



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
1st extraordinary session
Agenda item 23

92FUND/A/ES.1/22
25 October 1996
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RECORD OF DECISIONS OF THE 1ST EXTRAORDINARY SESSION OF THE ASSEMBLY

(held from 23 to 25 October 1996)

Chairman: Mr C Coppolani (France)
First Vice-Chairman: Professor H Tanikawa (Japan)
Second Vice-Chairman: Mr P Gómez-Flores (Mexico)

Opening of the Session

The 1st extraordinary session of the Assembly was opened by the Chairman, Mr C Coppolani (France).

Procedural Matters

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document 92FUND/A/ES.1/1.

2 Examination of credentials

2.1 The following Member States were present:

Australia	Greece	Mexico
Denmark	Japan	Norway
France	Liberia	United Kingdom
Germany		

The Assembly took note of the information given by the Director that all Member States participating had submitted credentials which were in order.

2.2 The following non-Member States were represented as observers:

States which have deposited instruments of ratification, acceptance, approval or accession to the 1992 Fund Convention:

Finland Spain

Other States which have signed the 1992 Fund Convention:

Monaco Morocco Poland

Other States which are Members of the 1971 Fund but not of the 1992 Fund:

Bahamas	Indonesia	Qatar
Belgium	Ireland	Republic of Korea
Canada	Italy	Russian Federation
Côte d'Ivoire	Kuwait	Tunisia
Cyprus	Latvia	United Arab Emirates
Estonia	Malaysia	Venezuela
Fiji	Netherlands	
Gabon	Nigeria	

States which have observer status with the 1971 Fund:

Argentina	Colombia	Peru
Chile	Egypt	Saudi Arabia
China	Panama	

2.3 The following intergovernmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1971 (1971 Fund)
International Maritime Organization (IMO)

International non-governmental organisations:

Federation of European Tank Storage Associations (FETSA)
International Tanker Owners Pollution Federation Limited (ITOPF)
Oil Companies International Marine Forum (OCIMF)

Financial matters

3 Mandate of the Investment Advisory Body and appointment of members

3.1 The Assembly adopted the mandate of the Investment Advisory Body, as contained in the Annex.

3.2 The Assembly considered, in view of the close link that existed between the 1992 Fund and the 1971 Fund, that it would be preferable for the members of the 1992 Fund's Investment Advisory Body to be the same as those of the 1971 Fund's Investment Advisory Body. The Assembly therefore appointed Mrs M E Beaman Gordon, Mr D Jude and Mr S Whitney-Long as members of the 1992 Fund's Investment Advisory Body for a term of one year.

4 Audit Committee

4.1 The Assembly noted that the Assembly of the 1971 Fund had decided at its 19th session that an open consultation group should be established, led by the Chairman of the 1971 Fund Assembly, with the following mandate:

- (a) to review the system of financial control in the 1971 Fund; and
- (b) to make proposals, if appropriate, for improvements in the system.

4.2 It was decided that it was premature for the Assembly to consider the establishment of an Audit Committee for the 1992 Fund.

Contribution questions

5 Submission of oil reports: consideration of sanction mechanisms

5.1 The Director introduced document 92FUND/A/ES.1/4 which contained a study, as requested by the Assembly at its 1st session, of mechanisms other than that provided in Article 15.4 of the 1992 Fund Convention which could be adopted to impose sanctions on States for the non-submissions of oil reports.

5.2 The Assembly noted the sanction mechanisms adopted within the framework of certain other organisations.

5.3 The Assembly noted that the 1992 Fund Convention allowed a particular sanction to be imposed on a Fund Member State which did not fulfill its duties under the Convention to submit oil reports, namely that, if the non-submission or late submission of oil reports resulted in a financial loss for the 1992 Fund, the State in question should be liable to the Fund for such loss.

5.4 Several delegations expressed the view that it was not acceptable that a number of States had not submitted their oil reports to the 1971 Fund and that it was important to prevent the same situation from arising as regards the 1992 Fund. It was emphasised that all States had a duty to fulfill their obligations under the 1992 Fund Convention, as under the 1971 Fund Convention.

