

ASSEMBLY - 1st session

FOR PARTICIPANTS ONLY

PROVISIONAL SUMMARY RECORD OF THE EIGHTH PLENARY MEETING

held at IMCO Headquarters, 104 Piccadilly, London, W.1,
on Thursday, 16 November 1978 at 2.40 p.m.

Chairman: Mr. J. BREDHOLT (Denmark)

Secretary-General of IMCO: Mr. C.P. SRIVASTAVA

Secretary: Mr. T.S. BUSEA (IMCO Secretariat)

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

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N.B. Corrections to be incorporated in the final summary record of the meeting should be submitted in writing (one copy in French or English), preferably on the provisional summary record, to the IMCO Secretariat, 104 Piccadilly, London W1V 0AE not later than 22 December 1978.

AGENDA ITEM 17 - INCREASE OF MAXIMUM LIABILITY OF THE FUND
(OPCF/A.I/14 and OPCF/A.I/14/1) (continued)

Rear-Admiral WALLACE (Observer, United States), speaking at the invitation of the Chairman, said that he had unfortunately not been present during the discussions at the preceding meeting. He had, however, had informal talks with members of delegations during the week, some of whom had suggested that it would be useful if his delegation could place its views on record.

His country had played a full part in both the International Legal Conference on Marine Pollution Damage, 1969 and the Conference on the Establishment of an International Compensation Fund for Oil Pollution Damage, 1971; the delegation had signed both Conventions, indicating an intention to seek ratification of them. The executive branch of the United States Government had sent the Conventions to the Senate in 1970 and 1972 for pre-ratification advice and consent, but difficulties had been encountered over some of the limitations. His country also had its own domestic, companion legislation on a Superfund which, for domestic purposes, would cover many of the objectives of the two Conventions as well as other matters.

In 1976 the Administration had decided, in face of opposition in the Congress to the two Conventions, not to press further but to concentrate on the Superfund. However, he hoped that his delegation's presence at the Assembly would be taken as an indication of his country's genuine interest in ratifying the Conventions. His delegation would report fully to the Government on the proceedings.

Soon after the new Congress convened on 15 January 1979 the Carter Administration was expected to reintroduce the Superfund legislation - which had failed at the previous Congress - and a decision would have to be taken on whether to retain that legislation as an independent effort or whether to try to link the Superfund with the two Conventions.

The effort so far had been useful, since it had given an idea of the liability limits that Congress was likely to accept. A maximum of \$300 per ton seemed now to be agreed upon, which was nearly double the limit under the Convention. The limit for the supplementary, domestic Superfund was likely to be about \$200 million.

His Government was now seriously considering the prospect of ratification of the two Conventions. Following the "Argo Merchant" disaster off the New England coast, concern had been expressed that the upper limits in both Conventions were not high enough, seeing that they had been adopted in 1969 and 1971 respectively. His delegation noted with satisfaction that the French delegation was in favour of doubling the compensation under the Fund Convention. It was concerned about the increased disparity between ship and cargo owners' liability, which had been touched on by the Japanese representative.

Since his country was an observer and not a party to either Convention, he would merely suggest that it might be appropriate for the Assembly to express itself on the need to increase liability limits and average compensation and to correct the disparity, although the representative of the Federal Republic of Germany had pointed out that the latter would entail amendment of the Conventions.

From his own country's point of view two actions would be very useful. The first was a decision by the Assembly to double the Fund. He appreciated that the matter was controversial and had yet to be decided, but at least a move in that direction would help his country's Administration. The second would be the adoption of a resolution urging Contracting States to both Conventions to request IMCO to convene a diplomatic conference as soon as possible to review the problems that were preventing countries including his own from ratifying the Conventions. He agreed with an earlier remark on the importance of contact with non-Contracting States.

He very much hoped that the question of doubling the Fund would not be deferred - or at least, not for long. He also hoped that an international conference would be held before long to consider the provisions in the two Conventions which should be brought up to date in the light of events since 1971. It was essential to ascertain and effect the changes that would enable many more countries to become parties to the Convention.

