



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
15th session
Agenda item 30

FUND/A.15/28
9 October 1992

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RECORD OF DECISIONS OF THE FIFTEENTH SESSION OF THE ASSEMBLY

(held from 6 to 9 October 1992)

Opening of the Session

The 15th session of the Assembly was opened by Mr J Bredholt (Denmark), in his capacity as representative of the delegation from which the Chairman of the previous session was elected.

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document FUND/A.15/1.

2 Election of the Chairman and Two Vice-Chairmen

The Assembly elected the following delegates to hold office until the next regular session of the Assembly:

Chairman:	Mr J Bredholt (Denmark)
First Vice-Chairman:	Professor H Tanikawa (Japan)
Second Vice-Chairman:	Mr A Al-Yagout (Kuwait)

3 Examination of Credentials

The following Contracting States were present:

Algeria	Kuwait
Bahamas	Liberia
Canada	Monaco
Côte d'Ivoire	Netherlands
Cyprus	Nigeria
Denmark	Norway
Finland	Poland
France	Russian Federation
Germany	Spain
Ghana	Sweden
Greece	Syrian Arab Republic
India	United Kingdom
Indonesia	Venezuela
Italy	Yugoslavia, Federal Republic of (Serbia and Montenegro)
Japan	

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

The Assembly noted that Brunei Darussalam had deposited its instrument of accession to the Fund Convention on 29 September 1992 and that the Convention will enter into force in respect of Brunei Darussalam on 28 December 1992. The Director informed the Assembly that, after consultation with the Chairman, he had invited Brunei Darussalam to send observers to the present session of the Assembly, pursuant to Rule 4 of the Rules of Procedure of the Assembly.

The Assembly decided to grant observer status to Colombia, Ecuador, Egypt, Panama and the Philippines, pursuant to requests set out in documents FUND/A.15/25, FUND/A.15/25/Add.1 and FUND/A.15/25/Add.2.

The following non-Contracting States were represented as observers:

Australia	Egypt
Belgium	Mexico
Brazil	Panama
Chile	Philippines
China	Republic of Korea
Colombia	United States
Ecuador	

The following inter-governmental and international non-governmental organisations participated as observers:

International Maritime Organization (IMO)
Comité Maritime International (CMI)
Cristal Ltd
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P & I Clubs
International Tanker Owners Pollution Federation Ltd (ITOPF)
Oil Companies International Marine Forum (OCIMF)

4 Report of the Director

4.1 The Director introduced the report on the activities of the IOPC Fund since the 14th session of the Assembly, contained in document FUND/A.15/2.

4.2 The Assembly expressed its gratitude to the Director and the other members of the Secretariat for the efficient way in which they administered the IOPC Fund. In particular, it thanked the Legal Officer, Mr Ryoichi Sonoda, who would be leaving the IOPC Fund Secretariat before the 16th session of the Assembly to take up a post in his home country, for his great contribution to the activities of the IOPC Fund.

4.3 The continued growth of the membership of the IOPC Fund was noted by the Assembly with satisfaction. The Director was instructed to continue his efforts to increase the number of Member States.

4.4 The Assembly congratulated the Director on the IOPC Fund's 1991 Annual Report which contained an instructive presentation of the activities of the Organisation.

4.5 The Assembly noted the concerns expressed by the Director relating to the failure of some Member States to submit their reports on contributing oil receipts. It agreed with the Director that the non-submission of these reports constituted a considerable problem. The Assembly emphasised that, if the reports on contributing oil are not submitted to the IOPC Fund, the Director is unable to issue invoices for the contributions in respect of the State concerned, and the system of levying contributions will not function in an equitable manner. For these reasons, the Assembly stressed the importance which these reports have for the functioning of the IOPC Fund and invited those States which had not yet done so to submit their reports as soon as possible.

5 Report on Investments

The Assembly took note of the Director's report on investments contained in document FUND/A.15/3.

6 Financial Statements and Auditor's Report and Opinion

6.1 The Director introduced document FUND/A.15/4 containing the Financial Statements of the IOPC Fund for the period ended 31 December 1991 and the External Auditor's Report and Opinion thereon. A representative of the External Auditor introduced the Auditor's Report and Opinion.

6.2 The Assembly noted with appreciation the External Auditor's opinion contained in Annex III to document FUND/A.15/4. In addition, the Assembly took note of the External Auditor's amendment of the structure and content of his Report to bring it into line with the most recent developments of the Panel of External Auditors of the United Nations, the specialised agencies and the International Atomic Energy Authority.

