



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
14th session
Agenda item 8

FUND/EXC.14/7
2 October 1985

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RECORD OF DECISIONS OF THE FOURTEENTH SESSION
OF THE EXECUTIVE COMMITTEE

(held from 30 September to 2 October 1985)

Chairman: Mr W Sturms (Netherlands)

Vice-Chairman: Mr R Tchibota-Souamy (Gabon)

1 Adoption of the Agenda (Agenda item 1)

The Executive Committee adopted the Agenda as contained in document FUND/EXC.14/1.

2 Examination of Credentials (Agenda item 2)

The following members of the Executive Committee were present:

Finland	Italy
France	Kuwait
Germany, Federal Republic of	Netherlands
Indonesia	United Kingdom

The Executive Committee took note of the information given by the Director that all the above-mentioned members of the Committee had submitted credentials which were in order.

The following Member States were represented as observers:

Bahamas	Norway
Denmark	Oman
Japan	Spain
Liberia	Sweden

In addition, the following non-Member States were represented as observers:

Brazil	Union of Soviet Socialist Republics
Canada	United States of America
Poland	

The following inter-governmental and international non-governmental organisations participated as observers:

International Maritime Organisation (IMO)
Comité Maritime International (CMI)
International Chamber of Shipping (ICS)
International Group of P & I Clubs
International Tanker Owners Pollution Federation Ltd (ITOPF)
Oil Companies Institute for Marine Pollution Compensation Ltd (CRISTAL)
Oil Companies International Marine Forum (OCIMF)

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

3.1 TANIO Incident

3.1.1 The Director introduced document FUND/EXC.14/2. He informed the Executive Committee of the development of claims settlement since the 13th session of the Executive Committee. All claims against the IOPC Fund arising out of the TANIO incident had been agreed. The total part payments made by the IOPC Fund amounted to FFr221 201 452.

3.1.2 With regard to the UK Club's claim against the IOPC Fund, the Executive Committee noted the Director's conclusion, after having received another legal opinion on the question of prescription, that the IOPC Fund could no longer maintain the position that the UK Club's claim was time-barred; he had, therefore, accepted this claim on the basis of the authorization given to him by the Executive Committee at its 11th session.

3.1.3 The Director informed the Executive Committee that he had decided not to make a second part payment of compensation to claimants, at least for the time being. This decision was taken in view of the possibility that a second part payment might lead to a situation where the aggregate amount actually paid by the IOPC Fund exceeded the total amount to be paid by the IOPC Fund under the Fund Convention.

3.1.4 The Executive Committee took note of the information given by the Director with regard to the legal action taken by the IOPC Fund and the French Government against the owner and other parties. The Committee agreed that the action should be maintained.

3.2 TARPENBEK Incident

3.2.1 The Director introduced document FUND/EXC.14/3 and gave further information on the legal situation as regards the claims against the IOPC Fund. He stressed that he considered that there was not sufficient evidence to prove that any spill of persistent oil had occurred as a result of the incident. However, there was, in his opinion, some evidence which could possibly lead a Court to the conclusion that some persistent oil was spilled at some time during the operations. He also stressed the fact that there was legal uncertainty as regards the interpretation of the Civil Liability Convention on certain points. The IOPC Fund's lawyer informed the Committee of his opinion as regards the legal situation.

3.2.2 The Executive Committee instructed the Director to continue the negotiations with the claimants in order to arrive at an out of court settlement and authorized him to make a final settlement of all claims against the IOPC Fund arising out of the TARPENBEK incident. The Committee indicated that the Director should, during these negotiations, take into account the uncertainty that existed both as to whether a spill of persistent oil actually occurred and as regards the interpretation of the Civil Liability Convention and the relevant United Kingdom legislation.

3.3 Other Incidents

3.3.1 The Director introduced documents FUND/EXC.14/4 and FUND/EXC.14/4/Add.1, containing information with regard to oil pollution incidents (other than the TANIO and TARPENBEK incidents) in respect of which claims for compensation and/or indemnification 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 took note of this information.

3.3.2 With regard to the ONDINA incident, the Executive Committee was satisfied that no more claims would be made against the IOPC Fund and no more expenses would have to be met; this was also the case as regards the FUKUTOKU MARU N°8 incident (cf document FUND/EXC.12/3/Add.1, Annex, paragraph 4).

