

INTERNATIONAL OIL POLLUTION
COMPENSATION FUND

ASSEMBLY - 1st session

OPCF/A.I/SR.9
30 March 1979

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SUMMARY RECORD OF THE NINTH PLENARY MEETING

held at IMCO Headquarters, 104 Piccadilly, London, W.1,
on Friday, 17 November 1978 at 9.40 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

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

The CHAIRMAN, recalling the main points of discussions already held on Agenda item 17, said that, to increase the maximum compensation payable by the Fund from 450 million to 900 million Poincaré francs as Article 4(6) empowered the Assembly to do, Members needed to review experience of actual incidents. After the "Amoco Cadiz" disaster it was clear that some countries had a great deal of experience. France and the United Kingdom were in that category. Other countries might need time to examine what the more experienced countries had found and reported. The feeling that had emerged from the previous day's discussion was that some action was called for but that it would be preferable to defer a decision until the next session of the Assembly. He reminded delegates that France had asked for a roll-call vote on the procedural issue of when to take a decision on the substantive issue of increasing the maximum liability of the Fund. He would therefore be asking the Assembly to vote by roll-call on the proposal that a decision on increasing the maximum liability of the Fund be taken at the present session.

Mr. NILSSON (Sweden) asked if he might explain his vote before voting actually took place. His delegation had come intending to vote for an increase in maximum liability, and had been prepared to do so at the present session. However, from what he had heard in the debate and in private conversation, he had realized that a substantial number of delegations were unable to vote to raise the limit at the present session, either, as in the case of the Federal Republic of Germany, for constitutional reasons, or because domestic preparations were not yet complete.

His delegation took the view that it was unreasonable to press delegations to vote while they were not yet in a position to do so. It further took the view that it was undesirable to proceed to a vote on a motion that was highly likely to be defeated. Consequently he moved that a vote on the raising of the maximum liability of the Fund be deferred until the second session of the Assembly.

Mr. DOUAY (France) welcomed that proposal, which was in accord with his own proposal at the previous day's morning meeting. Should the Assembly decide against taking a decision on the matter at the present session, the item would re-appear on the Assembly's agenda for its next session.

In accordance with Rule 34 of the Assembly's Rules of Procedure, he requested a roll-call vote.

It was so decided.

A vote was taken by roll-call on the proposal that the Assembly should forthwith take a decision on increasing the maximum liability of the Fund.

In favour: France, United Kingdom.

Against: Denmark, Federal Republic of Germany, Japan, Liberia, Norway, Sweden, Tunisia, Yugoslavia.

Abstaining: None.

The proposal was rejected by 8 votes to 2, with no abstentions.

AGENDA ITEM 9 - ADOPTION OF INTERNAL REGULATIONS (continued;
DRAFT RESOLUTION BY THE DELEGATIONS OF NORWAY AND
UNITED KINGDOM: OPCF/A.I/WP.11)

Ms BRUZELIUS (Norway), re-introducing the draft resolution prepared jointly by her delegation and that of the United Kingdom, said that in the light of helpful remarks made at the previous day's meeting the two sponsoring delegations had made a number of changes.

References to the internal regulations had been deleted from the preambular paragraph, together with references to the currency of the Headquarters State.

The second operative paragraph had been amended to take account of the advice of the Secretary-General of IMCO to the effect that the Assembly was empowered to "resolve" rather than to "recommend". Also in that paragraph "references to equal amounts" had been amended to read "references to equivalent amounts".

In the final operative paragraph a recommendation had been added that contracting States should adhere to the 1976 Protocol "as soon as possible".

Mr. VONAU (Observer, Poland), speaking at the invitation of the Chairman, welcomed what he described as a useful resolution.

He wished to remind members of the differences of opinion which had become apparent at previous legal conferences held under IMCO auspices between those States accepting the institution of SDRs and those for which such acceptance presented difficulties.

Such differences were greater than those which occurred over the International Monetary Fund but both areas would confront the Director with special problems. He had every confidence in the Director designate's ability to deal with them.

The CHAIRMAN proposed that the draft resolution contained in OPCF/A.I/WP.11 be adopted.

It was so decided.

