



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
8th session
Agenda item 20

FUND/A.8/15
4 October 1985

Original: ENGLISH

RECORD OF DECISIONS OF THE EIGHTH SESSION OF THE ASSEMBLY
(held from 2 to 4 October 1985)

Opening of the Session

The 8th 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.8/1.

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 C Douay (France)

3 Grant of Observer Status (Agenda item 3)

The Director informed the Assembly that Mexico had expressed interest in the Fund Convention and had requested to be admitted as observer at the meetings of the IOPC Fund. The Chairman welcomed Mexico's interest in the Fund Convention. The Assembly approved the grant of observer status to Mexico.

The Assembly decided to grant observer status to Friends of the Earth International (FOEI), the Advisory Committee on Pollution of the Sea (ACOPS) and the International Association of Independent Tanker Owners (INTERTANKO).

4 Examination of Credentials (Agenda item 4)

The following Contracting States were present:

Algeria	Kuwait
Bahamas	Liberia
Denmark	Netherlands
Finland	Norway
France	Oman
Germany, Federal Republic of	Spain
Indonesia	Sweden
Italy	United Kingdom
Japan	

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:

Brazil	Poland
Canada	Union of Soviet Socialist Republics
China	United States of America

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

International Maritime Organization (IMO)
 Comité Maritime International (CMI)
 International Chamber of Shipping (ICS)
 International Group of P & I Clubs
 International Tanker Owners Pollution Federation Ltd (ITOPF)
 Oil Companies Institute for Marine Pollution Compensation Ltd
 (CRISTAL)
 Oil Companies International Marine Forum (OCIMF)

5 Establishment of a Working Group regarding the 1984 Protocol to the 1969 Civil Liability Convention (Agenda item 5)

5.1 The Assembly set up a Working Group to study the conditions of application and the scope of the provisions of Article XII bis of the 1984 Protocol to the 1969 Civil Liability Convention, in the light of observations made in the Annex to document FUND/A.8/3 and in the Attachment to document FUND/A.8/3/1.

5.2 The Working Group met on 3 October 1985 under the Chairmanship of Dr R H Ganten (Federal Republic of Germany). The Chairman of the Working Group reported to the Assembly on 4 October 1985. He informed the Assembly that most delegations present at this session of the Assembly had participated in the Working Group and that a fruitful exchange of views had been held on the final clauses of the 1984 Protocols to the Civil Liability Convention and the Fund Convention. The Working Group had generally agreed on the interpretation of the provisions relating to the phased-in approach, in particular, the provisions relating to the setting up of the limitation fund under the Civil Liability Convention.

5.3 The Assembly took note of the report on the discussions of the Working Group.

6 Consideration of the Report of the Director (Agenda item 6)

6.1 The Director introduced document FUND/A.8/4. The Director thanked his predecessor, Dr R H Ganten, for the support given to him in connection with his taking over the post of Director.

6.2 The Chairman, on behalf of the Assembly, expressed his gratitude to the Director and his staff for the efficient way in which they had administered the IOPC Fund.

6.3 In considering the report of the Director, the Assembly urged all Member States to take the necessary steps to ensure that the reports on contributing oil receipts within their respective territories were submitted to the IOPC Fund by the date stipulated in Internal Regulation 5.1.

6.4 The Assembly noted the changes which had occurred with regard to personnel in the IOPC Fund.

6.5 As regards the revision of the voluntary industry schemes (TOVALOP and CRISTAL), the Assembly endorsed the Director's opinion that States cannot ultimately rely on voluntary schemes for compensation for oil pollution damage but that they consider it necessary to have an inter-governmental regime based on international legal instruments. In the view of the Assembly, any voluntary scheme should, therefore, be constructed in such a way as not to interfere with the functioning of the system of compensation established by the Civil Liability Convention and the Fund Convention nor delay the entry into force of the 1984 Protocols. The Assembly noted the statement by the observer from CRISTAL that PLATO and CRISTAL (Revised) 1985 were not intended to replace the regime established by the Civil Liability Convention and the Fund Convention.

