

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

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

ASSEMBLY -
1st extraordinary session
Agenda item 16

FUND/A/ES.1/13
17 October 1980

Original: ENGLISH

RECORD OF DECISIONS

Chairman: Mr. J. Bredholt (Denmark)
Vice-Chairmen: Mr. H. Boussoffara (Tunisia)
Mr. I. Sindija (Yugoslavia)

1. Adoption of Agenda (Agenda item 1)

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

2. Grant of Observer Status (Agenda item 2)

The Assembly decided to grant observer status to the European Economic Community.

3. Examination of Credentials (Agenda item 3)

The following Contracting States were present:

ALGERIA	JAPAN
BAHAMAS	LIBERIA
DENMARK	NORWAY
FRANCE	SWEDEN
FEDERAL REPUBLIC OF GERMANY	SYRIAN ARAB REPUBLIC
GHANA	TUNISIA
INDONESIA	UNITED KINGDOM
ITALY	YUGOSLAVIA.

The Assembly took note of the information given by the Director that all Members participating, except Liberia, had submitted credentials which were in order. Liberia's credentials were received later and also in order.

The following States were represented as observers:

BELGIUM	IRELAND
BRAZIL	NETHERLANDS
CANADA	POLAND
FINLAND	UNITED STATES .

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

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

4. Consideration of the Report of the Director (Agenda item 4)

The Assembly considered and discussed the report of the Director and the oral explanations given by the Director.

Special attention was given both to the Director's remark that the on-going existence of CRISTAL had led several non-Contracting States to doubt whether the ratification of the Fund Convention was advisable since CRISTAL provided a comparable cover, and contributions to CRISTAL were to be paid by their oil companies even if the State had become a Member of the Fund, and to the Director's statement that there was an on-going need for CRISTAL but that any amendment to the CRISTAL rules should ensure that they did not hamper future ratifications of the Fund Convention. One delegation observed that the existence of CRISTAL after the entry into force of the Fund Convention was no longer required and asked States to encourage their oil companies to withdraw membership of CRISTAL. Other delegations explained that it was necessary that CRISTAL went on providing cover for incidents which were not covered by the Fund Convention such as damages occurring in non-Member States and expenses for threat removal measures, and that it was for the oil companies to decide on their own whether or not continued membership in CRISTAL was in their interest.

The draft Memorandum of Understanding as contained in the Attachment to document FUND/A/ES.1/3 was welcomed and unanimously approved. Some delegations deplored, however, the fact that the International Group of P & I Clubs had not been able to agree on

the inclusion in this Memorandum of a clause providing for full cover of pollution damage by the P & I Clubs with respect to a minimum liability for small ships. These delegations did not see any legal reason why such a cover, which was included in the agreement between the P & I Clubs and CRISTAL, could not be given with respect to the Fund as well.

In this connexion, the Assembly repeated its desire that the question of a minimum liability for shipowners in the CLC should be dealt with by IMCO's Legal Committee as soon as possible. It asked the Director to convey this request to the Secretary-General of IMCO and to report to IMCO's Legal Committee that the Fund's Assembly would wish to have this problem taken up as soon as possible, subject to the priorities in the work programme already decided upon by IMCO's Legal Committee.

5. Consideration of the Reports of the Executive Committee on its Second and Third Sessions (Agenda item 5)

The Chairman of the Executive Committee, Professor Tanikawa, submitted his reports on the second and third sessions of the Executive Committee to the Assembly. Reference was made to the Records of Decisions as contained in documents FUND/EXC.2/6 and FUND/EXC.3/WP.1, the latter as amended by the Executive Committee.

With regard to the decision taken by the Executive Committee on the calculation of the indemnification payable to a shipowner with respect to an incident that happened in Japan where the national law does not comply with the methods of conversion of (gold) francs into the national currencies provided for in the Internal Regulations, the French delegation observed that this decision of the Executive Committee was in violation of the Fund's Internal Regulations and could not have been taken by the Executive Committee. The French delegation deplored this infringement of the Internal Regulations. Other delegations observed that the Executive Committee was empowered to take all decisions with regard to the settlement of claims and it was therefore authorized to give to the Director the instructions necessary for such settlements, including instructions regarding the amount of indemnification payable to the shipowner.