Mr. POPP (Observer, Canada), speaking at the invitation of the Chairman, said that the decisions taken at the present and future sessions of the Assembly were very important to his country, whose national liability and compensation regulations were at present under intensive review.

He had noted with interest what had been said by the representative of the Federal Republic of Germany on the views of non-Contracting States - a valid point in the deliberations on raising the limits of the Fund. He fully endorsed the remarks of the United States representative and would therefore refrain from covering the same ground.

Mr. KALPIN (Observer, USSR), speaking at the invitation of the Chairman, said that although his country was not yet a party to the Fund Convention, it could not stand apart from the discussions taking place on the vital documents that would determine the principles for the organization and operation of the Fund.

The Soviet Union was a party to the 1969 Liability Convention and had ratified it in 1975. It had taken an active part in the development of the Fund Convention. His delegation had obtained valuable information, from the present discussion, on the principles and operation of the Fund and would duly inform the appropriate national authorities. Such information would undoubtedly help the authorities in the decisions that they would ultimately be taking.

The representative of the Federal Republic of Germany had suggested that the observers should make their positions known. He would therefore tell the Assembly that his Government was giving very careful consideration to its attitude to the Convention and its participation in the Fund. It would take the necessary decisions in due course and would duly inform the Director and the Secretary-General of IMCO.

With regard to increasing the liability ceiling, since his country was an observer and had not yet taken a decision regarding participation in the Fund, he was not in a position to make a more specific statement.

Mr. KOMURA (Japan) asked that speakers be requested to address the Assembly only in the working languages of the Fund, as established in the Rules of Procedure, namely English and French.

Mr. MARCHAND (France) said that, while maintaining his request for a roll-call vote on whether to take a decision at the present or the next session, he would not be opposed to the vote being postponed until the following meeting if any delegations wished for time to consider the matter or obtain instructions. He stressed, however, that his Government's intention to request that the Fund be doubled had already been made clear in the Council in May and in the Legal Committee in June. It was therefore not a new move that could take delegates by surprise.

Mr. BEN AMMAR (Tunisia) said that he would prefer the vote to be postponed until the following meeting, since he was hoping to receive urgent instructions from his Government on the matter.

Ms BRUZELIUS (Norway) said that she would accept postponement of the vote if the Assembly so wished.

Article 4(6) of the Convention provided that the Assembly could, in the light of experience of incidents that had occurred and the amount of damage resulting therefrom, and changes in monetary values, decide to increase liability under the Fund; and relevant information had been provided by CRISTAL (OPCF/A.I/INF.2) and by the French delegation's proposal (OPCF/A.I/14/1) which showed that the Fund as at present would not be enough to cover the damage resulting from the "Amoco Cadiz" incident. However, the latter was only an initial assessment of damage; nothing had been approved. Consequently, while her Government took a favourable view of the possibility of increasing the liability under the Fund, it still needed more, and more definite information; she had therefore been instructed to ask for the matter to be postponed until the next session of the Assembly. Furthermore, it would be desirable to consider whether, if the figure were doubled, it might not be better for the increase to be made in stages. If the ceiling figure were reached at the outset, any further increases that might be necessary later on would entail amendment of the Convention.

In the circumstances, she would have to vote for postponement of a decision. If that failed, she would have to think very carefully how to vote on raising the limit.

It was agreed to postpone the vote until the following meeting.

AGENDA ITEM 9 - ADOPTION OF INTERNAL REGULATIONS (OPCF/A.I/WP.5, WP.6, WP.7, WP.8 and WP.9) (continued)

Ms BRUZELIUS (Norway) introduced the proposals submitted by her delegation and that of the United Kingdom in documents OPCF/A.I/WP.8 and WP.9, which superseded document OPCF/A.I/WP.5. As agreed with the United Kingdom representative, she maintained her proposal in document OPCF/A.I/WP.6 because it covered the Convention, whereas the new Regulation 1 bis proposed in document OPCF/A.I/WP.8 concerned only the internal regulations.

