

ASSEMBLY - 1st session

SUMMARY RECORD OF THE FIFTH PLENARY MEETING

held at IMCO Headquarters, 104 Piccadilly, London, W.1,
on Wednesday, 15 November 1978 at 11.10 a.m.

Chairman:	Mr. J. BREDHOLT (Denmark)
Director designate:	Mr. R.H. GANTEN
Secretary-General of IMCO:	Mr. C.P. SRIVASTAVA
Secretary:	Mr. T.S. BUSHA (IMCO Secretariat)

A list of participants is given in OPCF/A.I/INF.1

CONTENTS

	<u>Page</u>
<u>Agenda item 9:</u> Adoption of Internal Regulations (continued)	2

AGENDA ITEM 9 - ADOPTION OF INTERNAL REGULATIONS (OPCF/A.I/3, 3/1 and 3/2)
(continued)

The CHAIRMAN invited participants to begin by discussing draft Regulation 1, contained in document OPCF/A.I/3.

Regulation 1

Mr. BELMONT (France) said that in paragraph 5 the franc provisions should be interpreted in terms of the International Monetary Fund's Special Drawing Rights (SDRs).

Ms BRUZELIUS (Norway) suggested that in the interim period before the 1976 Protocol to the Convention entered into force the Assembly should pass a resolution on how the franc provisions were to be interpreted. In Norway the Poincaré Franc was always interpreted in SDRs, for otherwise it was very difficult to know what the Poincaré Franc amounts meant in "living" currencies. It was necessary to make a decision now in order to calculate the initial contributions. She agreed to a request from the Chairman to put her proposal in writing.

Mr. STALIO (Yugoslavia) and Mr. WALDER (Observer, OCIMF), the latter speaking at the invitation of the Chairman, expressed their support for the proposal by the representative of Norway.

Mr. HERBER (Federal Republic of Germany) also supported the Norwegian proposal, remarking that it was necessary to have a fixed basis for determining currency.

The CHAIRMAN suggested that discussion of the matter be deferred, pending receipt of the Norwegian amendment in writing.

It was so decided.

Regulation 2.1

Mr. NILSSON (Sweden) observed that the same problem arose as in Regulation 1, and in fact the last sentence of Regulation 2.1 had become the main rule on which to rely, since there was no longer any official value for gold. However, in his view it would be possible to keep the wording as it was, but on the understanding that the principles for determining currency had to be established by the Assembly. He supported the proposal of the representative of Norway.

Mr. HALL (United Kingdom) also supported the Norwegian proposal, but thought it advisable to introduce a new sub-paragraph to give effect to to the last sentence of paragraph 1.

Mr. NAKAYAMA (Japan) asked, with reference to the words "on the date of entry into force of the Fund Convention" in lines 5 and 6, whether for a State ratifying the Convention in the future, payment was to be made at the rate applying on 10 October 1978, when the Convention had entered into force for the present fifteen States, or at the rate applying on the date on which the Convention came into force for the particular State concerned. He suggested inserting the words "for the contracting State" after "entry into force" in line 5 of Regulation 2.1.

Mr. HERBER (Federal Republic of Germany) supported that idea.

Mr. HALL (United Kingdom) agreed to a request from the Chairman that he discuss the matter with the representative of Norway and that they make a common proposed amendment to Regulations 1 and 2.1.

It was so decided.

Regulation 2.2

Regulation 2.2 was approved.

Regulations 2.3 and 2.4

Mr. NILSSON (Sweden) said that in the present world economic conditions it was very important to find ways of eliminating currency risks and in his view Regulation 2.4, Alternative A, would give the Director of the Fund the best opportunity of doing so. He thus proposed that Regulation 2.3 and Regulation 2.4, Alternative A, be amalgamated to read: "Initial contributions and annual contributions shall be payable in the currency of the Headquarters State. However, the Director may require ..."

