



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
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Agenda item 37

FUND/A.16/32
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RECORD OF DECISIONS OF THE SIXTEENTH SESSION OF THE ASSEMBLY

(held from 5 to 8 October 1993)

Opening of the Session

The 16th 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.16/1.

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	Monaco
Bahamas	Morocco
Cameroon	Netherlands
Canada	Nigeria
Côte d'Ivoire	Norway
Croatia	Oman
Denmark	Poland
Finland	Republic of Korea
France	Russian Federation
Germany	Slovenia
Greece	Spain
India	Sri Lanka
Indonesia	Sweden
Ireland	Syrian Arab Republic
Italy	Tunisia
Japan	United Kingdom
Kuwait	Venezuela
Liberia	

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 Sierra Leone had deposited its instrument of accession to the Fund Convention on 13 August 1993 and that the Convention would enter into force in respect of Sierra Leone on 11 November 1993.

The following non-Contracting States were represented as observers:

Belgium	Egypt
Brazil	Jamaica
Chile	Mexico
China	Panama
Colombia	Saudi Arabia
Ecuador	United States

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

International Maritime Organization (IMO)
 Comité Maritime International (CMI)
 Cristal Ltd
 Friends of the Earth International (FOEI)
 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 Grant of Observer Status

The Assembly decided to grant observer status to the Baltic Marine Environment Protection Commission (Helsinki Commission) and the Regional Marine Pollution Emergency Response Centre for

the Mediterranean Sea (REMPEC), pursuant to requests set out in documents FUND/A.16/2 and FUND/A.16/2/Add.1.

5 Report of the Director

5.1 The Director introduced the report on the activities of the IOPC Fund since the 15th session of the Assembly, contained in document FUND/A.16/3. In his presentation, the Director made reference to the achievements of the IOPC Fund during 15 years of operation and emphasised the contribution made by the Organisation to the development of international law relating to liability and compensation. He expressed the view that the continuing expansion of membership of the IOPC Fund had demonstrated that the international community had found the system of compensation created by the Civil Liability Convention and the Fund Convention a viable one, providing compensation to victims rapidly and at low cost.

5.2 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. It also thanked the staff in the local claims offices in La Coruña (Spain) and on Shetland (United Kingdom).

5.3 The Assembly welcomed Mr Hideo Osuga (Japan) and Miss Christine Peyre (France) who had joined the Secretariat of the IOPC Fund since the last session of the Assembly.

5.4 It was noted that several major oil pollution incidents which had occurred recently in IOPC Fund Member States had resulted in a very heavy workload on the Fund Secretariat. The Assembly acknowledged the need for strengthening the Secretariat's personnel resources.

5.5 The Assembly congratulated the Director on the IOPC Fund's 1992 Annual Report which contained an instructive presentation of the activities of the Organisation.

5.6 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.

5.7 The Assembly noted the concerns expressed by the Director relating to the continued 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.

5.8 During the discussions under this agenda item, it was generally considered that the IOPC Fund faced a number of difficult problems as a result of several major incidents involving the Fund, in particular as regards the admissibility of claims. It was stressed by several delegations that it was important that the IOPC Fund should continue to assess claims on the basis of technical considerations and endeavour to settle claims out of court.

6 Report on Investments

The Assembly took note of the Director's report on investments contained in document FUND/A.16/4.

7 Financial Statements and Auditor's Report and Opinion

7.1 The Director introduced document FUND/A.16/5 containing the Financial Statements of the IOPC Fund for the period ended 31 December 1992 and the External Auditor's Report and Opinion thereon. A representative of the External Auditor introduced the Auditor's Report and Opinion.

7.2 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document FUND/A.16/5.

7.3 The Assembly approved the accounts of the IOPC Fund for the financial period 1 January to 31 December 1992.

8 Report on Contributions

The Assembly took note of the Director's report on contributions contained in documents FUND/A.16/6 and FUND/A.16/6/Add.1. It noted that 97% of the 1992 annual contributions, due by 1 February 1993, had been paid, and that only comparatively small amounts of contributions were outstanding in respect of previous years. The Assembly expressed satisfaction with the situation regarding the payment of contributions.

9 Reports of the Executive Committee on its 33rd, 34th, 35th and 36th Sessions

9.1 The Chairman of the Executive Committee, Dr R Renger (Germany), informed the Assembly of the work of the Committee during its 33rd, 34th, 35th and 36th sessions and reported to the Assembly the decisions taken by the Committee at these sessions. The Assembly approved the reports of the Executive Committee.

9.2 The Chairman expressed the gratitude of the Assembly to the Chairman of the Executive Committee for the work of the Committee during the particularly busy period of his chairmanship.