5.5 It was suggested that a State which had not presented its reports on oil receipts could be considered ineligible for election to the claims subsidiary body. The suggestion was also made that the 1992 Fund could refuse to pay compensation for pollution damage caused in a State which had not fulfilled its obligations in this regard, at least in respect of claims from the Government or other public bodies.

5.6 It was further suggested that, in the case of a State which had not submitted its reports on oil receipts during a given year, annual contributions based on quantities received during that year could be invoiced on the basis of the figures of the latest reports submitted by the State, possibly increased by say 10%, or on the basis of publicly available figures on oil receipts. It was noted, however, that publicly available statistics on oil receipts normally related to the aggregate quantity received in a particular State and did not provide information on receipts by individual contributors.

5.7 It was mentioned that in some cases States could have valid reasons for having been unable to fulfill their obligations to submit oil reports to the 1992 Fund, and that therefore the question of whether sanctions should be imposed would have to be decided on a case by case basis.

5.8 It was stressed that any possible sanction mechanisms could not go further than the 1992 Fund Convention allowed. It was suggested that any measures would have to be introduced within the framework of the Internal Regulations or Rules of Procedure.

5.9 In view of the importance of the submission of oil reports for the operation of the 1992 Fund, the Assembly invited the Director to study further the issue of sanction mechanisms, in the light of points raised in the discussion as reflected in paragraphs 5.4 – 5.8 above. The Director was instructed to study in particular whether, for contributors in States which had not submitted their oil reports, the assessment of contributions could be made on the basis of estimated quantities.

Secretariat and administrative matters

6 Secretariat functions after the transitional period

6.1 The Assembly recalled that it had decided at its 1st session that the 1992 Fund and the 1971 Fund should have a joint Secretariat and that the 1971 Fund Assembly had, at its 2nd extraordinary session, authorised the Secretariat of the 1971 Fund to administer also the 1992 Fund.

6.2 The Assembly decided that the 1992 Fund should establish its own Secretariat from the date on which the transitional period ended, ie the date on which the compulsory denunciations of the 1969 Civil Liability Convention and 1971 Fund Convention would take effect. It was noted that the compulsory denunciations would probably be triggered during November 1996, and that the transitional period would therefore end in May 1998.

6.3 The Assembly took note of the request made by the Assembly of the 1971 Fund that the 1992 Fund Secretariat, once established, would be authorised to administer also the 1971 Fund. The Assembly also noted the Resolution adopted by the 1971 Fund Assembly (1971 Fund Resolution N°10) concerning the Administration of the 1971 Fund by the 1992 Fund Secretariat.

6.4 The Assembly authorised the 1992 Fund Secretariat, once established, to administer also the 1971 Fund.

6.5 The Assembly recalled that it had, at its 1st session, adopted a Resolution (1992 Fund Resolution N°1) to the effect that, when the 1992 Fund established its own Secretariat, the personnel employed by the 1971 Fund would, if they so wished, be entitled to employment with the 1992 Fund Secretariat and that the terms and conditions of their service would be no less favourable than during their employment with the 1971 Fund.

7 Lease agreement with the International Maritime Organization

The Assembly noted that the Director and the Secretary-General of IMO had agreed on the text of an exchange of letters in order to extend the application of the Lease Agreement, license to occupy and sublease relating to the premises of the 1971 Fund, so that these documents would cover also the activities of the 1992 Fund.

Compensation matters

8 Establishment of a claims subsidiary body

8.1 It was recalled that, at its 1st session, the Assembly had decided that the 1992 Fund should have a subsidiary body to deal with claims for compensation. The Assembly took note of the Director's proposals for the composition, mandate and Rules of Procedure of the claims subsidiary body, as set out in document 92FUND/A/ES.1/7.