The proposals in documents OPCF/A.I/WP.8 and WP.9 were complementary. The tasks set her delegation and that of the United Kingdom had been twofold, covering the conversion of francs and those parts of Regulation 2 that were necessary for the initial contributions and which the Assembly would have to adopt to enable the Director to obtain the necessary funds.

On the first question, it had been decided to submit a general provision, since the question of francs was referred to in several of the regulations. She suggested that the working party should be requested to study the proposal during its intersessional work.

With regard to the second question, concerning Regulation 2, it was proposed, in accordance with the Assembly's instructions, that Regulation 2.3 be amended to include the possibility, at the discretion of the Director, of initial contributions being paid in the national currency of the State concerned. A provision had also been included on the method of calculating the conversion from national currency. Much of the material had been taken from Regulation 2.4.

The CHAIRMAN said that he assumed the proposed new Regulation 1 bis would replace Regulation 2.2 as proposed in OPCF/A.I/WP.5, now superseded.

Mr. HALL (United Kingdom) said that the last sentence of the proposed new Regulation 2.1 appeared elsewhere and there were references elsewhere to francs. More time would be needed to review the drafting and to ensure that there were references back to the new Regulation 1 bis wherever appropriate. The matter might be left with the working party.

The CHAIRMAN suggested that the Assembly should approve Regulation 1 bis (OPCF/A.I/WP.8) and Regulation 2 (OPCF/A.I/WP.9) subject to review of Regulation 2.1 by the working party on the lines indicated by the United Kingdom representative.

Ms BRUZELIUS (Norway), introducing her delegation's draft resolution (OPCF/A.I/WP.6), said that Norway's suggestion was that the issue of conversion to francs could be dealt with by means of an Assembly resolution for the interim period until the Protocol to the Convention entered into force. The United Kingdom delegation had proposed a more specific text to be included in the Internal Regulations, which had now been prepared, but since there were also in the Convention references to amounts expressed in francs, there should be for the interim period some rules for the interpretation of those amounts. She considered it imperative that similar language should be adopted for the franc provisions in both the Convention and the Regulations, in order that those provisions should be interpreted in the same manner as widely as possible. The adoption of a resolution would give guidance to the courts as to how the franc provisions in the Convention were to be interpreted.

She pointed out that the references in the operative paragraphs of the draft resolution to the Internal Regulations were unnecessary and could be deleted.

Mr. HERBER (Federal Republic of Germany) supported the draft resolution proposed by the Norwegian representative. He suggested that in order to give emphasis to the need for States to ratify the Protocol as soon as possible, the phrase "and at the same time suggesting that the Contracting States should ratify that Protocol as soon as possible" should be added at the end of the preambular paragraph.

Ms BRUZELIUS (Norway) said that she would be glad to accept such an amendment, but felt that it would be better if it took the form of an additional operative paragraph, urging Contracting States to become parties to the Protocol as early as possible.

Mr. NAKAYAMA (Japan) supported the proposal by the representative of the Federal Republic of Germany. He would be glad to leave it to the Norwegian and United Kingdom representatives to decide where the additional phrase could best be placed in the resolution.

Mr. HALL (United Kingdom) proposed that the amendment could take the form of a third operative paragraph beginning "RECOMMENDS", with the word "AND" being deleted from the beginning of the second operative paragraph. He further proposed that in the second line of the second operative paragraph. He further proposed that in the second line of the second operative paragraph, the word "equivalent" or "corresponding" should be substituted for "equal".

The SECRETARY-GENERAL of IMCO pointed out that since the Assembly had authority to take decisions it would not recommend, but rather resolve, in matters such as the present one. He therefore suggested that the word "RESOLVES" be substituted for "RECOMMENDS".

