

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

ASSEMBLY - 4th session
Agenda item 5

FUND/A.4/3
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CONSIDERATION OF THE REPORT OF THE DIRECTOR

MEMBERSHIP

1. During the period between the first extraordinary session and the fourth session of the Assembly, the Fund Convention entered into force for four more States. Iceland became a Member on 15 October 1980, Finland on 8 January 1981, Maldives on 14 June 1981 and Kuwait on 1 July 1981. The Fund now has 23 Members.

2. Following Assembly Resolution 5* adopted by the Assembly at its first extraordinary session in October 1980, the Director continued in his efforts to increase the membership of the Fund. He attended several regional seminars where he had the opportunity of talking to representatives of non-Contracting States about the advantages of joining the Fund. Visits to the United States (Atlanta and Washington) and Canada (Montreal) were also used to discuss the CLC and the Fund Convention with representatives of Governments of these States. The Canadian Government has decided to join the Fund and it is sincerely hoped that the necessary legislative procedures will soon be finalised. In Washington discussions with officials of the Senate Administration and the Government showed that

* NB For ease of reference, the Director suggests that all resolutions adopted by the Assembly are quoted by numbers. The resolutions adopted so far and their numbers are given in Annex I.

the attitude towards ratification of the CLC and the Fund Convention in the United States is generally quite positive but that several problems have to be overcome in order to make ratification of these Conventions possible. A revision of the two Conventions leading to an increase of the limits and an extension of the scope of application would probably make it easier for the United States to join the Fund.

3. The Director would like to mention the considerable assistance given to the Fund by IMCO, especially by IMCO's Regional and Inter-Regional Advisers. The Inter-Regional Consultant in Marine Pollution, Mr. T.M. Hayes, and the Inter-Regional Adviser in Maritime Legislation, Mr. M. Sanmuganathan, have deserved great merit for disseminating information on the Fund Convention and discussing, especially with governments of developing countries, the advantages of joining the Fund.

4. The Director also hopes that the close contacts which he has established with the United Nations and UNEP will help to make the benefits of the Fund Convention known to more governments.

CONTRIBUTIONS

5. The Director is concerned that some reports on contributing oil receipts are still coming in late. According to Article 15 of the Fund Convention and Regulation 5.1 of the Fund's Internal Regulations, Governments have to submit to the Fund by 31 March each year a report on the contributing oil receipts of the preceding year. On 31 March 1981, only six reports had been submitted to the Fund. On 1 July 1981 there were still 11 Member States out of 23 which had not reported their 1980 figures to the Fund. The Director believes that this delay in reporting puts an unnecessary burden on the Fund administration. In addition, quite a few problems are caused by the fact that the forms prescribed in Internal Regulation 5.1 and distributed to Governments are not always properly completed.

6. In 1980 the Director employed an expert to look into the reports on oil receipts submitted by Governments and to compare the data with figures available from other sources. The Director is pleased to state that in most cases these comparisons did not show any discrepancies. In the few cases where there were discrepancies, contacts with Governments led either to helpful explanations or to amendments of reports.

7. Following the decision taken by the Assembly at its first extraordinary session in October 1980, the Fund levied contributions of £10 million consisting of £9.2 million for the ANTONIO GRAMSCI major claims fund and £800,000 for the general fund. Although these contributions were much higher than in previous years, the positive response to the demand for the payment of contributions noted in preceding years was confirmed by this year's experience. On the date on which payments were due, 71.6% of the total had been paid. On 31 January 1981, 92% had been received and on 30 June 1981, 97.3% had been received.

8. Although nearly all the invoices were sent by registered mail, it was still often claimed by defaulting contributors that the reason for the delay in payment was that the invoices had not been received. In order to find out which contributors had not received the invoices, the Fund issued reminders a few weeks after the due date of payment. The fact that invoices were sent by registered mail makes it easier for the Fund to demand interest on unpaid annual contributions; however, there are still some cases where problems are caused by the refusal of contributors to pay interest.

9. The contributions to the ANTONIO GRAMSCI major claims fund received as at 15 January 1981 were not sufficient to meet the total payment due to the Swedish Government. The major claims fund therefore took a loan from the general fund, which was repaid to the general fund as soon as sufficient

contributions were received. However, because of the strength of the Pound Sterling gained after the assessment of contributions, only the sum of £8,617,783 out of the major claims fund was needed to satisfy the Swedish claim. A substantial amount of about £700,000 (including interest) remains in the major claims fund.