8.2 It was noted that, under the Director's proposal, the subsidiary body should comprise 15 Member States, seven of which would be elected from among the eleven Member States in the territory of which the largest quantities of oil to be taken into account under Article 10 of the 1992 Fund Convention were received during the preceding calendar year, and eight members would be elected from among the other Member States, whilst securing an equitable geographical distribution of the seats on the Committee on the basis of an adequate representation of Member States particularly exposed to the risks of oil pollution and of Member States having large tanker fleets. It was further noted that under the Director's proposal, election to the subsidiary body was for one year and that no State could serve on the subsidiary body for more than two consecutive terms.

8.3 Many delegations supported the Director's proposals or stated that the proposal was in general acceptable.

8.4 As regards the proposed composition of the claims subsidiary body, some delegations suggested, however, that the criteria for election should be more flexible so as to accommodate situations where a State which had been elected to the Committee does not attend its sessions.

8.5 The Japanese delegation questioned the proposed rule that no State should serve on the subsidiary body for more than two consecutive terms, since Japan, whose oil industry was the major contributor to the 1992 Fund, wished to be able to be a permanent member of that body. Other delegations stated that it would be difficult to accept permanent membership for any State. It was pointed out that all Member States of the 1992 Fund would be able to participate in the sessions of the subsidiary body as observers and that the experience of the 1971 Fund Executive Committee had shown that the observers could exercise a considerable influence on the Committee's decisions.

8.6 The Assembly decided that the claims subsidiary body should be known as the Executive Committee. It was also decided that the Committee should be composed of 15 members elected for one year and that no State should serve on the Committee for more than two consecutive terms.

8.7 It was recalled that, pursuant to a decision by the Assembly at its 1st session, the claims subsidiary body would be established at the Assembly's first session after the number of 1992 Member States had reached 25 (document 92FUND/A.1/34, paragraph 18.4) and that it was not necessary, therefore, to take a firm decision as regards the composition of that body and its mandate at this session. The Assembly decided to instruct the Director to study further the composition and mandate of the Executive Committee, in the light of the discussion reflected in paragraph 8.4, and to report to the Assembly at its 2nd session.

9 Director's authority to settle claims

9.1 It was recalled that, at its 1st session, the Assembly had authorised the Director to settle claims against the 1992 Fund up to the same limits as those laid down in the 1971 Fund's Internal Regulations, and that it had decided that these limits should be reviewed at its 1st extraordinary session.

9.2 The Assembly noted that, since its 1st session, there had been no significant developments on the basis of which the Director could propose to the Assembly that his authority be extended at this stage. It was therefore decided that the Director's authority to make final settlement of claims against the 1992 Fund, without prior approval of the Assembly or a subsidiary body, should be maintained at the levels provided in Internal Regulation 7.4.

10 Amendment of Internal Regulations concerning claims handling

The Assembly decided that no consequential amendments to the Internal Regulations were required as a consequence of the decision to establish a subsidiary body to consider claims for compensation. In order that the Internal and Financial Regulations used corresponding terminology, however, the Assembly decided to amend Internal Regulations 7.4, 7.5 and 7.8 to read as follows:

- 7.4 Where the Director is satisfied that the 1992 Fund is liable under the 1992 Fund Convention to pay compensation for pollution damage, he may, without the prior approval of the Assembly or, where appropriate, a subsidiary body established by the Assembly, make final settlement of any claim, if he estimates that the total cost to the 1992 Fund of satisfying all claims arising out of the relevant incident is not likely to exceed 2.5 million SDRs. The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of 666 667 SDRs in respect of any one incident. The relevant date for conversion shall be the date of the incident in question.
- 7.5 The Assembly or, where appropriate, a subsidiary body established by the Assembly, may authorise the Director to settle claims in respect of a particular incident beyond the limit established in Regulation 7.4.
- 7.8 All agreements to submit claims to arbitration under Internal Regulation 7.3 and all claims settled under Internal Regulation 7.4 or 7.5 shall be reported by the Director at the next session of the Assembly or, where appropriate, a subsidiary body established by the Assembly.

11 Amendment of Financial Regulations concerning claims handling

The Assembly decided that no consequential amendments to the Financial Regulations were required as a consequence of the decision to establish a subsidiary body to consider claims for compensation.