10 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
France
Italy
Netherlands
Republic of Korea
Spain
United Kingdom

Elected under
Article 22.2(a) of
the Fund Convention

Côte d'Ivoire
Greece
Nigeria
Poland
Sri Lanka
Sweden
Tunisia
Venezuela

11 Appointment of Members and Substitute Members of the Appeals Board

The Assembly appointed the following members and substitute members of the Appeals Board, to hold office until the 18th session of the Assembly.

Members

Mr A Benguerah (Algeria)
Mr N R Meemeduma (Sri Lanka)
Mr F D Berman (United Kingdom)

Substitute Members

Mr N Schuldt (Germany)
Mr E Conte (Italy)
Mr Y Ono (Japan)

12 Supplementary Budget for 1993

The Assembly approved a supplementary budget appropriation for 1993 of £20 000 for the financing of the post of a translator in IMO.

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

The Assembly took note of the information contained in document FUND/A.16/10 concerning the outcome of the International Conference which, in November 1992, adopted Protocols modifying the 1969 Civil Liability Convention and the 1971 Fund Convention.

14 Preparations for the Entry Into Force of the 1992 Protocols Amending the 1969 Civil Liability Convention and the 1971 Fund Convention

14.1 Despite the uncertainty regarding predictions as to the date for the entry into force of the 1992 Protocols to the Civil Liability Convention and the Fund Convention, the Assembly instructed the Director to commence the preparations necessary for the entry into force of the 1992 Protocol to the Fund Convention, in particular as regards the administration of the organisation (the "1992 Fund") which would be established under that Protocol. The Assembly decided that a study should be made of the following issues, and the results reported to the Assembly at its 17th session:

- (a) the necessary documents setting out the framework for the operation of the "1992 Fund";
- (b) a Headquarters Agreement between the United Kingdom Government and the "1992 Fund";
- (c) an agreement with the International Maritime Organization (IMO) in respect of the "1992 Fund's" offices, if the offices of the two Funds were to remain in the IMO building, as well as an agreement with IMO concerning administrative co-operation between IMO and the "1992 Fund" along the lines applied in respect of the "1971 Fund";
- (d) the complexities which will exist during the transitional period while the 1969 Civil Liability Convention and the 1971 Fund Convention in their original versions (as amended by the 1976 Protocols) remain in force in parallel with the 1992 Protocols;
- (e) the relationship between the "1971 Fund" and the "1992 Fund" during the transitional period, eg in respect of the financial relations between the two organisations as regards their budgets and the levying of contributions;
- (f) the structure of the Secretariat of the two Funds;
- (g) the intergovernmental and international non-governmental organisations to be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies of the "1992 Fund";
- (h) how claims for compensation against the "1992 Fund" should be dealt with, in view of the fact that under the 1992 Protocol to the Fund Convention there will be no Executive Committee; and
- (i) the problems which will arise when the 1971 Fund Convention ceases to be in force, eg in respect of the position of the personnel employed by the "1971 Fund" at that date.

14.2 The Assembly agreed with the Director that it would be necessary to make use of consultants for part of this work. It decided therefore that an amount of £30 000 should be allocated in the 1994 budget for the use of consultants for this purpose.

14.3 In accordance with Resolution N°2 adopted by the International Conference which adopted the 1992 Protocols, the Assembly instructed the Director to make all possible efforts to encourage the early entry into force of the 1992 Protocol to the Fund Convention.

14.4 The Italian delegation stated that, in the view of the Italian Government, the 1992 Protocols to the Civil Liability Convention and the Fund Convention were unsatisfactory in several respects, in particular as regards the maximum amount of compensation and compensation for environmental damage. For this reason the Italian Government did not support the view that the Director should be instructed to encourage the early entry into force of the 1992 Protocol to the Fund Convention.

15 Budget 1994

15.1 The Assembly considered the draft budget for 1994 as proposed by the Director in the Annex to document FUND/A.16/12, with a total expenditure of £1 010 010.

15.2 During the examination of the budget, a number of delegations emphasised the necessity of strengthening the resources of the IOPC Fund Secretariat. It was questioned whether it would be sufficient to employ only one more professional staff member, as proposed by the Director, in view of the great increase in workload resulting from recent incidents and increased membership. After considering various approaches to this problem, the Assembly concluded that the best solution would be to authorise the Director to employ additional staff members, the annual cost of which should not exceed a specified amount. It was suggested that it would be for the Director to use the staff resources in any way that was most efficient. Nevertheless, the Assembly stressed the importance of keeping the administrative costs at the lowest possible level.

