



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
4th extraordinary session
Agenda item 6

92FUND/A/ES.4/7
6 April 2000
Original: ENGLISH

RECORD OF DECISIONS OF THE FOURTH EXTRAORDINARY SESSION OF THE ASSEMBLY

(held from 4 to 6 April 2000)

Chairman: Mr W Oosterveen (Netherlands)

First Vice-Chairman: Professor H Tanikawa (Japan)
Second Vice-Chairman: Mr J Aguilar-Salazar (Mexico)

Opening of the session

1 Adoption of the Agenda

- 1.1 The Assembly adopted the Agenda as contained in document 92FUND/A/ES.4/1.
- 1.2 The Chairman noted that the second Vice-Chairman, Captain A Saúl Bandala (Mexico), had informed the Director that, due to transfer to other duties, he would not be able to continue to serve in that capacity. The Assembly elected Mr José Aguilar-Salazar (Mexico) as the new second Vice-Chairman.

2 Examination of credentials

2.1 The following Member States were present:

Algeria	Greece	Republic of Korea
Australia	Grenada	Singapore
Belgium	Ireland	Spain
Canada	Japan	Sweden
China (Hong Kong Special Administrative Region)	Liberia	Tunisia
Cyprus	Marshall Islands	United Arab Emirates
Denmark	Mexico	United Kingdom
Finland	Netherlands	Uruguay
France	Norway	Vanuatu
Germany	Panama	Venezuela
	Philippines	

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:

Fiji	Malta	Russian Federation
Italy	Poland	Trinidad and Tobago

Other States

Antigua and Barbuda	Estonia	Peru
Brazil	Georgia	Saudi Arabia
Colombia	India	Turkey
Côte d'Ivoire	Malaysia	United States
Ecuador	Nigeria	

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)

European Community

International non-governmental organisations:

Comité Maritime International (CMI)

Cristal Limited

European Chemical Industry Council (CEFIC)

International Association of Independent Tanker Owners (INTERTANKO)

International Chamber of Shipping (ICS)

International Group of P & I Clubs

International Tanker Owners Pollution Federation Limited (ITOPF)

International Union for the Conservation of Nature and Natural Resources (IUCN)

Oil Companies International Marine Forum (OCIMF)

3 Assessment of contributions

- 3.1 The Assembly considered the information in document 92FUND/A/ES.4/2, noting that the total amount of the claims arising out of the *Erika* incident would considerably exceed the limit of the shipowner's liability, FFr84 million (£7.7 million), and would probably reach the 1992 Fund's limit of 135 million Special Drawing Rights (SDR) corresponding to FF1 211 million (£110 million).
- 3.2 The Assembly took note of the Director's view that, during 2000 and the first few months of 2001, the 1992 Fund would have to make significant payments of compensation and would incur considerable costs, and that the total Fund expenditure might reach some £50 million before 1 March 2001.
- 3.3 In order to enable the 1992 Fund to meet payments of compensation for the satisfaction of claims for compensation under Article 4 of the 1992 Fund Convention arising out of the *Erika* incident to the extent that the aggregate amount paid by the 1992 Fund exceeded 4 million SDR, the Assembly decided, pursuant to Article 12.2(b) of the 1992 Fund Convention, to levy contributions of £40 million to the *Erika* Major Claims Fund as 1999 contributions, for payment by 1 September 2000.
- 3.4 The Assembly noted that its decision in respect of the levy to the *Erika* Major Claims Fund would result in a levy per tonne of contributing oil of approximately £0.035730, based on a total quantity of contributing oil of some 1 119 million tonnes.
- 3.5 The Director was instructed to advise contributors as soon as possible of the levy to be made in respect of the *Erika* incident.

