

INTERNATIONAL OIL POLLUTION
COMPENSATION FUND

OPCF/A.I/SR.6
30 March 1979

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ASSEMBLY - 1st session

SUMMARY RECORD OF THE SIXTH PLENARY MEETING

held at IMCO Headquarters, 104 Piccadilly, London, W.1,
on Wednesday, 15 November 1978 at 2.55 p.m.

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

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

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

The CHAIRMAN invited the observer from OCIMF to enumerate the internal regulations on which the Assembly was required to reach a decision before the next session.

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, said that his observations would be based on the assumption that the offer of a loan of US \$300,000 from IMCO would be taken up. In addition, the interest on the initial contribution (US \$3 million) would be sufficient to defray the costs of the Secretariat for the first year.

The regulations which would have to be adopted before the next session of the Assembly were Regulations 1, 2.1, 2.2 and 2.3 (as amended), which had already been provisionally approved, and Regulations 2.7, 2.8, 2.9, 3.1, 4, 11, 12 and the Annex, which had not yet been discussed by the Assembly. In addition to the above, some guidance would have to be given to the Working Group, for example in regard to the validity of Regulation 2.10, the choice between Alternatives A and B in Regulation 6.4, the content of Regulations 6.8 and 6.9, a decision of principle as to whether to include or exclude Regulation 7 (shown in square brackets) and Regulation X in the Appendix.

The CHAIRMAN invited the Assembly to continue consideration of the internal regulations, regulation by regulation.

Regulation 2.9

Mr. BELMONT (France) proposed that interest should be charged on all overdue contributions, both initial and annual.

Mr. NAKAYAMA (Japan) supported the French proposal.

Mr. HALL (United Kingdom) said that any decision by the Assembly should be subject to advice as to whether the proposed procedure was legally possible.

Mr. BUSH (IMCO Secretariat) said that the question of interest on initial contributions had been referred to by the Legal Committee of IMCO and the view expressed there had been that there was no authority under the Convention for charging such interest.

Regulation 2.9 was referred to the Working Group for examination.

Regulation 2.10

Mr. BELMONT (France) said that it would be preferable to define more clearly the type of financial guarantee which would be acceptable, such as the deposit of a specified sum of money in an approved bank.

Mr. NILSSON (Sweden) questioned the desirability of including Regulation 2.10 at all.

Mr. HERBER (Federal Republic of Germany) said that financial security could not be defined with such accuracy in advance. In practice, either the Fund would sue the contributor for non-payment or a settlement would be arrived at out of court.

Ms BRUZELIUS (Norway) also felt that Regulation 2.10 was unnecessary. If it was to be retained, it should be given as flexible a form as possible.

Regulation 2.10 was deleted.

Regulation 2.11

Regulation 2.11 was referred to the Working Group for examination.

Regulation 3

Regulations 3.1 and 3.2 were approved

Regulation 3.3

Mr. BELMONT (France) said that it was important that the Fund should not hold substantial sums of money for a prolonged period. The role of the Fund was not to act as a financial agent, but to allocate previously levied contributions and to meet claims as they arose. He therefore proposed the amendment set out in document OPCF/A.I/2.

Mr. WALDER (Observer OCIMF) agreed that the wording of Regulation 3.3 left something to be desired, but the underlying principle was correct.

Mr. HALL (United Kingdom) preferred the wording of the original draft regulation.

Mr. STEYN (Observer, CRISTAL), speaking at the invitation of the Chairman, drew attention to the danger of making rules which were too rigid and too specific, thus hampering management in the execution of its tasks. The draft version indicated the desirability of not having funds lying idle, without imposing a specific prohibition.

Mr. NILSSON (Sweden) supported the views of the representative of the United Kingdom and the observer from CRISTAL.

Regulation 3.3 was approved.

Regulation 3.4

Regulation 3.4 was approved.

Regulation 4Regulation 4.1

Regulation 4.1 was approved

Regulation 4.2

Mr. HALL (United Kingdom) proposed deletion of the last sentence on the grounds that it duplicated Article 46 of the Convention.

Ms BRUZELIUS (Norway) felt that there was no harm in the duplication in the present case, since some time occasionally elapsed before formal notification was made.