12 Co-operation with P & I clubs

12.1 The Assembly agreed that it would be appropriate to extend the scope of the 1980 Memorandum of Understanding signed by the International Group of P & I Clubs and the 1971 Fund to cover also co-operation between the P & I Clubs and the 1992 Fund. The Assembly authorised the Director to agree with the International Group on the text of letters to be exchanged to this effect.

12.2 It was also decided that the 1985 Memorandum of Understanding between the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) and the 1971 Fund could be replaced by an exchange of letters covering the parts of the text of the Memorandum which were not covered by the Memorandum of 1980 with the International Group. The Assembly authorised the Director to agree with JPIA on the text of such letters.

13 Incidents of interest to the 1992 Fund

13.1 The Assembly took note of the information contained in document 92FUND/A/ES.1/12 on an incident which had occurred in Germany in June 1996. It was noted that the analysis of samples of the oil washed ashore on the German coast matched the results of the analysis of samples taken from a Russian tanker, the *Kuzbass*.

13.2 The German delegation gave further details of this incident.

13.3 The Assembly took note of the information concerning this incident. It was noted in particular that, unless it was proved that the oil originated from the vessel referred to in paragraph 13.1, the question would arise of whether the German authorities could show that the damage resulted from an incident involving one or more ships, as defined in Article I.1 of the 1992 Civil Liability Convention (cf Article 4.2(b) of the 1992 Fund Convention).

14 Alternative dispute settlement procedures

14.1 The Assembly took note of a preliminary study carried out on possible alternative dispute settlement procedures, as contained in document 92FUND/A/ES.1/13. It noted the three options outlined in the study, viz:

- (a) claims to be presented by States on behalf of national claimants;
- (b) all claims for compensation to be dealt with by a specially constituted international body (tribunal); and
- (c) an independent compensation board to deal with all claims before submission to national courts, if necessary.

14.2 A number of delegations emphasised the importance of this issue and stated that the study contained an excellent analysis of the problems involved. It was stated that any attempt to solve the problems in the present system, under which claims were dealt with only by national courts, would give rise to a number of difficult issues. A number of delegations expressed the view that it was necessary to make an ambitious attempt to improve the present system, although they recognised the difficulties involved. It was mentioned that there was a need to reconsider a system which had been created 25 years ago, so as to adapt it to present needs, in particular in view of the great increase in the number of 1971 Fund Member States and the likelihood that the 1992 Fund would soon have many Members. It was emphasised, however, that it was essential that the policy developed by the 1971 Fund to settle claims by negotiation should also be followed by the 1992 Fund. The importance of involving the P & I Clubs in any consideration of this issue was also mentioned.

14.3 The Assembly decided to set up a Working Group to study the possibilities of introducing alternative settlement procedures in the compensation system established by the 1992 Civil Liability Convention and the 1992 Fund Convention for cases in which it had not been possible to reach out of court settlements.

14.4 It was decided that the Working Group, which should submit its report to the Assembly for consideration at its 2nd session, would be open to all Member States and that States and intergovernmental and international non-governmental organisations having observer status with the 1992 Fund would be invited as observers.

14.5 The Assembly invited Member States to submit written observations to the Director in order to facilitate the Working Group's consideration of this issue.

14.6 The Director stated that he intended to convene the Working Group during the week of 14 – 18 April 1997, in conjunction with a session of the 1971 Fund Executive Committee.

15 Claims Manual

15.1 The Assembly noted the draft text of a revised Claims Manual, as contained in document 92FUND/A/ES.1/14, to be issued jointly with the 1971 Fund. It was recalled that the Assembly had decided, at its 1st session, that the Claims Manual should be revised only insofar as amendments were needed to reflect the amendments to the 1969 Civil Liability Convention and the 1971 Fund Convention in the 1992 Protocols thereto, and that it would otherwise remain in its present form.

15.2 Delegations were invited to submit to the Secretariat by 30 November 1996 any comments of an editorial nature which they might have on those parts of the draft text which had been amended in relation to the previous edition.

15.3 The Assembly authorised the Director to publish the revised Claims Manual, taking into account any comments submitted by delegations, and after consultation with the Chairman. If comments received should give rise to particular difficulties, the Director was instructed to bring the matter to the attention of the Assembly at its 2nd session.

