



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
16th session
Agenda item 5

FUND/A.16/3
10 September 1993

Original: ENGLISH

REPORT OF THE DIRECTOR

1 Introduction

1.1 This report covers the activities of the IOPC Fund since the 15th session of the Assembly. The report contains a review of some of the main issues relating to the IOPC Fund's activities during that period. It also deals with the finances of the IOPC Fund for the first eight months of 1993.

1.2 The IOPC Fund's Annual Report for the calendar year 1992 was published in February 1993. This Report attracted great interest from all those dealing with the IOPC Fund as well as from persons and bodies interested in environmental matters in general.

1.3 Since the 15th session of the Assembly, there have been six new incidents involving the IOPC Fund. Three of these incidents have given rise to very large claims for compensation against the Fund. Several incidents which occurred in previous years still require a considerable amount of work by the IOPC Fund's Secretariat.

2 Membership

2.1 At the time of the entry into force of the Fund Convention in October 1978, the IOPC Fund had 14 Member States. By the time of the 15th session of the Assembly in October 1992, 49 States were Members of the IOPC Fund.

2.2 Six States – Brunei Darussalam, Estonia, Ireland, Kenya, Republic of Korea and Morocco – have become Parties to the Fund Convention and thus Members of the IOPC Fund since the 15th session of the Assembly. The Fund Convention entered into force for Brunei Darussalam on 28 December 1992, for Ireland on 17 February 1993, for Estonia on 1 March 1993, for the Republic of Korea on 8 March 1993, for Kenya on 15 March 1993 and for Morocco on 31 March 1993.

2.3 By letter dated 12 November 1992, the Secretary-General of the International Maritime Organization (IMO) was informed that Slovenia considered itself bound by virtue of succession to the Socialist Federal Republic of Yugoslavia by certain conventions deposited with IMO, including the Fund Convention, with effect from 25 June 1991.

2.4 As a result of this development, the IOPC Fund will have 56 Member States at the time of the 16th session of the Assembly.

2.5 In addition, Sierra Leone deposited its instrument of accession to the Fund Convention on 13 August 1993, and the Convention will enter into force for that State on 11 November 1993, bringing the number of Member States to 57.

2.6 On the basis of the information available to the IOPC Fund's Secretariat, it is expected that several States will join the IOPC Fund in the near future. It is anticipated that Albania, Australia, Belgium, Chile, Malaysia and Saudi Arabia will soon deposit their instruments of accession to the Fund Convention. Legislation implementing the Fund Convention is in an advanced stage in Brazil, Colombia, Mozambique and New Zealand. Many other States, eg Argentina, Bahrain, Barbados, China, Costa Rica, Democratic People's Republic of Korea, Ecuador, Egypt, Jamaica, Latvia, Lithuania, Marshall Islands, Mexico, Panama, Saint Kitts and Nevis, Senegal, Singapore and Trinidad and Tobago, are also examining the question of accession to the Fund Convention.

3 Contacts with Governments

3.1 A major reason for the smooth functioning of the system of compensation established by the Civil Liability Convention and the Fund Convention is the strong support that Governments of Member States have given the IOPC Fund and its Secretariat over the years.

3.2 In order to establish and maintain personal contacts between the IOPC Fund's Secretariat and officials within the national administrations dealing with Fund matters, the Director visits some Member States every year. Since the 15th session of the Assembly, the Director has visited five Member States - Canada, Denmark, Japan, Spain and Sweden - for discussions with government officials on the Fund Convention and the operations of the IOPC Fund.

3.3 The IOPC Fund's Secretariat has continued its efforts to increase the number of Member States. One important way of promoting membership is to convey information on the functioning of the compensation system created by the Civil Liability Convention and the Fund Convention. For this purpose, the Director went to Egypt and the Republic of Korea for discussions with government officials and interested circles in these States on the Conventions and the operations of the IOPC Fund. The Legal Officer held similar discussions in India, Sri Lanka and Thailand, and the Claims Officer had such discussions in Latvia and Malaysia.

3.4 The Director and the Legal Officer also had discussions with government representatives of both Member and non-Member States in connection with meetings within IMO, in particular during the sessions of the IMO Council in November 1992 and June 1993 and during the International Conference on the Revision of the Civil Liability Convention and the Fund Convention, held in November 1992.

3.5 The IOPC Fund's Secretariat has, on request, assisted some non-Member States in the elaboration of the national legislation necessary for the implementation of the Civil Liability Convention and the Fund Convention.

