

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 4

FUND/A/ES.1/3
2 September 1980
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CONSIDERATION OF THE REPORT OF THE DIRECTOR

Note by the Director

1. Annexed hereto is the report of the Director covering the period between the third regular session and the first extraordinary session of the Assembly. A draft Memorandum of Understanding between the IOPC Fund and the International Group of P & I Clubs, as negotiated by the Director, is attached to this report.
2. The Assembly is invited to take note of the report and to consider the draft Memorandum of Understanding for approval.

ANNEX

REPORT OF THE DIRECTOR

1. The Fund's activities in the period between the third regular session and the first extraordinary session of the Assembly were mainly in the following areas:

- settlement of claims;
- carrying out of decisions taken by the Assembly at its third session and by the Executive Committee at its second session and preparation of meetings;
- collection of contributions; and
- general administration.

Information on these activities is contained in the draft report of the Executive Committee on the Fund's activities in 1980 (document FUND/EXC.3/4) to which reference is made.

Settlement of claims

2. With respect to the Fund's activities relating to the settlement of claims, reference is made to document FUND/EXC.3/2 which contains the latest information. In this document, it can be seen that the Fund has become involved in some new incidents and that new developments have to be reported with regard to incidents already mentioned to the Assembly at its third session. In particular, the TANIO incident and the very intensive discussions with the French Government have caused a considerable amount of work.

3. It is noteworthy that, in dealing with claims, the Fund has again experienced a very fruitful co-operation with the P & I Clubs, CRISTAL and ITOFF. For several incidents, the technical experts of ITOFF have acted as surveyors for the Fund and have advised the Director and Governments on preventive and clean-up measures. The fees that ITOFF

charges to the IOPC Fund are low; they do not contain a profit element or even a proportion of their experts' salary. The charge is only for the extra expenses incurred by ITOPE on behalf of the IOPC Fund.

Follow-up action and preparation of meetings

4. The Director carried out the decisions taken by the Assembly at its third session and by the Executive Committee at its second session. He had negotiations with the International Group of P & I Clubs on the conclusion of an agreement of co-operation. The result of the discussions is contained in the attached draft Memorandum of Understanding. The Assembly is invited to approve this Memorandum; it will then be signed by the Director and by the Chairman of the Group.

5. With regard to the Assembly's decision to replace SOLAS 1960 by SOLAS 1974, the Director has to inform the Assembly that to date he has not received any declaration from a Member according to Article 5.4 of the Fund Convention stating that this State does not accept this replacement. Any such declaration must be given by 31 December 1980.

6. In accordance with a decision of the Executive Committee, the Director requested Contracting States to send to him National Laws and Regulations and other relevant information regarding the interpretation of the term "pollution damage". He has received replies from Sweden, United Kingdom, Bahamas and France. In addition, information is available on the legal situation in Denmark, Federal Republic of Germany, Hong Kong, Japan and Tuvalu. To gain a full picture of the legal situation in all Member States, it is necessary to have a more complete collection of National Laws. The Director, therefore, repeats his request to Governments to send him the information mentioned in his letter of 28 April 1980.

7. The preparation of the meeting of the Intersessional Working Group in June and of the sessions of the Assembly and the Executive Committee in October, and in particular, the preparation of the necessary documentation, constituted a major burden on the small Secretariat of the Fund in the months preceding the sessions.

Collection of contributions

8. Some initial and annual contributions that had not been paid by March 1980 were collected. There are now only a few payments outstanding. One contributor has gone into liquidation so that the major part of this contribution of £4,083 will probably have to be written off. Against another contributor legal action has been initiated. One contributor refused payment because he did not know about the Fund and therefore did not know why he was liable. As the contribution is only £21 no legal steps have been taken, but the amount will be added to the 1980 invoice and interest is accumulating. One State has not yet paid the initial contributions and has paid only a part of the annual contributions. The amount outstanding is £2,850. Two Members have not yet sent any reports to the Fund so that contributions, if any, could not be levied.

9. The Director has found that quite a few contributors claim not to have received invoices sent to them. All invoices and reminders are therefore now sent by registered mail. The Director's work of collecting contributions would be greatly facilitated if Governments of Contracting States could inform him of any changes in the names or addresses of contributors.