15.3 In the light of the discussion, the Director presented a revised draft budget as set out in document FUND/A.16/12/Add.1. In his introduction of this document, the Director suggested that he be authorised to employ up to three staff members with experience and qualifications which meet the needs of the IOPC Fund. He stated that the cost of employing new staff members would not exceed £218 810, as set out in paragraph 4 of that document. He mentioned that he would in that context also consider the structure of the Secretariat so as to ensure that the qualifications and experience of the present staff members, as well those of new staff members, could be used as efficiently as possible.

15.4 The Assembly adopted the budget appropriations for 1994, with a total expenditure of £1 172 730, as proposed by the Director in the Annex to document FUND/A.16/12/Add.1.

15.5 The Assembly approved the Director's proposal to promote the Finance Officer, Mr Sampson Nte, from Grade P4 to Grade P5, reclassifying the post at Grade P4/P5, and the Claims Officer, Mrs Sally Broadley, from Grade P3 to Grade P4.

15.6 The Assembly noted that the employment of additional staff would necessitate more office space. The Director was instructed to discuss this matter with the Secretary-General of IMO in order to find a solution which would be acceptable both to IMO and to the IOPC Fund. The Assembly requested that the Secretary-General of IMO should use his best endeavours to assist the IOPC Fund in this regard.

15.7 In response to a question from the Chairman, the Director informed the Assembly that he would be very honoured to continue to serve as Director after 31 December 1994 (the date when his contract with the IOPC Fund expires), if the Assembly were to decide to reappoint him.

16 Increase of the Working Capital

16.1 The Assembly considered a proposal by the Director to increase the working capital of the IOPC Fund from £6 million to £20 million, as set out in document FUND/A.16/13.

16.2 It was generally agreed that, in view of the experience gained from recent incidents, it was necessary to increase the IOPC Fund's working capital. All delegations emphasised, however, the importance of not placing too heavy a burden on contributors, especially in view of the fact that significant levies would have to be made to pay compensation in connection with the AEGEAN SEA, BRAER and TAIKO MARU incidents.

16.3 The Assembly decided to increase the IOPC Fund's working capital to £11 million. It was also decided that the level of the working capital should be kept under review.

17 Assessment of Annual Contributions

17.1 The Director introduced documents FUND/A.16/14, FUND/A.16/14/Add.1 and FUND/A.16/14/Add.2, which contained proposals for the levy of 1993 annual contributions.

17.2 The Assembly decided to levy 1993 annual contributions to the General Fund in the amount of £8 million, pursuant to Article 12.2(a) of the Fund Convention, payable by 1 February 1994, corresponding to a contribution per tonne of contributing oil of approximately £0.0076409.

17.3 Several delegations expressed the view that it was important not to place too heavy a burden on contributors. For this reason, a number of delegations questioned the necessity of levying further contributions to the HAVEN Major Claims Fund at this stage, since it was unlikely that any significant payments of compensation would be made to claimants during 1994 in respect of this incident. For this reason, the Assembly decided not to levy any 1993 annual contributions to the HAVEN Major Claims Fund.

17.4 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 AEGEAN SEA, BRAER, TAIKO MARU and KEUMDONG N°5 incidents, to the extent that the aggregate amount of the payments made by the Fund in respect of each incident exceeded 15 million (gold) francs, the Assembly decided, pursuant to Article 12.2(b) of the Fund Convention, to raise 1993 annual contributions, payable by 1 February 1994, to the following Major Claims Funds:

- (a) a levy of £20 million to the AEGEAN SEA Major Claims Fund;
- (b) a levy of £35 million to the BRAER Major Claims Fund;
- (c) a levy of £10 million to the TAIKO MARU Major Claims Fund; and
- (e) a levy of £5 million to the KEUMDONG N°5 Major Claims Fund.

17.5 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 £0.0212314 in respect of the AEGEAN SEA Major Claims Fund, £0.0357508 in respect of the BRAER Major Claims Fund, £0.0094251 in respect of the TAIKO MARU Major Claims Fund and £0.0047125 in respect of the KEUMDONG N°5 Major Claims Fund.

17.6 The Assembly decided to reimburse £200 000 of the amalgamated BRADY MARIA/THUNTANK 5 Major Claims Fund to contributors, and to transfer the balance to the General Fund.

17.7 The Assembly took note of the Director's position that it would be premature to levy 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.

18 Legal Status of the Provident Fund

18.1 The Director introduced document FUND/A.16/15 concerning the legal status of the Provident Fund.

18.2 The Assembly considered that, although the present situation had not created and was unlikely to create any problems, the status of the Provident Fund should be clarified. The Assembly agreed, in principle, with the Director that the Provident Fund should be constituted as a trust in accordance with the principles of trust law in operation in England and Wales.

