following result:

<u>In Favour</u>	<u>Against</u>	<u>Abstention</u>
Bahamas	Italy	Liberia
Denmark	Sri Lanka	Papua New Guinea
Finland		Portugal
France		
Germany, Federal Republic of		
Greece		
Indonesia		
Japan		
Kuwait		
Monaco		
Netherlands		
Norway		
Poland		
Sweden		
Tunisia		
Union of Soviet Socialist Republics		
United Kingdom		

14.2 The Assembly thus decided by 17 votes to 2, with 3 abstentions, to increase the working capital from £2 million to £4 million.

15 Assessment of Annual Contributions (Agenda item 15)

The Assembly decided to raise £2 900 000 for the 1988 annual contributions to the general fund and £90 000 for the 1988 annual contributions to the JAN major claims fund, to be paid by 1 February 1989.

16 Replacement of Instruments Enumerated in Article 5.3 of the Fund Convention (Agenda item 16)

The Assembly decided not to include the 1987 Amendments to MARPOL 73/78, the April 1988 Amendments to SOLAS 74 and the 1987 Amendments to COLREG 72 in the list of instruments contained in Article 5.3 of the Fund Convention, because it considered that these amendments were not of major importance for the purpose of Article 5 of the Convention.

17 International Conference on Salvage 1989 (Agenda item 17)

The Assembly noted that the Director would represent the IOPC Fund at the International Conference on Salvage, to be held in London from 17 to 28 April 1989.

18 Amendments to the Staff Rules (Agenda item 18)

The Assembly took note of the amendments to the Staff Rules which had been issued by the Director, as set out in documents FUND/A.11/15 and FUND/A.11/15/Add.1.

19 Date of Next Session (Agenda item 19)

The Assembly decided to hold its next ordinary session during the week 23 to 27 October 1989 in London.

20 Any Other Business (Agenda item 20)

20.1 Definition of "Contributing Oil"

The Director introduced document FUND/A.11/16 on the subject of the definition of "contributing oil" in Article 1.3 of the Fund Convention. The Assembly decided to postpone any decision on the proposals made in this document until its 12th session.

20.2 Reports on Oil Receipts

20.2.1 On the basis of document FUND/A.11/17, the Assembly discussed the procedure for reporting contributing oil receipts to the IOPC Fund.

20.2.2 The Assembly adopted the Resolution contained in the Annex to this report in which Member States are urged, inter alia, to submit their reports on contributing oil receipts at the time and in the manner prescribed in the Internal Regulations (IOPC Fund Resolution N°7).

20.2.3 The Assembly drew the attention of Member States to the fact that they should ensure that those persons who receive less than 150 000 tonnes of contributing oil in a calendar year are reported, if they are liable to pay contributions pursuant to the special provisions on "associated persons" in Article 10.2(b) of the Fund Convention.

20.2.4 The Assembly agreed that the form to be used for the submission of reports on contributing oil received should be amended. It authorised the Director to finalise the draft form contained in Annex II to document FUND/A.11/17 and to revise the form from time to time, in the light of experience. With regard to the revision of the current draft, Member States were invited to submit comments to the Director by 1 December 1988.

20.2.5 The Assembly examined the draft explanatory notes to the revised form set out in Annex III to document FUND/A.11/17. The Assembly agreed that the Director should finalise the text of these notes, in the light of observations made during the discussions in the Assembly and any comments received otherwise, and revise the notes, from time to time, in the light of experience.

20.2.6 The Assembly decided to postpone until its 12th session any consideration of the question of whether Member States should be invited to give further information on the points set out in paragraph 22(c) of document FUND/A.11/17.

20.3 Amendments to Internal Regulations

20.3.1 The Director introduced document FUND/A.11/18.

20.3.2 The Assembly decided to maintain the present method of calculating interest on the credit balances on the contributors' accounts, in accordance with Internal Regulation 3.11 as it is worded at present.

20.3.3 The Assembly decided to postpone until its 12th session any consideration of the question as to whether the IOPC Fund should be entitled to take loans from the contributors' accounts.

20.3.4 The Assembly approved the proposed amendment to Internal Regulation 3.10, as set out in paragraph 20 of document FUND/A.11/18.

20.4 Transfers within the 1988 Budget

The Assembly authorised the Director to transfer up to £6 000 from Chapter I (Personnel) to Chapter IV (Conferences and Travel), for the purpose set out in document FUND/A.11/19.

21 Adoption of the Report of the 11th Session (Agenda item 21)

The draft report, as contained in document FUND/A.11/WP.1, was adopted, subject to some amendments.

* * *

ANNEX

IOPC Fund Resolution N°7

adopted by the Assembly on 20 October 1988
at its 11th session

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

HAVING CONSIDERED the system used hitherto for the submission by Member States of reports on receipts of contributing oil, in accordance with Article 15.2 of the Fund Convention,

RECOGNISING that these reports are crucial for the functioning of the IOPC Fund, as the levy of contributions is based on these reports,

NOTING that reports do not always reach the IOPC Fund on time or in the manner laid down in the IOPC Fund's Internal Regulations and that some reports are incomplete,

URGES Member States to take the necessary steps to ensure that the reports on contributing oil received in their territory are submitted in time, using the prescribed forms, and that the reports contain the particulars prescribed in the Fund Convention and in the Internal Regulations,

REQUESTS Member States in which no person is liable to contribute to the IOPC Fund to submit reports certifying that this is the case in respect of the State concerned.