6.3 The Assembly approved the accounts of the IOPC Fund for the financial period 1 January to 31 December 1991.

7 Report on Contributions

The Assembly took note of the Director's report on contributions contained in documents FUND/A.15/5 and FUND/A.15/5/Add.1. It noted that only very small amounts of contributions were outstanding in respect of previous years and that 97% of the 1991 annual contributions, due by 1 February 1992, had been paid. The Assembly expressed satisfaction with the situation regarding the payment of contributions.

8 Reports of the Executive Committee on its 29th, 30th, 31st and 32nd Sessions

8.1 The Chairman of the Executive Committee, Dr R Renger (Germany), informed the Assembly of the work of the Committee during its 29th, 30th, 31st and 32nd sessions and reported to the Assembly the decisions taken by the Committee at these sessions (documents FUND/EXC.29/2, FUND/EXC.30/5, FUND/EXC.31/7 and FUND/EXC.32/8). The Assembly approved the reports of the Executive Committee.

8.2 The Chairman expressed the gratitude of the Assembly to the Chairman of the Executive Committee for the work of the Committee achieved under his Chairmanship.

8.3 The Assembly noted the decision rendered on 14 March 1992 by the judge of the Court of first instance in Genoa who is in charge of the limitation proceedings in the HAVEN case; under this decision, the maximum amount payable by the IOPC Fund pursuant to Articles 4.4 and 4.6 of the Fund Convention should be calculated by the application of the free market value of gold, which gives an amount of Lit 771 397 947 400 (£350 million) (including the amount paid by the shipowner under the Civil Liability Convention), instead of Lit 102 864 000 000 (£47 million), as maintained by the IOPC Fund, calculated on the basis of the Special Drawing Right (SDR) of the International Monetary Fund. The Assembly shared the grave concern expressed by the Executive Committee at its 31st session as regards the consequences of the decision rendered by the judge for the future of the international regime of liability and compensation established by the Civil Liability Convention and the Fund Convention. It agreed with the view expressed in the pleadings presented by the IOPC Fund that the universally accepted interpretation of the Fund Convention was that the limit of the IOPC Fund's cover should be determined by using the SDR. The Assembly noted that, at the 31st session of the Executive Committee, the Italian delegation had stated that it did not take any position on this point.

8.4 The Assembly took note of the informal discussions which had been held in September 1992 between representatives of the Italian Government and the technical experts appointed by the IOPC Fund, the shipowner and the UK Club with a view to establishing which claims constitute duplications and assessing the reasonableness of the amounts in respect of various items claimed. The Assembly noted that the Director stressed the importance that these discussions continued and an agreement be reached as to the quantum of those items of the Italian Government's claim which related to clean-up operations and preventive measures. The Italian delegation agreed with the Director that the discussions held so far had been very useful, and shared the Director's view that these discussions should continue.

8.5 The Assembly noted with regret that the IOPC Fund would not be able in this case to follow the established policy of providing rapid payment to victims, in view of the complexity of the case and the very high aggregate amount of the claims. The Assembly expressed its concern about the hardship that this might cause individuals and small businesses in particular.

9 Election of Members of the Executive Committee

The Assembly elected the following Contracting States as members of the Executive Committee:

Elected under
Article 22.2(b) of
the Fund Convention

Canada
Germany
India
Japan
Netherlands
Norway
Spain

Elected under
Article 22.2(a) of
the Fund Convention

Algeria
Ghana
Kuwait
Liberia
Nigeria
Poland
Russian Federation
Venezuela

10 Appointment of Substitute Members of the Appeals Board

The Assembly appointed Mr E Conte (Italy) and Mr Y Ono (Japan) to replace Mr S Mittiga (Italy) and Mr S Kanazawa (Japan), respectively, as substitute members of the Appeals Board, until the 16th session of the Assembly.

11 Lease of IOPC Fund's Offices

11.1 The Director introduced document FUND/A.15/8 dealing with the lease of the IOPC Fund's offices in the IMO headquarters building.

