



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
13th session
Agenda item 5

FUND/A.13/3
31 August 1990

Original: ENGLISH

REPORT OF THE DIRECTOR

1 Introduction

1.1 This report covers the activities of the IOPC Fund since the 12th session of the Assembly. The report contains a review of some of the main issues relating to the IOPC Fund's activities during that period. The various aspects of these activities are dealt with in detail in the documents submitted to the 13th session of the Assembly and to the 24th session of the Executive Committee. This report also deals with the finances of the IOPC Fund for the first eight months of 1990.

1.2 The IOPC Fund's Annual Report for the calendar year 1989 was published in March 1990. In the first years after the establishment of the IOPC Fund, the Annual Report was very modest in size. Over the years it has been expanded to give a more extensive presentation of the activities of the Fund. The 1989 Annual Report has attracted great interest from all those dealing with the IOPC Fund as well as from persons and bodies interested in environmental matters in general.

1.3 Since the 12th session of the Assembly, there have been six new incidents involving the IOPC Fund. One of these, the VOLGONEFT 263 incident which occurred in Sweden in May 1990, will result in substantial claims for compensation against the IOPC Fund. Several incidents which occurred in previous years still require a considerable amount of work by the IOPC Fund's Secretariat. The PATMOS incident, which occurred in the Straits of Messina in Italy in 1985, has given rise to large claims against the IOPC Fund, and the Fund has become involved in complex court proceedings in Italy. There are also sizeable claims against the IOPC Fund resulting from two other previous incidents, the AKARI and the AMAZZONE.

2 Membership

2.1 At the time of the entry into force of the Fund Convention in October 1978, the IOPC Fund had 14 Member States. By the time of the 12th Assembly in October 1989, 43 States were Members of the IOPC Fund.

2.2 One State, the Republic of Djibouti, has become a Member of the IOPC Fund since the 12th session of the Assembly. The Fund Convention entered into force for Djibouti on 30 May 1990. By the time of the 13th session of the Assembly, the IOPC Fund will have 44 Member States. In addition, the Republic of India deposited its instrument of accession on 10 July 1990, and the Convention will enter into force for India on 8 October 1990, bringing the number of Member States to 45.

2.3 On the basis of the information available to the IOPC Fund's Secretariat, it is expected that several States will join the IOPC Fund in the near future. It is anticipated that Ireland, Morocco and Saudi Arabia will soon deposit their instruments of accession to the Convention. Legislation implementing the Fund Convention is in an advanced stage in Belgium and Senegal. Many other States, eg Argentina, Australia, Bahrain, Barbados, Brazil, China, Costa Rica, the Gambia, Jamaica, Kenya, Kiribati, Malaysia, Malta, Marshall Islands, Mauritania, Mexico, Republic of Korea, St Kitts and Nevis, Sierra Leone, Singapore, Trinidad and Tobago, and Venezuela, are also examining the question of accession to the Fund Convention.

3 Contacts with Governments

3.1 The IOPC Fund and its Secretariat have always benefited from strong support from the Governments of Member States. Due to the spirit of co-operation shown by these Governments, it has been possible to solve most problems that have arisen.

3.2 Over the years, the Director's visits to Member States have contributed to the establishment of valuable personal contacts between the IOPC Fund's Secretariat and officials within the national administrations dealing with Fund matters. Since the 12th session of the Assembly, the Director has visited five Member States – France, the Netherlands, Norway, the Seychelles and the Union of Soviet Socialist Republics – for discussions with government officials on the Fund Convention and the operations of the IOPC Fund.

3.3 As instructed by the Assembly at its 11th session, the IOPC Fund's Secretariat has continued its efforts to increase the number of Member States, taking into account the emphasis placed by the Assembly on the importance of strengthening the financial basis of the Fund. To this end, the Secretariat has tried to convey as much information as possible to Governments and representatives of industry about the complex compensation system created by the Civil Liability Convention and the Fund Convention. For this purpose, the Director went to Australia, Malaysia, Singapore, Thailand and the United States of America for discussions on the Civil Liability Convention and the Fund Convention with Government officials in these States.