Regulation 4.2 was approved.

Regulation 4.3

Regulation 4.3 was approved

Regulation 4.4

Regulation 4.4 was approved.

Regulation 5Regulation 5.1

Mr. HALL (United Kingdom) proposed that the words "shall arrange to have" be replaced by the words "shall make application in accordance with national law for", since it was not possible for an individual to take the proposed action under British law.

Ms BRUZELIUS (Norway) emphasized that the right was in this case enshrined in the Convention and the actual wording was immaterial.

Mr. TANKAWA (Japan), supporting the United Kingdom, said that the procedures for implementing the Convention should of course comply with national law.

Regulation 5.1 was approved

Regulation 5.2

Regulation 5.2 was approved.

Regulation 6 - Settlement of claims

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, said that he had spoken to a number of delegations who agreed that the regulation should cover indemnification as well as claims.

Mr. NILSSON (Sweden) proposed that a new regulation, should be inserted after Regulation 6, to provide for the Fund to indemnify the shipowner for liability in accordance with Article 5.1 of the Convention. If the Assembly agreed to the idea in principle, the matter could be referred to the Working Party for drafting and he would submit a text as a working paper.

It was so decided.

Regulation 6.1

Mr. HALL (United Kingdom) said that it would be useful to have a provision enabling the Executive Committee to give the Director the necessary authority in certain instances, without the latter having to refer to the Assembly in every case. It might, for example, be decided that the Assembly should meet only every two years. He would like to know whether the observer for CRISTAL thought that such an interval would be too long.

Mr. STEYN (Observer, CRISTAL), speaking at the invitation of the Chairman, said that a two-year interval would be far too long: the Board of CRISTAL met every three or four months, so that settlements, which required the Board's approval, could be made within a reasonable time.

Mr. HALL (United Kingdom) questioned the need for the second sentence of the regulation, since Regulation 6.4 provided that the Director could pay compensation in certain cases without the Assembly's approval.

Mr. MARCHAND (France) said that Regulation 6.4 was of a more general scope, but Regulation 6.1 was useful because it provided the possibility of the Director recommending settlement without litigation. He would prefer to see the second sentence retained.

Mr. HALL (United Kingdom) said that the second sentence of Regulation 6.1 contradicted Regulation 6.4 which in effect allowed the Director flexibility in the settlement of claims without litigation. There were two problems to be considered: the legal interpretation and the policy aspect - whether the Director should be allowed flexibility for all claims.

It was decided that Regulation 6.1 should be referred to the Working Party.

Regulation 6.2Regulation 6.3

Regulations 6.2 and 6.3 were approved provisionally.

Regulation 6.4

The CHAIRMAN pointed out that a decision had to be taken at the present session between Alternatives A and B. He drew attention to the observations submitted by OCIMF in document OPCF/A.I/3/1.

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, said that, as indicated in document OPCF/A.I/3/1, OCIMF preferred Alternative B, since a number of claims not exceeding 5 million francs each could together exceed a total of 25 million francs. He suggested that the figure of 25 million francs should be halved, which would allow enough for small claims without risk of overpayment or of exceeding the total payment permitted.

Mr. NAKAYAMA (Japan) endorsed the views of the preceding speaker.

Mr. HERBER (Federal Republic of Germany) supported the suggestion by OCIMF to reduce the limit of 25 million francs to 12.5 million francs. If limits were to be set on the Director's right to make settlements without reference to the Assembly, the limits should be both on individual claims and on the total claims for one incident. Subject to that change he would support Alternative B. Otherwise he would have suggested retaining only paragraph (b) of Alternative A.

Mr. HALL (United Kingdom) said that he favoured Alternative B and would accept a reduction of the total to 12.5 million francs because, in the light of CRISTAL's experience, that would cover the majority of claims and would still allow the Director enough leeway.

Ms BRUZELIUS (Norway) said that she had at first been in favour of Alternative A, as offering the best possibility of speedy settlement. She would have supported Alternative B with the figure of 25 million francs, but doubted whether 12.5 million would be adequate, particularly if the Director had to seek approval from the Assembly and there were long

intervals between sessions. She suggested that the Working Party should consider the question of the interval between Assembly sessions and also whether the regulation should include a reference to the Executive Committee.