11.2 The Assembly took note of the fact that an agreement had been reached between the Secretary-General of IMO and the Director to extend, for a period of ten years, the IOPC Fund's lease of the offices at present occupied by the Fund in the IMO building, which will expire on 31 October 1992, and that this agreement was subject to approval by the IOPC Fund Assembly and the United Kingdom Government. It noted with satisfaction that the IOPC Fund had been given an option to obtain two further office rooms adjacent to the rooms at present occupied by the Fund, and that the Secretary-General had undertaken to use his best endeavours to provide the IOPC Fund with further office space in the building, should the need arise.

11.3 The Assembly approved the agreement between the Secretary-General of IMO and the Director concerning the extension of the lease of the IOPC Fund's offices in the IMO building from 1 November 1992 to 31 October 2002 and noted that this extension would be confirmed by a formal exchange of letters between the Secretary-General and the Director as soon as the United Kingdom Government had given its approval to this agreement.

12 Budget 1993

The Assembly adopted the budget appropriations for 1993 as proposed by the Director in the Annex to document FUND/A.15/9, with a total expenditure of £776 200. In addition, the Assembly decided to fix the Director's representation allowance at US\$9 000 from 1 January 1993.

13 Increase of the Working Capital

The Assembly agreed with the Director's proposal to maintain the working capital of the IOPC Fund at £6 million, as proposed by the Director in document FUND/A.15/10.

14 Assessment of Annual Contributions

14.1 The Director introduced document FUND/A.15/11 which contained proposals for the levy of 1992 annual contributions.

14.2 The Assembly decided not to levy any 1992 annual contributions to the General Fund, pursuant to Article 12.2(a) of the Fund Convention.

14.3 As regards the Director's proposal for the levy of £15 million in 1992 annual contributions to the HAVEN Major Claims Fund, it was noted that, as set out in paragraph 8.3 above, in the IOPC Fund's view the maximum amount available under the Civil Liability Convention and the Fund Convention was 900 million (gold) francs corresponding to 60 million SDR (£47 million) and that, consequently, the total amount payable by the IOPC Fund in respect of this incident would be in the region of £43 million. It was also noted that the Assembly had decided, at its 14th session, to levy £15 million to this Major Claims Fund, payable by 1 February 1992. During the discussion of this issue it was stated that, although it was likely that there would only be limited payments by the IOPC Fund

during 1993, it would nevertheless, from the point of view of the contributors, be advantageous to spread the financial burden as a result of this incident over several years. It was considered, on the other hand, that since it might be several years before major payments of compensation were to be made, the IOPC Fund should take a prudent approach as regards the levying of contributions. After considering the various aspects of this issue, it was agreed that a 1992 levy of £10 million to the HAVEN Major Claims Fund would be appropriate.

14.4 In order to enable the IOPC Fund to meet payments in the relevant years for the satisfaction of claims for compensation under Article 4 and for indemnification under Article 5 of the Fund Convention arising out of the HAVEN and VOLGONEFT 263 incidents, to the extent that the aggregate amount of the payments made by the Fund in respect of the relevant incident exceeds 15 million (gold) francs, the Assembly decided, pursuant to Article 12.2(b) of the Fund Convention, to raise 1992 annual contributions, payable by 1 February 1993, as follows:

- (a) a second levy of £10 million to the HAVEN Major Claims Fund; and
- (b) a levy of £950 000 to the VOLGONEFT 263 Major Claims Fund.

14.5 It was noted that, based on the relevant year's reports on contributing oil receipts, the levies decided by the Assembly would correspond to a contribution per tonne of contributing oil of approximately £0.0010556 in respect of the VOLGONEFT 263 Major Claims Fund and £0.0106450 in respect of the HAVEN Major Claims Fund.

14.6 The Assembly decided to amalgamate the BRADY MARIA and THUNTANK 5 Major Claims Funds. However, it decided to postpone any decision in respect of the surplus on these Major Claims Funds until the 16th session of the Assembly, as further claims in respect of the THUNTANK 5 incident could not yet be ruled out.

14.7 The Assembly took note of the Director's position that it would be premature to levy any contributions to any Major Claims Fund in respect of the PATMOS, VISTABELLA or AGIP ABRUZZO incidents and also noted the situation in respect of the KASUGA MARU N°1 and RIO ORINOCO Major Claims Funds.

15 Review of Investment Policy

15.1 The Assembly recalled that, in view of certain events in the London banking market, it had at its 14th session instructed the Director to examine the IOPC Fund's investment policy, in consultation with the External Auditor.