AGENDA ITEM 12 - DETERMINATION RELATING TO THE REPLACEMENT OF INSTRUMENTS
ENUMERATED IN ARTICLE 5(3) (OPCF/A.I/9/1) (continued)

Mr. BUSH (IMCO Secretariat) called the attention of the Assembly to the question posed in paragraph 5 of the Secretariat document. The Assembly was asked to decide whether the absence of an option in respect of amendments to provide a means of up-dating the Convention was a serious gap which should be remedied. In the view of IMCO's Legal Division such a remedy would probably entail an amendment to the Convention since the paragraph calling for the replacement of one instrument by another made no mention of amendments.

The Assembly might wish to examine the point before its next session.

Mr. SASAMURA (IMCO Secretariat) said that, apart from the legal question, he saw no practical problems. He had taken part in the deliberations of the working group which had discussed the matter at considerable length at the 1971 Conference.

The nub of the matter was that a ship which violated the 1969 amendments to the 1954 Oil Pollution Convention could not claim compensation from the Fund, which would be exonerated by virtue of Article 4(3) of the Fund Convention as those amendments dealt with deliberate pollution.

The CHAIRMAN repeated the suggestion that the matter be borne in mind for discussion at the next session of the Assembly.

It was so decided.

AGENDA ITEM 6 - APPOINTMENT OF DIRECTOR (OPCF/A.I/WP.12) (continued)

The CHAIRMAN asked the United Kingdom representative to comment on the draft contract, with particular reference to numbered paragraph 6.

Mr. HALL (United Kingdom) explained that the remaining square brackets in that paragraph reflected the Working Group's feeling that there had been insufficient clarification of the impact and relevance of the allowances to which the Director would be eligible; and of the use of dollars to express a salary which would be paid in sterling.

Mr. GANTEN (Director designate) expressed his preference for following IMCO custom, in other words expressing the sum in US dollars and leaving it to his discretion as to how he wished it to be paid.

It was decided to delete the words "payable in the currency of the Headquarters State".

It was agreed to insert "annual" before "salary" in the same line.

The SECRETARY-GENERAL of IMCO explained that the allowances to which the Director would be entitled would be, where applicable, a dependency allowance, an education grant up to a maximum of US \$2,250 per child and a standard repatriation allowance. In addition he would be entitled to a cost of living allowance known within the United Nations system as a post adjustment which was determined by the International Civil Service Commission for the whole of the United Nations system rather than by IMCO. It could be positive or negative and varied according to exchange rates and inflation at the duty station of the staff member concerned.

Mr. HALL (United Kingdom) suggested that placing the words "representation allowance" immediately after "of US \$2,250", would in no way preclude the Assembly from increasing that sum at a later date if it so wished. The words "and payable in that currency" in line 5 could be deleted, and replaced by the words "mid-way between those of D1 and D2".

It was so decided.

The contract of appointment, as amended, was approved.

DRAFT RECORD OF DECISIONS (OPCF/A.I/WP.13)

The CHAIRMAN explained that, in addition to the customary summary records of the meetings, the Secretariat had prepared a report in the form of a record of decisions. He invited comments.

Agenda item 1 - Adoption of the Agenda (OPCF/A.I/1/Rev.1)Agenda item 2 - Election of the Chairman and two Vice-Chairmen

The record of the decisions relating to items 1 and 2 was approved.

Agenda item 3 - Determination of Rules of Procedure (OPCF/A.I/5/1)

Ms BRUZELIUS (Norway) asked whether the Assembly had in fact adopted the rules of procedure contained in OPCF/A.I/5/1, or merely adopted them 'provisionally'.

The CHAIRMAN said that rules had been adopted for the present session only.

Mr. NILSSON (Sweden) proposed that the meeting be suspended to allow time to study the paper.

The meeting was suspended at 10.30 a.m. and resumed at 11.20 a.m.

Mr. HALL (United Kingdom) said that in connexion with Agenda item 17 on increasing the maximum liability of the Fund he was very concerned that he would have to report back to his Government that the Assembly had postponed its decision on the matter. The postponement was unfortunate, particularly as it might be interpreted as indicating a negative attitude to that important issue on the part of the Assembly. He hoped that delegates would place on record their determination to tackle the matter positively and reach a decision at the second session.

The CHAIRMAN said that a majority of delegates felt that a decision to increase the maximum liability of the Fund would have to be taken at the next session.

Mr. HERBER (Federal Republic of Germany), endorsing the Chairman's view, felt that the matter was expressed as clearly as possible on page 5 of the draft record of decisions.