3.4 The Director and the Legal Officer also had discussions with government representatives of both Member and non-Member States in connection with meetings within the International Maritime Organization (IMO), in particular during the sessions of the IMO Assembly and the IMO Council in October 1989 and June 1990, respectively.

3.5 The IOPC Fund's Secretariat has, on request, assisted some non-Member States in the elaboration of the national legislation necessary for the implementation of the Civil Liability Convention and the Fund Convention.

4 Relationship with International Organisations and Interested Circles

4.1 As in previous years, the operation of the IOPC Fund has benefited from close co-operation with many international inter-governmental organisations.

4.2 The assistance and support given by IMO to the IOPC Fund is of special importance. The Director would like to thank the previous Secretary-General of IMO, Mr C P Srivastava, for the support which he gave the IOPC Fund over the years. The Director is pleased to note that the new Secretary-General, Mr W A O'Neil, has already shown a great interest in the activities of the IOPC Fund. The Director also expresses his profound gratitude to the staff of IMO for the assistance they have given the IOPC Fund.

4.3 The IOPC Fund has maintained close co-operation with a number of international non-governmental organisations and other non-governmental bodies. The co-operation with the P & I Clubs in connection with the settlement of claims is of great importance. This co-operation is

not only in the interest of the IOPC Fund and the Clubs, but also in the interest of claimants, since it contributes to speedy settlements. The International Tanker Owners Pollution Federation Limited (ITOPF) is usually called upon by the IOPC Fund to provide technical expertise with regard to oil pollution incidents; ITOPF's assistance is crucial, as the IOPC Fund does not have such expertise within its Secretariat. There is also close co-operation between the IOPC Fund and oil industry interests represented by the Oil Companies International Marine Forum (OCIMF) and Cristal Limited. The co-operation between the IOPC Fund and Cristal has become more important in recent years, in view of the link between the system of compensation governed by the international Conventions and the voluntary industry schemes (TOVALOP and CRISTAL) created by the revision of these schemes in 1987.

4.4 For the purpose of improving further the co-operation with the P & I Clubs, the Director visited four of the Clubs located outside London, namely the Liverpool and London Steamship Protection and Indemnity Association Limited in Liverpool, the North of England Protection and Indemnity Association Limited and the Newcastle Protection and Indemnity Association Limited, both in Newcastle (United Kingdom), and Assuranceforeningen Skuld in Oslo (Norway), where he held discussions with representatives of these Clubs.

5 Conferences and Seminars

5.1 Since the 12th session of the Assembly, the Director and the Legal Officer have given a number of lectures at seminars, conferences and workshops on the activities of the IOPC Fund.

5.2 The Director took part in the International Oil Spill Conference (SPILLCON 90), held in Sydney (Australia), where he presented a paper entitled "Liability and Compensation for Oil Pollution Damage and the Operations of the IOPC Fund". He gave lectures on the Conventions and the activities of the IOPC Fund at a regional meeting of oil companies in Singapore and to various government departments and interested circles in Bangkok (Thailand) and Kuala Lumpur (Malaysia). The Director lectured to students at the World Maritime University in Malmö (Sweden) on Liability and Compensation for Oil Pollution Damage. He also made presentations on the IOPC Fund's activities to members of the German Maritime Law Association in Hamburg (Federal Republic of Germany) and to the Nordic Institute of Maritime Law in Oslo (Norway).

5.3 The Legal Officer gave a lecture on the International Regime for Compensation for Oil Pollution Damage at a seminar on Marine Pollution held in New York (United States of America).

6 The 1984 Protocols to the Civil Liability Convention and the Fund Convention

6.1 In 1984 a Diplomatic Conference held in London under the auspices of IMO adopted two Protocols to amend the Civil Liability Convention and the Fund Convention, respectively. These Protocols provide higher limits of compensation and a wider scope of application than the Conventions in their original versions.

6.2 The Protocol to the Civil Liability Convention has been ratified by Australia, Federal Republic of Germany, France, Peru, St Vincent and Grenadines and South Africa, whereas only France and the Federal Republic of Germany have so far become Parties to the Protocol to the Fund Convention. In the United Kingdom, a bill which would enable the Government to ratify the Protocols has been approved by Parliament. Some States, eg Denmark, Finland, Greece, Netherlands, Norway and Sweden, have begun preparing legislation enabling them to ratify the Protocols.