Mr. BELMONT (France) supported that proposal and observed that in certain cases it should be permitted to make initial contributions in national currencies. He referred participants to the Note by the French delegation (OPCF/A.I/3/2) which argued in favour of the adoption of Alternative B, appropriately amplified. On reflection, he felt, however, that it could be dangerous to keep Alternative B; he proposed that a decision be taken on this by the Assembly. Meanwhile, his delegation was withdrawing its proposal on Regulation 2.4

The CHAIRMAN, summing up, said that delegates had to decide on the Swedish proposal to amalgamate Regulations 2.3 and 2.4 and on the choice between the two Alternatives in Regulation 2.4

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman said that both initial and annual contributions should be payable in either the currency of the Headquarters State or that of the contracting State, as desired by the Director of the Fund, whose prime responsibility was to handle and move funds as quickly as possible. He favoured Alternative A.

Mr. HALL (United Kingdom) said that he strongly supported the argument put forward by the observer from the OCIMF. The interests of the Fund had to be safeguarded, and it was the view of the United Kingdom delegation that Alternative A struck the right balance. Alternative B would take responsibility away from the Director and be against the interests of the Fund.

Mr. NAKAYAMA (Japan) shared the view of the United Kingdom delegate and also opted for Alternative A. He pointed out that as far as Alternative B was concerned, the national currency might not be a convertible one.

The CHAIRMAN felt that a decision had to be taken.

Mr. BELMONT (France) said that he agreed with the other delegates and also now opted for Alternative A.

The CHAIRMAN asked for a decision on the Swedish proposal to amalgamate Regulations 2.3 and 2.4, Alternative A.

Mr. NAKAYAMA (Japan) said that he supported it.

It was decided to amalgamate Regulations 2.3 and 2.4, Alternative A, as proposed by the representative of Sweden.

Mr. HALL (United Kingdom) said that Alternative A of Regulation 2.4 as at present drafted meant that the payment had to be at the rate of exchange on the date when payment was due. However, the invoice would be sent out after the calculations were made, and payment made at a later date. It was therefore unreasonable to set the calculation date as the one on which payment was due. Since Regulation 4.1 specified that the annual report, listing the names of all persons who in the preceding calendar year had received oil in respect of which contributions were due, must reach the Director not later than 31 March each year, the Director would presumably not be able to complete his calculations until after that date. It would therefore be reasonable to set a date later than 31 March by which payment should be made. In that connexion, Regulation 2.9, reading: "Interest shall be charged on unpaid annual contributions from the date on which payment is due" was also relevant.

He proposed that the date when payment fell due should be a month after the date on which invoices were sent out. The wording in Regulation 2.4 might be "on the date on which payment was calculated" and the words "on 31 March each year" might also be included.

Mr. WALDER (Observer, OCIMF) speaking at the invitation of the Chairman, said that the aim was to prevent anyone from delaying payment so as to benefit from currency fluctuations; but the Fund must allow a reasonable period for transfer of the payment. Since the Director could not send out invoices until after the budget was prepared, there would be difficulties unless dates were set. The date of the invoice would be one possible date, or the first day of the financial year, although if the invoice had not yet been sent out that would be impossible. The Director should therefore consider the matter in the light of the Assembly's decisions. It could not be solved at the present session.

Mr. HALL (United Kingdom), in reply to a question from the Chairman, confirmed that he wished to add the words "on 31 March each year". There were further complications because the Fund was going to work on the basis of a calendar year rather than a financial year, and budgets for a given year would therefore have to be calculated allowing for the fact that the amount of annual contributions in respect of that year was not yet known. That point would have to be considered later. If the amendment were adopted, the Assembly would later have to decide upon the date on which annual contributions were due. That might be 1 May or 1 June so as to allow contracting States time to make their payments.

Ms BRUZELIUS (Norway) pointed out that if Regulations 2.3 and 2.4 were amalgamated, both annual and initial contributions would be covered in the same paragraph. She did not think that initial contributions should be so covered.

She agreed with the suggestion of the observer for OCIMF that the discussion should be deferred. The Assembly would be able to accept the proposal as far as annual contributions were concerned, but if some of the initial contributions, due on 16 January 1979, were to be in national currencies, the Assembly would need to know the conversion date during the present session.

