

INTERNATIONAL OIL POLLUTION COMPENSATION FUND
FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES
DUS A LA POLLUTION PAR LES HYDROCARBURES

ASSEMBLY - 4th session
Agenda item 19
29 September - 2 October 1981

FUND/A.4/16
2 October 1981
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RECORD OF DECISIONS OF THE ASSEMBLY

Opening of the Session

After the opening of the session by the Head of the Danish delegation, the Secretary-General of IMCO informed the Assembly that IMCO's new Headquarters will be ready for occupation by the end of next year and that IMCO had agreed to offer the Fund a lease for a minimum of ten years. He expressed his conviction that this lease would ensure continuation of the good co-operation between IMCO and the Fund.

1. Adoption of the Agenda (Agenda item 1)

The Assembly adopted the Agenda as contained in document FUND/A.4/1.

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 R Robbani (Indonesia).

3. Grant of Observer Status (Agenda item 3)

The Assembly decided to grant observer status to the International Institute for the Unification of Private Law (UNIDROIT).

4. Examination of Credentials (Agenda item 4)

The following Contracting States were present:

| | |
|------------------------------|----------------------|
| Algeria | Japan |
| Bahamas | Kuwait |
| Denmark | Liberia |
| Finland | Monaco |
| France | Norway |
| Germany, Federal Republic of | Sweden |
| Ghana | Syrian Arab Republic |
| Iceland | Tunisia |
| Indonesia | United Kingdom |
| Italy | Yugoslavia. |

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

The following States were represented as observers:

| | |
|-------------|--------|
| Belgium | Poland |
| Brazil | USSR |
| Canada | USA. |
| Netherlands | |

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

| | |
|-------|------------------------------------|
| IMCO | ITOPF |
| EEC | INTERNATIONAL GROUP OF P & I CLUBS |
| BIMCO | CRISTAL |
| ICS | OCIMF |
| CMI | PIANC. |

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

The Assembly considered and discussed the report of the Director as contained in document FUND/A.4/3 and the additional explanations given by the Director. In general, appreciation was expressed for the work done by the Director and the Fund's Secretariat during the reporting period. The Assembly considered, in particular, some items mentioned by the Director as summarised below.

(a) Tonnage Measurement

The Assembly agreed that certain problems may arise from the entry into force of the 1969 Tonnage Measurement Convention with regard to the calculation of the limitation tonnage of a ship liable

under the 1969 Civil Liability Convention. Since under certain circumstances it may be impossible, or at least very difficult, to establish the limitation tonnage of a ship according to Article V.10 of the Civil Liability Convention which has been measured only under the new 1969 Tonnage Measurement Convention it was decided that the Director should submit to the appropriate Committees of IMCO clearly defined questions and ask them for their advice.

(b) Move to New Premises

The Assembly appreciated IMCO's offer to grant the IOPC Fund a minimum of a ten-years' lease for ten office rooms plus one store room in the new Headquarters building. The Assembly authorised the Director to negotiate a lease agreement with IMCO and to sign it. The Director was also authorised to sub-let three office rooms and to sign the lease agreements with the sub-tenants. The Assembly noted that the IOPC Fund will be charged a market rent by IMCO. The Assembly also took note of the statement given by the delegation of the United Kingdom that there would be no change in the United Kingdom Government's attitude towards the Fund. It was acknowledged with appreciation that the United Kingdom Government would continue to refund 80% of the rent payable by the Fund and that the upper ceiling available for this refund was raised to £50,000.

(c) Insurance of Contributions Payable to the Fund

The Assembly discussed the possibilities mentioned by the Director of insuring the Fund's liabilities under the Fund Convention or the contributions payable to the IOPC Fund by individual contributors. Although some delegations held a different view, it was generally felt that the IOPC Fund should not seek insurance for its liabilities under the Fund Convention and that it must be left to individual contributors to decide whether they wished to insure their obligations towards the IOPC Fund. No objections were raised to the Director's proposal that the results of the discussions held between the Director and the insurance brokers be made known to contributors on a purely informative basis.