6.3 In the United States of America, Congress had for some time considered proposals for new comprehensive oil spill legislation. The House of Representatives had adopted a Bill which, inter alia, contained provisions implementing the 1984 Protocols. However, the Bill adopted by the Senate did not contain any such provisions and the Senate was opposed to ratification. At the invitation of the Secretary of Transportation, and in accordance with the decision of the Assembly at its 8th session, the Director went to the United States to give information to Senators and Congressmen and members

of their staff concerning the system of compensation which would be established by the Civil Liability Convention and the Fund Convention as amended by the 1984 Protocols. In the end, the position of the Senate prevailed and the legislation adopted by Congress does not contain provisions implementing the 1984 Protocols. This legislation entered into force on 18 August 1990. This means that the United States will not ratify the Protocols.

6.4 In view of this development, it is unlikely, in the opinion of the Director, that the 1984 Protocols will enter into force in the near future.

6.5 The delegation of the United Kingdom of Great Britain and Northern Ireland has proposed that the Assembly should address the issue of the future of the existing intergovernmental oil pollution liability and compensation system based on the 1969 Civil Liability Convention and the 1971 Fund Convention, and has submitted a document on this matter.

7 Contributions

7.1 The Assembly decided at its 12th session to raise £1.6 million for the 1989 annual contributions to the General Fund, £1.7 million for the THUNTANK 5 Major Claims Fund and £1.5 million for the KASUGA MARU N°1 Major Claims Fund. The amount payable by each contributor per tonne of contributing oil received was £0.0018797 in respect of the General Fund, based on the quantities of oil received in 1988, £0.0022307 in respect of the THUNTANK 5 Major Claims Fund, based on the quantities received in 1985, and £0.0018788 in respect of the KASUGA MARU N°1 Major Claims Fund, based on the quantities received in 1987. The payments were due by 1 February 1990. Only a comparatively small amount (£114 716) remained unpaid as at 30 August 1990.

7.2 In respect of contributions levied for previous years, the situation is very satisfactory, as only very small amounts are in arrears. On 30 August 1990, only an amount of £52 959 was outstanding.

7.3 The levy of contributions to the IOPC Fund is based on reports of contributing oil receipts submitted by Governments of Member States. In October 1988, at its 11th session, the Assembly discussed the system for reporting oil receipts to the IOPC Fund, since the existing system did not function entirely satisfactorily. The main problem was that a number of States did not submit their reports in time. The Assembly adopted a Resolution in which Member States were urged, inter alia, to submit their reports on contributing oil receipts at the time and in the manner prescribed in the IOPC Fund's Internal Regulations.

7.4 The Director is pleased to inform the Assembly that there has been some improvement on previous years as regards the submission of the reports on contributing oil receipts, but the situation is not yet entirely satisfactory. On 31 March 1990, the last date for Member States to submit their reports on oil receipts in 1989 in accordance with the IOPC Fund's Internal Regulations, only 13 reports had been received by the Director. By 30 August 1990, 34 reports had been submitted. In addition, a few States have still not submitted their reports on contributing oil receipts in previous years (cf Annexes to document FUND/A.13/7). It should again be emphasized that it is of decisive importance for the operation of the IOPC Fund that these reports are actually submitted by Governments. If the reports on contributing oil receipts are not received by the IOPC Fund, the system of levying contributions will not function in an equitable manner.

8 Investment of Funds

8.1 During 1989 and 1990, funds which were not required for the short-term operation of the IOPC Fund were invested with several leading London banks. Apart from investments placed overnight till the next business day, the average rate of interest on the investments in 1989 was 13.45%. The base rate in London, which went up to 15% just before the 12th session of the Assembly, has remained at that level. Investments made during 1990 have attracted high interest rates, and it is expected that this will be the case also for investments made during the remainder of the year.

8.2 It is estimated that the average rate of interest on the IOPC Fund's investments in 1990 will be approximately 14.5%. Interest earned during the first eight months of the year is £308 000 with about £400 000 due during the remaining four months, on an estimated average capital of £6.5 million.