15.2 The Director introduced document FUND/A.15/12 containing an examination of the IOPC Fund's investment policy which he had carried out in consultation with the External Auditor. The External Auditor's representative presented his report on the examination of the IOPC Fund's investment policy and procedures, which was reproduced in the Annex to document FUND/A.15/12.

15.3 During the discussions it was emphasised that the IOPC Fund was not an investment bank. The point was made that, in view of the large amounts which are at present held by the IOPC Fund, it would be necessary to ensure that there are adequate procedures for investing the IOPC Fund's assets and for controlling the management of these assets. The question was raised whether, in view of the expanding activities of the IOPC Fund, in particular in respect of the size of its investments, it would not be appropriate to consider increasing the resources of the Secretariat to handle these matters. It was considered that a study should be made as to whether a special body should be established which could advise the Director on investment matters. It was also stated that the Assembly should regularly examine the IOPC Fund's investment policy and give the Director such instructions in this field as it may deem appropriate.

15.4 The Assembly considered, in particular, the types of investments which the IOPC Fund should make, which kinds of institutions should be used for investment purposes, the extent to which investments should be made in currencies other than pounds sterling, the maximum investment in any one institution, the maximum period of investments and the internal procedures of the Fund relating to investments.

15.5 The Assembly made the following decisions on these points:

- (a) the IOPC Fund should not, at least for the time being, broaden its investment policy beyond deposits and bank bills;
- (b) the IOPC Fund should maintain, at least for the time being, its policy of investing only with banks, building societies and discount houses;
- (c) the Director should retain the possibility of keeping assets in any currency required to meet payments of claims arising out of a particular incident which have been settled or are likely to be settled in that currency in the near future; he should also retain the possibility of buying currencies other than pounds sterling through forward contracts or through options, to cover payments of such claims;
- (d) as regards incidents which have given rise to substantial claims against the IOPC Fund, significant investments in the relevant currency at an early stage to meet such claims should require prior approval by the Assembly;
- (e) the normal limit for investment in any one institution should be 25% of the IOPC Fund's total assets, provided however that investments with any one institution should not normally exceed £4 million; and
- (f) the maximum period for investments should be maintained at one year.

15.6 In view of the decisions set out in paragraph 15.5, the Assembly decided to amend Financial Regulation 7.1 to read as follows:

The assets of the Fund shall be invested by the Director in accordance with Internal Regulation 10.2 and the following principles:

- (a) the Fund's assets shall be held in pounds sterling or, if the Director considers it appropriate, in the currencies required to meet claims arising out of a specific incident which have been settled or are likely to be settled in the near future. Subject to prior approval by the Assembly, investments may also be made in currencies other than pounds sterling to meet payments in respect of a particular incident which has given rise to significant claims against the Fund;
- (b) the assets shall be placed on term deposit with banks or building societies enjoying a high reputation and standing in the financial community, or they shall be invested with discount houses which are members of the London Discount Market Association by the purchase of bank bills; the term of these investments shall in neither case exceed one year;
- (c) the maximum investment in any bank, building society or discount house shall not normally exceed 25% of the Fund's total assets, subject to a maximum of £4 million;
- (d) any exceptions to the normal limit in paragraph (c) shall be reported to the Assembly at its next meeting.

These principles shall be reviewed from time to time.

15.7 The Assembly instructed the Director to:

- (a) study further the question of the investment of the IOPC Fund's assets in currencies (including the European Currency Unit) other than pounds sterling;
- (b) examine, in consultation with the External Auditor, whether it would be appropriate for the IOPC Fund to set up a special body to advise the Director on investment matters and to consider the composition of such a body; and
- (c) consider whether the fact that the IOPC Fund will be holding significant amounts of money would necessitate any increase in the resources of the IOPC Fund Secretariat to deal with matters relating to the IOPC Fund's finances in general, and investment matters in particular.

and submit these matters to the Assembly for consideration at its 16th session.

15.8 The IOPC Fund's use of money brokers was noted by the Assembly. It was pointed out that money brokers should not be used for independent advice on investment matters.

15.9 The Assembly took note of the internal procedures applied by the IOPC Fund for investment purposes, the External Auditor's observations, proposals and recommendations as to these procedures, and the Director's intentions as to the formalisation and modification of these procedures. The Director was instructed to report any developments in respect of these procedures to the Assembly at its 16th session.