The CHAIRMAN suggested that a working group be set up to deal with the matter.

Mr. HALL (United Kingdom) explained that his proposal was not to amalgamate Regulations 2.3 and 2.4 but merely that Alternative A of 2.4 should be added to 2.3.

The CHAIRMAN invited the Assembly to take a decision on whether Alternative A of Regulation 2.4 should be added to 2.3, amended in the last line to read: "... on the date on which payment is calculated, 31 March of each year".

The proposal was approved.

The CHAIRMAN asked whether the Assembly agreed to set up a working group to deal with other problems in the regulations.

It was so decided.

Regulation 2.5

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, said that the regulation dealt with the proposal that the conversion date should be the date of the incident. It was unlikely, however, that claims would be settled for some time after an incident had occurred, and during the interval currency fluctuations might take place. It was therefore suggested that conversion of the 15 million francs laid down in Article 12(1)(i)(b) and (c) of the Convention should be made at the date of assessment of annual contributions. A date for that assessment should therefore be set.

Mr. BELMONT (France) endorsed that view.

Mr. HALL (United Kingdom) said that the matter was relevant to the fixing of the budget. What date would be relevant when the amount of compensation was decided?

Mr. HERBER (Federal Republic of Germany) was in favour of retaining the date of the incident, which was fixed for all time. If the assessment date were adopted, it would be possible to alter the date at which payment was requested and thus to benefit from exchange fluctuations.

Ms BRUZELIUS (Norway) said that, as she understood it, the significance of the 15 million francs was that it provided a division between States parties to the Convention when an incident took place, which would have to contribute to the payment of sums up to 15 million francs, and those which would have to contribute to payments of over 15 million francs. She was not

quite sure about the importance of changing the date of the incident to that of the assessment. The method of calculation must be known when the annual budget was established, since it was linked with the amount of the contribution. If the date of the assessment was before the budget was established, it might be acceptable; but if it was later, difficulties might arise.

Since it was not anticipated that there would be a call for annual contributions before the next session of the Assembly, the proposed working group might be asked to look into the matter. She merely wished to have the implications clarified.

Mr. NAKAYAMA (Japan) said that his delegation preferred to keep the present text.

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, said that Regulation 2.5 referred to the cost of calculating annual contributions for the preparation of the budget, since it referred to Article 12 of the Convention. The date of the incident, as the Norwegian representative had said, was relevant to which parties were liable, but a situation might arise in which an incident occurred say in 1980 and the payments required under annual contributions were not made until 1985. In establishing his budget for 1985 the Director would have to see how much the Fund would need to pay out, and that would have to be calculated in reference to the money due from various parties. He should use the exchange rate prevailing at that time, not when the incident occurred. The date of the incident was only relevant to the fact that a State that was not a party when the incident took place would not have to pay. It was not relevant to the actual payment.

Ms BRUZELIUS (Norway) objected that inflation would distort the figures so that calculations for 1985 would entail much larger contributions from States parties in 1980, but the same amounts if all those that were parties in 1985 took their share of the increased burden.

Mr. HALL (United Kingdom) pointed out that Article 12(1)(i)(b) and (c) of the Convention was unfortunately specific: it mentioned "payments to be made by the Fund". Subject to legal advice, that suggested to him that the Director could take into account payments that might have to be made during the year. Any shortfall would have to be made up by loans. If that interpretation was correct, the existing text was satisfactory. If, on the other hand, the

Director would have to make estimations in respect of likely and outstanding payments, his delegation would prefer the alternative offered by the observer for OCIMF.

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, recalled that the point made by the Norwegian representative had been very fully discussed at the 1971 Conference. That was why the sum of 15 million francs had been specified. Small claims could be shared by all contracting States that were members at the time of payment, but claims of over 15 million francs would be paid only by those that were contracting States at the time of the incident.

The point made by the United Kingdom representative had also been discussed in 1971, and it had been assumed that the Director would be able to work out what was needed in the budget for any given year. One point had been overlooked: running costs would be paid for by the interest on capital and hence contributions would be called for as and when needed, not necessarily every year.

