

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

ASSEMBLY - 5th session
Agenda item 15

FUND/A.5/12
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REVISION OF THE 1969 CIVIL LIABILITY CONVENTION
AND THE 1971 FUND CONVENTION

Note by the Director

1 The Legal Committee of the International Maritime Organization (IMO) is presently considering the question of revising the Civil Liability Convention (CLC) and the Fund Convention. A first full discussion on the subject was held at the Committee's forty-eighth session in March 1982 (see report of this session in IMO document LEG 48/6). This session was preceded by two informal meetings which were held in Washington in June 1981 and in Stockholm in December 1981, the results of which were submitted to the forty-eighth session of the Legal Committee (IMO document LEG 48/2/2). A further informal meeting was held in London in June 1982 to discuss drafts of protocols to the Conventions (see the Chairman's report in IMO document LEG 49/3). A document submitted to this meeting by the Director in his personal capacity containing proposals for an amendment to the Fund Convention is annexed to the Chairman's report; the proposals are also at Annex I of this document.

2 The Director's proposals for an amendment to the Fund Convention regard only provisions dealing with the operations of the IOPC Fund; they do not touch upon the IOPC Fund's legal liabilities and the contributors' obligations. There are two ideas behind these proposals. Firstly, they are intended to facilitate the IOPC Fund's administration by amending the provisions regarding the assessment of annual contributions, by setting a time limit for

amendments of reports on contributing oil receipts and by abolishing the Executive Committee. Secondly, they are intended to achieve greater justice by charging interest also on overdue initial contributions and by making a Contracting State liable for any financial loss that the IOPC Fund may suffer as a result of that State not submitting its report on contributing oil receipts to the IOPC Fund in time.

3 The Director suggests that the Assembly holds a discussion on the amendments to the Fund Convention as proposed in the annexed paper and on other proposals that delegates may wish to make. In this connection, reference is made to a statement made by the Bahamian delegation at the sixth session of the Executive Committee regarding Article 10 of the Fund Convention. This delegation requested that their statement be circulated to Members for discussion at the fifth session of the Assembly, and it is reproduced at Annex II. Following the discussions in the Assembly on the amendments to the Fund Convention, a document may be submitted by the IOPC Fund to the forty-ninth session of the Legal Committee of IMO which will be held in the week immediately following that in which the IOPC Fund Assembly meets.

4 In connection with the discussion on the revision of the Fund Convention, the Director would like to draw the Assembly's attention to a provision in the Fund Convention in respect of which Member Governments may have different interpretations and which could be of considerable financial importance. This is Article 4.4(a) of the Fund Convention.

5 The United Kingdom participants in the discussions have interpreted Article 4.4(a) of the Fund Convention in a way which differs from that which the Director believes is the correct interpretation. According to the United Kingdom participants' interpretation, in the case of an incident caused by a ship having maximum liability under the CLC and her owner being entitled to indemnification, the IOPC Fund's maximum limit of, at present, 675 million francs would include 210 million francs payable by the owner to the victims as well as 85 million francs of indemnification

payable by the IOPC Fund to the owner, ie the 675 million francs is a "global" limit. Following this interpretation, the victims of the pollution incident would be entitled to 210 million francs from the owner under the CLC and an additional amount of 380 million francs from the IOPC Fund, ie a total of 590 million francs. According to the interpretation which the Director would like to follow, the sum of 210 million francs of the shipowner's liability includes the indemnification payable so that in the case given above the total compensation receivable by victims would be 675 million francs. Therefore, following the Director's interpretation, but contrary to the United Kingdom participants' interpretation, the maximum amount receivable by victims would not depend on whether or not the owner is entitled to indemnification. The wording of Article 4.4(a) in both official languages seems to cover either interpretation; the records of the 1971 Conference do not appear to shed any light on this matter. The discussions referred to above arose out of consideration of the examples quoted in paragraph 22 of the United Kingdom treaty law paper submitted to the Legal Committee of IMO (LEG 48/2/3) but are purely incidental to the main issues dealt with in that paper.

6 The Assembly is invited to consider the questions raised regarding the amendments to and the interpretation of the Fund Convention and to give guidance to the Director with respect to a possible document to be submitted by the IOPC Fund to the Legal Committee of IMO.

ANNEX IPROPOSALS FOR AN AMENDMENT OF THE 1971 FUND CONVENTION,
TO BE INCLUDED IN THE /1984/ FUND PROTOCOLSubmitted by R H Ganten, Director of the IOPC Fund1 Note

The following amendments are proposed by the Director of the IOPC Fund, in his personal capacity, for discussion at the Informal Meeting from 2 to 4 June 1982. The proposals have not been discussed within the IOPC Fund. The Director intends to submit a document to the fifth session of the Fund's Assembly in September 1982 containing certain suggestions for an amendment of the Fund Convention. Following the discussions in the Fund's Assembly, a document may be submitted by the IOPC Fund to the 49th session of the Legal Committee of the International Maritime Organization to be held from 4 to 8 October 1982.