15.10 The Assembly noted the information given by the Director concerning the legal status of the assets of the Provident Fund and the investment of these assets. It instructed the Director to pursue his study of these issues and invited him to submit this matter for consideration by the Assembly at its 16th session.

15.11 The Director stated that, in the light of the discussions, he intended to carry out a general review of the IOPC Fund's Financial Regulations in order to establish if modifications should be made to meet the concerns expressed during the discussions, for example with regard to the relationship between the General Fund and Major Claims Funds, and to adapt these Regulations to the needs of the expanded activities of the Organisation.

15.12 The Assembly authorised the Director to exceed the appropriation for Consultants' Fees in the 1993 budget to the extent necessary to meet the fees incurred in connection with the studies of the issues referred to in paragraphs 15.7 and 15.10.

16 Independent Investigations by the IOPC Fund Into the Cause of Incidents

16.1 The Director introduced document FUND/A.15/13 containing a study requested by the Assembly at its 14th session as to whether it would be useful for the IOPC Fund to carry out its own independent investigations into the cause of incidents to enable the Fund to form an opinion at an early stage as to whether an incident was due to the fault or privity of the shipowner or whether there were any grounds for taking recourse action against third parties.

16.2 The Assembly agreed with the Director's conclusions that the IOPC Fund should continue with the flexible policy followed so far, ie to appoint legal and technical experts to carry out independent investigations into the cause of a particular incident involving the IOPC Fund in cases where the Director considers it is in the best interest of the Fund to do so.

16.3 During the discussion of this matter several delegations stressed the importance of the IOPC Fund being afforded the opportunity of becoming involved in the investigations carried out by the competent coastal or flag State into the cause of incidents and of the Fund being granted access as soon as possible to the results of any such investigations. The United Kingdom delegation stated that

the United Kingdom Government would be prepared to study this matter further, in consultation with other interested governments, and submit for consideration by the Assembly at its 16th session a draft Resolution dealing with this matter. The Assembly accepted with appreciation the United Kingdom's offer to carry out such a study.

17 Replacement of Instruments Enumerated In Article 5.3 of the Fund Convention

17.1 The Assembly decided, in accordance with Article 5.4 of the Fund Convention, to include the July 1991 Amendments to MARPOL 73/78 in the list of instruments contained in Article 5.3(a) of the Fund Convention, with effect from 4 October 1993. The reference to the instrument listed in Article 5.3(a)(i) was amended to read:

- (i) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as amended by Resolutions MEPC.14(20) and MEPC.47(31) adopted by the Marine Environment Protection Committee of the International Maritime Organization on 7 September 1984 and 4 July 1991, respectively;

17.2 It was noted that the July 1991 amendments to MARPOL 73/78 covered by Resolution MEPC.47(31) included, inter alia, new regulations on oil pollution emergency plans which were closely linked with the provisions of the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation. It was pointed out that some States had laid down requirements for ships entering their waters to have oil pollution emergency plans different from those provided for in the 1991 Amendments to MARPOL 73/78.

17.3 The Assembly recognised that this situation may cause difficulties for shipowners. It was pointed out, however, that under Article 5.3 of the Fund Convention the competent court would decide whether and, if so, to what extent the IOPC Fund should be exonerated from its obligation to indemnify the shipowner if, as a result of the fault or privity of the owner, the incident or damage was caused wholly or partially by the ship's non-compliance with MARPOL 73/78 as amended by Resolution MEPC.47(31). In the view of the Assembly, the court would therefore be entitled to take into account the problems which the shipowners were facing, due to the differences in the requirements regarding oil pollution emergency plans in various countries.

17.4 As regards the Amendments to MARPOL 73/78 adopted in March 1992 by the Marine Environment Protection Committee of IMO by Resolutions MEPC.51(32) and MEPC.52(32), the Assembly considered that these Amendments were of an important character for the purpose of the prevention of oil pollution. However, the Assembly decided that it was premature to take a decision at the present session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the Fund Convention. In view of the importance of these Amendments, the Assembly expressed the hope that they would enter into force on 6 July 1993, pursuant to the tacit amendment procedure.

17.5 The Assembly decided not to include the April 1992 Amendments to SOLAS 74 adopted by the Maritime Safety Committee of IMO (Resolutions MSC.24(60) and MSC.26(60)) in the list of instruments contained in Article 5.3(c) of the Fund Convention, because they were not considered relevant for the purpose of Article 5.3 of the Convention.