Agenda item 3 - Determination of Rules of Procedure (OPCF/A.I/5/1)

The CHAIRMAN pointed out that the Director had been asked to go through the provisional rules of procedure and if he felt there should be any changes he would present them to the next session of the Assembly.

The record of the decision on Agenda item 3 was approved.

Agenda item 4 - Determination of non-Contracting States to be invited as Observers

The CHAIRMAN suggested that the incomplete sentence appearing at the top of page 2 of OPCF/A.I/WP.13 should read as follows:

"In respect of the second session the Assembly decided to ask the Director to invite the same States which were present at the first session. Thereafter, Rule 4 of the Rules of Procedure shall be applicable".

Ms BRUZELIUS (Norway) suggested that by using the word "present" the Assembly was restricting the number of States to those which had physically participated in the present session.

The CHAIRMAN, on the advice of the Secretary-General of IICO, suggested that the words "who were admitted as observers" be used.

Mr. NAKAYAMA (Japan) said that according to the rules of procedure a State depositing instruments of ratification between the first and second sessions would have to be invited, but that would not be possible in view of the wording which had just been decided.

Ms BRUZELIUS (Norway) felt that although that was a very valid point, it could be overcome by saying that the Assembly should invite Governments in accordance with Rule 4 of the rules of procedure and in addition those States which, although invited to the first session, did not fulfil the requirements laid down by Rule 4.

The record of the decision on Agenda item 4, as amended, was approved.

Agenda item 5 - Determination of Inter-Governmental and International Non-Governmental Organizations to be invited as Observers

The CHAIRMAN drew attention to the fact that in respect of the second session the Assembly had decided to invite in addition a representative of the P and I Clubs.

The record of the decision on Agenda item 5 was approved.

Agenda item 6 - Appointment of Director (OPCF/A.I/4/1)

The CHAIRMAN noted that there had been some small drafting changes in paragraph 6 of document WP.12 but he hoped the Assembly would trust him to sign the Director's contract of employment, thus amended.

The record of the decision on Agenda item 6 was approved.

Agenda item 7 - Structure of the Secretariat

Ms BRUZELIUS (Norway) proposed that the record begin with the sentence:

"The Assembly decided that the Secretariat of the Fund should be as small as feasible considering the functions of the Fund".

Mr. HALL (United Kingdom) suggested a further addition:

"Taking full account of the possibility of engaging outside consultants as necessary for appropriate tasks of the Fund".

He later agreed to a suggestion from the Secretary-General of IMCO that the word "appropriate" be replaced by "specific".

Mr. DOUAY (France) said that although his delegation seemed once again to be in splendid isolation, it felt that as the matter had not hitherto been discussed it was now too late to do so and thus it should be deferred until the second session when it could be considered in greater depth. In particular, there should be discussion of the kind of functions to be fulfilled by the outside consultants.

The CHAIRMAN said it had already been agreed that the Secretariat of the Fund should be small and after lengthy discussion it had been decided that there should be a special paper on the recruitment of outside consultants.

The record of the decision on Agenda item 7 was approved.

Agenda item 8 - Adoption of Staff Regulations (OPCF/A.I/2/1)

Ms BRUZELIUS (Norway) asked whether there should be a reference to the fact that the Assembly had adopted a draft interim letter of appointment to be sent by the Director to those whom he wished to employ in the period before the staff rules had been elaborated.

The CHAIRMAN said that since it was only a model contract there was no need to insert such a reference.

The record of the decision on Agenda item 8 was approved.

Agenda item 9 - Adoption of Internal Regulations (OPCF/A.I/3/3)

The CHAIRMAN, introducing the note by the IMCO Secretariat, suggested the replacement of the word "presentation" in line 5 of page 1 by "examination and report".

Ms BRUZELIUS (Norway) said she was mystified by the use of square brackets in document OPCF/A.I/3/3; some of the provisions listed by the observer from OCIMF and accepted had been square bracketed while many others had not been. She sought clarification of the matter from the Secretariat of IMCO.

The CHAIRMAN said that he too had been mystified by the square bracketing; however, it would be quite clear from the summary records that for the interim period between the first and second sessions certain regulations had been adopted, although some of them were to be considered further by the Working Group.