2 Article 12

Article 12 reads as follows:

1 With a view to enabling the Director to assess for each person ... (to be continued as in present text)

(i) Expenditure

(a) unamended

(b) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4, including repayment of loans previously taken by the Fund for the satisfaction of such claims in cases where the aggregate amount of such claims in respect of any one incident does not exceed V million units of account;

(c) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4, including repayments on loans previously taken by the Fund for the satisfaction of such claims in cases where the aggregate amount of such claims in respect of any incident is in excess of V million units of account;

(ii) Income

unamended

2 For each person referred to in Article 10 the amount of his annual contribution shall be determined by the Director and shall be calculated in respect of each Contracting State:

(sub-paragraphs (a) and (b) unamended)

Paragraph 3 unamended

4 The annual contributions shall normally be due on the date of payment laid down in the Internal Regulations. The Assembly may decide on a different date of payment.

Paragraphs 5 and 6 to be deleted

3 Article 13

1 The amount of any contribution due under Articles 11 and 12 and which is in arrear shall bear interest at a rate which shall be determined in accordance with the Internal Regulations, provided that different rates may be fixed for different circumstances.

Paragraph 2 unamended

3 Where a person who is liable in accordance with the provisions of Articles 10, 11 and 12 to make contributions ... (to be continued unamended)

4 Article 15

Add the following sentence to paragraph 3:

However, the list may not be amended after it has been

the basis for the assessment of contributions in accordance with Article 12, unless a Contracting State has notified the Fund of the possibility that a specific amendment may have to be made after this date.

New paragraph 4:

4 Where a Contracting State does not fulfil its obligations under this Article to submit to the Fund the list mentioned above and this results in a financial loss for the Fund, this Contracting State shall be liable to the Fund for compensation of such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by a Contracting State.

5 Article 16

The Fund shall have an Assembly and a Secretariat headed by a Director.

Comment: The suggested abolition of the Executive Committee requires the following consequential amendments:

- (a) deletion of Article 18, paragraphs 8 and 12, Articles 21 to 27, Article 29.2(g) and Article 33.1(c);
- (b) deletion of reference to Executive Committee in Article 18.10 and 18.11, Article 19.1 and 19.2, Article 29.1 and 29.2 (e), (f), (g) and (h), Article 31.1, Article 32, introduction and (b);
- (c) Article 29.2(g) reads as follows:

prepare, in consultation with the Chairman of the Assembly, and publish a report on the activities of the Fund during the previous calendar year.

Alternative

As an alternative to deleting all references to the Executive Committee, the following amendments are proposed:

(a) Article 22

1 The Executive Committee shall consist of one half of the Members of the Assembly but of not less than seven and not more than 30 Members. Where the number of Members of the Assembly is not divisible by two, the one half referred to shall be calculated on the next higher number.

Changes to the table in sub-paragraph 2(b) to be made in accordance with new paragraph 1.7

(b) Article 25

A majority of the Members of the Executive Committee shall constitute a quorum for its meetings.

(c) Article 26

Delete paragraph 1(b)(i) and paragraph 2.

(d) Article 29

Sub-paragraph 2(g) reads as follows:

(g) prepare, in consultation with the Chairman of the Assembly, and publish a report on the activities of the Fund in the previous calendar year.

6 Article 33

(a) Sub-paragraph 2(a) reads as follows:

(a) a decision under Article 13, paragraph 4, to claim compensation from a Contracting State;

(b) Sub-paragraph 2(c) is deleted.

ANNEX II

BAHAMAS GOVERNMENT PROPOSALS ON AMENDMENTS TO THE INTERPRETATION OF
"RECEIVED" OIL TO BE PRESENTED AT THE MEETING OF THE FIFTH ASSEMBLY
OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND
27 SEPTEMBER - 1 OCTOBER 1982

As members will be aware, The Bahamas is not an industrialized nation, nor are we large consumers of oil, although at present we are the sixth largest contributors to the Fund, based on the present interpretation of "received" contributing oil.

The Bahamas, situated as it is in close proximity to the East Coast of the United States and having deep water facilities, is ideally situated to provide transshipping service from ULCCs to small tankers for onward shipment to US terminals. A large proportion of these transshipping activities are performed via land based storage tanks.

The Intersessional Working Group (FUND/A/ES.1/8) had reviewed the question of under which circumstances contributing oil has to be considered as "received" according to Article 10.1 of the Fund Convention. Their interpretation as presented in the above report was approved by the Assembly at the first extraordinary session held on 17 October 1980. Their findings concluded that ship to ship transfers should not be regarded as received for the purpose of calculating contributing oil receipts, further the transfer from one seagoing vessel to another by means of a pipeline passing over land would also not be considered as a receipt of oil.

We are of the opinion that this interpretation of the rules recognised that a temporary interruption of a voyage would not constitute a receipt for contributing oil purposes. However, the Working Group did not extend this rationale to include the transfer and temporary storage of oil through land based storage tanks. We believe this to be an oversight which places The Bahamas in an inequitable position in that a very large proportion of our imports are re-exported without processing, and the time crude oil is in tankage can be extremely short.

Because of our heavy commitment to transshipping oil through land based tankage, we believe that the present interpretation of Article 10.1 of the 1971 Fund Convention places The Bahamas in an inequitable position and therefore consider that the interpretation of "received" adopted in 1980 should be reviewed and further amended to also exclude receipts of oil which is subsequently re-exported without further processing. The proposed amendment would effect only the transshipment of oil through storage tanks and would not include any oil which is processed or treated in any way before re-export.