(d) Reports on Oil Receipts

The Assembly noted with concern that not all Governments' reports on contributing oil receipts had been submitted to the Fund in time as

required by the Fund Convention and the Fund's Internal Regulations. Governments of Member States were strongly urged to make the necessary arrangements so that in future reports could be submitted by 31 March each year.

6. Consideration of the Report of the Executive Committee on its Fourth Session (Agenda item 6)

The Chairman of the Executive Committee, Professor Tanikawa, submitted to the Assembly his report on the fourth session of the Executive Committee. Reference was made to the Record of Decisions as contained in document FUND/EXC.4/4. The Chairman of the Executive Committee stressed that the Executive Committee, in connection with a discussion on the MEBARUZAKI MARU incident, had expressed concern about the small amount of liability incurred by owners of small ships under the CLC and the absence of a minimum liability in the CLC.

The Chairman of the Assembly expressed the Assembly's gratitude to Professor Tanikawa for being the first Chairman of the Executive Committee and congratulated him on his achievement in establishing the Executive Committee as such an efficient body.

7. Consideration of the External Auditor's Report on the Financial Statements (Agenda item 7)

The Director introduced the External Auditor's Report on the Fund's Financial Statements for the calendar year 1980. Certain clarifications asked for by delegates were given by the auditor. In accordance with Article 18.6 of the Fund Convention, the Assembly approved the accounts of the Fund for the financial period 1 January 1980 - 31 December 1980.

8. Consideration of the Report on Investments (Agenda item 8)

The Assembly considered and discussed the report on investments and the additional information given by the Director with regard to investments made after the issuance of document FUND/A.4/5. The suggestion made by the Director in his oral report to consider an amendment to the Fund's investment policies to allow for the Fund to invest by the purchase of bank acceptances was also discussed but the Assembly felt that no amendment to the investment policy should be made at present; rather the Director should suggest to the next Assembly the amendments he considers advisable.

9. Budget 1982 (Agenda item 9)

The Director introduced document FUND/A.4/6. He explained that the reasons for the increase in the budget appropriations for 1982, as compared to those in the budget 1981, lay mainly in the payments to be made to the Director and the Professional Officer when their present contracts expire in 1982 and in the increased rent payable after the move to the new Headquarters which may take place in October 1982.

The Assembly adopted the budget as proposed by the Director, totalling £222,282 for administrative expenses. The Assembly asked the Director to try to keep the expenditure at the lowest possible level.

The Assembly requested the Director to include in future draft budgets, for reasons of easier comparison, with respect to each individual appropriation the actual expenditure of the last completed calendar year.

10. Assessment of Annual Contributions (Agenda item 10)

The Assembly decided that the total amount of annual contributions to be levied in 1981 is £500,000. This assessment was based on the following calculation:

| <u>Expenditure</u> | £ |
|-----------------------------------|------------------|
| (a) Administrative expenses | 222,282 |
| (b) Minor claims | 911,548 |
| (c) Working capital | 2,000,000 |
| | <u>3,133,830</u> |
| | |
| <u>Income</u> | |
| (a) Surplus | 2,499,182 |
| (b) Interest | 195,000 |
| (c) Annual contributions required | 439,648 |
| | <u>3,133,830</u> |

The amount of £911,548 for minor claims was appropriated for the HOSEI MARU (£511,548) and the JOSE MARTI (£400,000) incidents. It was agreed that contributions should be payable, in accordance with the Fund's practice, by 15 December 1981.

11. Election of Members of the Executive Committee (Agenda item 11)

The following Members were elected members of the Executive Committee:

| <u>Elected under Article 22.2(b)</u> | <u>Elected under Article 22.2(a)</u> |
|--------------------------------------|--------------------------------------|
| France | Ghana |
| Federal Republic of Germany | Indonesia |
| Italy | Norway |
| United Kingdom | Yugoslavia. |

12. Appointment of Members and Substitute Members of the Appeals Board (Agenda item 12)

The Assembly decided to reappoint the present members and substitute members of the Appeals Board.