The CHAIRMAN suggested that the Assembly should decide provisionally between Alternatives A and B and leave the Working Party to submit proposals to the next session.

Mr. NILSSON (Sweden) said that the last point made by the representative of Norway was covered by the definition of "Assembly" in Regulation 1.7.

With regard to the total amount of claims, while it was difficult to set a specific figure, his delegation considered that the Director should be given a free hand and would therefore prefer to keep the figure of 25 million francs.

The CHAIRMAN said that there appeared to be general support for Alternative B.

It was so decided.

The CHAIRMAN suggested a figure of 20 million francs as a compromise between 25 million and 12.5 million.

In reply to questions from Ms BRUZELIUS (Norway) and Mr. NAKAYAMA (Japan), Mr. STEYN (Observer, CRISTAL) speaking at the invitation of the Chairman, said that - with the exception of the "Amoco Cadiz" incident - the biggest individual settlement payment made by the Institute was just over \$1 million. The average amount of a claim was about \$500,000.

Mr. HALL (United Kingdom) suggested that in view of the uncertainty over figures, it would be better not to decide on a change at the present stage but to leave it to the Working Party to review the matter.

The CHAIRMAN said that he took it the Assembly agreed to retain the figure of 25 million francs for the time being and leave the question of changing the regulation until the next session. Meanwhile, the Working Party would study the problem.

It was so decided.

Regulation 6.5Regulation 6.6

Regulations 6.5 and 6.6 were approved provisionally.

Regulation 6.7

Mr. NAKAYAMA (Japan) pointed out that there was no reference to the Executive Committee.

The CHAIRMAN explained that the Executive Committee was included in the definition of the Assembly in Regulation 1.7.

Mr. DUFFY (Observer, ICS), speaking at the invitation of the Chairman, pointed out that the problem was also covered in Article 26(b)(ii) of the Convention.

Regulation 6.7 was approved provisionally.

Regulation 6.8

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, said that, as indicated in document OPCF/A.I/3/1, his organization would be most concerned if the regulation were approved in its present form, especially where proration of claims was necessary, because a provisional payment of 60 per cent to any one claimant might be excessive and might mean denying other claimants their share. There also appeared to be some conflict between the 60 per cent figure and 225 million francs.

He suggested that such provisional payments be left to the discretion of the Director, since it would be difficult to set precise rules. It was essential to allow the widest possible discretion on the management of the Fund. If the present figures were kept, the Director might find himself in an awkward situation.

He accordingly suggested that the last two sentences of the regulation should be deleted.

Mr. MARCHAND (France) said that there appeared to be a number of problems. He shared the concern expressed by the previous speaker. The regulation as it stood could lead to the provisional payment of large sums which would cause problems in the final settlement of claims.

He suggested that in the fifth line, the word "may" should be replaced by the word "shall", so that the Director would be authorised to make provisional payments where he was satisfied that the owner was entitled to limit his liability, or had no liability, under the 1969 Civil Liability Convention.

With regard to the last two sentences, he suggested that the 60 per cent might be retained, subject to the figure of 225 million francs being reduced. Alternatively, both figures should be reviewed.

Mr. HERBER (Federal Republic of Germany) said that he agreed with the representative of France on the danger of making provisional payments, which might result in hardship for victims of an incident, or even a situation where the Fund could not recover a provisional payment which proved not to have been justified. Caution was necessary and perhaps a less broad regulation.

The CHAIRMAN suggested that the regulation should be submitted to the Working Party, which would have available the summary records of the discussion at the present session. It could then be reconsidered at the next session.

It was so decided.

Regulation 6.9

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, said that the Forum's concern, as indicated in document OPCF/A.I/3/1, was due to the fact that the regulation provided for even higher provisional payments than those under Regulation 6.8.

The CHAIRMAN suggested that the Working Party should consider Regulation 6.9 at the same time as 6.8.

It was so decided.

Regulation 6.10

Regulation 6.11

Regulations 6.10 and 6.11 were approved provisionally.

Regulation 7

The CHAIRMAN drew attention to the comments submitted by OCIMF in document OPCF/A.I/3/1.