18.3 The Assembly instructed the Director to study in depth the various legal and practical problems involved, in consultation with the External Auditor, and to present detailed proposals for the constitution of such a trust, including a draft Trust Deed and draft Provident Fund Regulations, to the Executive Committee for consideration.

18.4 The Assembly authorised the Executive Committee to take the necessary decisions for the constitution of a Provident Fund Trust, including the adoption of the Trust Deed, the appointment of Trustees and the adoption of the Provident Fund Regulations.

18.5 It was noted that the purpose of constituting a Provident Fund Trust was to protect the interests of staff members and that this should not result in reducing their benefits. For this reason, the Assembly agreed with the Director that the cost of operating such a Trust should be borne by the IOPC Fund.

18.6 It was noted that the Director had, in the above-mentioned document, expressed the view that the assets of a Provident Fund Trust and the yield on such assets, as well as any sums paid on separation to staff members by the Trust, should be considered exempt from taxes, pursuant to Articles 8 and 9 of the Headquarters Agreement between the Government of the United Kingdom and the IOPC Fund. The United Kingdom delegation stated that it was likely that the exemptions set out in the Headquarters Agreement would be considered applicable to a Provident Fund Trust but that the United Kingdom Government could only give a definite answer to this question when it had been able to examine the details of the proposed scheme.

19 Review of Investment Policy

19.1 The Director introduced document FUND/A.16/16 containing a further examination of the IOPC Fund's investment policy, following the discussions on this subject at the 15th session of the Assembly.

19.2 The Assembly reiterated its position that the IOPC Fund was not an investment bank. It agreed with the Director that it would not be in the IOPC Fund's interest to abandon the present approach of a prudent and cautious investment policy. It shared his view that the IOPC Fund's investment in foreign currencies should also in the future be limited to the situations set out in Financial Regulation 7.1(a). The Assembly also agreed with the Director that it would not be advisable to invest the IOPC Fund's assets in the European Currency Unit (ECU).

19.3 The Assembly took note of the document setting out the investment management procedures of the IOPC Fund reproduced in the Annex to document FUND/A.16/16, which had been elaborated by the Director in consultation with the External Auditor.

20 Establishment of Investment Advisory Body

20.1 The Assembly recalled that following its decision in connection with the review of the IOPC Fund's investment policy at its 15th session, it had instructed the Director to 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. It was

noted that the point had been made that, in view of the large amounts which were held by the IOPC Fund, it would be necessary to ensure that there were adequate procedures for investing the IOPC Fund's assets and for controlling the management of these assets.

20.2 The Assembly noted that the IOPC Fund's investment portfolio would probably exceed £50 million in the near future. Whilst recognising that it would be impracticable to set up an internal investment committee for an organisation of the size of the IOPC Fund, the Assembly nevertheless considered that it would be appropriate to set up a body which should advise the Director on investment matters. Some delegations took the view that the body should be composed of officials appointed by their respective Governments, whereas others favoured a body of independent experts. Having considered various options, the Assembly concluded that such a body should be composed of external experts with special knowledge in investment matters.

20.3 The Director was instructed to examine the feasibility of establishing an Investment Advisory Body composed of such experts, to assess the cost implications of setting up such a Body and to consider the precise mandate of the Body, and submit a report to the Assembly at its 17th session.

21 Review of Financial Regulations

21.1 The Director introduced document FUND/A.16/18 containing proposals, made in consultation with the External Auditor, to amend the Financial Regulations.

21.2 The Assembly agreed with the Director that a general review of the Financial Regulations applicable to the present Organisation should be made in conjunction with the elaboration of Financial Regulations to be applied by the Organisation established under the 1992 Protocol to the Fund Convention.

21.3 In the light of the increased total amount of monthly salaries payable to the IOPC Fund staff members, the Assembly agreed with the Director's proposal that the amount up to which he is authorised to empower two other officers to sign jointly instructions for payment of salaries should be increased from £25 000 to £40 000.

21.4 The Assembly took note of the difficulties which had arisen in the context of the BRAER incident as a result of the limit of £5 000 beyond which the Director must sign instructions to the IOPC Fund's bankers for payments. In view of the fact that it was often crucial that compensation to individuals and small businesses was paid immediately, the Assembly decided to empower the Director to authorise two other officers jointly to make payment up to £25 000 in respect of a particular claim already approved by the Director in cases where a delay in payment would cause financial hardship for the victims concerned.