Mr. HALL (United Kingdom) shared the doubts expressed by the representative of Norway and proposed an amendment to the draft record so that the first sentence would read:

"In a first reading, the Assembly provisionally adopted Internal Regulations for the Fund, in so far as the determination of these was necessary for its initial operations."

He also proposed a consequential amendment to page 1 of the document OPCF/A.I/3/3, inserting after the words "present document" in line 1, the words: "and agreed on a provisional basis in so far as the determination of these was necessary for its initial operations. These have been referred to an inter-sessional Working Group with a view to their final adoption at the second session of the Assembly in the light of the Working Group's recommendations."

Mr. NAKAYAMA (Japan) drew attention to the fact that Regulation 2.4 stipulated that conversion should be made at the official rate of exchange applied by the Central Bank of the Headquarters State on 31 March of each year. There might be a problem in 1979, when 31 March fell on a Saturday. The Bank of England might be closed, and no exchange rate would be available.

Mr. HALL (United Kingdom) pointed out that there was always a prevailing exchange rate whether or not the Central Bank in a given country was closed.

Ms BRUZELIUS (Norway) said that since in any case Regulation 2.4 should have appeared in square brackets, the points made by the representative of Japan should be noted, and the Working Group requested to study it.

It was so decided.

The record of the decision on Agenda item 9, as amended, was approved.

Agenda item 10 - Determination of Initial Contributions
(OPCF/A.I/18 and Add.1; OPCF/A.I/Res.1)

Mr. DETHELFSEN (Denmark) said that the wording of the decision was imprecise. Article 11 of the Convention stated that calculation of the initial contribution for each Contracting State should be made on the basis of a fixed sum for each ton of contributing oil received by it during the calendar year preceding that in which the Convention entered into force for that State. For a State becoming a party to the Convention in 1979, for instance, the amount would be based on 1978 figures. The Assembly should therefore use the wording of Article 11(1) rather than the wording proposed in OPCF/A.I/WP.13, which seemed to mean that the 1977 figures must always be used.

Ms BRUZELIUS (Norway) said that the figure of 0.04718 francs was fixed for the future for all States ratifying the Convention. What would vary was the multiplying factor, namely the figures for oil movements during the year before entry into force of the Convention in respect of each State.

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, suggested that the Danish representative's point might be met either by adding the words "and instructed the Director to ensure that appropriate figures for States which subsequently ratified the Convention be made available as soon as possible to allow him to determine the initial contribution", or, if the Danish proposal were adopted, by adding the words:

"It was decided that for the present contracting States the rate should be 0.04718 francs on the 1977 figures".

The CHAIRMAN, at the suggestion of the Director designate, proposed that the point could be met by deleting the words "in 1977".

It was so decided.

The record of the decision on Agenda item 10, as amended, was approved.

Agenda item 11 - Preparation of Budgets for 1978 and 1979 (OPCF/A.I/8)

The record of the decision on Agenda item 11 was approved.

Agenda item 12 - Determination relating to the replacement of instruments enumerated in Article 5(3) (OPCF/A.I/9)

The CHAIRMAN suggested that the square brackets relating to the 1969 Amendments to the 1954 Oil Pollution Convention should be deleted.

Mr. BUSHA (IMCO Secretariat) suggested the deletion of the text in square brackets and its replacement by the following:

"The Assembly took note of the absence in Article 5 of a means of replacement of out-of-date provisions in the instruments listed in paragraph 3 of that Article, when such provisions were by amendment not falling under the "important nature" provision in the pertinent convention. It deferred consideration of whether this matter would require specific future attention".

The suggested text was approved.

The record of the decision on Agenda item 12, as amended, was approved.

Agenda item 13 - Determination of Headquarters State (OPCF/A.I/10)

The record of the decision on Agenda item 13 was approved.

Agenda item 14 - Consideration of the Question of Headquarters Premises and Matters connected thereto (OPCF/A.I/11)

Mr. HALL (United Kingdom) said that the words "and its Director would ... enjoy all privileges and immunities appropriate to an inter-governmental organization" did not quite reflect his Government's position. His delegation would therefore prefer to amend the text of the third paragraph by deleting all the words after "Fund" in the third line and replacing them with the following: "the United Kingdom Government would make interim

arrangements to ensure the effective operation of the Fund, taking into account the need for appropriate privileges and immunities to be granted".

The proposal was adopted.

The record of the decision on Agenda item 14, as amended, was approved.