4 Relationship with International Organisations and Interested Circles

4.1 The support given to the IOPC Fund by IMO is of great importance in a number of ways. The Director would like to express his profound gratitude to the Secretary-General of IMO and his staff for the assistance they have given the IOPC Fund.

4.2 The operation of the IOPC Fund depends on close co-operation with a number of international non-governmental organisations and other non-governmental bodies. In the great majority of incidents involving the IOPC Fund, the monitoring of the clean-up operations and the claims assessment is made in close co-operation between the Fund and the P & I Club concerned. The technical assistance

required by the IOPC Fund with regard to oil pollution incidents is usually given by the International Tanker Owners Pollution Federation Limited (ITOPF). There is also close co-operation between the IOPC Fund and oil industry interests represented by the Oil Companies International Marine Forum (OCIMF) and Cristal Limited.

5 Conferences and Seminars

5.1 Since the 15th session of the Assembly, the Director, the Legal Officer and the Claims Officer have given a number of lectures at seminars, conferences and workshops on the activities of the IOPC Fund.

5.2 The Director gave lectures on the system of compensation established by the Civil Liability Convention and the Fund Convention to representatives of the Japanese Government, government agencies and interested circles in Tokyo (Japan) and to a similar audience in Seoul (Republic of Korea). He made presentations on the IOPC Fund's activities at the 1993 International Oil Spill Conference held in Tampa (United States), organised jointly by the United States Coast Guard, the United States Environment Protection Agency and the American Petroleum Institute. He also participated in a seminar on liability in maritime law in Ottawa (Canada), organised by the Government of Canada. He took part in the 2nd International Environment North Seas Conference in Stavanger (Norway), organised by the Environment Northern Seas Foundation. In addition, the Director gave a lecture to students at the World Maritime University in Malmö (Sweden) on liability and compensation for oil pollution damage.

5.3 The Legal Officer made a presentation at the 8th Meeting of the Indian Ocean Marine Affairs Co-operation Standing Committee, held in Colombo (Sri Lanka). He also gave a lecture on the IOPC Fund at a national seminar on MARPOL 73/78 in Bangkok (Thailand). The Claims Officer gave lectures at a Conference on Oil Spill Response in Asian Pacific Waters, held in Kuala Lumpur (Malaysia), and at a seminar on the implementation of conventions in Riga (Latvia), organised by the Helsinki Commission.

6 Future Development of the Intergovernmental Oil Pollution Liability and Compensation System

6.1 In 1984, a Diplomatic Conference held in London under the auspices of IMO adopted two Protocols to amend the Civil Liability Convention and the Fund Convention, respectively. These Protocols provide higher limits of compensation and a wider scope of application than the Conventions in their original versions. The 1984 Protocols have not entered into force, due to the fact that the required number of ratifications has not been obtained.

6.2 A Diplomatic Conference held in London in November 1992 under the auspices of IMO adopted two new Protocols amending the Conventions, in order to ensure the viability in the future of the system of compensation established by these Conventions. The Conference based its activities on two draft Protocols elaborated within the IOPC Fund. The new Protocols retain the substantive provisions of the 1984 Protocols but with lower entry into force provisions. The 1992 Protocol to the Fund Convention also introduces provisions which for a certain period of time set a cap on contributions to the IOPC Fund payable by oil receivers in any given State. The outcome of the 1992 Conference is dealt with in document FUND/A.16/10.

6.3 The 1992 Conference also adopted a Resolution which invited the Assembly of the IOPC Fund to instruct the Director to make the necessary preparations for the entry into force of the 1992 Protocol to the Fund Convention. A document on this issue has been submitted to the Assembly (document FUND/A.16/11).

7 Voluntary industry schemes TOVALOP and CRISTAL

7.1 The voluntary industry schemes TOVALOP and CRISTAL provide compensation for oil pollution damage. These schemes are currently designed to operate until 20 February 1994.

7.2 The Board of the International Tanker Owners Pollution Federation Limited (ITOPF), which administers TOVALOP, and the Board of Cristal Limited, which administers the CRISTAL Contract, have submitted proposals to their respective General Meetings, to be held in October 1993, that the schemes should be extended for a period of three years up to 20 February 1997. The Boards have stated that they encourage prompt ratification of the 1992 Protocols to the Civil Liability Convention and the Fund Convention. The Board of ITOPF has emphasised that the voluntary schemes were conceived by the industries concerned as interim instruments pending widespread ratification of the Civil Liability Convention and the Fund Convention, and that governments cannot therefore rely on the indefinite existence of the voluntary regimes.

