



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE -
10th session
Agenda item 6

FUND/EXC.10/5
29 September 1983
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RECORD OF DECISIONS
OF THE 10th SESSION OF THE EXECUTIVE COMMITTEE
(held from 26 to 29 September 1983)

Chairman: Mr J R Perrett (United Kingdom)
Vice-Chairman: Mr A J Kandakai (Liberia)

1 Adoption of the Agenda (Agenda item 1)

The Executive Committee adopted the Agenda as contained in document FUND/EXC.10/1.

2 Examination of Credentials (Agenda item 2)

The following members of the Executive Committee were present:

Bahamas	Norway
France	Spain
Japan	United Kingdom
Liberia	

The Executive Committee took note of the information given by the Director that all members of the Executive Committee present at the meeting had submitted credentials which were in order.

The following States were represented as observers:

Brazil	Kuwait
Canada	Netherlands
Denmark	Papua New Guinea
Finland	Poland
Gabon	Portugal
Federal Republic of Germany	Sweden
Indonesia	Syrian Arab Republic
Italy	United States of America

The following international non-governmental organisations participated as observers:

ICS
INTERNATIONAL GROUP OF P&I CLUBS
ITOPF

CRISTAL
OCIMF

3 Information on and Approval of Settlement of Claims
(Agenda item 3)

3.1 Incidents other than the TANIO and ONDINA incidents

3.1.1 The Director introduced documents FUND/EXC.10/3 and FUND/EXC.10/3/Add.1 containing information with regard to oil pollution incidents in respect of which claims have been made against the IOPC Fund. He reported the developments which had taken place since the Executive Committee's last session. The Executive Committee noted that it had been possible to finalise a number of cases.

3.1.2 With respect to the TARPENBEK incident, the Executive Committee took note of the information given by the Director regarding the legal proceedings taken against the IOPC Fund. It approved the steps the Director had taken in respect of a possible out-of-court settlement of the claims. The Executive Committee also noted the willingness of CRISTAL to look into the possibility of participating in such an out-of-court settlement. The Director was requested to continue his efforts to reach an agreement with the claimants.

3.1.3 With regard to the GLOBE ASIMI incident, the Executive Committee endorsed the Director's view that payment of indemnification under Article 5 of the Fund Convention had to be made to the person who had actually established the limitation fund if claims for indemnification were made both by the owner of the ship and his insurer.

3.1.4 The Executive Committee discussed whether in the case of the SHINKAI MARU NO 3 incident it was necessary for the shipowner's insurer to establish a limitation fund in order to allow the claimants to claim compensation from the IOPC Fund. In view of the disproportionately high legal costs that would arise for establishing the CLC limitation fund, compared with the amount of liability under the CLC, the Committee agreed that, as an exception, the IOPC Fund could pay compensation without the limitation fund being established.

It was underlined, however, that the IOPC Fund normally required the establishment of a limitation fund and that this requirement could be waived only in exceptional cases like the SHINKAI MARU NO 3 incident. In any case, it would be for the Executive Committee to decide if the exceptional circumstances of a case allowed the IOPC Fund to pay compensation without the prior establishment of the limitation fund.

3.2 ONDINA Incident

3.2.1 The Executive Committee discussed in detail the different aspects of the ONDINA incident, as contained in section 2 of document FUND/EXC.10/3/Add.1. It accepted the claims made by the Environmental Protection Office of Hamburg (BBNU), as laid down in paragraph 2.4.2 of the document, totalling DM84 043.28. The Committee also approved the claim made by the United Kingdom P & I Club, as specified in paragraph 2.4.3.1 of the said document, totalling DM20 170 352.95.

3.2.2 With regard to the UK P & I Club's claim for interest, the Executive Committee noted the information given by the Director that the entitlement to interest under the law of the Federal Republic of Germany had not yet been fully studied and that he would continue his discussions with the UK P & I Club on this issue. After an exchange of views on the merits of this claim, the Executive Committee authorised the Director to negotiate this item of the claim with the claimants and to agree on the amount of interest payable, if any. The Executive Committee expressed the opinion that in his assessment of the claim for interest, the Director should, on the one hand be guided by the legal opinion of the liquidator of the CLC limitation fund that the UK P & I Club was not entitled to interest but, on the other hand also take into consideration that the IOPC Fund should not discourage a P & I Club from organising the clean-up of pollution damage if the expenses for these operations exceeded the shipowner's limit of liability under the CLC.

3.2.3 The Director informed the Executive Committee that, in addition to the items of claims mentioned in FUND/EXC.10/3/Add.1, the Fund may also have to pay to the UK P & I Club VAT amounting to DM2 613 496.06. This amount had actually been paid by the Club, but it was not yet clear whether it could be recovered from the German tax authorities.

3.2.4 The claim made by the United Kingdom P & I Club, as assessed by the Director, was approved by the Executive Committee. The claim, including DM1 000 000 for interest and DM2 613 496.06 for VAT, but excluding the shipowner's liability, totals DM13 763 543.

3.2.5 The Executive Committee took note of the information given by the Director that he would continue to investigate the possibility of breaking the limitation of liability of the owner of the ONDINA.