18 International Conference on the Revision of the 1969 Civil Liability Convention and the 1971 Fund Convention

18.1 The Director introduced document FUND/A.15/15 which contained information on the International Conference to be held from 23 to 27 November 1992 under the auspices of IMO to consider the draft Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention, draft

Resolutions and a proposal for introducing in the Fund Convention, for a transitional period, a system setting a cap on contributions payable by oil receivers in any given State.

18.2 The Director informed the Assembly that he had submitted to IMO, on behalf of the IOPC Fund, a document containing information regarding the size of the tanker fleets of various States and the quantities of contributing oil received in certain States, so as to enable delegations participating at the International Conference to assess the entry into force provisions of the proposed Protocols. The Assembly noted that the Director intended to represent the IOPC Fund at the Conference and make such interventions as might be appropriate in order to explain the system of compensation administered by the IOPC Fund and, in particular, to give information to the Conference on the likelihood of the entry into force of the proposed new Protocols under various assumptions as to the ratifications of these Protocols.

19 **Publication of the Official Records of the 1984 International Conference on Liability and Compensation for Damage in Connection with the Carriage of Certain Substances by Sea**

19.1 The Assembly considered, on the basis of a document prepared by the Director (document FUND/A.15/16), whether and, if so, to what extent the IOPC Fund should give financial support towards the publication by IMO of the Official Records of the 1984 International Conference on Liability and Compensation for Damage in Connection with the Carriage of Certain Substances by Sea.

19.2 The Assembly shared the Director's view that publication of Official Records of international conferences were important and agreed therefore with the Director that the Official Records of the 1984 Conference should be published. The Assembly authorised the Director to offer to the Secretary-General of IMO that the IOPC Fund would pay the total cost of the publication of those parts of the Official Records of the 1984 Conference (both the English and French texts) which relate to the revision of the Civil Liability Convention and the Fund Convention. The Director was also instructed to discuss with the Secretary-General whether this publication could be made to include relevant documents relating to the 1992 International Conference on the Revision of the 1969 Civil Liability Convention and the 1971 Fund Convention. The Assembly requested the Director to discuss with the Secretary-General the number of copies that would be made available to the IOPC Fund free of charge for the Fund's internal use and for the use of Governments of Fund Member States.

20 **Definition of "Oil" in Article 1.5 of the Civil Liability Convention and of "Contributing Oil" in Article 1.3 of the Fund Convention**

20.1 The Director introduced document FUND/A.15/17 which dealt with the product *orimulsion*.

20.2 The Assembly expressed the view that *orimulsion* should be considered as "persistent oil" for the purpose of Article 1.5 of the Civil Liability Convention.

20.3 The Assembly decided that *orimulsion* should be considered as falling within the definition of "contributing oil" laid down in Article 1.3 of the Fund Convention. It was also decided that no allowance should be made for the water content in *orimulsion* in the assessment of contributions. It was furthermore agreed that the inclusion of *orimulsion* in the concept of "contributing oil" should not lead to any adjustment of the reported quantities of contributing oil received during 1991 or previous years.

20.4 It was agreed that the Director should seek clarification from the oil industry as to the correct nomenclature of the product known as *orimulsion*.

20.5 The Director was instructed by the Assembly to issue a revised list of contributing oil, in which the product referred to in paragraph 20.4 would be included, to feature on the reverse of the oil reporting form.

21 Interpretation of the Notion of "Received" in Article 10 of the Fund Convention

21.1 The Director introduced documents FUND/A.15/18 and FUND/A.15/18/Add.1 concerning the notion of "received" in Article 10 of the Fund Convention and, in particular, its application in respect of certain storage companies in the Netherlands.

21.2 The Assembly confirmed the position taken at its 1st extraordinary session as to the interpretation of the concept of "receiver" (document FUND/A.ES/1/13, paragraph 10, pages 7-8). In particular, the Assembly emphasised that, failing payment by persons reported other than the physical receivers, the physical receivers should ultimately be liable for contributions irrespective of whether the persons reported have their place of business or residence in a Member State or not. The Assembly also agreed with the Director that the storage companies in the Netherlands were liable to pay contributions in respect of any quantities actually received by them.

