



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
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Agenda item 26

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UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT

Note by the Director

Introduction

1 By Resolution 44/228, adopted on 22 December 1989, the General Assembly of the United Nations decided to convene a United Nations Conference on Environment and Development of two weeks' duration and with the highest possible level of participation. The Conference took place in Rio de Janeiro (Brazil) from 3 to 14 June 1992. The IOPC Fund was invited to participate in the Conference as an observer.

2 The Conference had been prepared by a Preparatory Committee which held four sessions, the last one in New York from 2 March to 3 April 1992. The IOPC Fund was also invited to participate in the work of the last session of the Preparatory Committee.

Preparatory Committee

3 The Legal Officer represented the IOPC Fund at the last session of the Preparatory Committee.

4 At that session, the IOPC Fund circulated a document on Liability and Compensation for Oil Pollution Damage, containing a brief description of the system of compensation established by the Civil Liability Convention and the Fund Convention and setting out the advantages for a State of being a Member of the IOPC Fund.

United Nations Conference

5 The United Nations Conference in Rio de Janeiro was attended by 181 States, the European Community and a number of inter-governmental and non-governmental organisations. During the last

two days of the Conference, a summit meeting (the Earth Summit) was held, at which Heads of States and Governments from some 120 States participated.

6 The Director represented the IOPC Fund at the Conference. He made a statement in the Plenary on behalf of the IOPC Fund. The text of this statement is reproduced at the Annex to this document.

7 Two conventions were opened for signature at the Conference: the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity. Neither of these Conventions are of direct relevance for the IOPC Fund.

8 The Conference adopted two documents, the "Rio Declaration on Environment and Development" and "Agenda 21". The Rio Declaration contains 27 principles which are fundamental to achieving environmental sustainable development. Agenda 21 (a document of some 480 pages) is a comprehensive plan of action for the global community in the environmental field extending to the next century.

9 The document of main interest to the IOPC Fund is Agenda 21 which deals, inter alia, with marine environment protection under the heading of "Prevention, reduction and control of degradation of the marine environment from sea-based activities". States should support wider ratification and implementation of relevant shipping conventions and protocols. Special mention is made of the Convention on Oil Pollution Preparedness, Response and Co-operation. Under Agenda 21, States should also support the on-going activity within IMO regarding the development of an international regime governing transportation of hazardous and noxious substances carried by ships and should further consider whether compensation funds similar to the one established under the Fund Convention would be appropriate in respect of pollution damage caused by substances other than oil.

10 In Agenda 21 it is proposed that a new body, a Commission on Sustainable Development, be established within the framework of the United Nations to oversee the implementation of Agenda 21; the Commission should report to the Economic and Social Council (ECOSOC) of the United Nations. This proposal will be considered by the General Assembly of the United Nations at its next session.

Action to be Taken by the Assembly

11 The Assembly is invited to take note of the information contained in this document.

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ANNEX

**UNITED NATIONS CONFERENCE
ON ENVIRONMENT AND DEVELOPMENT**

Statement by

Mr Måns Jacobsson

Director

International Oil Pollution Compensation Fund

Mr President, Mr Secretary-General, Excellencies, Distinguished Delegates, Ladies and Gentlemen

Let me first echo the previous speakers in expressing to the Brazilian Government my admiration for the excellent organisation of this enormous Conference, and to the Secretary-General and his staff for the magnificent preparation which they have carried out.

Having listened to the statements of the previous speakers addressing great themes of vital importance for the future of mankind, I feel reluctant to take the floor. As Executive Head of a very small Organisation, I can only deal with questions which in this greater context may seem trivial and unimportant. Nevertheless, I think it may be interesting to see that, in the experience of the Organisation that I represent, international co-operation in environmental matters can work if the commitment is there.

An important item on the Agenda of the Conference is that dealing with the protection of the marine environment against pollution from various sources, including ship-related pollution, ie pollution caused by the release from ships of oil or other hazardous and noxious substances.