Ms BRUZELIUS (Norway) said that if the Assembly accepted her suggestion that the reference to the Internal Regulations in the first operative paragraph be deleted, the reference to the currency of the Headquarters State might not be adequate. There would also need to be a reference to national currencies as applied by the courts of Contracting States.

The CHAIRMAN suggested that the Norwegian and United Kingdom representatives prepare a revised draft resolution, taking into account the points raised, for consideration the following day.

It was so decided.

The CHAIRMAN invited the Swedish representative to introduce his delegation's proposal regarding Regulation 6 bis (OPCF/A.I/WP.7).

Mr. NILSSON (Sweden) said that his proposal took account of the points made by the representative of OCIMF and others on the question of indemnification, and of the decision in principle which the Assembly had taken; it was therefore largely self-explanatory.

Mr. HALL (United Kingdom) suggested that the Working Group might take into consideration the fact that Regulation 6 bis referred only to the shipowner, whereas Article 5 of the Fund Convention referred to the owner and guarantor. That fact should be taken into account in the wording of the regulation.

The CHAIRMAN commented that the Assembly had now concluded its consideration of the Internal Regulations, since all problems in that connexion were now to be looked into by the working group.

AGENDA ITEM 20 - ANY OTHER BUSINESS (OPCF/A.I/19)

The CHAIRMAN drew attention to the note by the Secretary-General of IMCO regarding determination of interest payable on arrears (OPCF/A.I/19)

Mr. HALL (United Kingdom) said that he had some difficulty with the wording of Article 13(1), which indicated that the Assembly would be obliged to set a different interest rate for each calendar year. It seemed likely that problems would arise if rapid changes were to take place in the interest rate. He suggested the provision set out in Regulation 7.2 of the Internal Regulations should serve as a basis for determining the rate of interest until the Assembly took a decision to the contrary. He hoped that there would not be any legal obstacles to such an arrangement.

The SECRETARY-GENERAL of IMCO did not think that any major legal objection to such a provision was likely particularly since in some circumstances the Assembly might not meet every year.

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, said that when the question had been discussed in 1971 the solution suggested by the United Kingdom representative had been anticipated as being the normal one; the wording of Article 13(1) had been intended to take into account the possibility of different rates for special circumstances. He agreed that it would be preferable to establish the rate of interest at an annual rate 2 per cent above the minimum lending rate fixed by the central bank of the Headquarters State, as provided in Regulation 7.2.

It was so decided.

AGENDA ITEM 18 - RELATIONS WITH IMCO AND OTHER ORGANIZATIONS (OPCF/A.I/15,
OPCF/A.I/WP.1)

The SECRETARY-GENERAL of IMCO, introducing document OPCF/A.I/15, said that the document had been prepared solely for the information of the Assembly. Annex I contained a list of organizations with which IMCO had established agreements or arrangements of co-operation, and Annex II contained a list of non-governmental organizations which had been granted consultative status. Those lists covered a much wider field of activities than those of interest to the Fund, but it had been desired not to prejudice any actions the Assembly might take in that connexion. Both the Council and the Assembly of IMCO had recently indicated their desire to extend the fullest possible co-operation to the Fund.

The CHAIRMAN proposed that the Director be asked to consider the question and to report back to the next session of the Assembly. For the present, the same organizations would be invited to attend the next session as had been invited to the present one.

Mr. HALL (United Kingdom) supported that suggestion. The Director might also consider inviting representatives of the P. and I. Clubs.

The Chairman's proposal was adopted.

The CHAIRMAN drew attention to the footnote to Rule 5 of the Draft Rules of Procedure of the Assembly (Page 2 of the Annex to OPCF/A.I/WP.1).

Mr. NAKAYAMA (Japan) said that it had been his delegation's proposal that the United Nations be included among the organizations to be represented by observers at any session of the Assembly. The reference to the United Nations should be included as paragraph (1), and the subsequent paragraphs renumbered accordingly.