21.5 In view of the decisions set out in paragraphs 21.3 and 21.4, the Assembly decided to amend Financial Regulation 6.2 to read as follows:

The Fund's bankers shall only be empowered to accept instructions on behalf of the Fund if such instructions are signed by the Director and, in respect of payment instructions for any sum in excess of £14 000, countersigned by one other properly authorized officer. The Director may empower another officer or other officers to sign instructions to the Fund's bankers on his behalf only in respect of payment instructions for any sum up to £5 000. For payment of salaries the Director may exceptionally, in circumstances where he is unable to do so himself, empower two other officers to sign jointly instructions for any sum up to £40 000. In addition, the Director may authorise two other officers to sign jointly instructions for payment of compensation to any claimant up to £25 000 in respect of a claim already approved by the Director, in the event that a delay in payment would cause financial hardship to the claimant concerned.

21.6 It was recalled that, during the discussions at the 15th session of the Assembly, concerns had been expressed with regard to the relationships between the General Fund and the Major Claims Funds. It was noted that the Director had interpreted these concerns as relating to the fact that the assets of the General Fund and the assets of the various Major Claims Funds were not invested separately. The Assembly agreed with the Director that it would be very impracticable to separate the investments of the various funds and that the present practice of joint investment was not detrimental to the contributors to the various funds, who were generally the same. The Assembly therefore decided that the present investment policy in this regard should be continued.

21.7 The Assembly nevertheless considered it appropriate to clarify in the Financial Regulations that Major Claims Funds could be merged for investment purposes, even if the contributors to these funds were not identical. For this reason, it was decided to include in the Financial Regulation a new Regulation 7.3 to read as follows:

For purposes of investment, all monies in the General Fund, Major Claims Funds, Contributors' Accounts, the Provident Fund and any special accounts may be merged. Any resulting income shall accrue to the respective Fund or account pro rata.

22 Investigations Into the Cause of Incidents

22.1 At its 15th session the Assembly accepted an offer by the delegation of the United Kingdom that the United Kingdom Government would carry out a study of how the IOPC Fund could be 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.

22.2 Since the United Kingdom delegation had informed the Assembly that it had not been able to prepare this study in time for the present session, the Assembly decided to defer the consideration of this issue to a future session.

23 Criteria for the Admissibility of Claims

23.1 The Assembly recalled that the Executive Committee had, at its 35th session held in June 1993, addressed several important questions of principle in respect of the admissibility of claims in connection with the Committee's consideration of claims for compensation arising out of the HAVEN, AEGEAN SEA and BRAER incidents. It was noted that the Committee had discussed in particular the extent to which so-called "pure economic loss" would fall within the definition of "pollution damage" and whether the notion of "preventive measures" covered measures to prevent or minimise pure economic loss, such as tourism promotion and the marketing of fish products. The Assembly took note of the fact that, in the light of the importance of these questions, the Executive Committee had recognised that there was a need for general criteria for the admissibility of claims.

23.2 The Assembly took note of the Director's proposal to create a Working Group to study the issues referred to above (document FUND/A.16/20), and also noted the French delegation's proposal (document FUND/A.16/20/1) concerning the mandate of the proposed Working Group.

23.3 During the discussions under this agenda item, a number of delegations supported the proposal to set up a Working Group to examine the above-mentioned questions. These delegations emphasised that it was important that the IOPC Fund should consider, in the light of experience gained in recent years, matters concerning the admissibility of claims, in particular in relation to pure economic loss and preventive measures relating thereto. A number of delegations also referred to the importance of problems relating to the admissibility of claims for environmental damage being studied by this Working Group. It was emphasised, however, that any examination carried out by the proposed Working Group should be made within the framework of the applicable legal regime, namely the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Protocols thereto. Many delegations

also considered it important that a study be made of the procedures to be applied by the bodies of the IOPC Fund in the examination and settlement of claims. In the view of all delegations, it was important that the proposed Working Group could base its work on documentation setting out the policy followed by the Fund so far and the various problems encountered in connection with recent incidents. Reference was made to the importance of Member States making contributions to this documentation.

23.4 The Assembly decided that a Working Group should be set up to study the criteria for admissibility of claims for compensation with the following mandate:

- 1 to examine the general criteria for the admissibility of claims for compensation for "pollution damage" and "preventive measures" within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and the 1992 Protocols thereto;
- 2 to study in particular problems relating to claims in respect of so-called "pure economic loss" and "preventive measures" taken to prevent or minimise pure economic loss;
- 3 to consider problems relating to the admissibility of claims for environmental damage within the scope of the definition of "pollution damage" referred to above;
- 4 to study the procedures to be applied by the IOPC Fund in the assessment and settlement of claims.

23.5 The Director was instructed to make a preliminary study of the issues included in the mandate of the Working Group. The Assembly invited Member States to submit observations on the issues to the Director by 1 December 1993.