21.3 The Assembly noted with satisfaction that the Ministry of Economic Affairs of the Netherlands had rejected an appeal made by a Dutch storage company, which had been included in the reports of the Government of the Netherlands to the IOPC Fund as a receiver of contributing oil during 1990, requesting that it be decided that the company was not liable to pay contributions to the IOPC Fund since it should not be considered as a "receiver" of oil for the purpose of Article 10 of the Fund Convention. The Director was instructed to pursue the IOPC Fund's position if this company were to appeal against this decision to the Administrative Court.

21.4 The delegation of the Netherlands acknowledged that it recognised that the Dutch storage companies were facing a considerable economic problem, since they had difficulties in passing on the cost of contributions levied upon them to the ultimate receivers of the oil and that the contributions to the IOPC Fund represented a considerable share of the fees earned by these companies. This delegation stated that it would be interested in knowing whether similar problems had been encountered in other Member States and would be grateful for any information on this point from other delegations.

22 Levy of Contributions in Respect of Oil Receivers in the Former USSR

22.1 The Assembly considered, on the basis of a document submitted by the Director (document FUND/A.15/19), certain problems which had arisen with regard to the levy of contributions in respect of oil receivers in States which were formerly part of the Union of Soviet Socialist Republics (USSR).

22.2 It was noted that the Fund Convention entered into force in respect of the USSR on 15 September 1987. The Assembly took note of the fact that the Russian Federation had stated, in a note verbale dated 26 December 1991 to the Secretary-General of IMO, that the membership of the USSR in all conventions concluded within the framework of IMO would be continued by the Russian Federation and that the Russian Federation would maintain all rights and obligations of the USSR with IMO, including financial obligations. It was also noted that none of the other newly independent States which previously formed part of the USSR have made a similar declaration or submitted an instrument of ratification, accession or approval of the Fund Convention.

22.3 The Assembly noted the analysis made by the Director of the obligation to pay contributions to the IOPC Fund incumbent upon oil receivers in those parts of the former USSR which were not part of the Russian Federation, viz Azerbaijan, Georgia and Turkmenistan. Most delegations agreed with the analysis made by the Director. It was pointed out, however, that there was also another important aspect to be considered, ie whether in the case of an oil pollution incident compensation would be granted for oil pollution damage in the newly independent States (other than the Russian Federation) which were formerly part of the USSR. The Assembly noted the legal uncertainties that exist as to the position of these States in relation to the Civil Liability Convention and the Fund Convention, and consequently as to the applicability of these Conventions in respect of these States both as regards the obligation to pay contributions and as regards the right to compensation, although it was pointed out that any obligation to pay contributions which existed at the time of the dissolution

of the USSR remained unaffected. For this reason, the Assembly considered it inappropriate to draw any firm conclusions as to the above-mentioned obligations of the oil receivers in those three States and to give the Director instructions as regards the issuing of invoices to those oil receivers.

22.4 The Assembly instructed the Director to approach the Governments of the newly independent States (other than the Russian Federation) which were formerly part of the USSR, in particular the Governments of Azerbaijan, Georgia and Turkmenistan, in consultation with the Secretary-General of IMO, in order to establish the respective positions of the Governments of those States vis-à-vis the Fund Convention, and to report the results of these enquiries to the Assembly at its 16th session.

23 Refund of Indirect Taxes

23.1 The Director introduced document FUND/A.15/20 which dealt with difficulties encountered by the IOPC Fund in the application of Article 34.2 of the Fund Convention.

23.2 The Assembly agreed with the Director that work carried out by lawyers and other experts on behalf of the IOPC Fund in connection with incidents involving the Fund should be considered as fulfilling the criterion of "important work which is necessary for the exercise of its official activities", and that the Governments of Member States were thus under an obligation, pursuant to Article 34.2 of the Fund Convention, to take appropriate measures for the remission or refund of the amount of indirect taxes or sales taxes included in the cost of such services.

23.3 The Director was instructed to inform the Governments of States where the IOPC Fund has encountered problems regarding the application of Article 34.2 of the Fund Convention of the position taken by the Assembly and to request a refund of any amounts of indirect taxes or sales taxes paid by the IOPC Fund for services of the kind referred to in paragraph 23.2.

23.4 The Assembly invited the Director to examine the possibility of adopting a resolution clarifying the meaning of the notions of "substantial purchases" and "important work" in Article 34.2 of the Fund Convention and to submit this matter to the Assembly for consideration at its 16th session.