6. Consideration of Auditor's Report on Financial Statements
(Agenda item 6)

The representative of the External Auditor (the Comptroller and Auditor General, United Kingdom) introduced the Report on the IOPC Fund's financial statements as contained in document FUND/A/ES.1/4, Annex I. The Assembly, in accordance with Article 18.6 of the Fund Convention, approved the accounts of the IOPC Fund for the financial period 16 October 1978 to 31 December 1979 on the basis of the Auditor's Report.

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

The Assembly considered and discussed the report on investments contained in document FUND/A/ES.1/5 and the additional information given by the Director, in particular, with regard to investments made after the issuance of document FUND/A/ES.1/5.

8. Budget 1981 (Agenda item 8)

The Assembly adopted the budget 1981 as contained in document FUND/A/ES.1/6 totalling £187,885 for administrative expenses. It expressly agreed to the appropriation for the design of an emblem by a professional designer.

The Assembly authorized the Director to purchase the accounting machine offered to the Fund by IMCO at a very favourable price, if after a thorough assessment of the Fund's needs and the capabilities of that machine, the Director was convinced that the purchase of this machine would meet the Fund's requirements. The authorization was limited to a price of £1,500 for the machine plus approximately £500 for the necessary software.

The Assembly adopted an appropriation of £2,000 for the holding of the Intersessional Working Group (see paragraph 11).

9. Assessment of Annual Contributions (Agenda item 9)

The Director revised, as set out below, the figures contained in document FUND/A/ES.1/7 in line with further developments of the settlement of claims after the issuance of the above document:

(a) Estimate of claims under Article 12.1(i) (b) of the Fund Convention (Minor Claims):

(reference to document FUND/A/ES.1/7, Annex)

	Fund's liability (estimated) £
UNSEI MARU	10,000
NITTAN MARU	nil
FURENAS	450,000
ANTONIO GRAMSCI (15 million gold francs as first layer of major claim)	637,118
	<u>£1,097,118</u>

(b) Estimate of annual contributions according to Article 12.2(b) of the Fund Convention (Major Claims Fund) to satisfy the settlement of the ANTONIO GRAMSCI incident:

	Sw. Cr.	
A. CLAIM agreed upon	93,000,000.00	
less amount paid by ship-owner on 16 July	3,942,282.75	
	<u>89,057,717.25</u>	
B. INTEREST (5 April 1980 to 15 January 1981)	9,558,706.07	
C. LEGAL FEES	48,945.00	
TOTAL	Sw. Cr. <u>98,665,368.32</u>	
		£
£1 = Sw. Cr. 9.90 (on 1 October 1980)		9,966,198.82
Fund's expenditure		<u>3,266.00</u>
		9,969,464.82
<u>Deductions</u>		
Equivalent to 15 million francs		637,118.00
Interest from 5 April to 30 June 1980 to be reduced or waived by Swedish Government		299,815.00
TOTAL AMOUNT NEEDED FOR MAJOR CLAIM ACCOUNT		<u><u>£9,032,531.82</u></u>

Taking into account the above calculations, the following estimate, in accordance with Article 12.1 of the Fund Convention, was presented to the Assembly:

(i) EXPENDITURE	£
(a) Administrative expenses	187,885
(b) Minor claims	1,097,118
(c) Working capital	2,000,000
(d) Major claim (ANTONIO GRAMSCI)	9,200,000
	<u>12,485,003</u>
(ii) INCOME	
(a) Surplus	2,197,515
(b) Interest	260,000
(c) Annual contributions required	10,027,488
	<u>12,485,003</u>

The Assembly decided that the total amount of annual contributions to be levied in 1980 is £10 million, consisting of £800,000 for contribution according to Article 12.2(a) of the Fund Convention (General Fund) and of £9.2 million for contribution according to Article 12.2(b) of the Fund Convention (Major Claims Fund). The Assembly agreed with the Director's proposal that the invoices for annual contributions for 1980 should be sent as soon as possible and that the payment should be made by 15 December 1980.