13. Report of the Fifth Intersessional Working Group (Agenda item 13)

The Chairman of the fifth Intersessional Working Group, Mr J Perrett (United Kingdom), introduced his report (Annex to document FUND/A.4/10). The Assembly took note of the information contained in that document and generally endorsed the results of the Working Group's discussions. The Japanese delegation reserved its position on the inter-relationship of fixed and additional costs. It was generally accepted that further efforts would be required in the future with respect to greater harmonisation of the positions in Member States.

As a result of the discussions of the Working Group, the Assembly adopted the following amendments to the Fund's Internal Regulations.

1. Regulation 3.9 is worded as follows:

"3.9 Interest shall be charged on unpaid annual contributions from the date on which payment is due at an annual rate of 2 per cent higher than the lowest London clearing bank base rate, taking into account any changes in the London clearing bank base rates while an annual contribution remains unpaid."

2. Regulation 4.4 is replaced by the following:

"4.4.1 Where, after the periods set out in Article 6 of the Fund Convention for bringing actions in respect of a particular incident have lapsed and all claims and expenses arising out of that incident have been settled, or where, after the settlement of all claims known to the Fund the Executive Committee is satisfied that no more claims in respect of that incident will be made against the Fund and no more expenses will have to be met, there remains a substantial amount which has been reserved in accordance with Regulation 4.3, the Assembly shall decide whether such amount shall be reimbursed pro rata to the persons who made contributions with respect to that incident in accordance with Article 12, paragraph 2(b), of the Fund Convention, or whether such amount shall be credited pro rata to the accounts of these persons.

4.4.2 If, in the case of Regulation 4.4.1, the Assembly considers the amount remaining not to be substantial this amount shall be transferred to the general fund (Financial Regulation 5.1).

4.4.3 Any amounts credited to a contributor's account with the Fund shall bear interest at the rate of the lowest London clearing bank base rate, taking into account any changes in the London clearing bank base rates."

3. The following paragraph 8.4.4 is added to Regulation 8:

"8.4.4 Subject to 8.4.1 where a claim has been submitted to the Fund and agreement has been reached between the Fund and the claimant as to the value of the majority of items of the claim, but further investigation is considered necessary with respect to the remaining items, the Director may make payment in respect of the agreed items. Regulation 8.4.3 applies correspondingly."

4. The following sentence is added to Regulation 8.6:

"Such provisional payments may be made before the shipowner has established the limitation fund in accordance with Article V.3 of the Civil Liability Convention."

Following the adoption of the new Internal Regulation 4.4.1 the following amendment to the Fund's Financial Regulations was adopted.

Regulation 5.1(a)(iv) is worded as follows:

"(iv) income received from the investment of monies in the general fund, transfers from major claims funds according to Internal Regulation 4.4.2 and other miscellaneous income."

The Assembly also adopted the resolution contained in the Annex.

A discussion was held on the draft claims manual as contained in the Annex to document FUND/A.4/10/2. The Assembly agreed that the issuance of such a claims manual brochure would be of great assistance to potential victims of pollution incidents for the filing of their claims against the IOPC Fund. After the discussion of several amendments to this draft, the Assembly agreed to request the Executive Committee to consider this claims manual in the light of any comments received and finally adopt it for publication and circulation.