15.4 It was noted that the Assembly of the 1971 Fund had also invited delegations to submit comments by 30 November 1996 on the draft Claims Manual.

15.5 The Assembly also noted that a further revision of the Claims Manual would be required at the end of the transitional period, to reflect the different situation which would then exist.

Budgetary matters

16 Sharing of joint administrative costs with the 1971 Fund

16.1 The Assembly approved the Director's proposal that the costs of running the joint Secretariat should for 1997 be distributed with 70% to be paid by the 1971 Fund and 30% by the 1992 Fund.

16.2 It was noted that the Assembly of the 1971 Fund had agreed, at its 19th session, to the distribution proposed by the Director.

17 Budget for 1997

The Assembly adopted the budget appropriations for 1997, with a total administrative expenditure for the 1992 Fund of £922 224, as set out in document 92FUND/A/ES.1/16.

18 Working capital

The Assembly decided to set the working capital of the 1992 Fund at £7 million.

19 Assessment of contributions

19.1 The Assembly decided to levy contributions to the General Fund for a total of £7 million. It was decided that £4 million should be due for payment by 1 February 1997, and that the balance of the levy should be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 1997.

19.2 The Director informed the Assembly that the assessment of £7 million would represent an estimated levy of £0.0191993 per tonne before the application of the capping provisions contained in Article 36 ter of the 1992 Fund Convention. It was noted that the amount due on 1 February 1997 would represent an estimated £0.0109710 per tonne before capping, and that the maximum deferred levy would represent an estimated £0.0082283 per tonne before capping.

Treaty questions

20 Status of the 1992 Civil Liability Convention and 1992 Fund Convention and related matters

20.1 The Assembly took note of the information contained in document 92FUND/A/ES.1/19 concerning the ratification situation in respect of the 1992 Civil Liability Convention and the 1992 Fund Convention.

20.2 The Assembly noted that it was likely that the requirements for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention would be fulfilled within the coming weeks – ie a total quantity of 750 million tonnes of contributing oil represented by the States which have deposited instruments of ratification in respect of the 1992 Protocol to the Fund Convention. It was also noted that States Parties to the 1992 Protocol to the Fund Convention, as well as States which have deposited their instruments of ratification in respect of that Protocol, would then have to denounce the 1969 Civil Liability Convention and the 1971 Fund Convention within six months of the date when that quantity of contributing oil was reached, with effect 18 months after the date on which the instrument of ratification which triggered the compulsory denunciation had been deposited.

20.3 The Director drew the attention of delegations to the fact that, if a State which had ratified the 1992 Protocol to the Fund Convention did not denounce the 1969 Civil Liability Convention and the 1971 Fund Convention by the expiry of the above-mentioned six-month period, it would be deemed to have denounced the 1992 Protocol to the Fund Convention at the expiry of that period and would consequently cease to be Member of the 1992 Fund twelve months later.

Other matters

21 Date of next session

The Assembly decided to hold its next ordinary session during the week of 20 to 24 October 1997.

22 Any other business

22.1 Delegation of Director's authority

Authority to make payments

22.1.1 The Assembly decided to authorise the Director to empower two other officers jointly to authorise payments both as regards administrative expenses and the payment of claims up to £30 000. Financial Regulation 9.2 was therefore amended to read:

The 1992 Fund's bankers shall be empowered to accept payment instructions on behalf of the 1992 Fund as follows:

- (a) if signed by the Director, for any sum up to £15 000;
- (b) if signed by the Director and countersigned by another authorised officer, for any sum in excess of £15 000;
- (c) if signed by another officer empowered by the Director, for any sum up to £5 000;
- (d) if signed jointly by two other officers empowered by the Director, for any sum up to £30 000;
- (e) for the payment of salaries, if signed jointly by two other officers empowered exceptionally by the Director, in circumstances where he is unable to sign himself, for any sum up to £60 000.