4 Revision of maximum amount of compensation available under the 1992 Conventions

- 4.1 It was recalled that at the Executive Committee's 6th session, the United Kingdom delegation had formally requested that the Assembly should include in the agenda of its present session the question of an increase of the limits of compensation laid down in the 1992 Conventions by means of the special procedure for amending these limits.
- 4.2 The Assembly took note of the information in document 92FUND/A/ES.4/3, setting out the procedure for increasing the limits contained in the 1992 Civil Liability Convention and 1992 Fund Convention and the factors which should be taken into consideration in the context of this procedure. It was noted that any decision on the amendment of the limits would be taken by the Legal Committee of the International Maritime Organization (IMO).
- 4.3 The United Kingdom delegation informed the Assembly that a proposal to amend the limits in the 1992 Civil Liability Convention and 1992 Fund Convention would be submitted to the Secretary-General of IMO by 7 April 2000. It was noted that the proposal was co-sponsored by 13 Contracting States to the 1992 Civil Liability Convention and by 12 Contracting States to the 1992 Fund Convention. That delegation mentioned that, under the proposal, the limits would be increased to the maximum permitted under the Conventions. It was noted that the proposed amendment would be circulated by the Secretary-General, for consideration at the October 2000 session of the IMO Legal Committee.
- 4.4 A general exchange of delegations' provisional views was held on the question of increasing the limits in the 1992 Conventions.
- 4.5 Many delegations thanked the United Kingdom delegation for its initiative in co-ordinating an amendment proposal and looked forward to discussing an increase of the limits in the Conventions in the context of the Legal Committee. It was pointed out that the present limits had been adopted in 1984 and had not been revised in connection with the adoption of the 1992

Protocols. It was also mentioned that even if the IMO Legal Committee approved a proposal to increase the limits at its October 2000 session, the higher limits would not come into force until October 2003.

- 4.6 Several delegations stated that it was important to maintain the financial balance between the limits in the Civil Liability Convention and those in the Fund Convention. It was stressed by many delegations that it was important that extensive consultations were held with representatives of the oil, shipping and insurance industries before the amendment proposal was considered by the Legal Committee. A number of States emphasised the need to maintain the long-term viability of the Conventions and to consider also possible effects of inadequate limits on the credibility of both the 1992 Fund and IMO. It was also noted that increased limits - and therefore potentially higher contributions - should not form a financial barrier for States which were considering accession to the Conventions.
- 4.7 A number of delegations considered that increasing the limits in the 1992 Conventions would result in pro-rating of compensation payments by the 1992 Fund being necessary in fewer cases, and therefore in the more prompt payment of full compensation.
- 4.8 It was noted by a few delegations that the inclusion in the 1992 Protocols of a tacit acceptance procedure for increasing the limits in the Conventions indicated that periodic review of the limits had been envisaged. It was also pointed out that higher limits had been envisaged even in 1984 when the original texts of what later became the 1992 Protocols were adopted, as the 1992 Fund Convention provided for an increase of the maximum compensation amounts if three States representing together a certain quantity of contributing oil became Parties to the 1992 Fund Convention.
- 4.9 Some delegations considered that the question of increasing the limits in the Conventions should not be considered in isolation. Those delegations expressed the view that it was important that issues relating to tanker safety and the prevention of oil spills should be examined further within the technical bodies of IMO, whilst also looking at questions of response and compensation. One delegation considered that it would be easier for its Government to support a decision to increase the limits in the Conventions if certain issues relating to the application of those instruments beyond the territorial seas in the Mediterranean could be resolved.
- 4.10 A few delegations expressed varying degrees of reservations, but did not oppose discussing further the question of increasing the limits. Those delegations considered it necessary to examine whether the limits corresponded to changes in circumstances, so as to ensure that the 1992 Fund could achieve its purpose of making adequate compensation available to those who suffered pollution damage from ships. It was pointed out that increasing the limits in the 1992 Conventions was not the only way that this could be achieved, and that all involved in an incident should consider ways of speeding up the claims settlement process.
- 4.11 Several delegations stressed that a number of issues had to be taken into account when considering whether the limits should be increased, and that any amendment of the limits should not be merely a reaction following a major incident. Those delegations considered it essential that a detailed objective analysis was made of the IOPC Funds' experience of the amount of damage arising from past incidents.
- 4.12 It was emphasised by a number of delegations that States should strive to reach a consensus position at the discussions in the Legal Committee, since consensus solutions had previously characterised the development of the regime of liability and compensation in the Conventions.
- 4.13 A number of delegations emphasised that any increase should be clearly justifiable, and considered that it was important that any amendment proposal was well presented.

- 4.14 Delegations' attention was drawn to the possible ambiguity with regard to whether the operative date of the maximum increase permitted by the 1992 Conventions should be that of the date of a decision by the Legal Committee to increase the limits or that of the date any increase would enter into force (ie three years after any decision by the Committee).
- 4.15 The Director was instructed to make document 92FUND/A/ES.4/3 available to the Secretary-General of IMO in order to assist the work of the Legal Committee. He was also instructed to provide such assistance to the IMO Secretariat as might be requested, particularly in the preparation of a detailed analysis of background data on the amount of damage arising from oil spills.