10. It is of great concern to the Director that the reports on contributing oil receipts, to be submitted to the Director by 31 March each year (see Article 15 of the Fund

Convention and Internal Regulation 5.1), have not yet all been submitted. As at 31 March 1980 only 7 reports were received by the Fund and, in spite of reminders sent on 16 May and 12 August 1980, 9 had still not been submitted as at 1 September. It is obvious that the collection of contributions is greatly hampered if the reports are not available in time. The Director needs all the reports some time before invoices are sent out in order to check them and discuss queries, if any, with the competent authorities.

General administration

11. In addition to the activities mentioned above, the usual administrative functions had to be fulfilled.

During the period covered by this report, the Secretariat moved from the third to the second floor in the office building at 1-4 Yarmouth Place. The Fund now occupies six office rooms plus one meeting room. This is one room more than planned in 1979, as the Assembly agreed in March 1980 to establish the post of a third permanent secretary. The U.K. Government, bearing the cost of 80% of the Fund's rent, kindly agreed to this additional room. The space now occupied by the Fund appears to be sufficient for the time being and for the foreseeable future. These offices will be held by the Fund's Secretariat up to the time when the Fund moves into IMCO's new headquarters building which will, on present information, be in 1982. When the new furniture for the meeting room was bought, account was taken of the fact that the Fund will not have a meeting room of its own in the new IMCO building.

12. The Director continued his work of spreading information on the Fund. Several articles on the Fund and its operations have been written for magazines and newspapers, and invitations to present papers at seminars and conferences have been

accepted. The publication of the booklet containing the 1969 and 1971 Conventions, the 1976 Protocols relating thereto, the Internal Regulations and the Rules of Procedure, together with general information papers will certainly help to make the Fund and its functions better known to the public.

ATTACHMENT

MEMORANDUM OF UNDERSTANDING

The International Group of P & I Clubs (hereinafter referred to as "the Clubs"), whose names and addresses are scheduled hereto, and the International Oil Pollution Compensation Fund (hereinafter referred to as "the IOPC Fund") agree as follows:-

1. The Clubs (together or individually, as the case may be) shall encourage and recommend that each of their Members promptly take or cause to be taken preventive measures when there is an escape or discharge of oil from one of their ships (as defined in Article I(1) of the CLC) threatening to cause pollution damage to the territory, including the territorial sea, of a Fund Convention Contracting State, unless there is no liability on the part of the Member concerned. However, the Clubs shall not be obliged to encourage or recommend to take such preventive measures to the extent that the cost thereof is likely to exceed the limit of that Member's legal liability or the maximum P & I cover available for oil pollution liabilities.
2. The Clubs will report to the IOPC Fund each escape or discharge of oil which is likely to involve a claim against the IOPC Fund, and thereafter the parties hereto will exchange views concerning the same and co-operate with a view towards avoiding, eliminating or minimising pollution damage.
3. The IOPC Fund recognises the primary responsibility of the Clubs for the handling of claims against their Members. However, the Clubs will consult with the IOPC Fund concerning such claims as involve the likelihood of claims being made against the IOPC Fund.

4. ~~Wherever possible and practical the Clubs and the~~ IOPC Fund shall co-operate in the use of lawyers, surveyors and other experts necessary to determine the liability of the shipowner to third party claimants. In these circumstances the costs incurred shall be pro-rated between the shipowner concerned and the IOPC Fund in accordance with the respective amounts of their ultimate liability for the incident.
5. Where on payment of compensation or indemnification by the IOPC Fund, the IOPC Fund acquires subrogated rights, the Clubs will use their best efforts to ensure that any of their Members who have received any such compensation or indemnification shall fully assist the IOPC Fund to enforce such rights, subject to the usual indemnity as to costs and other customary indemnities being provided by the IOPC Fund.
6. The Clubs and the IOPC Fund shall exchange views from time to time with each other and shall co-operate in an effort to alleviate and dispose of such problems as may arise. In particular, the Clubs and the Fund will exchange views and will consult with one another when an incident occurs so that the term "pollution damage", which has the same definition in the Civil Liability Convention and the Fund Convention, receives the same interpretation by the Clubs and by the IOPC Fund.
7. This Memorandum shall enter into force when signed on behalf of the Clubs and the IOPC Fund. Either party may terminate this Memorandum by giving six months' prior written notice to the other party.

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Dated this day of 1980.

Signed by and on behalf of the International Group
of P & I Clubs.

Chairman

Signed by and on behalf of the International Oil
Pollution Compensation Fund

Director

SCHEDULE

Members of the International Group