8.3 Details of the investments from 1 July 1989 to 30 June 1990 are given in document FUND/A.13/4.

9 Accounts of the IOPC Fund

9.1 The expenditure for the administration of the IOPC Fund in 1989 was £361 066, compared with the budgetary appropriation of £446 840. Details of the accounts of the IOPC Fund for the financial year 1989 are given in the Financial Statements (document FUND/A.13/5, Annex IV).

9.2 The expenditure for the administration during the first eight months of 1990 amounts to approximately £285 000. The budget appropriation for the whole of 1990 is £485 530. It is expected that there will be a budgetary surplus at the end of the year.

9.3 As in previous years, excellent co-operation with the External Auditor, the Comptroller and Auditor General of the United Kingdom, has facilitated the administration of the IOPC Fund.

10 Administration of the IOPC Fund

10.1 The Secretariat has at present seven staff members: the Director, the Legal Officer, the Finance/Personnel Officer, three Secretaries and a Messenger. No new post has been created since 1983 when the post of messenger was established.

10.2 As explained in the notes to the draft budget for 1991 (document FUND/A.13/10, Annex), the Director considers that it will be necessary to establish a new post of Clerk-Secretary with effect from 1 October 1990, owing to increasing workload.

10.3 There have been two changes in the permanent staff of the IOPC Fund's Secretariat since the 12th session of the Assembly. As reported to the 12th session, Miss Birgit See, Secretary to the Finance/Personnel Officer, left the IOPC Fund for family reasons on 31 July 1989. Her successor, Miss Pauline van Romunde, joined the Secretariat on 11 December 1989. The Legal Officer, Mr Keiji Wada (Japan), left the IOPC Fund on 31 May 1990, in order to take up a post with the Ministry of Transport in Tokyo. He was succeeded by Mr Ryoichi Sonoda (Japan) on 1 June 1990.

10.4 The Director would like to express his gratitude to all members of the IOPC Fund's Secretariat for their work which, as in previous years, has been of very high quality. Due to their efforts, it has so far been possible to meet the great increase in workload which has taken place over the last few years without the employment of more permanent staff.

11 Settlement of Claims

11.1 Since its establishment in October 1979 the IOPC Fund has, up to 30 August 1990, been involved in the settlement of claims arising out of 48 incidents. 29 of these incidents occurred in Japan, whereas 14 incidents, leading in general to much larger claims, took place in European waters, one in Algeria, one in Canada, one in Indonesia and two in the Gulf. However, some of these incidents did not result in any payment of compensation by the IOPC Fund. The total amount of compensation and indemnification paid by the IOPC Fund as at 30 August 1990 is £41 million.

11.2 For details regarding the various incidents with which the IOPC Fund has dealt over the years, reference is made to the 1989 Annual Report and to the updated statistics (1990) distributed during this session of the Assembly.

11.3 Since the 12th session of the Assembly, six incidents have occurred which will or may give rise to claims against the IOPC Fund, namely the DAINICHI MARU N°5, DAITO MARU N°3, KAZUEI MARU N°10, FUJI MARU N°3 and HATO MARU N°2 incidents, which took place in Japan, and the VOLGONEFT 263 incident which occurred in Sweden.

11.4 The most serious of the above-mentioned cases was the VOLGONEFT 263 incident which occurred off the south-east coast of Sweden. The USSR tanker VOLGONEFT 263 collided with a dry cargo vessel. As a result of the collision, 800 tonnes of oil escaped from the VOLGONEFT 263, necessitating extensive clean-up operations at sea. The costs of the Swedish authorities are estimated at SKr15 million (£1.4 million).

11.5 In addition to the new incidents mentioned above, there are, as at 30 August 1990, three incidents in respect of which final settlements of third party claims have not yet been reached, namely the PATMOS, AKARI and AMAZZONE incidents.

11.6 The most important developments since the 12th session of the Assembly relate to the THUNTANK 5 incident (Sweden, 1986), the ANTONIO GRAMSCI incident (Finland, 1987) and the KASUGA MARU N°1 incident (Japan, 1988). All claims arising out of these incidents have been settled and paid.