5 Any other business

5.1 European Commission's White Paper on Environmental Liability

- 5.1.1 The Director introduced document 92FUND/A/ES.4/4 relating to the White Paper on Environmental Liability prepared by the Commission of the European Community.
- 5.1.2 The Assembly noted that the Commission had invited comments on the White Paper by 1 July 2000. The Director was instructed to present comments on behalf of the 1992 Fund drawing the Commission's attention to the international compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention and emphasising the importance that any action by the Commission should not prejudice or undermine the operation of this regime. It was stated that in his comments the Director should remain neutral on political issues and emphasise the positive aspects of the global regime.
- 5.1.3 The Assembly agreed that the Director should submit observations on behalf of the 1992 Fund on other documents issued by the Commission on matters of interest to the Fund, as appropriate.
- 5.1.4 The Assembly noted that the 1992 Fund Member States belonging to the European Union had a responsibility to provide information on the international regime to the Commission as required.

5.2 Status of Conventions

- 5.2.1 The Assembly took note of the information in document 92FUND/A/ES.4/5 regarding the status of the 1971 and 1992 Fund Conventions. It was noted that the 1992 Fund Convention had entered into force for 43 States, that a further 12 States had deposited instruments of accession and that consequently the 1992 Fund would have 55 members by March 2001. It was also noted that 42 States were still Parties to the 1971 Fund Convention, that nine of these States had deposited instruments of denunciation and that the 1971 Fund would have 33 members by March 2001.
- 5.2.2 The Indian observer delegation indicated that the Council of Ministers had decided on 7 March 2000 to denounce the 1971 Fund Convention and accede to the 1992 Fund Convention. The Estonian observer delegation stated that the process for ratification of the 1992 Conventions was underway.
- 5.2.3 The Chairman initiated a discussion on the future role of the 1992 Fund, its Director and its Secretariat in the operation and activities of the 1971 Fund.
- 5.2.4 Several delegations expressed their concern that a number of 1971 Fund Member States had not taken the necessary steps to denounce the 1971 Fund Convention, in spite of the considerable efforts made by the Director to draw their attention to the importance of this being done and the consequences of their remaining Party to the 1971 Fund Convention. It was stated that in the very near future the 1971 Fund would not be viable, since the contribution base of the 1971 Fund would soon fall to only 90 million tonnes and the 1971 Fund would be unable to pay compensation to victims of a major incident which might occur in a remaining Member State.

- 5.2.5 Many delegations emphasised that the 1971 Fund and the 1992 Fund were two totally separate entities, that the 1992 Fund and its Member States had no legal or financial obligations *vis-à-vis* the 1971 Fund in respect of future incidents and that these obligations were limited to those laid down in Article 43.2 of the 1971 Fund Convention. Several delegations considered however that the credibility of the Fund regime as a whole was at stake, particularly as the two Organisations were often perceived as being one and the same.
- 5.2.6 Several delegations questioned whether it would be appropriate for the 1992 Fund to continue to share a Secretariat with the 1971 Fund and for the 1992 Fund's Director to remain Director of the 1971 Fund also. The point was made that the 1992 Fund should consider whether at some point in the near future the roles of Director and Secretariat of the 1992 Fund should be separated from those of Director and Secretariat of the 1971 Fund. It was pointed out that it would nevertheless be necessary to find a mechanism to allow outstanding incidents to be handled in a manner which safeguarded the interests of both contributors and victims in former 1971 Fund Member States.
- 5.2.7 The Assembly instructed the Director to study the possibilities open to the 1992 Fund, setting out the requirements as well as the legal, practical and organisational consequences of the various options. The Director was instructed to look at the situation with regard to both outstanding incidents and new incidents in 1971 Fund Member States. The Director was also instructed to obtain expert advice on legal, practical and organisational aspects.
- 5.2.8 It was decided that the question of the future role of the 1992 Fund in the operation of the 1971 Fund should be placed on the agenda of the Assembly at its 5th session in October 2000, with a view to taking decisions on the subject at that session in the light of developments and of the Director's study.
- 5.2.9 The Director was instructed to inform the remaining 1971 Fund Member States of the discussions at the present Assembly session.
- 5.2.10 The Assembly also instructed the Director to continue his efforts to draw the attention of 1971 Fund Member States to the importance of denouncing the 1971 Fund Convention and the consequences of their remaining Party to the 1971 Fund Convention, and of providing advice and assistance to such States as requested.
- 5.3 Establishment of an intersessional working group to assess the adequacy of the international system of the Civil Liability and Fund Conventions
- 5.3.1 The French delegation introduced document 92FUND/A/ES.4/6 in which it proposed the establishment of a Working Group to examine the adequacy of the international compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention. That delegation stated that although on numerous occasions this regime had been able to live up to the expectations of the international community, experience in some recent years had shown that there were inadequacies in the system. That delegation proposed, therefore, that the Assembly should establish an intersessional Working Group to examine whether the international system still met the expectations of the international community.
- 5.3.2 Several delegations supported the French proposal and stressed that any review of the international regime of liability and compensation should be carried out from within the system in order to ensure that any future solutions were global in nature and not regional.
- 5.3.3 Other delegations considered that a review of the international regime was not an urgent matter and were of the view that, in any event, a working group would need terms of reference for any deliberations. It was nevertheless acknowledged that, as part of the development of the system, it would be appropriate to carry out a step by step review of how it could be improved.

