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 10

FUND/A/ES.1/8
29 August 1980
Original: ENGLISH

CONSIDERATION OF THE REPORT OF THE INTERSESSIONAL WORKING GROUP

Note by the Director

Annexed hereto is the report of the Intersessional Working Group set up by the Assembly at its third session to consider the interpretation of the term "received" (Articles 10-15 of the Fund Convention) and the problem of double payment of initial contributions (Article 11 of the Fund Convention).

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ANNEX

REPORT OF THE INTERSESSIONAL WORKING GROUP

1. At its third session in March 1980, the Assembly decided to set up an Intersessional Working Group to consider the subjects set forth in documents FUND/A.3/14 and FUND/A.3/WP.1 and matters relating thereto. The Group held a meeting on 2 and 3 June 1980.

2. Members of the Working Group were France, Federal Republic of Germany, Indonesia, Italy, Japan, Liberia, Sweden and United Kingdom. Indonesia and Liberia were not able to attend the meeting. Belgium, Netherlands, IMCO, OCIMF and CRISTAL attended the meeting as observers. The meeting was chaired by Mr. M. Jacobsson, Sweden.

Interpretation of Article 10 of the Fund Convention (document FUND/A.3/14)

3. The Working Group studied the interpretation of Article 10 of the Fund Convention. The Group had before it several examples of national laws implementing the Fund Convention, and information, provided by the Director, on the preparatory work preceding the adoption of the Fund Convention. The Working Group considered in depth the two principal questions of when oil has to be considered as being "received", and who is the "receiver" of such oil. The Group's conclusions were as follows.

4. 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, agreement was reached, subject to the reservation recorded in paragraph 5 below, on the following points:

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.

5. With regard to the situation mentioned under sub-paragraph (c) above, the United Kingdom delegation noted that under the UK national law, ship-to-ship transfer within a port area is considered as a receipt and consequently the receiver is liable to pay contributions in respect of the quantities thus transferred. The delegation reserved its position as to this situation and stated that it would study this matter further.

6. As to the question of which person has to be included in the report as the "receiver" of oil, it emerged from the information available and the discussions in the Working Group that different solutions had been adopted by Contracting States. The solutions were discussed at length by the Working Group on the basis of the preparatory work leading to the adoption of the Fund Convention.

In view of the little documentation available on this subject, different views were expressed as to the meaning of Article 10 and the conclusions to be drawn from its wording. The practical implications of the different systems were examined.

7. There was general agreement in the Working Group on the principle that, whatever system may be adopted by Contracting States, each Contracting State had to ensure that all quantities of contributing oil received in that State were covered by the reporting system. The Working Group was of the opinion 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. All members of the Working Group stressed that they were aware of their Governments' obligations under paragraph 2 of Article 13 of the Fund Convention to ensure that any obligation to contribute to the Fund in respect of oil received within the territory of their States is fulfilled. It was generally agreed that, failing payment by persons reported other than the actual receivers, the actual 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.

8. On the basis of the understanding reached, the Working Group came to the conclusion that the existing divergencies in reporting practices would not lead to practical problems; and that, for the time being, it was not necessary to pursue this matter further.

Interpretation of Article 11 of the Fund Convention (document FUND/A.3/WP.1)

9. The document FUND/A.3/WP.1, submitted to the third session of the Assembly in March 1980, was introduced by the delegation of the Federal Republic of Germany. It was stated that the situation explained in that document had arisen after Italy had joined the

Fund in 1979. Italian oil terminal operators, after paying initial contributions to the Fund, had passed on part of these contributions as pipeline charges to their customers in the Federal Republic of Germany, who had already directly paid initial contributions to the Fund when that State became a Member in 1978. It was noted that this situation would arise again when the Netherlands ratify the Convention, as the Federal Republic of Germany is also receiving quantities of oil via the Netherlands, and that the same situation may come up again with respect to States joining the Fund later.

10. The problem of the interpretation of Article 11 was examined in detail. Some members of the Working Group supported the proposal of the Federal Republic of Germany. It was observed that it would be undesirable if the prospect of the oil companies in its territory being faced with a double burden of the costs of initial contributions, would keep a State from ratifying earlier than the neighbouring State. However, other members of the Working Group expressed the view that Article 11 of the Fund Convention clearly stated that initial contributions had to be made for each ton of contributing oil received in respect of each Contracting State during the calendar year preceding that in which the Fund Convention entered into force for that State and that the Convention did not allow the interpretation suggested by the delegation of the Federal Republic of Germany. One member of the Working Group felt that a decision of the kind requested in the document would affect not only payment of initial contributions but also payment of annual contributions and should therefore not be taken. Another delegation thought that a possible refund of initial contributions paid by Italian contributors would lead to practical problems as to how this refund could be credited to the contributors' customers in the Federal Republic of Germany. Others expressed the view that they could not offer a solution as they had not examined the problem prior to the meeting of the Working Group.

11. The Working Group concluded that it was not possible to come to an agreement at this session. It was decided, therefore, to hold another short meeting immediately before the meeting of the Assembly in October 1980. The delegations of the Federal Republic of Germany and Italy were invited to examine how possible practical difficulties could be overcome. The Director was requested to give information as to the quantities of oil received in the Federal Republic of Germany via Italy and the Netherlands in the previous years. This information is contained in the Appendix to this report.

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APPENDIX

INFORMATION ON THE QUANTITIES OF OIL RECEIVED IN THE FEDERAL REPUBLIC OF GERMANY VIA ITALY AND THE NETHERLANDS

According to the reports submitted by the Federal Republic of Germany to the IOPC Fund, the following quantities of oil were received by persons within the territory of the Federal Republic of Germany via Italy and the Netherlands:

1978	via Italy	27,453,602 tonnes
	via the Netherlands	14,461,814 tonnes
1979	via the Netherlands	15,773,950 tonnes.

The report of the Federal Republic of Germany for the calendar year 1977 does not specify the quantities of contributing oil received via Italy and the Netherlands, but the German authorities have informed the Director that the quantities of oil received in 1977 via Italy and the Netherlands were approximately the same as those in 1978.