Mr. WALDER (Observer, OCIEF), speaking at the invitation of the Chairman, said that he would like to see the entire regulation deleted.

Mr. DUFFY (Observer, ICS), speaking at the invitation of the Chairman, said that Regulation 7 would not be needed if it were decided not to keep Regulation X. He suggested that the latter be taken first.

Mr. NAKAYAMA (Japan), supported by Mr. HALL (United Kingdom) and Mr. STALIO (Yugoslavia) said that both regulations were unnecessary.

It was decided to delete Regulation 7.

Regulation 8

Mr. MARCHAND (France) said that, as indicated in document OPCF/A.I/3/2, his delegation considered that Regulation 8.1 gave the Director very wide powers to take up loans for the account of the Fund. Such a provision was open to criticism in that disbursements by the Fund should in all cases be covered by contributions. All necessary provisions must be taken, subject to scrutiny by the Director, to ensure that contributions were adequate, thus making loans unnecessary. In that connexion he drew attention to Regulations 2.8, 2.9 and 2.10.

He proposed that Regulation 8.1 be deleted.

Ms BRUZELIUS (Norway) said it would be useful to hear about the experience of OCIEF and CRISTAL before taking any decision.

Mr. STEYN (Observer, CRISTAL), speaking at the invitation of the Chairman, said it had been CRISTAL's experience that about 95 per cent of the total of calls made had been received within two months of the date on which invoices had been sent out. It was CRISTAL's practice to specify a two-month period for payment because it was aware of the problems experienced by some countries in moving funds. In general, it had found that members tended to remit very promptly.

Mr. HALL (United Kingdom) said the issue was a very important one. If the Director were not allowed to take up loans, he might be prevented from making payments sufficiently quickly. The basic principle was that sufferers should receive compensation as quickly as possible, and he was opposed to any procedure that would increase the possibility of delay. He urged that the provision set out in Regulation 8.1 should be retained.

Mr. NAKAYAMA (Japan) said he was satisfied with the existing text of Regulation 8.1.

Mr. MARCHAND (France) said that difficulties would arise in cases where annual contributions were not levied at a time that was appropriate to meet the Fund's needs. He proposed that contributions should be levied in such a way as to provide a reserve which would enable it to meet all likely future commitments. He suggested that the Working Group should look into that possibility.

Ms BRUZELIUS (Norway) said that the French delegation would apparently favour an arrangement whereby annual contributions could provide a cash reserve for use when necessary. As she understood it, France had not favoured the setting up of such a reserve in other connexions.

Her own delegation would prefer the Director to have the opportunity of taking up short-term loans, and for the cost of such loans to be included in the annual call. She favoured the retention of the existing text of Regulation 8.1, since she felt that it provided sufficient guarantee that the loan facility would only be used in case of real need.

The CHAIRMAN said it appeared that the majority preferred the existing text. He suggested that the Working Group be asked to consider the question, taking into account the points raised by the French representative.

It was so decided.

Regulation 8.2

Ms BRUZELIUS (Norway) proposed that the Working Group should look into the possibility of inserting in the regulations a requirement that the Director should report to the Assembly on how the Fund's investments were placed. In reply to a question from the United Kingdom representative, she explained that the Director would merely be stating the investment position, and not justifying his choice of investments.

Mr. NAKAYAMA (Japan) supported that proposal.

Mr. STEYN (Observer, CRISTAL), speaking at the invitation of the Chairman, stated that at each meeting of the Board of Directors of his Institute a report was made on the investment portfolio at that time.

The CHAIRMAN said that there appeared to be agreement on the inclusion of the requirement proposed by the Norwegian representative.

It was so decided.

Regulation 9

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, suggested that the Working Group might look into the question of whether anything further needed to be done to meet the needs of States in emergency situations. He urged that there should be close co-ordination with all bodies concerned in order to avoid duplication of work in this area.

Mr. HALL (United Kingdom) supported that view. The Working Group, and also the Director, should be asked to consider the practicalities of the problem and to put proposals, taking into account the information and expertise already available within IMCO.