24 Certain Questions Relating to the Application of the Civil Liability Convention and the Fund Convention in Cases of Bareboat Charter

24.1 The Assembly took note of the information contained in document FUND/A.15/21 as to whether, in certain cases of bareboat charter, the actual owner or the bareboat charterer should be considered as the registered owner for the purpose of the provisions of the Civil Liability Convention relating to the issue of insurance certificates.

24.2 The Director was instructed to follow the further consideration of this issue within IMO.

25 Amendments to the Staff Rules

The Assembly took note of the amendments to the Staff Rules which had been issued by the Director, as set out in document FUND/A.15/22.

26 United Nations Conference on Environment and Development

The Assembly took note of the information contained in document FUND/A.15/23 concerning the United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro (Brazil) in June 1992.

27 Draft International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea

27.1 The Assembly took note of the information contained in document FUND/A.15/24 concerning the draft Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea.

27.2 The Assembly considered that the IOPC Fund should continue to participate in the on-going work of preparing the above-mentioned Convention so that the experience gained by the Fund in operating the system of liability and compensation for oil pollution damage would be brought to the attention of the IMO Legal Committee.

28 Date of Next Session

The Assembly decided to hold its next ordinary session during the week of 4 to 8 October 1993 in London.

29 Any Other Business

29.1 Application of the Contribution System to Certain Oil Receipts in Egypt

29.1.1 In its request for observer status with the IOPC Fund (document FUND/A.15/25), the Government of the Arab Republic of Egypt mentioned that it was considering accession to the Fund Convention but that it had some concern regarding the application of the contribution system laid down in the Fund Convention to the activities of the company operating the SUMED pipeline, which runs from the Gulf of Suez to the Mediterranean, and stated that it would be grateful if the IOPC Fund could look into this matter.

29.1.2 The Assembly invited the Director to examine the problem raised by the Government of Egypt, in consultation with that Government, and to submit the matter for consideration by the Assembly at its 16th session.

29.2 Transfers within the 1992 Budget

As proposed by the Director in document FUND/A.15/26, the Assembly authorised the Director to transfer within the 1992 budget:

- (a) to Chapter IV (Conferences and Travel) up to £18 000 from Chapter I (Personnel) to cover additional travel expenses; and
- (b) to Chapter V (Miscellaneous Expenditure) up to £2 900 from Chapter I (Personnel) to cover the increase in audit fee.

29.3 Supplementary Budgets

29.3.1 The Assembly approved a supplementary budget appropriation for 1992 of £25 670 in respect of Consultants' Fees, as proposed by the Director in document FUND/A.15/27.

29.3.2 The Assembly approved a supplementary budget appropriation of £100 000 for 1992 or 1993, as applicable, in respect of Printing and Publication, the funds to be used for meeting the cost of the publication of the Official Records of the 1984 International Conference on Liability and Compensation for Damage in Connection with the Carriage of Certain Substances by Sea and the relevant documents

relating to the 1992 International Conference on the Revision of the 1969 Civil Liability Convention and the 1971 Fund Convention, pursuant to the decision of the Assembly set out in paragraph 19.2 above (cf document FUND/A.15/27).

29.4 Translation of IOPC Fund Documents

29.4.1 It was noted that IMO had over the years provided excellent services to the IOPC Fund in respect of the translation of Fund documents, under an agreement concluded between the two Organisations, against the payment by the IOPC Fund of fees on an agreed basis.

29.4.2 The Director informed the Assembly that the greatly increased volume of documents and reports issued by the IOPC Fund in recent years had given rise to problems for IMO in providing a translation service. He proposed that he be authorised to discuss this matter with the Secretary-General of IMO in order to find a mutually acceptable solution to these problems.

29.4.3 The Assembly invited the Director to discuss this matter with the Secretary-General and authorised him to agree with the Secretary-General on such modifications of the present procedures for translating documents as would be appropriate and acceptable to both IMO and the IOPC Fund.

29.5 Acts of Piracy

One delegation referred to a recent case of piracy against an oil tanker and drew attention to the risk of the IOPC Fund being called upon to pay compensation as a result of such acts. The Assembly expressed its concern as regards the consequences of acts of piracy against such ships.

30 Adoption of the Report of the 15th Session

The draft report, as contained in documents FUND/A.15/WP.1, FUND/A.15/WP.1/Add.1 and FUND/A.15/WP.1/Add.2, was adopted, subject to some amendments.