10. Consideration of the Report of the Intersessional Working Group
(Agenda item 10)

The Chairman of the Working Group introduced the report of the Intersessional Working Group (FUND/A/ES.1/8). As to the question of under which circumstances contributing oil has to be considered as "received" according to Article 10.1 of the Fund Convention, the Assembly approved the following interpretation adopted by the Working Group:

- (a) Discharge of oil into a floating tank within the territorial waters of a Contracting State (including its ports) constitutes a receipt of oil irrespective of whether the tank is connected with on-shore installations via pipeline or not. Ships are considered to be floating tanks in this connection only if they are "dead" ships, i.e., if they are not ready to sail.
- (b) Traffic within a port area shall not be considered as carriage by sea.
- (c) Ship-to-ship transfer shall not be considered as receipt, irrespective of where this transfer takes place (i.e. within a port area or outside the port but within territorial waters) and whether it is done solely by using the ships' equipment or by means of a pipeline passing over land. This applies for a transfer between two sea-going vessels as well as for a transfer between a sea-going vessel and an internal waterway vessel and irrespective of whether the transfer takes place within or outside a port area. When the oil, after having been transferred in this way from a sea-going vessel to another vessel has been carried by the latter to an on-shore installation situated in the same Contracting State or in another Contracting State, the receipt in that installation shall be considered as a receipt of oil carried by sea. However, in the case where the oil passes through a storage tank before being loaded to the other ship it has to be reported as oil received at that tank in that Contracting State.

With regard to the question of which person has to be included in the report as the "receiver" of oil, the Assembly agreed that, within the scope of Article 10 of the Fund Convention, Contracting States should have a certain flexibility to adopt a practical reporting system allowing an effective and easy checking of the figures and taking into account the peculiarities of the oil movement and the local circumstances of a particular country and that, failing payment by persons reported other than the physical receivers, the physical receivers should ultimately be liable for

contributions irrespective of whether the persons reported have their place of business or residence in a Contracting State or not. It was agreed that this interpretation of the Fund Convention should not lead to amendments of previous reports on contributing oil receipts and is only to be taken into consideration for future reports. The Director was asked to include the decisions in the explanatory notes attached to the forms for contributing oil receipts.

As to the interpretation of Article 11 of the Fund Convention, the Chairman of the Working Group reported that the Working Group had been unable to agree on a proposal to interpret that provision in a way which avoided that some persons, under specific circumstances, were burdened twice with the costs of initial contributions. After careful consideration of this proposal, the Assembly, while realising that there had been additional burdens for the persons concerned, decided by majority vote that such interpretation could not be made.

11. Consideration of Certain Aspects of the Term "Pollution Damage" (Article 1.2 of the Fund Convention) (Agenda item 11)

(a) The Assembly took note of the information contained in document FUND/A/ES.1/9 regarding the claim made by the Government of the USSR with respect to the ANTONIO GRAMSCI incident for damage to resources and for costs and expenses in restoring the polluted water to a clean condition. The Assembly adopted the resolution contained in Annex I.

(b) The Assembly decided to set up an Intersessional Working Group to consider the Fund's general policy in respect of the admissibility and payment of claims, with particular regard to their expeditious settlement.

The Working Group should take into account existing regional agreements on co-operation between States in cases of oil pollution incidents and the work carried out in the OECD Transfrontier Pollution Group.

(c) It was decided that this Working Group should meet on 19 and 20 February 1981. In view of the anticipated large attendance in the Working Group and the importance of the subject to be dealt with, it was decided that, contrary to the decision taken by the Assembly at its second session and as an exceptional case, translation and interpretation should be available. It was agreed that the Chairman of the Working Group should be from the United Kingdom delegation.