Mr. HALL (United Kingdom) proposed that in the last sentence of Regulation 2.5 the reference to SDR's should be included, as in Regulation 2.2.

It was so decided.

The CHAIRMAN suggested that Regulation 2.5 be referred to the new Working Group.

It was so decided.

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, commented that while it was inappropriate to vary the initial contribution or "entry fee" to take account of the time at which ratification took place, annual contributions ought to be pro rata. A State ratifying towards the end of a year should not be assessed for a full year, as that would lead to a budget surplus.

Mr. HERBER (Federal Republic of Germany), took the view that an additional argument in support of Mr. Walder's suggestion was that, if ratification in the course of a year entailed paying a full year's contribution, States would delay entry to avoid incurring the additional expense. The consequence would be a fixed date for adherence, which was undesirable. He endorsed the view of the observer for OCIMF and put it forward as a formal proposal.

Ms BRUZELIUS (Norway) objected that the interpretation on which that proposal was based was less stringent than the provisions of Article 10.1 of the Convention.

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, replied that neither Article 10 nor Article 11 stated that any contributory monies were payable in respect of a period prior to ratification by the contributing States.

Mr. HALL (United Kingdom) agreed. His delegation took note of the comment of the representative of Norway but considered that the Assembly should not be swayed by it.

Ms BRUZELIUS (Norway) withdrew her objection.

The CHAIRMAN suggested that Regulation 2.6 should be referred to the Working Group to be amended in line with the suggestion made by the observer for OCIMF.

It was so decided.

Regulation 2.7

Mr. NAKAYAMA (Japan) asked whether any contracting State had, at the time it deposited its instrument of ratification, formally declared that it assumed those obligations.

It was agreed that the Secretariat would check that point, and it was later ascertained that no contracting State had assumed such obligations.

Regulation 2.7 was approved.

Regulation 2.8

Regulation 2.8 was approved.

Regulation 2.9

Mr. HALL (United Kingdom) proposed clarifying the paragraph by adding the words "which shall be 1 June". That would allow a full month between issuing the invoice and requiring payment. Certainly his delegation considered that a specific date should be given.

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, said that the specified date must of necessity have reference to Regulation 2.7. The Director should certainly state a date, and that date would depend on the date of the invoice.

Ms BRUZELIUS (Norway) recalled that the Convention provided for contributions to be paid by instalments. While 1 June might be appropriate for part of the contribution, it would not be right to require the full amount then. Her delegation would prefer the Director to be in a position to use his discretion as to the appropriate date to enter when he sent the invoice.

Mr. HERBER (Federal Republic of Germany) drew attention to the fact that under Article 13 of the Convention the Assembly was obliged to fix, annually, the rate of interest which would vary from year to year. The Assembly, at its present session, was accordingly called upon to fix the rate it would apply until the next Assembly session.

The CHAIRMAN said that it was clear that a working group would need to meet between the present session of the Assembly and the next one. Before the Group could receive its terms of reference, however, all draft Regulations should be looked at. With the assistance of the observer for OCIMF those whose functioning was essential for the intervening period could be singled out and accorded priority. Of the remainder some presented no problems while others would need to be considered by the Working Group. One and the same Working Group should be able to deal with both categories.

Mr. HALL (United Kingdom) agreed. The only regulations on which it was necessary for the Assembly to spend much time were those needed for immediate use. Mr. Walder's help in deciding which they were would be greatly appreciated.

Mr. DOUAY (France) supported that view. He doubted whether there would be time for the Working Group to meet in the course of the present session of the Assembly.

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, commented that in advising on what points were of immediate importance, it was relevant to know the approximate date of the next session of the Assembly.

The CHAIRMAN replied that the next session of the Assembly was likely to be held in April 1979.

Mr. HALL (United Kingdom) supported the views expressed by the representative of France. Not only did he agree that there was hardly time for a working group to meet, he further questioned the need for it to do so.

Mr. GANTEN, (Director designate), endorsed those remarks, adding that in the event the most important clauses might emerge as precisely those on which agreement was most easily reached.

The meeting rose at 12.40 p.m.