23.6 It was decided that the Working Group, which should submit its report to the Assembly for consideration at its 17th session, should be open to all Member States and that States and intergovernmental and international non-governmental organisations having observer status with the IOPC Fund should be invited as observers.

24 Applicability of the Fund Convention to Spills of Oil from Unidentified Sources

24.1 The Assembly noted that the Government of Portugal had submitted a claim for compensation for pollution to the coast of Portugal which had occurred in December 1992. It was recalled that the Portuguese Government had maintained that the oil originated from a ship and that this ship was a laden tanker, although the Government had not been able to identify the vessel.

24.2 The Assembly discussed the question of whether the IOPC Fund was obliged to pay compensation when the origin of the spill could not be identified, on the basis of a document presented by the Director (document FUND/A.16/21). It was recalled that, under Article 4.1 of the Fund Convention, the IOPC Fund was obliged to pay compensation for pollution damage where the victim was unable to obtain compensation because "no liability arises under the Civil Liability Convention" and that one of the situations in which no liability would arise under the Civil Liability Convention was where the identity of the ship which caused the damage was not known, since in that case no shipowner could be held liable under that Convention. It was noted that in respect of such cases, Article 4.2(b) of the Fund Convention provided that the IOPC Fund would not be obliged to pay compensation if "the claimant cannot prove that the damage resulted from an incident involving one or more ships".

24.3 The Assembly noted the general agreement among the delegations at the 1971 International Conference which had adopted the Fund Convention that the IOPC Fund should only be required to pay compensation for damage which was caused by a ship as defined in the Fund Convention (ie a vessel or other craft actually carrying oil in bulk as cargo). The Assembly agreed with the Director that the claimant had to prove that pollution damage resulted from a particular incident and that this incident involved a ship or ships as defined in the Civil Liability Convention and the Fund Convention.

The Assembly also agreed with the Director that the claimant could not discharge the burden of proof imposed upon him by the Convention solely by proving that there was a strong likelihood that the damage was caused by a ship as defined or that the damage could not have been caused other than by such a ship.

24.4 Several delegations expressed the view that the text of the Fund Convention on this point was unsatisfactory since it imposed a very heavy burden of proof on the claimant and that this was particularly onerous for claimants in developing countries.

24.5 In the light of the analysis of oil samples carried out on behalf of the IOPC Fund, the Assembly shared the Director's view that it had not been shown in the particular case under consideration that the oil had come from a ship as defined in the Civil Liability Convention and the Fund Convention, ie a vessel carrying oil in bulk as cargo. On the basis of the Director's analysis of the preparatory works relating to Article 4.2(b) of the Fund Convention, the Assembly decided that the IOPC Fund was not obliged to pay compensation in respect of the oil spill to which the Portuguese Government's claim related.

25 Director's Authority to Settle Claims

25.1 It was noted that the general limit of the Director's authority to settle claims laid down in Internal Regulation 8.4.1 only applied if it was likely that the total cost to the IOPC Fund of satisfying all claims for compensation arising out of a given incident did not exceed 37.5 million (gold) francs, which corresponded to approximately £2.4 million.

25.2 The Assembly considered a proposal by the Director to authorise him to settle claims up to an amount of 37.5 million (gold) francs in respect of each incident, independent of the total estimated cost to the IOPC Fund of satisfying all claims for compensation arising out of the incident.

25.3 Several delegations expressed their reluctance to accept the Director's proposal, in view of the difficult problems that often arose in respect of claims arising out of major incidents.

25.4 The Assembly decided that the question of the Director's authority to settle claims should be considered by the Working Group referred to in paragraph 23.4 above, in connection with its study of the procedures to be applied by the IOPC Fund in the assessment and settlement of claims.

26 Functions of the Executive Committee

The Assembly decided to postpone its consideration of the functions of the Executive Committee to its 17th session.

27 Application of the Contribution System Laid Down in the Fund Convention to Oil Passing Through the SUMED Pipeline

27.1 The Assembly recalled that at its 15th session the Arab Republic of Egypt had been granted observer status with the IOPC Fund. It was further recalled that the Government of Egypt had mentioned in its request for observer status that it was considering accession to the Fund Convention but that it had some concerns regarding the application of the contribution system laid down in the Fund Convention to the activities of the Arab Petroleum Pipelines Company (SUMED). It was noted that the SUMED pipeline runs from a terminal on the Gulf of Suez to a terminal close to Alexandria on the Mediterranean, a distance of 320 kilometres, that the pipeline had a capacity of transferring 80 million tonnes a year and that during 1994, the capacity would be increased to 117 million tonnes. It was further noted that the oil was discharged via storage tanks in the terminal at the Gulf of Suez from tankers coming from the Gulf area which were too big to pass through the Suez Canal, that it took about 50 hours for the oil to pass through the pipeline and that the oil was then loaded via

storage tanks into tankers owned or chartered by the same company which discharged the oil into the pipeline.