It is obvious that the main task facing the international community is to adopt appropriate measures for preventing pollution from ships altogether. Unfortunately, as we all know, this will not be possible. This is so, independent of the quality of construction and maintenance of the ships, the quality and training of the crews and the content of international and national law. Accidents will always happen. The grave economic consequences of major disasters exceed the financial resources of many States and therefore require the spreading of risks on a worldwide basis.

Once an incident causing pollution occurs the main task for the authorities and private interests involved is that of minimising the damage and restoring the polluted area. A question of considerable importance would then often be: who should pay the bill? Or in legal terminology: who is liable to pay compensation? This is particularly so in respect of developing countries, which often lack human, technical and financial resources to combat pollution of the seas.

So far, the international community has only adopted treaties dealing with compensation for one special kind of pollution of the oceans, namely pollution caused by spills of persistent oil from laden tankers. As regards this kind of damage, two treaties have been adopted under the auspices of the International Maritime Organization (IMO): the 1969 Civil Liability Convention and the 1971 Fund Convention. The question is whether these treaties have contributed to the protection of the marine environment, and whether they could serve as examples when solutions are sought in respect of other kinds of pollution.

The Civil Liability Convention deals with the liability of shipowners for oil pollution. The Fund Convention provides additional compensation when the compensation paid by the shipowner is insufficient. The International Oil Pollution Compensation Fund (IOPC Fund) was established to administer the regime of compensation created by the Fund Convention.

The IOPC Fund pays compensation for expenses incurred for clean-up operations at sea or on the shore. The expenses may be incurred by governments, government agencies, local authorities or private companies. Compensation is paid for reasonable costs for cleaning or replacing contaminated property, such as fishing boats, fishing gear, beaches and piers. Economic loss suffered by those who depend directly for their livelihood on earnings from coastal or sea-related activities is also recoverable, eg loss of earnings suffered by fishermen or by hoteliers and restaurateurs at seaside resorts.

The compensation payable by the IOPC Fund in respect of any one incident is limited to approximately US\$85 million, including the sum actually paid by the shipowner. It may not be enough to cover the worst scenarios, but there have only been a couple of cases in which the aggregate amount of the accepted claims for compensation has exceeded that amount.

The payments of compensation made by the IOPC Fund are financed by contributions levied on persons in Member States who have received certain kinds of oil after sea transport. The assessment of contributions is based on reports on oil receipts in respect of individual contributors. The reports are submitted by governments of Member States, but the contributions are paid by the individual contributors directly to the IOPC Fund. Governments have no responsibility for these payments, unless they have voluntarily taken on such responsibility.

It should be noted that of the 1991 contributions, over 90% were paid by the oil industries in ten OECD Member States. Most developing countries pay very low contributions or no contributions at all, since they do not receive oil in large quantities.

When a major incident occurs, it is vital that neighbouring States, or indeed all States, are prepared to give assistance to the State in which pollution is caused, so as to facilitate the clean-up. It is also important that there exists a system which enables States giving such assistance to recover their costs. The legal situation in respect of the reimbursement of the costs for such assistance is clear if the requesting State is Party to the Fund Convention. The requested State would then know that its costs for rendering assistance would be reimbursed. Experience shows that assistance will often be rendered more rapidly if the State requesting assistance is party to the Fund Convention.

It is obvious that prevention is better than cure. However, in the less than perfect world in which we live, shipping and related activities will result in incidents causing pollution. It is therefore in the interest of all countries – developed and developing – that there are adequate international regimes governing questions of liability and that compensation will actually be paid rapidly to victims. If this is so, States and other parties involved will have the financial resources to clean up after a spill and restore the marine environment, in the interest of the international community and individuals alike.

The system set up under the Fund Convention has worked remarkably well. This is due to the commitment shown by governments, shipping interests, insurers and the oil industry. For this reason, it may be worth considering whether similar regimes of compensation would be appropriate also for other kinds of pollution of the marine environment. International co-operation in environmental matters can work.

Thank you, Mr President.