10. Internal Regulation 4.4 provides that a balance remaining in a major claims fund can be credited or reimbursed to contributors only after the periods set out in Article 6 of the Fund Convention have lapsed and all claims and expenses have been settled. This provision prevents the Fund from crediting contributors with the amounts remaining in the major claims fund even though it is extremely unlikely that any further claims arising out of the ANTONIO GRAMSCI incident will be made against the IOPC Fund. This is so because the Agreement of 6 March 1980 concluded with the Swedish Government provides in paragraph 6 that "... the Kingdom of Sweden fully and finally releases the Fund in respect of all claims arising from the above-mentioned incident." This means that even in the very unlikely event of further claims being made against the Fund, the Swedish Government would indemnify the IOPC Fund and the Fund would not have to make further payments. Therefore, the Director is of the opinion that it should be made possible to reimburse or credit the contributors pro rata with the amount remaining in the ANTONIO GRAMSCI major claims fund. He suggests that the Assembly adopts the necessary amendments to the Internal Regulations and the Financial Regulations. The amendments suggested are contained in Annex II.

11. Another problem connected with the payment of contributions has arisen with respect to the decision taken by the Assembly at its first extraordinary session regarding the interpretation of the term "receipt" (document FUND/A/ES.1/13, paragraph 10). This decision says that the interpretation adopted by the Assembly should not lead to amendments of

previous reports on contributing oil receipts and is only to be taken into consideration for future reports. With respect to two countries, namely the Bahamas and Indonesia, each oil company has claimed that it has been charged with too high a contribution since their respective Government's reporting practice did include ship-to-ship transfers and quantities of oil thus transferred were reported to the Fund. Whereas the Bahamian oil companies agreed to pay the amounts calculated on the basis of the original reports in 1980 but requested that future contributions (especially for the TANIO major claims fund) should be based on the amended reports, the Indonesian Government, on behalf of the Indonesian oil company, reserved its position to refuse to pay the full amount. Following the Assembly's decision, the Director insisted on the full payment of contributions in 1980 but conceded that the calculation for the TANIO major claims fund may be based on quantities of oil calculated in accordance with the new interpretation of the term "received". He agreed with the Bahamian and Indonesian Governments to bring this matter to the attention of the Assembly.

12. In view of the relatively high annual contributions levied in 1980, especially in comparison with the 1979 annual contributions, several contributors got in contact with insurance brokers to enquire about the possibility of insuring their liability for contributions to the IOPC Fund. The brokers, in turn, approached the Director to collect the necessary information for their assessment of the situation. Several meetings were held with different brokers on this subject, which included the question of whether there was a possibility of the IOPC Fund itself taking out insurance cover with respect to the Fund's liability. The results of these deliberations, which were not available at the time of drafting this document, will be duly laid before the Assembly.

CLAIMS

13. Information regarding claims is contained in document FUND/EXC.4/2 submitted to the fourth session of the Executive Committee. Reference is made to this document.

14. In addition it should be noted that, although there were not many new claims to be dealt with, a considerable amount of time was spent on discussions and negotiations with the French Government on the presentation of claims and the claims settlement procedure regarding the TANIO incident. However, in view of the amount of work involved in the presentation of these claims, and in view of the number of claimants, a final agreement on the procedure has not yet been reached. The main problems with respect to the settlement procedure stem from the fact that the total amount of compensation available under the Fund Convention can only be paid out if the Director is satisfied that no claims will be made against the Fund in addition to those known at the time of payment.

MISCELLANEOUS

Meetings

15. The general administration of the Fund, including actions following from decisions taken by the Assembly at its first extraordinary session, the preparation of the meeting of the fifth Intersessional Working Group and the preparation of the fourth meetings of the Assembly and the Executive Committee occupied a considerable amount of the Fund's staff's time. However, since there was sufficient time between the first extraordinary session and fourth session of the Assembly, it was possible to prepare the documentation in time and to circulate most of the documents well within the time limit set by the Rules of Procedure.

It is gratefully acknowledged that the documents prepared by the Fund's Secretariat have been translated and printed by IMCO' Conference Division within a short time. IMCO only

charges the Fund with their own cost of preparing the documentation without adding a profit element. A review of the cost of translation services carried out by IMCO has shown that IMCO's costs compare favourably with those of other UN Organizations. The Director feels that the IOPC Fund should express its gratitude to IMCO for providing these services.

Missions

16. As in previous years, the Director maintained close and friendly co-operation with Member Governments. The only Contracting State visited by the Director since the Assembly's last session was the Bahamas in November 1980. He was warmly received by the Bahamian Government. Interesting meetings were held with representatives of the Government and of the two companies contributing to the Fund, during which the Director had the opportunity of discussing the operations of the Fund, especially the practice of reporting oil receipts.

17. As mentioned in paragraph 2, the Director attended several regional seminars. In November 1980 he took part in a meeting of Caribbean Islands on Oil Spill Contingency Planning held in Barbados; in February 1981 he participated in the IMCO Seminar on Tanker Safety and Pollution Prevention held in Nairobi; in March he attended the 1981 Oil Spill Conference in Atlanta; in May he was invited to a Seminar on Legal Practice Regarding the Protection of the Sea against Pollution held in Bogota, Colombia. At each of these occasions, the Director gave a speech on the legal regimes on civil liability for oil pollution damage and discussed with participants advantages of Fund membership.