11.7 As for the PATMOS incident, claims totalling £35 million were filed against the shipowner's limitation fund and against the IOPC Fund. Most of the claims were settled out of court. However, the IOPC Fund has become involved in complex legal proceedings in Italy concerning some claims which had been rejected by the Director. In these proceedings, some important legal questions have arisen. The main outstanding issue relates to a claim submitted by the Italian Government for compensation for damage to the marine environment which was rejected by the Court of first instance. The Court of Appeal rendered a non-final judgement in March 1989 concerning that claim. In the judgement the Court stated that the owner of the PATMOS, his P & I insurer and the IOPC Fund were liable for the damage covered by the claim made by the Italian Government. The Court appointed three experts with the task of ascertaining the existence, if any, of damage to the marine resources off the coasts of Sicily and Calabria, consequent on the oil pollution; if such damage existed, they should determine the amount thereof or, in any case, supply any useful element suitable for the equitable assessment of the damage. In March 1990 the Court experts submitted their report in which they took the view that they could not quantify the damage to the marine environment. It is expected that the Court of Appeal will render its final judgement in late 1991.

11.8 The IOPC Fund's Secretariat has made great efforts to settle outstanding claims arising out of earlier incidents. The Director will do his utmost to continue the IOPC Fund's established policy of reaching settlements within a short period of the incident. He will also endeavour to ensure that the definition of "pollution damage" is given a uniform interpretation in IOPC Fund Member States.

11.9 For details of the new incidents and for recent developments regarding the settlement of claims arising out of earlier incidents, reference is made to documents FUND/EXC.24/2 (PATMOS incident), FUND/EXC.24/3 (ANTONIO GRAMSCI incident) and FUND/EXC.24/4 (all other incidents).

12 Final Remarks

12.1 During the last five years, the number of IOPC Fund Member States has grown from 34 to 45. As already mentioned, there are reasons to believe that a number of States will join the IOPC Fund in the near future. This continuing expansion of membership demonstrates, in the Director's view, that the international community has found the system of compensation created by the Civil Liability Convention and the Fund Convention a viable one, providing rapid compensation to victims at low costs.

12.2 The worldwide public debate concerning problems relating to oil pollution from ships which resulted from the EXXON VALDEZ incident in Alaska in March 1989 has continued also during the last twelve months. Although this debate focused on the necessity of enhancing the safety of navigation, of improving contingency plans and of developing better equipment and materials for oil spill clean-up, questions of liability and compensation have also been addressed. During his discussions with representatives of non-Member States the Director has noted an increased awareness of the importance of an effective system for compensating victims of oil pollution damage.

12.3 Member States will no doubt note with satisfaction that there has been no disastrous oil pollution incident in any Fund Member State since the 12th session of the Assembly. However, the ARAGON incident, which occurred in January 1990 off the coast of Madeira (Portugal) and resulted in the escape of about 25 000 tonnes of oil, could have developed into a major disaster. Fortunately, only part of the oil reached the shore and there was only limited pollution damage. The aggregate amount of the claims is likely to stay within the limitation amount applicable to the vessel. Another serious incident took place in December 1989 in the Atlantic ocean off the coast of Morocco involving the Iranian tanker KHARK 5. This incident resulted in the escape of an estimated 70 000 - 80 000 tonnes of oil, and there was a threat not only to the Moroccan coast but also to the coasts of Spain and Portugal. In the end the oil dispersed at sea. There was no damage affecting Spain and Portugal and only limited pollution in Moroccan territorial waters. A serious incident occurred off the south coast of England in April 1990, in which the Liberian tanker ROSEBAY spilled about 1 100 tonnes of oil, but only small quantities of oil reached the British coast, and the cost of the clean-up operations will stay within the shipowner's limitation amount. In August 1990, the Cypriot tanker SEA SPIRIT was involved in a collision in the Straits of Gibraltar, which resulted in the escape of 10 000 tonnes of oil into the Mediterranean and caused a threat of serious pollution to the coasts of Spain and Morocco. Several major spills occurred in the United States of America, in particular the AMERICAN TRADER incident off the Californian coast in February 1990 and the MEGA BORG incident which took place in June 1990 in the Gulf of Mexico off the coast of Texas. The above-mentioned incidents clearly demonstrate that the risk of oil pollution is there, both in Fund Member States and in non-Member States.
