



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
5th extraordinary session
Agenda item 5

92FUND/A/ES.5/5
30 January 2001
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RECORD OF DECISIONS OF THE FIFTH EXTRAORDINARY SESSION OF THE ASSEMBLY

(held on 30 January 2001)

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

The Assembly adopted the Agenda as contained in document 92FUND/A/ES.5/1.

2 Examination of credentials

2.1 The following Member States were present:

Algeria	Greece	Poland
Australia	Ireland	Republic of Korea
Belgium	Italy	Singapore
Canada	Japan	Spain
China (Hong Kong Special Administrative Region)	Latvia	Sweden
Croatia	Liberia	United Arab Emirates
Cyprus	Malta	United Kingdom
Denmark	Marshall Islands	Uruguay
Finland	Mexico	Vanuatu
France	Netherlands	Venezuela
Germany	Norway	
	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:

Argentina	India	Russian Federation
Georgia	Morocco	Trinidad and Tobago

Other States

Cameroon	Côte d'Ivoire	Portugal
Chile	Malaysia	Turkey
Colombia		

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

Intergovernmental organisations:

European Commission
International Oil Pollution Compensation Fund 1971
International Maritime Organization

International non-governmental organisations:

Comité Maritime International
International Chamber of Shipping
International Group of P&I Clubs
International Tanker Owners Pollution Federation Ltd
International Union for the Conservation of Nature and Natural Resources
Oil Companies International Marine Forum

3 European Commission proposal for a Regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures

3.1 The Assembly recalled that at its 4th extraordinary session held in April 2000, in connection with its consideration of a White Paper on environmental liability prepared by the Commission of the European Community, it had 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 1992 Fund, as appropriate (document 92FUND/A/ES.4/7, paragraph 5.1.3).

- 3.2 The Director introduced a document regarding a proposal by the European Commission for a Regulation on the establishment of a fund for the compensation of oil pollution damage in European waters (document 92FUND/A/ES.5/2). He stated that in view of the fact that the proposed Regulation was intended to supplement the international compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention, he had considered that the Assembly should be informed of the proposal at the earliest opportunity.
- 3.3 The Chairman stated that he had discussed the matter with the Director and had agreed that the Assembly, and in particular the 1992 Fund Member States which were not Members of the European Union, should be informed of the European Commission's proposal and that an extraordinary Assembly session in connection with the Executive Committee's 11th session would be appropriate.
- 3.4 The Assembly noted that the proposed Regulation would set up a fund (the COPE Fund) to provide supplementary compensation for oil spills in Member States of the European Union. It was further noted that under the proposed Regulation the amount of compensation available would be 1 000 million Euros (£628 million), including the amount payable under the 1992 Civil Liability Convention and the 1992 Fund Convention, ie 135 million SDR (£118 million or 188 million Euros). The Assembly also noted that under the proposal the COPE Fund would only be activated when a spill occurred in European Union waters when the total claims exceeded, or threatened to exceed, the maximum amount of compensation available from the 1992 Fund. It noted that, according to the proposal, victims of an oil spill would receive full compensation as soon as their claims had been approved by the 1992 Fund and that, once the total costs were known, there would be a bilateral financial settlement between the 1992 Fund and the COPE Fund. It was also noted that the COPE Fund would be financed by European oil receivers according to procedures similar to those of contributions to the 1992 Fund.
- 3.5 The Assembly further noted that the proposed Regulation required individual Member States of the European Union to implement legislation introducing financial penalties for grossly negligent behaviour of any person involved in the transport of oil at sea.
- 3.6 The representative of the observer delegation of the European Commission gave some additional information on the proposed Regulation and the procedures which would be followed in the examination of this proposal by the European Parliament and the Council of Ministers.
- 3.7 A large number of delegations expressed their gratitude to the Director for having submitted document 92FUND/A/ES.5/2 and for the information given on the proposal by the Commission of the European Union. In particular a number of States which are not members of the European Union emphasised the value of their being adequately informed of the European Commission proposal which was considered relevant to the functioning of the IOPC Fund.
- 3.8 During the discussion all delegations which intervened stressed the importance of the international regime established by the 1992 Conventions and emphasised the importance of any action within the European Union not working to the detriment of the international regime. All these delegations expressed the view that it was important that any development in the field of liability and compensation for oil pollution damage should be carried out on a global level.
- 3.9 The delegations of the European Union Member States which intervened stated their strong support for the IOPC Fund regime and stressed the importance of the work being carried out by the international Working Group set up by the Assembly. They also expressed the view that any action within the European Union should not be detrimental to the global regime. It was pointed out, however, that the proposed Regulation had not yet been considered by the Member States of the European Union and that examination of the proposal would commence shortly.