7 Consideration of the Report on Investments (Agenda item 7)

The Assembly took note of the Director's report on investments as contained in document FUND/A.8/5.

8 Consideration of the External Auditor's Report (Agenda item 8)

The Director introduced document FUND/A.8/6 containing the External Auditor's Report and the Financial Statements of the IOPC Fund for the period ended 31 December 1984. The Assembly took note of the information given and noted with appreciation the External Auditor's opinion contained in Annex III to that document. It approved the accounts of the IOPC Fund for the financial period 1 January 1984 to 31 December 1984.

9 Report on Contributions (Agenda item 9)

The Assembly took note of the Director's report on contributions as contained in documents FUND/A.8/7 and FUND/A.8/7/Add.1. The Assembly expressed its satisfaction with the positive response of contributors in Member States regarding the payment of contributions. In particular, the Assembly noted with pleasure that the Government of Ghana had paid in full the outstanding contributions under the Fund Convention, together with interest.

10 Consideration of the Reports of the Executive Committee on its 13th and 14th Sessions (Agenda item 10)

10.1 The Chairman of the Executive Committee, Mr W Sturms (Netherlands), informed the Assembly of the work of the Executive Committee during its 13th and 14th sessions and reported to the Assembly the decisions taken by the Executive Committee at these sessions (documents FUND/EXC.13/2 and FUND/EXC.14/7).

10.2 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.

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

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

Elected under
Article 22.2(b) of
the Fund Convention

France
Japan
Spain
Sweden
United Kingdom

Elected under
Article 22.2(a) of
the Fund Convention

Algeria
Bahamas
Indonesia
Kuwait
Liberia
Oman

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

The Assembly appointed the following members and substitute members of the Appeals Board:

Members

Mr A Perera (Sri Lanka)
Mr M Kefi (Tunisia)
Mr F D Berman (United Kingdom)

Substitute Members

Mr J Marc (France)
Mr H Eckert (Germany, Federal
Republic of)
Mr J Hanyu (Japan)

13 Budget 1986 (Agenda item 13)

13.1 The Director introduced document FUND/A.8/10/1 regarding certain questions relating to contributions to the Provident Fund. He informed the Assembly that he had decided to apply the following interim measures as regards two of the staff members, the Director and the Legal Officer:

Contributions to the Provident Fund will continue to be based on the pensionable remuneration scale in operation as at 31 December 1984. However, the difference between the contributions based on the old and the new scales will be reserved in a separate account, but within the Provident Fund, pending a decision by the Executive Committee.

13.2 The Assembly decided that the above-mentioned interim measures should be applied in respect of the Director and the Legal Officer, pending a final decision within the United Nations. If a solution were adopted within the United Nations protecting the rights of staff members in respect of whom the pensionable remuneration under the scale in operation as at 31 December 1984 was more favourable than under the new scale, then such a solution should also be applied, mutatis mutandis, to the Director and the Legal Officer. Should the Director not be able to apply the solution adopted, the Director should continue to apply these interim measures and refer the matter to the Assembly at its next session for decision.

13.3 The Assembly decided to raise the rates of contributions to the Provident Fund to 7.25% for staff members and 14.5% for the IOPC Fund as from 1 January 1985. It adopted the amendments to Staff Rule VIII.5, paragraphs (b) and (e), as proposed by the Director in Annex III to document FUND/A.8/10/1, with effect from that date.

13.4 The Assembly adopted the budget appropriations for 1986, as proposed by the Director in the Annex to document FUND/A.8/10. It also approved the promotions proposed in that document.

14 Assessment of Annual Contributions (Agenda item 14)

The Assembly decided to raise E1 500 000 for the 1985 annual contributions to the general fund, to be paid by 15 January 1986. In addition, noting that, as regards the ONDINA and FUKUTOKU MARU N°8 incidents, the Executive Committee was satisfied that no more claims would be made against the IOPC Fund and no more expenses would have to be met (document FUND/EXC.14/7, paragraph 3.3.2), it decided that an amount of E700 000 remaining in the ONDINA/FUKUTOKU MARU N°8 major claims fund should be credited to contributors on 15 January 1986, any amount remaining thereafter to be transferred to the general fund.