Authority to make investments

22.1.2 The Assembly decided that instructions concerning the 1992 Fund's investments should always be given or confirmed in writing by two duly authorised persons. Financial Regulation 10.5 was therefore amended to read:

Instructions relating to the 1992 Fund's investments shall be given by the Director. Such instructions shall be given or confirmed in writing by him. The Director may empower another officer or officers to act, if necessary, on his behalf. Any instructions relating to the transfer of funds from one financial institution to another should be confirmed in writing

- (a) by the Director and countersigned by another authorised officer; or
- (b) jointly by two other officers empowered by the Director.

Authority to settle claims

22.1.3 The Assembly decided to empower the Director to delegate the authority to settle claims, in certain well-defined cases and up to a specified amount, to an officer or officers responsible for the handling of claims arising out of a particular incident. As a result, the Assembly decided to insert the following new provisions in the Internal Regulations:

7.13 The Director may authorise another officer or other officers to make final or partial settlement of claims or to make provisional payments when he is away from the office or otherwise unable to approve claims. Such authority shall:

- (a) be given only in respect of claims arising out of a specific incident and only to an officer who is responsible for dealing with claims arising out of that incident;
- (b) be restricted to claims which do not give rise to any question of principle which has not previously been decided by the Assembly, a subsidiary body or the Director in respect of the particular incident, where there is no doubt as to the admissibility of the claim and where the assessment of the quantum of the loss or damage does not give rise to any particular difficulties; and
- (c) be limited to approvals not exceeding £30 000 for a particular claim.

7.14 Any settlements made under Internal Regulation 7.13 shall be reported to the Director.

22.2 Grant of observer status

22.2.1 The Assembly considered a request of the World Wide Fund for Nature for observer status with the 1992 Fund, as set out in document 92FUND/A/ES.1/21.

22.2.2 It was noted that the request for observer status with the 1992 Fund had been received only a few days before the Assembly's session. A number of delegations stated that they had not been provided with sufficient details concerning WWF and that for this reason they could not decide whether WWF fulfilled the criteria for granting observer status laid down by the Assembly.

22.2.3 The Assembly decided that it was not in a position to grant WWF observer status with the 1992 Fund.

22.3 Scheduling of Fund meetings

The Director recalled that in both June 1996 and October 1996 three sessions (namely sessions of the 1971 Fund Assembly, the 1992 Fund Assembly and the 1971 Fund Executive Committee) had been held during a one week period. He expressed doubts as to whether it would be appropriate to continue to hold three sessions in the same week. He stated that he intended to discuss with the Chairmen of the Assembly and the Executive Committee whether in the future the meetings of the 1971 and 1992 Fund bodies should be scheduled differently.

23 Adoption of the Record of Decisions of the 1st extraordinary session

The Assembly adopted the parts of the draft Record of Decisions contained in document 92FUND/A/ES.1/WP.1 (viz paragraphs 1-4, 6, 7, 9-13, 15-23 and the Annex), subject to some amendments. The Assembly authorised the Director to prepare the remaining parts of the Record of Decisions (paragraphs 5, 8 and 14), in consultation with the Chairman.

* * *

ANNEX

Mandate for the 1992 Fund's Investment Advisory Body

- 1 The Investment Advisory Body of the 1992 Fund is composed of three persons appointed by the Assembly.
 - 2 The mandate of the Investment Advisory Body is:
 - (a) to advise the Director in general terms on investment matters;
 - (b) in particular, to advise the Director on the tenor of the 1992 Fund's investments and the suitability of institutions used for investment purposes;
 - (c) to draw the Director's attention to any developments which may justify a revision of the 1992 Fund's investment policy as laid down by the Assembly; and
 - (d) to advise the Director on any other matters relevant to the 1992 Fund's investments.
 - 3 The Body shall meet at least three times a year. The meetings shall be convened by the Director. Any member of the Body may request a meeting to be held. The Director and the Finance Officer shall be present at the meetings.
 - 4 The members of the Body shall be available for informal consultations with the Director in case of need.
 - 5 The Body shall submit, through the Director, to each ordinary session of the Assembly, a report on its activities since the previous session of the Assembly.
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