



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
56th session  
Agenda item 8

71FUND/EXC.56/2  
24 October 1997

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## RECORD OF DECISIONS OF THE FIFTY-SIXTH SESSION OF THE EXECUTIVE COMMITTEE

(held on 24 October 1997)

Chairman: Mr W J G Oosterveen (Netherlands)  
Vice-Chairman: Professor L S Chai (Republic of Korea)

### 1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document 71FUND/EXC.56/1.

### 2 Election of the Chairman and Vice-Chairman

2.1 The Executive Committee elected the following delegates to hold office until the next regular session of the Assembly:

Chairman: Mr W J G Oosterveen (Netherlands)  
Vice-Chairman: Professor L S Chai (Republic of Korea)

2.2 It was noted that the election of officers was made on the understanding that, since the Netherlands and the Republic of Korea would not be Members of the 1971 Fund after 15 May 1998, the elected officers would not be able to exercise the function of Chairman and Vice-Chairman, respectively, after that date and that consequently a new election of officers would then have to take place.

2.3 The Chairman and the Vice-Chairman thanked the Executive Committee for the confidence shown in them.

### 3 Examination of Credentials

3.1 The following members of the Executive Committee were present:

Algeria	Greece	Netherlands
Belgium	India	Poland
Colombia	Italy	Republic of Korea
Denmark	Japan	United Kingdom
France	Morocco	

3.2 The Executive Committee agreed that the credentials submitted by these delegations to the 20th session of the Assembly should be understood as also covering the 56th session of the Executive Committee.

3.3 The following Member States were represented as observers:

Australia	Indonesia	Norway
Canada	Ireland	Russian Federation
China <sup>&lt;1&gt;</sup>	Mexico	Spain
Finland	New Zealand	Tunisia
Germany	Nigeria	Venezuela

3.4 The following non-Member States were represented as observers:

Brazil	Egypt	Panama
Chile	Latvia	United States

3.5 The following intergovernmental organisations and international non-governmental organisations were represented as observers:

*Intergovernmental organisations:*

International Oil Pollution Compensation Fund 1992 (1992 Fund)

International Maritime Organization (IMO)

*International non-governmental organisations:*

International Group of P & I Clubs

Oil Companies International Marine Forum (OCIMF)

### 4 Incidents involving the 1971 Fund

#### 4.1 Irving Whale

4.1.1 The Executive Committee took note of the information concerning the *Irving Whale* incident, as set out in document 71FUND/EXC.55/14.

4.1.2 The Director informed the Executive Committee that the barge *Irving Whale* had sunk in the Gulf of St Lawrence (Canada) in approximately 67 metres of water in 1970, that heavy fuel oil was released from the barge following the sinking, that it was established in 1991 that over 3 000 tonnes of oil remained on board, that preparations to refloat the vessel were carried out in 1995 and that the refloating operation took

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<1> The 1971 Fund Convention applies to the Hong Kong Special Administrative Region.

place in 1996 and that a small quantity of oil was released during the refloating operation. It was noted that the Canadian Government had taken legal action before the Federal Court of Canada against the owner and operators of the *Irving Whale* claiming compensation for Can\$42 million (£19 million) for the cost of the 1995 preparations and of the refloating operation in 1996 (including clean-up costs), that the claim did not include the cost of the clean-up operations incurred in connection with the sinking in 1970 and that the Government had notified the 1971 Fund of the legal action.

4.1.3 The Committee noted that the 1971 Fund Convention entered into force in respect of Canada in April 1989.

4.1.4 The Executive Committee shared the Director's view that, although the lifting of the barge was carried out in 1996, these operations should be considered as being part of the incident which had started with the sinking of the barge in 1970. It was noted that "incident" was defined in the Conventions as any occurrence or series of occurrences having the same origin (Article I.8 of the 1969 Civil Liability Convention and Article 1.1 of the 1971 Fund Convention).

4.1.5 It was recalled that a similar situation had been addressed by the 1971 Fund in the *Czantoria* case (Canada, 1988), when the Executive Committee had decided that the 1969 Civil Liability Convention and the 1971 Fund Convention did not apply to damage sustained in a given State after the entry into force of the respective Convention for that State resulting from an incident occurring before the entry into force (document FUND/EXC.24/6, paragraph 3.4.6).

4.1.6 In the light of the Executive Committee's decision in the *Czantoria* case, the Committee decided that the claim presented by the Canadian Government did not fall within the scope of application of the 1971 Fund Convention.

4.1.7 The Executive Committee noted that the Director intended to intervene in the court proceedings pursuant to Article 7.6 of the 1971 Fund Convention to protect the 1971 Fund's interests.