15 Replacement of Instruments Enumerated in Article 5.3 of the Fund Convention (Agenda item 15)

15.1 The Assembly decided to interpret Article 5.4 of the Fund Convention so as to allow the inclusion in the list of instruments contained in Article 5.3 of amendments adopted by a tacit acceptance procedure, provided that such amendments were of an important character for the purpose of the prevention of oil pollution.

15.2 The Assembly decided, in accordance with Article 5.4 of the Fund Convention, to replace the instruments listed in Article 5.3(a)(i) and (ii) of the Fund Convention. The references to the instruments listed in these sub-paragraphs were thus amended to read:

- (i) "the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as amended by Resolution MEPC.14(20) adopted by the Marine Environment Protection Committee of the International Maritime Organization on 7 September 1984; or"
- (ii) "the International Convention for the Safety of Life at Sea, 1974, as modified by the Protocol of 1978 relating thereto and as amended by Resolution MSC.1(XLV) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981; or".

It was agreed that these replacements should take effect on 1 August 1986 and 1 May 1986, respectively.

15.3 The Assembly decided not to include the 1981 Amendments to COLREG 72 in the list contained in Article 5.3(a) of the Fund Convention because it agreed that they were not of major importance for the purpose of Article 5 of the Convention.

15.4 As regards the 1983 Amendments to SOLAS 74, the Assembly agreed that the character of these Amendments justified their inclusion in the list contained in the above-mentioned Article. However, the Assembly considered it premature to take any decision in this regard, as it would not be possible to establish until 1 January 1986 whether these Amendments would enter into force.

16 Consideration of Resolution N°3 Adopted by the 1984 Diplomatic Conference (Agenda item 16)

The Assembly, stressing the need for wide dissemination of information on the Fund Convention and the operation of the IOPC Fund to IOPC Fund members as well as to non Member States, agreed that the Director should provide information, to States that so desire, on the system that would be established by the Civil

Liability Convention and the Fund Convention as amended by the 1984 Protocols and, on request, to assist States in their procedures for ratification of the Protocols, provided that such activities would not hamper the IOPC Fund's Secretariat in carrying out its duties under the 1971 Fund Convention.

17 Increase of the Maximum Liability of the IOPC Fund
(Agenda item 17)

17.1 The delegation of the United Kingdom introduced document FUND/A.8/14.

17.2 Several delegations were of the opinion that it would be appropriate and timely to increase the amount of compensation payable by the IOPC Fund in respect of any one incident under Article 4 of the Fund Convention up to the maximum permitted in the Convention, whereas others declared that they could accept an increase up to an intermediate amount. Other delegations could not agree to any such increase for the time being, and further pointed out the necessity to consider the serious financial conditions of the Contracting States, particularly those of developing countries. Some delegations stressed that although they favoured an increase to be decided as soon as possible, such a decision should preferably be taken by consensus. For this reason, they were prepared to defer the matter to the next Assembly if that would mean that an agreement could be reached.

17.3 The delegation of the United Kingdom stated that, in view of the opinions expressed, it would not make a specific proposal on an increase of the maximum amount at this session. This delegation hoped that it would be possible at a future session to agree on an increase of the amount. In the opinion of several delegations, the question would have to be considered again at the next session of the Assembly.

17.4 The Assembly decided not to take any decision as regards an increase of the maximum amount at this session. The Director was instructed to submit to the next session of the Assembly a document containing factual information relating to the question of an increase of the maximum amount.

18 Date of Next Session (Agenda item 18)

The Assembly decided to hold its next ordinary session during the week 20 to 24 October 1986 in London.

19 Any Other Business (Agenda item 19)

No items were raised under this Agenda item.

20 Adoption of the Report of the 8th Session (Agenda item 20)

The draft report, as contained in document FUND/A.8/WP.1, was adopted, subject to some amendments.