27.2 The Assembly considered a study of the matter carried out by the Director in consultation with the Government of Egypt (document FUND/A.16/24) and a document presented by that Government (document FUND/A.16/24/1). These documents were introduced by the Director and the Egyptian observer delegation, respectively.

27.3 The Assembly recognised that the notion of "received" was a basic concept in the contribution system under the Fund Convention and that the position previously adopted by the Assembly, as well as the text of the Convention itself, was based on the idea that contributions were paid by the actual (physical) receiver of the oil after sea transport. It was recalled that the point of departure for this position was that oil was to be taken into account for the purpose of levying contributions each time the oil was physically received after sea transport in a port or terminal installation located in a State Party to the Fund Convention.

27.4 It was recalled that the Assembly had examined, at its 1st extraordinary session, the question of the circumstances in which oil should be considered as received and that it had approved the following interpretation of Article 10.1 of the Fund Convention (document FUND/A/ES.1/13, paragraph 10):

Ship-to-ship transfer shall not be considered as receipt, irrespective of where this transfer takes place (ie within a port area or outside the port but within territorial waters) and whether it is done solely by using the ships' equipment or by means of a pipeline passing over land. This applies for a transfer between two sea-going vessels as well as for a transfer between a sea-going vessel and an internal waterway vessel and irrespective of whether the transfer takes place within or outside a port area. When the oil, after having been transferred in this way from a sea-going vessel to another vessel has been carried by the latter to an on-shore installation situated in the same Contracting State or in another Contracting State, the receipt in that installation shall be considered as a receipt of oil carried by sea. However, in the case where the oil passes through a storage tank before being loaded to the other ship it has to be reported as oil received at that tank in that Contracting State.

27.5 The Assembly noted that the Government of Egypt had invoked the following main arguments in support of its request that the oil received at the terminal on the Gulf of Suez for transport through the SUMED pipeline should not be taken into account for the purposes of contributions:

The situation of the SUMED pipeline is unique because it is used for transferring oil from one ship to another, due to the fact that large tankers are unable to transit the Suez Canal. The storage tanks at both ends of the pipeline are an integral part of a closed transit pipeline system. The oil transported through the pipeline is not owned by the company operating the pipeline but by the users. This oil cannot be considered as received in Egypt since it is only in transit and not actually delivered to Egyptian cargo interests. SUMED acts only as a common carrier of the oil against payment of a fee. Transport through the SUMED pipeline should be considered as ship-to-ship transfer and the quantities received for such transport should therefore not be taken into account for the purpose of levying contributions to the IOPC Fund. The transport of oil through the SUMED pipeline is much safer from an environmental point of view than alternative transport routes.

27.6 During the discussions of this issue, a number of delegations supported the request made by the Government of Egypt, whereas a number of other delegations opposed the request.

27.7 The Assembly concluded that there was not a majority in favour of the request made by the Government of Egypt. It was noted, however, that several delegations had expressed the opinion that

a compromise solution should be sought. The Assembly decided, therefore, that this question should be re-examined if a firm compromise proposal were made or new arguments advanced.

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

28.1 The Assembly recalled that, at its 15th session, it had considered the problems that had arisen due to the fact that certain storage companies in the Netherlands, which had been reported by the Dutch Government as having received contributing oil, argued that the interpretation of the notion of "received" in the Fund Convention applied by the IOPC Fund was incorrect and that they should not be under any obligation to pay contributions to the IOPC Fund.

28.2 The Director introduced document FUND/A.16/25 which set out the developments which had taken place since the 15th session.

28.3 The Assembly noted that the Minister of Economic Affairs of the Netherlands had rejected an appeal made by a Dutch storage company, which had been included in the report 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 purposes of Article 10 of the Fund Convention. It was also noted that this company had appealed to the Administrative Court of Appeal against the decision of the Minister.

28.4 Since the IOPC Fund had been granted the opportunity of being heard as a third party in the proceedings before the Administrative Court of Appeal, the Assembly instructed the Director to present the IOPC Fund's position to the Court.

29 Definition of "Contributing Oil" in Article 1.3 of the Fund Convention

29.1 It was noted that, in connection with its submission of reports on receipts of contributing oil for 1992, the Government of Canada had requested clarification as to whether a particular kind of oil, cohasset-panuke crude, from an oil field off Nova Scotia should be considered as "contributing oil" for the purposes of the Fund Convention.

