



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
16th session
Agenda item 8

FUND/EXC.16/8
22 October 1986

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RECORD OF DECISIONS OF THE SIXTEENTH SESSION
OF THE EXECUTIVE COMMITTEE

(held from 20 to 22 October 1986)

Chairman: Professor H Tanikawa (Japan)
Vice-Chairman: Mr G Arku (Liberia)

1 Adoption of the Agenda (Agenda item 1)

The Executive Committee adopted the Agenda as contained in document FUND/EXC.16/1.

2 Examination of Credentials (Agenda item 2)

The following members of the Executive Committee were present:

Algeria	Liberia
Bahamas	Oman
France	Spain
Indonesia	Sweden
Japan	United Kingdom
Kuwait	

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:

Denmark	Netherlands
Finland	Norway
Gabon	Poland
Germany, Federal Republic of	Portugal
Italy	Sri Lanka
	Syrian Arab Republic

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

Belgium	German Democratic Republic
Brazil	Greece
Canada	Mexico
China	Union of Soviet Socialist Republics
Côte d'Ivoire	United States of America
	Venezuela

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

International Maritime Organisation (IMO)
 Advisory Committee on Oil Pollution of the Sea (ACOPS)
 Friends of the Earth International (FOEI)
 International Association of Independent Tanker Owners
 (INTERTANKO)
 International Chamber of Shipping (ICS)
 International Group of P & I Clubs
 International Tanker Owners Pollution Federation Ltd (ITOPF)
 Oil Companies International Marine Forum (OCIMF)

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

3.1 TARPENBEK Incident

The Executive Committee took note of the report on the final settlement of this incident, as set out by the Director in document FUND/EXC.16/2. The Committee expressed its satisfaction that the Director had succeeded in settling this incident.

3.2 TANIO Incident

The Director introduced document FUND/EXC.16/3, setting out the developments in the case since the last session of the Executive Committee. The Committee endorsed the Director's decision that the legal action in the Court of Brest, taken by the IOPC Fund, together with the French Government, should be maintained.

3.3 PATMOS Incident

3.3.1 The Director introduced documents FUND/EXC.16/4 and FUND/EXC.16/4/Add.1 which contained information on the developments in the PATMOS case since the 15th session of the Executive Committee.

3.3.2 The Committee discussed the relationship between preventive measures and salvage operations, on the basis of the presentation of the problem in document FUND/EXC.16/4, paragraphs 2.9 - 2.18. The Executive Committee endorsed the position taken by the Director on this issue (document FUND/EXC.16/4, paragraph 2.16) that operations could be considered as preventive measures, as defined in the Civil Liability Convention, only if the primary

purpose was to prevent pollution damage; if the operations primarily had another purpose, such as salvaging hull or cargo, the operations would not be covered by that definition. It also supported the position taken by the Director (paragraph 2.18) as to the criteria to be applied in the assessment of compensation in respect of operations whose primary purpose was to prevent pollution damage, ie that compensation under the Civil Liability Convention and the Fund Convention should be limited to costs (including a reasonable element of profit); the assessment should not be made on the basis of the criteria applied for the assessment of salvage awards.

3.3.3 On the subject of damage to the marine environment, for which a claim had been submitted by the Italian Government, the Executive Committee noted that the claimant had not specified the kind of damage which had allegedly been caused, nor had the claimant given any explanation of the basis on which the amount claimed had been calculated. The Executive Committee endorsed the Director's opinion that this claim had to be rejected in accordance with Resolution N°3 adopted by the IOPC Fund's Assembly in 1980 relating to non-economic environmental damage, under which "the assessment of compensation to be paid by the IOPC Fund is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models" (document FUND/A/ES.1/13, Annex I). The Committee also referred to the position taken by the IOPC Fund's Assembly in 1981, on the basis of the proposal of a Working Group, that compensation could be granted only if a claimant who had a legal right to claim under national law had suffered quantifiable economic loss (documents FUND/A.4/10, Annex, paragraphs 18 and 19, and FUND/A.4/16, paragraph 13). The Committee noted that the claim had been rejected by the Court of Messina.

3.3.4 The Italian delegation, in its capacity as observer, informed the Committee that it will report the discussions at this session to the various authorities in Italy dealing with matters pertaining to this case.

3.3.5 The Executive Committee stressed that it was important that the notion of pollution damage was interpreted and applied in a uniform manner in Member States. It was pointed out that Resolution N°3 had already had a certain effect in this regard.

3.3.6 The Executive Committee took note of the actions being taken by the Director in the appeals proceedings.

3.3.7 The Executive Committee instructed the Director to take the necessary steps to safeguard the IOPC Fund's right to initiate recourse proceedings against the owner of the CASTILLO DE MONTEARAGON, if the results of the formal enquiry into the cause of the incident were to justify recourse action being taken.

3.4 Other Incidents

3.4.1 The Director introduced documents FUND/EXC.16/5 and FUND/EXC.16/5/Add.1, containing information with regard to oil pollution incidents (other than the TARPENBEK, TANIO and PATMOS 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.

3.4.2 With regard to the ROSE GARDEN MARU incident, the Executive Committee noted that no limitation fund had been established under the Civil Liability Convention and that there was a lack of information on many important points, as indicated in documents FUND/EXC.16/5, paragraph 9, and FUND/EXC.16/5/Add.1, paragraph 4. For this reason, the Executive Committee considered it premature to take any decision as to whether the IOPC Fund should, exceptionally, waive the requirement to establish the limitation fund in this case. The Executive Committee instructed the Director to make a thorough investigation of all the aspects of the case and, if necessary, to refer the incident back to the Executive Committee at its 18th session.

3.4.3 The Executive Committee noted with satisfaction that a major part of the claims arising from the BRADY MARIA incident had been settled within ten months of the incident, due largely to the smooth co-operation between the IOPC Fund and the German authorities.

4 Claims Settlement Procedure for Incidents in Japan (Agenda item 4)

The Executive Committee took note of the information contained in document FUND/EXC.16/6 concerning the agreement reached with the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) on the procedure for dealing with incidents occurring in Japan.

5 Amendments to Staff Rules (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 documents FUND/EXC.16/7 and FUND/EXC.16/7/Add.1.

6 Date of Next Session (Agenda item 6)

The Executive Committee decided to hold its 17th session on Friday 24 October 1986 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.16/WP.1, was adopted, subject to some amendments.