Agenda item 15 - Appointment of Auditors (OPCF/A.I/12)

Mr. HALL (United Kingdom) proposed deletion of the square brackets round the word "four", deletion of the second set of square brackets and the insertion of the words "commencing with the audit of the first financial year". The Comptroller-General would be glad if the Director designate could indicate to him the kind of services that would be required.

Mr. GANTEN (Director designate) suggested that the first financial year should start before December 1978, when he would take up his duties, since payments had already been made on behalf of the Fund.

Mr. NILSSON (Sweden) endorsed that view. The period should start with the entry into force of the Convention.

Mr. WALDER (Observer, OCIMF), speaking at the invitation of the Chairman, suggested that the wording should be "commencing with the audit of the first financial period".

It was so decided.

The record of the decision on Agenda item 15, as amended, was approved.

Agenda item 17 - Increase of maximum liability of the Fund (OPCF/A.I/14)

The CHAIRMAN proposed deletion of the square brackets and the amendment of the decision as follows: "The Assembly decided, after a roll-call vote, not to take a decision at this session with respect to an increase of the aggregate amount of compensation payable by the Fund in respect of any one incident as provided in Article 4(6) of the Convention".

Mr. HALL (United Kingdom) thought that a more positive form of words was necessary, perhaps on the following lines: "The Assembly, after a roll-call vote, decided not to take a decision with respect to of the Convention, having in mind the need to take a positive decision on this issue at the next session".

Mr. HERBER (Federal Republic of Germany), supported by Mr. OWADA (Japan) and Mr. STALIO (Yugoslavia), feared that that wording might be misleadingly positive. It was not for the present session of the Assembly to say whether or not the decision of the next session would be positive.

Mr. HALL (United Kingdom) then suggested the following wording: "The Assembly decided, after a roll-call vote, to take a decision with respect to ... of the Convention at its next session rather than at this session".

Mr. STALIO (Yugoslavia) said that he could not support that proposal.

Mr. DOUAY (France) thought that the Chairman's proposed wording was preferable both in form and content.

Mr. HALL (United Kingdom) withdrew his proposed amendment, with an expression of regret.

The record of the decision on Agenda item 17, as amended, was approved.

Agenda item 18 - Relations with IMCO and other inter-governmental organizations (OPCF/A.I/15)

Agenda item 19 - Date of next session (OPCF/A.I/16)

The records of the decisions on Agenda items 18 and 19 were approved.

AGENDA ITEM 20 - ANY OTHER BUSINESS (continued)

Meeting of the Working Group

Mr. GANTEN (Director designate) recalled the Assembly's decision to set up a Working Group, comprising the representatives of France, Japan, Sweden and the United Kingdom, to discuss the internal regulations and the draft Headquarters Agreement. Since interpretation would be needed, the meeting would have to be held at IMCO Headquarters. One possible time was 12-14 December 1978, and he asked whether delegations could agree to those dates.

Mr. HALL (United Kingdom) said that it would be helpful to his Government if the meeting could be held on those dates.

The SECRETARY-GENERAL of IMCO said that some flexibility was needed in the choice of dates since the interpretation facilities would be needed for an IMCO working group during part of that time.

Subject to that reservation, it was decided that the Working Group would meet from 12 to 14 December 1978.

Procedure for compensation and indemnification by the Fund

Mr. OWADA (Japan) said that for the purpose of Articles 4 and 5 of the Fund Convention, a procedure with respect to compensation and indemnification by the Fund must be established. He proposed that the Director designate should prepare a draft for submission to the Assembly at its second session.

It was so decided.

SIGNATURE OF CONTRACT AND TAKING OF THE OATH BY THE DIRECTOR OF THE
INTERNATIONAL OIL POLLUTION COMPENSATION FUND

In a short ceremony, the Director of the Fund and the Chairman of the first session of the Assembly signed the contract between the Fund and the Director. The Chairman then administered and the Assembly witnessed the oath which Mr. Ganten took as Director of the Fund.

CLOSURE OF THE SESSION

The CHAIRMAN thanked representatives of contracting States and observers for having contributed to the success of the first session of the Assembly.

Mr. HALL (United Kingdom), on behalf of the Assembly, thanked the Chairman for his conduct of its discussions.

The SECRETARY-GENERAL of IMCO assured the Assembly of the Organization's continued co-operation in the future.

The session closed at 12.30 p.m.