#### 4.2 Plate Princess incident

4.2.1 The Executive Committee took note of the information contained in document 71FUND/EXC.55/15 on the *Plate Princess* incident.

4.2.2 The Committee noted that the Director was carrying out investigations into the cause of the incident.

4.2.3 As regards the 1971 Fund's position in respect of the admissibility of claims relating to damage to the marine environment and to measures to reinstate the environment, the Executive Committee made reference to paragraphs 3.12.6 - 3.12.9 of document 71FUND.EXC.55/19.

#### 4.3 Diamond Grace incident

4.3.1 The Executive Committee took note of the information contained in document 71FUND/EXC.55/16 on the *Diamond Grace* incident, which had occurred in Japan on 2 July 1997.

4.3.2 The Committee noted that immediately after the incident there had been fears that the incident would give rise to claims for compensation for very high amounts, and that the 1971 Fund and the shipowner's insurer had therefore jointly set up a Claims Handling Office in Tokyo. It was noted that so far claims had been submitted for only comparatively low amounts, and that it seemed possible that the total amount of the claims would not after all exceed the shipowner's limitation amount.

4.3.3 The Executive Committee nevertheless decided to authorise the Director to approve final settlements on behalf of the 1971 Fund of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee.

4.3.4 It was noted that, in view of the uncertainty as to the total amount of the claims, the Director did not request that he should be authorised to make any payments for the time being.

#### 4.4 Evoikos incident

4.4.1 The Executive Committee took note of the information contained in document 71FUND/EXC.55/18 concerning the *Evoikos* incident which occurred on 15 October 1997 in Singapore.

4.4.2 The Executive Committee noted that the incident had occurred in Singapore, which was not a 1971 Fund Member State and that the oil release from the *Evoikos* had entered the territorial waters of Indonesia and Malaysia, which were both Members of the 1971 Fund.

4.4.3 It was noted that the shipowner and his insurers, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), would probably constitute the limitation fund in Singapore.

4.4.4 The Director mentioned that the shipowner and the UK Club might maintain that the operations carried out in Singaporean waters (or at least part thereof) were undertaken to prevent or minimise pollution damage in Malaysia or Indonesia and that the costs thereof would therefore qualify for compensation under the 1971 Fund Compensation. It was noted that the shipowner and the UK Club had referred to the position taken by the Executive Committee in respect of the *Kihnu* incident (document 71FUND/EXC.49/12, paragraph 3.4.6). It was further noted that claims for salvage operations might be submitted not only under Article 13 of the 1989 International Convention on Salvage but also under Article 14 of that Convention.

4.4.5 The Executive Committee took the view that it was premature for the Committee to take any position on the issues referred to in paragraph 4.4.4.

4.4.6 The Executive Committee authorised the Director to make final settlement of all claims arising out of this incident, to the extent that the claims do not give rise to questions of principle which had not previously been decided by the Committee, provided that the claims related to pollution damage suffered in a 1971 Fund Member State or to measures taken to prevent or minimise pollution damage in such a State.

4.4.7 In view of the uncertainty as to the total amount of the claims, the Committee decided that the Director was not authorised to make any payments for the time being.

### 5 Amendment of Rules of Procedure of the Executive Committee

5.1 The Director introduced document 71FUND/EXC.55/17 which dealt with certain amendments to the Rules of Procedure of the Executive Committee.

5.2 The Executive Committee adopted the following text of Rule (iv) of its Rules of Procedure:

"Rules 14 and 17 shall not apply. The provisional agenda of meetings of the Executive Committee shall be prepared by the Director in consultation with the Chairman and shall include items required to be dealt with by the application of Articles 18 and 26 of the Fund Convention or which have been requested by the Assembly or by a Member of the Fund.

The provisional agenda for each session shall normally be communicated by the Director to the members of the Executive Committee and to other Member States at least forty-five days before the session. Supporting documents should be distributed as early as possible, taking into account the need for Member States to prepare the sessions, the availability of the necessary information and the importance of claims for compensation and other urgent issues to be dealt with promptly."

### 6 Future sessions

6.1 The Executive Committee decided to hold its next session during the week of 2 - 6 February 1998.

6.2 The Committee also decided to hold a session during the week of 27 April - 1 May 1998.

6.3 It was decided that the Committee would hold its normal autumn session during the week of 26 - 30 October 1998.

6.4 It was agreed that the Committee should decide at a later stage whether it would be necessary to hold a session during June or July 1998.

7 **Any Other Business**

No matters were raised under this agenda item.

8 **Adoption of Record of Decisions**

The Executive Committee decided to authorise the Director to prepare, in consultation with the Chairman, the Record of Decisions of this session.

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