18. The Director also attended the XXXIInd CMI Conference in Montreal where a draft convention on salvage was elaborated and the IMCO draft convention on liability for noxious and hazardous cargoes was discussed. After this Conference, the Director participated in a meeting of an informal working

group in Washington which held a first discussion on a possible revision of the CLC and the Fund Convention. In addition to these missions, the Director and the Professional Officer attended several conferences in London, generally dealing with problems of oil pollution, and an OECD seminar in Paris, dealing with the question of assessment of pollution damage.

New Premises

19. The move to IMCO's new headquarters premises is now scheduled for October 1982. The IOPC Fund will be occupying ten office rooms plus one storage room on the first floor of the new headquarters building. The Secretary-General of IMCO has agreed that the Fund will be granted a minimum of a ten years' lease. Since the Fund will neither in 1982 nor probably in 1983 use all the ten rooms for its own staff, the sub-letting of the rooms which will not be used at the time of the removal is being discussed with IMCO. The Director envisages that out of the ten office rooms, seven will be occupied by the Fund, i.e. six rooms for the six staff members plus one additional room which will be used for small meetings, for the auditors or for temporarily-employed consultants. Although IMCO will leave it to the Fund to find a tenant for the remaining three rooms, the sub-letting will be co-ordinated with IMCO.

20. Several issues regarding the lease of the new headquarters building have not been finally decided. One of these is the rent payable by the Fund. It seems probable that IMCO will charge a market rate for accommodation but the actual amount has not been fixed. A lease agreement will have to be worked out with IMCO and this should contain provisions regarding the use of the conference rooms and other general facilities by the Fund.

Tonnage Measurement Convention, 1969

21. The International Convention on Tonnage Measurement of Ships, 1969 will enter into force on 18 July 1982. Out of the 47 Contracting States to this Convention (as at 23 June 1981), 16 States are Parties to the Fund Convention.

22. For new ships measured according to the 1969 Tonnage Convention, it will not be possible to determine the limitation tonnage as defined in Article V.10 of the CLC. Article V.10 of the CLC provides that, in the case of a ship which cannot be measured in accordance with the "normal rules of tonnage measurement", the ship's tonnage shall be deemed to be 40% of the weight in tons (of 2,240 lbs) of oil which the ship is capable of carrying. This provision could be interpreted to mean that a ship measured in accordance with the 1969 Tonnage Convention is regarded as "a ship which cannot be measured in accordance with the normal rules of tonnage measurement", although, after the entry into force of the 1969 Tonnage Convention, that Convention would contain the "normal" rules of tonnage measurement. If the second sentence of Article V.10 of the CLC is applicable to new tankers measured under the 1969 Tonnage Measurement Convention, clarification is needed on what the expression "40% of the weight of oil which the ship is capable of carrying" exactly means, e.g. whether bunker oil is included. A related question is whether an existing ship measured according to the 1969 Tonnage Convention at the request of the owner may retain the existing limitation tonnage determined on the basis of the previous national tonnage regulations, or should alter the limitation tonnage to correspond to 40% of the weight of oil which the ship is capable of carrying.

23. The problem of determining a ship's limitation tonnage arises under the CLC as well as under the Fund Convention. The Director suggests, therefore, that the Assembly asks IMCO to discuss this problem with a view to recommending a solution applicable to the CLC and the Fund Convention as well as to the 1957 Limitation Convention which contains a similar provision.

ANNEX I

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

ASSEMBLY - RESOLUTIONS

| Numbers | Date of Adoption | Subject | Contained in Document |
|---------|------------------|-------------------------------------|---------------------------|
| 1 | 17 November 1978 | Units of Account | OPCF/A.I/Res.1 |
| 2 | 20 April 1979 | Revision of CLC and Fund Convention | FUND/A.2/17 |
| 3 | 10 October 1980 | Pollution Damage | FUND/A/ES.1/13, Annex I |
| 4 | 10 October 1980 | Units of Account | FUND/A/ES.1/13, Annex II |
| 5 | 10 October 1980 | Membership of Fund Convention | FUND/A/ES.1/13, Annex III |

ANNEX II

AMENDMENTS TO INTERNAL REGULATIONS
AND FINANCIAL REGULATIONS
PROPOSED BY THE DIRECTOR

A. Amendment to Internal Regulations

Paragraph 4 of Internal Regulation 4 should be 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 Director 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 ..." (continue as in existing paragraph 4)

"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 minimum lending rate fixed by the Central Bank of the Headquarters State."

B. Amendment to Financial Regulations

Regulation 5.1(a)(iv) should be 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."