8 Contributions

8.1 The Assembly decided at its 15th session to make a second levy of £10 million to the HAVEN Major Claims Fund (in addition to the levy of £15 million decided at its 14th session) and a levy of £950 000 to the VOLGONEFT 263 Major Claims Fund, whereas it decided not to raise any 1992 annual contributions to the General Fund. The amount payable by each contributor per tonne of contributing oil received was £0.0105380 in respect of the HAVEN Major Claims Fund, based on the quantities received in 1990 (the year before the incident), and £0.0010830 in respect of the VOLGONEFT 263 Major Claims Fund, based on the quantities received during 1989 (the year before the incident). The payments were due by 1 February 1993. As at 10 September 1993, 97.94% of these contributions had been paid.

8.2 In respect of contributions levied for previous years, the situation must be regarded as satisfactory. As of 10 September 1993, an amount of £678 200 was outstanding, out of which £280 847 relates to contributors in the former Union of Soviet Socialist Republics and £227 260 to contributors in the former Socialist Federal Republic of Yugoslavia.

8.3 The levy of contributions to the IOPC Fund is based on reports of contributing oil receipts submitted by governments of Member States. In October 1988, at its 11th session, the Assembly discussed the system for reporting oil receipts to the IOPC Fund, since the existing system did not function entirely satisfactorily. The main problem was that a number of States did not submit their reports in time. The Assembly adopted a Resolution in which Member States were urged, inter alia, to submit their reports on contributing oil receipts at the time and in the manner prescribed in the IOPC Fund's Internal Regulations.

8.4 The Director regrets to inform the Assembly that the non-submission of the reports on contributing oil receipts by some Member States still constitutes a considerable problem. On 31 March 1993, the date by which Member States should submit their reports of oil received in 1991 in accordance with the IOPC Fund's Internal Regulations, only 17 reports had been received by the Director. By 10 September 1993, 33 reports had been submitted. In addition, some States have still not submitted their reports on contributing oil receipts in previous years (see Annexes II, III and IV of document FUND/A.16/6). It should again be emphasized that it is of decisive importance for the operation of the IOPC Fund that these reports are actually submitted by governments. If the reports on contributing oil receipts are not submitted to the IOPC Fund, the Director is unable to issue invoices for the contributions in respect of the States concerned. The system of levying contributions will then not function in an equitable manner.

9 Investment of Funds

9.1 During 1992 and 1993, funds which were not required for the short-term operation of the IOPC Fund were placed on term deposits with several leading London banks, discount houses and building

societies. Apart from investments placed overnight till the next business day, the average rate of interest on the investments in 1992 was 10%.

9.2 The base rate in London, which stood at 9% at the time of the 15th session of the Assembly, was reduced to 8% on 16 October 1992, to 7% on 13 November 1992 and to 6% on 26 January 1993, where it has stood since then. It is estimated that the average rate of interest on the IOPC Fund's investments in 1993 will be approximately 6.5%.

9.3 Interest earned during the first eight months of 1993 amounted to £2 million, with about £350 000 due during the remaining four months, on an estimated average capital of £30 million.

9.4 Details of the investments from 1 July 1992 to 30 June 1993 are given in document FUND/A.16/4.

9.5 At its 15th session, the Assembly examined the IOPC Fund's investment policy, on the basis of a document prepared by the Director and a report presented by the External Auditor. The Assembly took a number of important decisions relating to the IOPC Fund's investments and instructed the Director to study certain issues further. The Assembly will be invited to examine a document on these issues (document FUND/A.16/16).

10 Accounts of the IOPC Fund

10.1 The expenditure for the administration of the IOPC Fund in 1992 was £625 326, compared with the budgetary appropriation of £673 770. Details of the accounts of the IOPC Fund for the financial year 1992 are given in the Financial Statements (document FUND/A.16/5, Annex IV).

10.2 The expenditure for the administration during the first eight months of 1993 amounts to approximately £470 000. The budget appropriation for the whole of 1993 is £876 200. It is expected that there will be a budgetary surplus at the end of the year.

10.3 As in previous years, excellent co-operation with the External Auditor, the Comptroller and Auditor General of the United Kingdom, has facilitated the administration of the IOPC Fund.