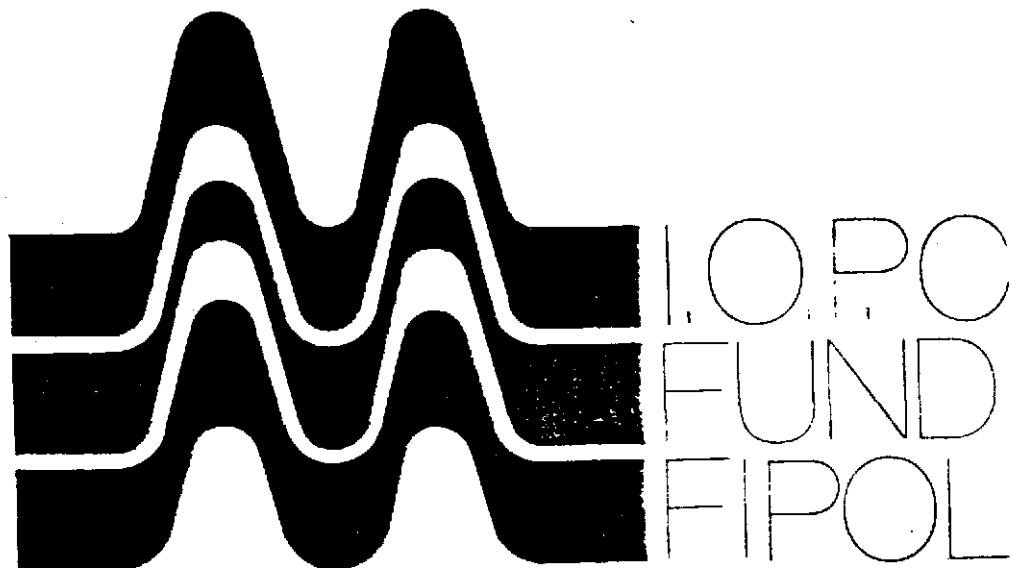
Following the adoption of new Internal Regulations 4.4.1 and 4.4.2 and the report of the Executive Committee stating that the Executive Committee was satisfied that no further claims would be made against the Fund and no more expenses would have to be met with respect to the ANTONIO GRAMSCI incident, the Assembly decided to credit an amount of £750,000 left in the ANTONIO GRAMSCI Major Claims Fund to the contributors to that fund and any remaining amount left in this Major Claims Fund to the general fund.

14. Definition of the Term "Persistent Oil" (Agenda item 14)

The Director, the expert employed by the IOPC Fund, Mr C Walder, and the French delegation introduced document FUND/A.4/11, the Annex to that document and document FUND/A.4/WP.1 respectively. The Assembly took note of the respective explanations and discussed certain amendments proposed by delegates. It was agreed that the non-technical guide annexed to document FUND/A.4/11 should be revised in the light of the comments made during the discussion and then serve as a guideline to the Director when dealing with claims made against the Fund. It was further agreed that the note annexed to document FUND/A.4/WP.1 should be attached to the guide.

15. Adoption of the Fund's Emblem (Agenda item 15)

The Director introduced document FUND/A.4/12 and gave explanations of the designs reproduced in the document and additional designs received after the submission of that document. All designs had been displayed during the session. The Assembly adopted, by majority vote, the design as reproduced below.



16. Report on the Situation Regarding the Conversion of (Gold) Francs into National Currencies (Agenda item 16)

The Director introduced document FUND/A.4/13 and explained the situation regarding the conversion of (gold) francs into national currencies to the extent that this was known to the Fund Secretariat. The Assembly was informed by the delegations of Italy and Japan that their Governments intended to submit Bills to their respective Parliaments enabling them to ratify the Protocols of 1976 to the CLC and the Fund Convention. The delegation from the Netherlands stated that the Netherlands would deposit an instrument of ratification to the 1976 Fund Convention Protocol together with their forthcoming ratification of the Fund Convention.

17. Date of Next Session (Agenda item 17)

The Assembly decided to hold its next meeting as the fifth session from 27 September to 1 October 1982.

At the invitation of the Chairman, the Director stated that at the next Assembly he would likely be able to accept an offer, if such an offer was to be made, for an extension of his present contract expiring on 31 December 1982.

18. Any Other Business (Agenda item 18)

Replacement of Instrument (Article 5.3 of the Fund Convention)

The Assembly decided, in accordance with Article 5.4 of the Fund Convention, to replace the 1974 SOLAS Convention by the 1978 SOLAS Protocol, to the extent that the Protocol contains amendments to the 1974 SOLAS Convention. This replacement shall take effect on 1 May 1982.