Mr. SASUMURA (IMCO Secretariat) said that there was within IMCO a Marine Environment Protection Committee (MEPC) and that the United Nations Environment Programme carried out various activities in the same field. The MEPC had compiled a list of equipment and experts, and was acting as mediator for the purchase of equipment. However, there would be practical problems in implementing the activities in question, and a certain amount of technical support would be needed; that support could for instance be provided by IMCO's Marine Environment Division. The assistance thus provided by the IMCO Secretariat, together with the advice of Member States supplied through the MEPC, would be an effective means of providing assistance to the Director in accordance with Article 4(7) of the Convention.

The CHAIRMAN said that in its consideration of Regulation 9 the Working Group would bear in mind the points that had been raised.

Regulation 10

Mr. MARCHAND (France), referring to Regulation 10.1, proposed that the phrase "or may reasonably be expected to suffer" should be deleted, on the grounds that credit facilities ought to be provided only if it were certain that damage had been suffered. He further proposed that in the third line the word "will" should be used in preference to "might", so

that the sentence would read "..... if he estimates that the Fund will be called upon", on the grounds that there needed to be certainty that the Fund would be involved.

Ms BRUZELIUS (Norway) said that she could accept the second amendment proposed by the French representative but was not in favour of the first. It was now becoming increasingly possible to contain an oil spill by means of barriers and other mechanical devices to prevent pollution damage taking place. Such devices were very costly, and it was important that States should have money speedily available to enable them to take preventive measures. She felt it unwise to delete a provision which would offer the possibility of providing credit facilities to prevent pollution.

Mr. HALL (United Kingdom) urged that the Working Group should look very carefully at Regulation 10.1, bearing in mind that if every contracting State were to call upon the Fund to make advance payments in respect of every incident, the administrative and financial burdens could be very great. The paragraph gave no indication as to when the advances made should be repaid. For the time being he could agree to the use of the word "will" instead of "might".

Mr. NAKAYAMA (Japan) supported that view.

Mr. MARCHAND (France) suggested that a compromise solution might be not to delete the phrase "or may reasonably be expected to suffer" but to substitute a phrase such as "or is likely to suffer", thus making the conditions for the extension of credit facilities more stringent.

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, referring to Regulation 10.5, suggested that it would be clearer if specific mention were made of the total amount which the Fund might ultimately be liable to pay. He also suggested that the phrase "or in respect of the cost of preventive measures" should be added after "incident" in the fourth line.

Mr. NILSSON (Sweden) supported that suggestion.

The CHAIRMAN said there appeared to be agreement on the amendment suggested by the observer for OCIMF. The Working Group would look into Regulation 10, taking into account the points raised.

It was so decided.

Regulations 11-14 and Annex

There were no comments.

Appendix

Mr. HALL (United Kingdom) said as he understood it, it had been agreed to delete Regulation X in addition to Regulation 7.

Mr. STALIO (Yugoslavia) and Mr. MARCHAND (France) said that was also their understanding of the position.

It was decided to delete Regulation X.

The CHAIRMAN commented that the only regulation on which problems remained unsolved was Regulation 2 (Contributions). He suggested that the representatives of Norway and the United Kingdom should prepare proposals on that regulation for submission the following day.

It was so decided.

The CHAIRMAN suggested that the Working Group should consist of representatives of the United Kingdom, Sweden, France and Japan. If other delegations wished to participate in the Group's work, they could indicate their wish before the end of the session.

Ms BRUZELIUS (Norway) suggested that the observers for OCIMF and CRISTAL be asked to participate in the Group, since their technical knowledge would be of great assistance.

The CHAIRMAN suggested that it be left to the Group, and to the Director of the Fund, to invite OCIMF and CRISTAL to assist the Group as observers.

Mr. HALL (United Kingdom) asked whether IMCO could provide the Fund with a Secretariat in the interim period until it could supply its own.

Mr. BUSH (IMCO Secretariat) said that IMCO would be at the Fund's disposal to provide all assistance possible. He suggested that Mr. Ganten, Director designate of the Fund, might wish to act as Secretary of the Working Group, with the IMCO Secretariat providing the appropriate assistance.

Mr. MARCHAND (France) supported that suggestion. He asked if members could be informed of the dates of the Group's meetings.

Mr. GANTEN (Director designate) said he would inform members as soon as possible of the time and place of the Group's meetings.

The meeting rose at 5.25 p.m.