11 Administration of the IOPC Fund

11.1 The Secretariat has at present ten staff members: the Director, the Legal Officer, the Finance/Personnel Officer, the Claims Officer, the Director's Secretary/Administrative Officer, four Secretaries and a Messenger.

11.2 At its 35th session, the Executive Committee established a new post of Clerk-Secretary, due mainly to the great increase in workload on the IOPC Fund Secretariat resulting from recent incidents and the increase in the number of Member States. Miss Christine Peyre (France) was appointed to this post from 1 September 1993.

11.3 During the last twelve months the IOPC Fund Secretariat has faced a heavy workload, which has put considerable pressure on the staff. The strong commitment of all the staff members to their work, and their knowledge and expertise, are a great asset to the Organisation and these factors are crucial to the efficient functioning of the Secretariat.

11.4 The lease of the IOPC Fund's offices in the IMO building expired on 31 October 1992. The Director is pleased to inform the Assembly that a new ten year lease from 1 November 1992 has been agreed with IMO.

11.5 Two serious incidents involving the IOPC Fund, namely the AEGEAN SEA (Spain, 3 December 1992) and the BRAER incidents (United Kingdom, 5 January 1993), have given rise to

significant claims from a large number of claimants. In order to enable the IOPC Fund to deal efficiently with these claims, local claims offices have been set up jointly with the P & I insurer of the ship concerned in La Coruña, (Spain) and on Shetland (United Kingdom). The staff at these offices have carried out their task in an excellent manner. These incidents have also necessitated extensive use of outside experts for the assessment of claims. These experts have rendered invaluable assistance to the work of the IOPC Fund Secretariat and to the local offices.

12 Incidents Involving the IOPC Fund

12.1 Since its establishment in October 1979 up to 10 September 1993, the IOPC Fund has been involved in the settlement of claims arising out of 67 incidents. 35 of these incidents occurred in Japan, whereas 22 incidents, leading in general to much larger claims, took place in European waters, one in Algeria, four in Canada, one in the Caribbean, one in Indonesia, one in the Republic of Korea and two in the Persian Gulf. However, some of these incidents did not result in any payment of compensation by the IOPC Fund. The total amount of compensation and indemnification paid by the IOPC Fund as at 10 September 1993 is £58 million.

12.2 For details regarding the various incidents with which the IOPC Fund has dealt over the years, reference is made to the 1992 Annual Report and to the updated statistics (1993) distributed during this session of the Assembly.

12.3 Since the 15th session of the Assembly, six incidents have occurred which have given rise to claims against the IOPC Fund, namely the AEGEAN SEA (Spain), BRAER (United Kingdom), SAMBO N°11 (Republic of Korea), TAIKO MARU (Japan) and RYOYO MARU (Japan) incidents and a spill from an unknown source in Portugal. Three of these incidents have resulted in significant claims for compensation.

12.4 The Greek OBO carrier AEGEAN SEA grounded on 3 December 1992 in bad weather off the port of La Coruña in north-western Spain while carrying 80 000 tonnes of crude oil. The incident resulted in the escape of considerable quantities of crude oil and necessitated extensive clean-up operations at sea and on shore. It also resulted in claims for compensation for economic loss by a large number of fishermen and by persons involved in various forms of aquaculture. Claims have also been presented by a number of persons affected by the incident in various ways. Since a number of claims have not been quantified, it is premature to make any estimate of the total amount of the pollution damage caused by this incident. As at 8 September 1993, 244 claims for a total amount of £112 380 had been settled and paid.

12.5 On 5 January 1993, the Liberian tanker BRAER laden with 84 000 tonnes of crude oil grounded in very severe weather off the southern coast of Shetland Island (United Kingdom). The ship broke up, resulting in the entire cargo oil and bunker oil escaping. Due to the heavy seas most of the spilled oil dispersed naturally. The United Kingdom Government imposed a fishery exclusion zone in respect of an area along the west coast of Shetland which was affected by the oil. A large number of claims for compensation have been submitted, eg by salmon farmers, fishermen, persons involved in packing and processing fish, persons in the tourist industry, crofters whose grassland was contaminated and persons whose houses were contaminated. So far, claims have been settled and paid for a total amount of nearly £13.5 million.

12.6 As mentioned above, the IOPC Fund has established jointly with the P & I insurer of the ship concerned local claims offices in La Coruña (Spain) and on Shetland (United Kingdom) to deal with the claims arising out of the AEGEAN SEA and BRAER incidents.