29.2 The Assembly noted that, in view of the characteristics of cohasset-panuke crude oil, as set out in paragraph 7 of document FUND/A.16/26, an application of the criteria laid down in the Non-technical Guide to the Nature and Definition of Persistent Oil elaborated within the IOPC Fund would result in this product being considered as "non-persistent" oil. The Assembly took the view that this product should therefore be considered as non-persistent oil and that it would thus fall outside the scope of application of both the Civil Liability Convention and the Fund Convention as regards compensation for oil pollution damage.

29.3 With regard to the question of whether oil which was not persistent oil could fall within the notion of "contributing oil" and therefore be subject to the levy of contributions, the Assembly shared the Director's view that it was reasonable to interpret the definition of "crude oil" within the definition of "contributing oil" in the Fund Convention as being limited to persistent crude oil, since the compensation system established by the Civil Liability Convention and the Fund Convention applied only to persistent oil. For this reason, the Assembly decided that cohasset-panuke crude should be considered as falling outside the definition of "contributing oil".

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

30.1 It was recalled that, at its 15th session, the Assembly had 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). It was noted that the Assembly had 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 order to establish the respective positions of the Governments of those States vis-à-vis the Fund Convention.

30.2 The Director introduced document FUND/A.16/27 which set out the developments which had taken place since the 15th session.

30.3 The Assembly noted that the situation as regards Estonia had become clear before any action was taken by the Director, when Estonia deposited its instrument of accession to the Fund Convention on 1 December 1992.

30.4 It was also noted that, after consultation with the Secretary-General of IMO, the Director had sent letters in July 1993 requesting clarification concerning the position of the respective Governments vis-à-vis the Fund Convention to all of the newly independent States (other than the Russian Federation and Estonia) which were formerly part of the USSR and which had a coast, ie Azerbaijan, Georgia, Kazakhstan, Latvia, Lithuania, Turkmenistan and Ukraine. It was reported that so far a reply had been received only from Lithuania, requesting the IOPC Fund to provide the Lithuanian Government with certain documents in order to facilitate its review of the Civil Liability Convention and the Fund Convention.

30.5 The Assembly instructed the Director to pursue his efforts to establish the position of the States concerned vis-à-vis the Fund Convention and to give those States considering accession to the Convention any assistance which they might require in drafting the legislation needed to implement the Civil Liability Convention and the Fund Convention, and to report any developments to the Assembly at its 17th session.

31 Replacement of Instruments Enumerated in Article 5.3 of the Fund Convention

31.1 The Assembly decided, in accordance with Article 5.4 of the Fund Convention, to include the March 1992 Amendments to MARPOL 73/78 in the list of instruments contained in Article 5.3(a) of the Fund Convention, with effect from 10 April 1994. 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), MEPC.47(31), MEPC.51(32) and MEPC.52(32) adopted by the Marine Environment Protection Committee of the International Maritime Organization on 7 September 1984, 4 July 1991, 6 March 1992 and 6 March 1992, respectively;

31.2 The Assembly decided not to include the October 1992 Amendments to MARPOL 73/78 adopted by the Marine Environment Protection Committee of IMO (Resolutions MEPC.57(33) and MEPC.58(33)) in the list of instruments contained in Article 5.3(a) of the Fund Convention, because they were not considered relevant for the purposes of Article 5.3 of the Convention.

31.3 As regards the December 1992 Amendments to SOLAS 74 adopted by the Maritime Safety Committee of IMO (Resolution MSC.27(61)), 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, since it was not possible to determine when these Amendments would enter into force.

32 Refund of Indirect Taxes

32.1 It was recalled that the Assembly had considered, at its 15th session, certain difficulties which the IOPC Fund had encountered in the application of Article 34.2 in respect of fees for the services

of lawyers and other experts. The Assembly had 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.

32.2 It was noted that, as instructed by the Assembly, the Director had raised this matter with representatives of the Government of the State in which the IOPC Fund had encountered problems regarding the application of Article 34.2 of the Fund Convention but that, so far, no detailed discussions on the subject had been held between the Government concerned and the IOPC Fund. It was also noted that the Director had not been able to finalise the study of the meaning of the notions of "substantial purchases" and "important work" requested by the Assembly.

32.3 The Assembly instructed the Director to pursue the questions referred to in paragraph 32.2 and submit a report to the Assembly at its 17th session.

33 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.16/30.

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

The Assembly took note of the information contained in document FUND/A.16/31 concerning the draft International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea.

35 Date of Next Session

The Assembly decided to hold its next ordinary session during the week of 17 to 21 October 1994 in London.

36 Any Other Business

No items were raised under this Agenda item.

37 Adoption of the Report of the 16th Session

The draft report, as contained in documents FUND/A.16/WP.1 and FUND/A.16/WP.1/Add.1 was adopted, subject to some amendments.