3.3 TANIO incident

3.3.1 The Executive Committee discussed the progress on the settlement of the different claims as reported in documents FUND/EXC.10/2 and FUND/EXC.10/WP.1.

3.3.2 United Kingdom P & I Club

The Executive Committee approved the claim by the United Kingdom P & I Club for expenses regarding the surveying and sealing of the TANIO wreck, as specified in paragraph 1.1(e) of the Annex to document FUND/EXC.10/2. These claims amount to US \$878 608.67. With regard to the bonus which the P & I Club may have to pay to the receivers of Intersub the Executive Committee authorised the Director to negotiate an agreement with the P & I Club. It also agreed that the claims by the States of Guernsey and Jersey, the hotelier in Guernsey and the Comité des Assureurs Maritimes de Paris, which were paid in full by the P & I Club, could now be claimed by the P & I Club against the IOPC Fund.

The Executive Committee considered in a private session, with participation restricted to the representatives of Member States, the question of whether the claim by the P & I Club was time-barred. It decided to invite the P & I Club to submit to the Executive Committee, if possible at its next session, a statement explaining why they were of the opinion that they had observed the periods stipulated in Article 6 of the Fund Convention.

3.3.3 Côtes-du-Nord

The Executive Committee accepted the settlement of the claims made by the Département and the Communes of Côtes-du-Nord, as specified in Annex III of document FUND/EXC.10/WP.1, totalling FFr7 396 254.

3.3.4 Finistère

The Executive Committee also approved the settlement of the claims made by Communes of the Département of Finistère, as stated in Annex III of document FUND/EXC.10/WP.1, totalling FFr1 513 899.

The Executive Committee discussed at some length the claim made by Cléder for loss of tax revenue. It took note of the legal advice given by the IOPC Fund's lawyer. It was agreed by the Committee that it may be very difficult in this case for a public authority to prove that a loss in tax revenue had actually occurred as a direct result of a pollution incident. The documentation submitted by Cléder in support of their claim was not regarded as sufficient. The Executive Committee therefore rejected this claim.

3.3.5 Private Claimants

The Executive Committee approved the settlement of claims agreed by the Director, as specified in paragraph 3.1 of document FUND/EXC.10/WP.1. It took note of the information that the agreed claim with respect to the Hotel Printannia was FFr141 700 and not FFr241 700, as stated in the document.

The Executive Committee authorised the Director to settle the remaining private claims. It expressed the wish that these settlements could be done by the end of the year 1983.

3.3.6 Agreements

The Executive Committee considered the draft agreements elaborated between the Director and the French Government (Attachment II to document FUND/EXC.10/2), the Communes of Côtes-du-Nord and Finistère (Annex I to document FUND/EXC.10/WP.1) and the United Kingdom P & I Club (Annex II to document FUND/EXC.10/WP.1). It approved the draft agreements with the proviso that small amendments to the wording may have to be made and to be agreed between the Director and the respective claimants. It authorised the Director to conclude an agreement with the private claimants on the same basis as the agreements with the other claimants.

3.3.7 Distribution of Compensation

With regard to the distribution of the compensation available

under the Fund Convention at a date to be decided by the Assembly, the Executive Committee accepted the method of calculation submitted by the Director in Annex III of document FUND/EXC.10/WP.1. The Executive Committee left it to the Director to calculate the exact figures of the compensation actually payable in the light of the claims that will have been agreed at the time of the distribution, and to determine the reserve that the IOPC Fund will have to make in view of the claims that may not have been finally agreed at the date of distribution. It was also noted that the IOPC Fund would only be able to pay compensation to the extent that contributions had actually been received by the TANIO Major Claims Fund.

3.3.8 Legal Proceedings

The Executive Committee received a report from the IOPC Fund's lawyers on the status of the proceedings against the shipowner and other parties to recover the compensation paid and payable by the IOPC Fund. It took note of the information that it was expected that by the end of the year detailed information may be available on the position of the different defendants regarding the actions taken against them.

3.3.9 Conclusion

The Chairman concluded the discussion on the TANIO incident by pointing out that the Executive Committee had now been able to more or less finalise the settlement of the claims arising out of this incident and that he would recommend to the Assembly to decide on the levy of contributions to the TANIO Major Claims Fund in such a manner that payment of compensation could be made in early 1984. The Chairman and the Executive Committee expressed their appreciation and gratitude to the Director and the Secretariat for the work they had done to allow a relatively quick settlement of this major and complicated pollution incident.

4 Date of next Session (Agenda item 4)

The Executive Committee decided to hold its eleventh session on Friday 30 September 1983 at 9.30 a.m.

5 Any Other Business (Agenda item 5)

The Executive Committee took note of the amendments to the IOPC Fund's Staff Rules issued by the Director, as contained in document FUND/EXC.10/4 and FUND/EXC.10/4/Corr.1.

6 Adoption of the Report to the Assembly (Agenda item 6)

The draft Report, as contained in documents FUND/EXC.10/WP.2 and FUND/EXC.10/WP.2/Add.1, was adopted subject to some amendments.