12. Adoption of Conditions for the Extension of Credit Facilities
(Agenda item 12)

The Assembly took note of the information contained in document FUND/A/ES.1/10 and decided that, for the time being, it was unnecessary to specify further conditions for the extension of credit facilities as foreseen in Regulation 12 of the Fund's Internal Regulations.

13. Amendment of Staff Regulations (Appeals Board) (Agenda item 13)

The Assembly decided that it was not necessary to adopt rules which would allow for appeals against the decisions of the IOPC Fund's Appeals Board.

14. Date of Next Session (Agenda item 14)

The Assembly decided to hold its fourth session from 29 September to 2 October 1981, following the session of the Executive Committee starting on 28 September 1981. It was agreed that the session of the Assembly may start at a later time should the Executive Committee need more than one and a half days to finalize its work.

15. Any Other Business (Agenda item 15)

(a) The Assembly decided that the following sentence be added to Regulation 6.2 of the Fund's Financial Regulations:

"For payment of salaries the Director may exceptionally, in circumstances where he is unable to do so himself, empower two other officers to sign jointly instructions for any sum up to £10,000."

(b) The Assembly adopted the resolutions as contained in Annexes II and III.

With regard to the resolution contained in Annex II, the Assembly decided to invite Contracting States to report at the next session of the Assembly on the progress made in their States regarding the adoption into their national legislation of a method of converting the (gold) franc into their national currency in the manner provided for in Regulation 2 of the Fund's Internal Regulations, and the resolution adopted at the first session of the Assembly (OPCF/A.1/Res.1).

ANNEX I

RESOLUTION

adopted on 10 October 1980

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

CONSCIOUS of the dangers of pollution posed by the world-wide maritime carriage of oil in bulk,

AWARE of the detrimental effect the escape or discharge of persistent oil into the sea may have on the environment and, in particular, on the ecology of the sea,

CONSCIOUS of the problems of assessing the extent of such damage in monetary terms,

NOTING that under the Civil Liability Convention a claim for ecological pollution damage has been raised against the shipowner which was based on a theoretical model for assessment,

CONFIRMS ITS INTENTION that the assessment of compensation to be paid by the International Oil Pollution Compensation Fund is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models.

ANNEX II

RESOLUTION

adopted on 10 October 1980.

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

AWARE of the problems caused by the use of (gold) francs as the monetary unit in the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, and the lack of uniformity in Member States regarding the methods of converting this unit of account into national currencies,

CONCERNED that this lack of uniformity may seriously affect the operations of the Fund,

NOTING that the Protocol of 19 November 1976 to the Fund Convention has so far been ratified or acceded to by only four States and that the entry into force in the near future for all Members of the Fund is not likely,

URGES Governments of Member States to ensure that their national laws are brought into line with the method of conversion provided for by a resolution at the first session of the Assembly (OPCF/A.1/Res.1) and laid down in Regulation 2 of the Fund's Internal Regulations,

AND REAFFIRMS the recommendation contained in that resolution that Contracting States should become Parties to the Protocol of 19 November 1976 to the Fund Convention as soon as possible.

ANNEX III

RESOLUTION

adopted on 10 October 1980

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

RECALLING that the International Oil Pollution Compensation Fund was established by the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, which entered into force in 1978, with a view to ensuring that adequate compensation is available to persons who suffer pollution damage caused by the world-wide maritime carriage of oil in bulk,

NOTING with regret that only twenty-one States, far from covering the whole world, have become Contracting States to the said Convention and that the aims which led to the creation of the Fund have not yet been achieved,

RECOGNIZING the need and importance to promote the ratification, acceptance, approval or accession of the said Convention by a greater number of countries as early as possible,

REQUESTS the Contracting States to the Convention and the Director of the Fund to make appropriate efforts in order to convince non-Contracting States to become Parties to the Convention, especially to make such efforts on the occasions of the meetings of the International Organizations concerned, such as IMCO.