- 3.10 Those delegations of the States not members of the European Union which intervened also expressed their strong support for the international regime. It was pointed out that any compensation system created within the European Union was totally separate from the international regime. Concern was expressed that the proposed European Union Regulation could have negative consequences for the global regime, and that it was important therefore that any such system should be fully compatible with the global regime. It was suggested by some of these delegations that if the proposed COPE Fund were to be established this might reduce the need for an increase of the maximum amount of compensation available under the global regime.
- 3.11 In a statement the Italian delegation pointed out that the proposed Regulation under consideration was nothing more than a proposal put forward by the Commission and that the proposal had not yet been examined either by the European Parliament or by the Council of Ministers of the Member States. That delegation pointed out that it was a document which could be adopted in its present form, could be adopted in a revised version or not be adopted at all. Therefore the Italian delegation expressed the view that a debate in the Assembly on this document was not only untimely, but was in a way an interference in the decision-making process of the European Union on a matter with very delicate implications. For this reason, the Italian delegation suggested that the proposal should be debated if and when a decision had been taken within the European Union, which meant that the Italian delegation was not in a position at this stage to make any comment on the substance of the matter.
- 3.12 The Japanese delegation made the following statement:

The issue under consideration is the COPE Fund, not the IOPC Fund regime itself. This delegation understands that the COPE Fund is a regional scheme, and in nature it is totally separate from the IOPC Fund. In this sense, this delegation considers that it is appropriate for the Assembly to take the provided information at this stage.

In the discussion of the *Erika* incident in the Executive Committee, the criticism of the 1992 Fund was noted. It is recognised that the IOPC Fund's policy of requiring claimants to substantiate their losses by supporting documents or other evidence has been criticised, and that it has been maintained that the criteria applied by the IOPC Fund are too strict. This is a point of concern to this delegation. If the COPE Fund is set up the question would be whether claims with insufficient supporting documents or other evidence could be approved by the IOPC Fund with the support of the COPE Fund with its higher limit of compensation and whether the Secretariat of the IOPC Fund would have to make only a rough assessment of each claim. This delegation understands that the theoretical answers to these questions are NO, because the IOPC Fund and the COPE Fund are different and separate schemes, and the IOPC Fund is operated under an international Convention. But, in reality, is there clearly no need to worry about easy compensation or rough assessment? If the answer is Yes, that would be acceptable to this delegation. But it should be emphasised that whatever contents the COPE Fund regime may have, the IOPC Fund is subject to the Convention, and the Secretariat is expected to make a thorough examination of each claim based on the Convention and the agreed practice. This delegation will continue to watch closely the IOPC Fund activity from this point of view.

With regard to the IOPC Fund regime the Japanese delegation would like to state that Japan has an open mind as regards improving the international compensation regime and will participate in the discussions to this effect in a constructive and co-operative manner. But it should be pointed out that the COPE Fund scheme has no implication for the discussion concerning the IOPC Fund regime. The discussion on the international regime has to take place in the 1992 Fund and the results have to be agreed in the Fund's bodies. It is understood that the

discussion will start in the intersessional Working Group to be held in March 2001.

- 3.13 The Director was instructed to continue to provide information to the Assembly on any developments within the European Union relating to the proposed Regulation, whenever appropriate. He was also instructed to provide factual information to the bodies of the European Union on the international compensation regime so as to enable those bodies to ensure that any measures taken within the Union would not be detrimental to the global compensation system.

4 Any other business

4.1 IOPC Funds' website

The Director informed the Assembly of recent developments which had taken place to improve the Funds' website and stated that work to this effect would continue.

4.2 Access to documents on the Internet

- 4.2.1 The Director introduced document 92FUND/A/ES.5/3 which explained the procedures to be used by delegates to access the IOPC Funds' documents on the Internet.
- 4.2.2 A number of delegations expressed their appreciation of the Funds having established a system for access to documents for IOPC Funds' meetings on the Internet.
- 4.2.3 The question was raised whether it was necessary to require passwords for access to documents. It was agreed that this issue should be considered at the October 2001 session of the IOPC Funds' governing bodies when experience would have been gained from the operation of the system.
- 4.2.4 In reply to a question, the Director stated that consideration would be given to adding the Records of Decisions of all previous IOPC Funds' meetings on the Internet, but that it would not be cost-effective to add all other documents from previous meetings.
- 4.2.5 It was noted that it was not intended that the system should replace the distribution of documents by mail, although Member States as well as States and Organisations having observer status might wish to take the opportunity to review the number of copies of documents which they currently receive.

4.3 Status of Conventions

- 4.3.1 The Director presented document 92FUND/A/ES.5/4 regarding the current status of the 1992 Fund Convention. It was noted that Djibouti had deposited an instrument of accession to that Convention on 8 January 2001, but had not denounced the 1971 Fund Convention at the same time. It was also noted that Papua New Guinea had denounced the 1969 Civil Liability Convention and the 1971 Fund Convention and acceded to the 1992 Protocols thereto on 23 January 2001.
- 4.3.2 The Assembly noted that there were at present 52 Members of the 1992 Fund and that a further 12 States had deposited instruments of accession to the 1992 Conventions.

5 Adoption of the Record of Decisions

The draft Record of Decisions of the Assembly, as contained in document 92FUND/A/ES.5/WP.1, was adopted, subject to certain amendments.