12.7 On 31 May 1993, the Japanese tanker TAIKO MARU collided with a dry cargo vessel off Shiota Saki some 300 kilometres north of Tokyo. Some 520 tonnes of heavy fuel oil were spilled as a result of the incident, necessitating extensive clean-up operations at sea and on shore. The area is of great importance for fishing, and the oil caused loss of income to a number of fishermen. Significant claims for compensation have been presented.

12.8 In addition to the new incidents mentioned above, there are, as at 10 September 1993, five incidents in respect of which final settlements of third party claims have not yet been reached, namely the PATMOS, PORTFIELD, VISTABELLA, AGIP ABRUZZO and HAVEN incidents.

12.9 One of these five cases, the HAVEN Incident which occurred in Italy in April 1991, caused extensive pollution damage in Italy, France and Monaco, and some 1 300 claims for compensation have been submitted to the Court of first instance in Genoa for a total amount corresponding to approximately £720 million; however, a number of claims are duplications. The judge in charge of the proceedings has held hearings concerning the claims, but his decision on the various claims is not expected until 1994. The aggregate amount of the claims greatly exceeds the total amount of compensation available under the Civil Liability Convention and the Fund Convention, viz 900 million (gold) francs, which in the IOPC Fund's view corresponds to 60 million Special Drawing Rights or Lit 102 864 000 000 (£47 million). However, the Court of first instance in Genoa has fixed the maximum amount payable by the IOPC Fund at Lit 771 397 947 400 (£350 million), calculated on the basis of the free market value of gold. The IOPC Fund has appealed against the Court's judgement.

12.10 Large claims have also been submitted to the IOPC Fund in respect of the AGIP ABRUZZO incident which took place in Italy in 1991. Claims have been settled for a total of £8.2 million. Claims totalling £700 000 million are being examined by the IOPC Fund.

12.11 As for the PATMOS incident, which took place in Italy in 1985, the IOPC Fund has become involved in complex legal proceedings concerning a claim submitted by the Italian Government for compensation for damage to the marine environment which was rejected by the Court of first instance. The Court of Appeal rendered a non-final judgement in March 1989 concerning that claim. In that judgement the Court stated that the owner of the PATMOS, his P & I insurer and the IOPC Fund were liable for the damage covered by the claim made by the Italian Government. It is expected that the Court will in 1994 render its judgement on the quantum of the damage.

12.12 It is the established policy of the IOPC Fund to settle claims within a short period of the incident in question. The IOPC Fund Secretariat will do its utmost to continue this policy. The Director will also endeavour to ensure that the definition of "pollution damage" is given a uniform interpretation in IOPC Fund Member States.

12.13 For details of the new incidents and for recent developments regarding the settlement of claims arising out of earlier incidents, reference is made to the various documents submitted to the 36th session of the Executive Committee.

13 Final Remarks

13.1 Since the 15th session of the Assembly, three serious oil pollution incidents have occurred in IOPC Fund Member States, namely the AEGEAN SEA, BRAER and TAIKO MARU incidents. This is the worst record for any 12 month period since the establishment of the IOPC Fund in 1978.

13.2 The worldwide public debate concerning problems relating to oil pollution from ships which resulted from recent incidents, such as the HAVEN, AEGEAN SEA and BRAER, focused on the need to enhance the safety of navigation, to study tanker design and construction, to improve contingency plans and to develop better equipment and materials for oil spill clean-up. This debate has also increased the awareness in all States, including States which are not Members of the IOPC Fund, of the importance of an effective system for compensating victims of oil pollution damage.

13.3 During the last five years, the number of IOPC Fund Member States has grown from 40 to 57, and there are reasons to believe that a number of States will join the IOPC Fund in the near future. This continuing expansion of membership demonstrates that the international community has found the system of compensation created by the Civil Liability Convention and the Fund Convention a viable one, providing prompt compensation to victims of oil pollution damage.

13.4 As a result of the work carried out within the IOPC Fund, an International Conference held in November 1992 under the auspices of IMO adopted Protocols to modify the 1969 Civil Liability Convention and the 1971 Fund Convention. These Protocols contain the same substantive and administrative provisions as the 1984 Protocols but differing entry into force provisions. On the basis of information available to the IOPC Fund Secretariat concerning the position of a number of States to the 1992 Protocols, there are prospects that these Protocols will enter into force in 1995 or 1996, thereby ensuring the viability of the system of compensation established by the Civil Liability Convention and the Fund Convention in the future.