5.3.4 It was stressed that IMO should be closely involved in any review process, as the 1992 Civil Liability and Fund Conventions had been adopted under the auspices of that Organization.

5.3.5 The Assembly agreed that it would be appropriate to consider whether, in the light of experience, the international compensation regime established under the 1992 Civil Liability Convention and the 1992 Fund Convention needed improvements in order to meet the needs of the international community. To this end the Assembly decided to establish an intersessional Working Group with the following mandate:

- (a) to hold a general preliminary exchange of views, without drawing any conclusions, concerning the need to improve the compensation regime provided by the 1992 Civil Liability Convention and the 1992 Fund Convention;
- (b) to draw up a list of issues which could merit further consideration in order to ensure that the compensation system meets the needs of society; and
- (c) to report to the Assembly at its 5th session, to be held in October 2000.

5.3.6 It was agreed that 1971 Fund Member States as well as States and Organisations which had observer status with the 1992 Fund should be invited to participate as observers.

5.3.7 The Assembly decided that the Working Group would meet on 6 July 2000 in connection with the session of the Executive Committee to be held during that week.

5.3.8 In the light of the difficulties which some delegations might face in attending the session in July, States and Organisations were invited to submit proposals to the Director by 1 June 2000 of any issues they wished to be included in the list referred to in paragraph (b) of the mandate. It was agreed that any such proposals would be included in the Working Group's list.

5.4 Relocation of the IOPC Funds' offices

5.4.1 The Director informed the Assembly that the relocation of the IOPC Funds' offices to Portland House, Stag Place, London, SW1E 5PN, was scheduled for the beginning of June 2000.

5.4.2 The Director also informed the Assembly that agreement had been reached between the United Kingdom Government and the Director concerning the Government's contribution to the relocation costs, that the Government had on 31 March 2000 transferred to the Funds £333 750 and that the Government had undertaken to pay consultants' and lawyers' fees totalling some £115 000.

5.4.3 The Assembly expressed its appreciation of the generous financial assistance given by the United Kingdom Government to the IOPC Funds in respect of the relocation.

5.5 Hearings of parliamentary committees in Member States

5.5.1 It was recalled that in the context of the *Sea Empress* incident the Director had been invited in 1996 by the Welsh Affairs Committee of the House of Commons in the United Kingdom to give oral evidence before the Committee. It was also recalled that the Director had informed that Committee that, in view of the particular status of the 1971 Fund as an intergovernmental organisation, he considered it inappropriate for the Director of the Fund to give evidence before a parliamentary committee in any Member State. It was further recalled that the Welsh Affairs Committee had accepted the Director's position.

5.5.2 The Director informed the Assembly that a Commission established by the French Senate had been given the task of examining a number of issues relating to the *Erika* incident and that the Commission had invited the Director to appear before it. He mentioned that he had informed the Commission that, for the reasons set out in paragraph 5.5.1 above, he did not consider it

appropriate for him to be heard by the Commission, but that he would be prepared to present a note to the Commission containing information on the international compensation regime. He stated that the Commission, through its rapporteur, had accepted the Director's position and had agreed to accept such a note.

- 5.5.3 The Director also mentioned that it was possible that he would be invited to be heard by a Commission, which had been established by the French Assemblée Nationale to make an investigation of various issues relating to the *Erika* incident. He stated that, if so invited, he intended to take the same position as in respect of the Senate Commission, and hoped that this position would be accepted also by the Assemblée Nationale's Commission. The Director also stated that he would be prepared to present a note to this latter Commission corresponding to the note referred to in paragraph 5.5.2 above.
- 5.5.4 The French delegation informed the Assembly that steps were being taken in order to find a solution which took account of the the different types of interests involved in this regard.

6 Adoption of the Record of Decisions

The draft Record of Decisions of the Assembly, as contained in document 92FUND/A/ES.4/WP.1, was adopted, subject to certain amendments.