In consequence of this replacement, the treaty instrument under Article 5.3(a)(ii) of the Fund Convention reads as follows:

"(ii) the International Convention for the Safety of Life at Sea, 1974, as modified by the Protocol of 1978 Relating to the International Convention for the Safety of Life at Sea, 1974;"

Interpretation of Article 5.3(a)(v) of the Fund Convention

The Assembly agreed that amendments to be adopted by IMCO's Maritime Safety Committee with regard to SOLAS Convention, 1974, could not be regarded as being of an "important nature" as defined in Article 5.3(a)(v) of the Fund Convention and therefore would not automatically become relevant for the purposes of Article 5.3 of the Fund Convention.

Increase of Fund's Upper Limit

Document FUND/A.4/15 proposing an increase of the Fund's upper limit from at present 675 million (gold) francs to 900 million (gold) francs was introduced by the French delegation. This delegation, and others supporting it, stressed that in view of the fact that several incidents in recent years had exceeded the Fund's present limits the maximum limit allowed under the Fund Convention had to be accepted in order to provide sufficient compensation for damage arising as a result of major pollution disasters. The increase of the limit according to Article 4.6 of the Fund Convention was the only existing possibility to increase the compensation; a future revision of the CLC and the Fund Convention would have to take care of the distribution of the burden between shipowning and cargo industry. The delegations opposing the French proposal pointed out that an increase of the Fund's upper limit to 900 million (gold) francs at the present time would pose an unjustifiably heavy burden on oil companies, especially when compared to the shipowners' liability under the CLC. Even with the present limit, the high contributions payable by the oil companies and the contributions payable by some Contracting States to the IOPC Fund in many cases cause considerable financial problems. It was noted that an increase in contributing oil receipts would reduce the financial burden for each contributor.

A vote on the proposal contained in document FUND/A.4/15 was taken by roll-call. The voting was as follows:

| <u>In favour</u> | <u>Against</u> | <u>Abstention</u> |
|-----------------------------|----------------|-------------------|
| Denmark | Ghana | Bahamas |
| Finland | Japan | Indonesia |
| France | Yugoslavia | Italy |
| Federal Republic of Germany | | Kuwait |
| Iceland | | Liberia |
| Monaco | | |
| Norway | | |
| Sweden | | |
| Syrian Arab Republic | | |
| Tunisia | | |
| United Kingdom | | |

As the required three-fourths majority of the Members present was not obtained, the proposal was rejected.

Agreement with Shipowners

The Assembly requested the Director to discuss with shipowners and insurers the possibility of concluding an agreement following which the shipowners would not claim indemnification under Article 5 of the Fund Convention and accept a minimum liability for small ships and by that ease the cargo industry's heavy burden under the Fund Convention.

Allocation of Contributions

The Assembly took note of the intervention submitted by the Indonesian delegation concerning the review of the criterion of the allocation of the contributions from each Member country.

ANNEX

ASSEMBLY RESOLUTION 6

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

AWARE of the difference of views held in Contracting States regarding the question of whether the Civil Liability Convention and the Fund Convention cover expenses for preventive measures taken before an actual spill of persistent oil has occurred or in cases where no spill of persistent oil occurs at all,

NOTING that these differences in the interpretation of the two afore-mentioned Conventions by Contracting States could lead to differing decisions in the various Contracting States regarding the Fund's liability,

CONSCIOUS of the need in a specific pollution incident for all parties concerned to do their utmost to prevent an actual spill of oil,

RECALLING Assembly Resolution 2, adopted by the Fund's Assembly at its second session in April 1979, requesting IMCO to consider the desirability of revising the 1969 Civil Liability Convention and the 1971 Fund Convention,

REQUESTS IMCO to bear in mind, when elaborating amendments to the two Conventions, the need to ensure that the cover for preventive measures provided for in the two Conventions clearly includes cover for measures taken before an actual spill of oil, if any, has occurred.