3.3.3 In respect of the KOHO MARU N°3 incident, it was noted that the incident was caused by the negligence of the master, who was also the president of the company which owned the KOHO MARU N°3. The Executive Committee agreed with the Director that this negligence, attributable to the master in that capacity, should not deprive the owner of his right to limit his liability.

3.3.4 As for the PATMOS incident, the Executive Committee discussed the question as to whether and to what extent salvage operations fell within the definition of "preventive measures" in the Civil Liability Convention, on the basis of the presentation of the problems in document FUND/EXC.14/4/Add.1, paragraphs 3.7 - 3.21.

3.3.5 In particular, the Committee examined the issue of what criteria should be applied in order to determine whether measures which could be considered as having a dual purpose, ie both to prevent oil pollution and to preserve hull and cargo, should be considered as covered by the definition of "preventive measures". It also addressed the question of whether and how a possible apportionment of costs between salvage and pollution prevention might be made. The question of assessment of the compensation for salvage operations that were considered as falling within the definition of "preventive measures" was discussed, as well as problems relating to subrogation in respect of costs of such measures.

3.3.6 It was mentioned that the purpose of the regime established by the Civil Liability Convention and the Fund Convention was to provide compensation to victims who would otherwise be without adequate compensation. On the other hand, it was observed that the Conventions should be applied in a way so as to encourage the taking of preventive measures in order to minimise pollution damage.

3.3.7 The representative of the International Group of P & I Clubs presented the position of the Clubs on the relationship between salvage costs and costs of preventive measures.

3.3.8 The Director stressed that the examination of the claims was still in its very early stages. In respect of claims relating to salvage operations, the examination would aim at establishing whether, in the light of the particular circumstances, the claims should be considered as falling within the definition of "preventive measures". The commercial practice that had been developed over the years as regards the relationship between salvage claims and pollution prevention would be taken into account. Each claim would be examined in order to establish whether it related to reasonable costs of preventive measures. The IOPC Fund's examination would be carried out in co-operation with the UK Club.

3.3.9 The Executive Committee was of the opinion that it would not be possible, at this stage, to take any firm position as regards the interpretation of the definition of "preventive measures" in relation to salvage operations, nor to give the Director any instructions as regards the criteria to be applied in respect of the admissibility of claims of this kind. The Director was instructed to report to the 16th session of the Committee on the developments in respect of the PATMOS incident.

3.4 Procedure for Settlement of Claims Arising from Incidents in Japan

The Executive Committee authorized the Director to deal with the incidents occurring in Japan in accordance with the procedure described in document FUND/EXC.14/4/1. Under this procedure, a formal letter of undertaking would be issued to the IOPC Fund by the shipowner's insurer (Japan Ship Owners' Mutual Protection and Indemnity Association, JPIA), guaranteeing the

payment into the court of the shipowner's limitation amount, in accordance with Japanese law, if and when the IOPC Fund requested such a payment to be made. Furthermore, JPIA would guarantee to refund the amounts that the IOPC Fund would have paid to claimants in respect of claims relating to a particular incident if it were established by the competent court that the shipowner was not in fact entitled to limit his liability.

4 Amendments to Staff Rules (Agenda item 4)

4.1 The Executive Committee took note of the amendments to the IOPC Fund's Staff Rules, issued by the Director, as contained in documents FUND/EXC.14/5 and FUND/EXC.14/5/Add.1.

4.2 The Director undertook to examine the Staff Regulations and Staff Rules in order to establish whether there was any need for amendments. In particular, he would consider whether Staff Regulation 28 should be amended so as to provide for the reporting of amendments by the Director to the Assembly instead of to the Executive Committee.

5 Administrative Directive Introducing Housing Loans for Staff Members (Agenda item 5)

The Executive Committee took note of Administrative Directive N°1 with regard to Housing Loans to Staff Members from the Provident Fund, issued by the Director, as contained in the Annex to document FUND/EXC.14/6.

6 Date of Next Session (Agenda item 6)

The Executive Committee decided to hold its 15th session on Friday 4 October 1985 at 9.30 am.

7 Any Other Business (Agenda item 7)

No items were raised under this Agenda item.

8 Adoption of the Report to the Assembly (Agenda item 8)

The draft report of the Executive Committee to the Assembly, as contained in document FUND/EXC.14/WP.1, was adopted, subject to some amendments.