Ms BRUZELIUS (Norway) said she had no objection to that amendment. However, she would like to be assured that the Assembly was to instruct the Director to work out guidelines for the acceptance of governmental and non-governmental organizations which might wish to be admitted to sessions of the Assembly in the future.

The SECRETARY-GENERAL of IMCO pointed out that the Council of IMCO had recently revised its guidelines for the admission of organizations to consultative status. It had decided that in future only those organizations whose activities were of real relevance to IMCO would be admitted to consultative status.

The CHAIRMAN thanked the Secretary-General of IMCO for that clarification.
The proposal by the Japanese delegation was adopted.

AGENDA ITEM 8 - ADOPTION OF STAFF REGULATIONS (OPCF/A.I/WP.2, WP.3, WP.10)

The SECRETARY-GENERAL of IMCO said that working papers 2 and 3 provided an excerpt from the relevant IMCO Regulations, which had been circulated purely for purposes for information. He fully appreciated the reluctance of some delegations to give blanket approval to Regulations, the detailed Annexes of which were to be elaborated later. He had therefore prepared in working paper 10 a redraft of Regulations 19 and 24, which he hoped that the Assembly would feel able to adopt in principle. The detailed application of those Regulations would then be covered in the Staff Rules, which the Director had been authorized to determine, and would thus be submitted to the next session of the Assembly for confirmation.

There was however the further point that if staff were recruited in the meantime, some cover would be required. He had therefore drawn up, at Annex to working paper 10, an interim letter of appointment based on IMCO recruitment in recent months. He understood that insurance to cover the risks specified in paragraph 5 of the letter of appointment could be obtained on the insurance market for \$310 per person per year.

The CHAIRMAN invited the Assembly to approve the amended drafts of Regulations 19 and 24 and the proposed letter of appointment at Annex to working paper 10.

It was so decided.

AGENDA ITEM 19 - DATE OF NEXT SESSION (OPCF/A.I/16)

The SECRETARY-GENERAL of IMCO said that the date of the next session of the Assembly was governed mainly by the time required by the Director of the Fund to prepare the relevant documentation and by the IMCO work programme.

He understood that the Director anticipated completing the documentation within two months from 1 January 1979. A further period of 30 days was then required in accordance with the decision of the Assembly for circulation of the documents.

IMCO would be fully committed in the second half of April to a major international diplomatic Conference in Hamburg, the Search and Rescue Conference. Nevertheless, it should be possible for the session of the Assembly to be held in London from 17 to 20 April.

Mr. DOUAY (France) pointed out that to hold a session of the Assembly during the Search and Rescue Conference could cause difficulties, since legal questions were liable to arise in both cases and delegates might find themselves commuting between Hamburg and London. He suggested either an earlier period such as 9 to 12 April or a week at the end of April.

Mr. GANTZEN (Director designate of the Fund) said that, although early April was within the time limit which he had specified, the second session of the Assembly would have to give careful consideration to a number of important points and he would therefore like as much time as possible to prepare the relevant documentation. He would prefer the later period of 17 to 20 April. He pointed out that both the proposed dates allowed only four working days for the Assembly to complete its work.

Mr. HALL (United Kingdom), supported by Ms BRUZELIUS (Norway), considered that four working days would be adequate. He preferred the original period of 17 to 20 April.

Mr. STALIO (Yugoslavia) was also in favour of the period of 17 to 20 April originally proposed.

Mr. MASHIMA (Japan) agreed with the representative of France that the simultaneous holding of the Assembly and the Search and Rescue Conference would cause difficulties. He wondered whether the problem could be solved by holding the Assembly at some location other than at the Headquarters of IMCO.

After some discussion, it was agreed that the assistance of the IMCO Secretariat was essential to the smooth running of the Assembly, especially since only four working days would be available, whichever dates were selected, and that the Assembly could therefore only be held at the Headquarters of IMCO.

It was decided that the next session of the Assembly would be held from 17 to 20 April 1979.

The meeting rose at 5.10 p.m.