



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
18th session
Agenda item 6

FUND/EXC.18/5
7 October 1987

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RECORD OF DECISIONS OF THE EIGHTEENTH SESSION
OF THE EXECUTIVE COMMITTEE

(held from 6 to 7 October 1987)

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.18/1.

2 Examination of Credentials (Agenda item 2)

The following members of the Executive Committee were present:

Bahamas	Netherlands
Finland	Poland
Germany, Federal Republic of	Spain
Japan	Sweden
Liberia	

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	Monaco
France	Norway
Ghana	Syrian Arab Republic
Greece	Union of Soviet
Indonesia	Socialist Republics
Italy	United Kingdom
Kuwait	

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

Côte d'Ivoire	Chile
Argentina	China
Belgium	Mexico
Brazil	Switzerland
Canada	United States of America

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)
 Baltic and International Maritime Council (BIMCO)
 Friends of the Earth International (FOEI)
 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 Incidents Other than the TANIO and PATMOS Incidents

3.1.1 The Director introduced documents FUND/EXC.18/4 and FUND/EXC.18/4/Add.1, containing information with regard to oil pollution incidents (other than the 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. The Executive Committee noted with satisfaction that a number of incidents had been settled. It also noted that the IOPC Fund would not be called upon to pay any compensation in respect of the JOSE MARTI incident and that the claim against the IOPC Fund arising out of the ROSE GARDEN MARU incident had been withdrawn.

3.1.2 With regard to the BRADY MARIA incident, the Director explained the position that he had taken in the negotiations with the German authorities as regards the relationship between so-called "fixed costs", ie costs which would have arisen for the authorities concerned even if the incident had not occurred, as opposed to "additional costs", ie expenses incurred solely as a result of the incident and which would not have been incurred had the incident and operations relating thereto not taken place. He referred to the discussions that had taken place within the IOPC Fund in 1981 at the 5th Intersessional Working Group on the question of the admissibility of claims for fixed costs. The Working Group had agreed that additional costs were always recoverable under the Civil Liability Convention and Fund

Convention, whereas the Working Group had not reached unanimity on the question of the admissibility of fixed costs. Most delegations had agreed, however, that a reasonable proportion of fixed costs should be recoverable. In addition, the Working Group had agreed that the calculation of the relevant fixed costs included only those expenses which corresponded closely to the clean-up operations in question and which did not include remote overhead charges.

3.1.3 The Japanese delegation stated that the objective of the Civil Liability Convention was to provide compensation for losses and costs which would not have been incurred if the incident had not taken place and that the principles of compensation should be in accordance with this objective.

3.1.4 The Director stated that, in his view, the results of the discussions of the Working Group must be regarded as defining the policy of the IOPC Fund with regard to additional and fixed costs. In the negotiations with the German authorities he had based his approach on the position taken by the Working Group. The Committee endorsed the position taken by the Director during the negotiations in respect of the admissibility of fixed costs, as set out in paragraphs 5.4 to 5.6 of document FUND/EXC.18/4/Add.1.

3.1.5 In connection with the THUNTANK 5 incident, the Executive Committee authorised the Director, pursuant to Internal Regulation 8.4.1, to settle claims from private claimants arising out of this incident without the prior authority of the Committee, up to an aggregate amount of SKr400 000.

3.2 PATMOS Incident

The Director introduced document FUND/EXC.18/3 which contained information on the developments in the PATMOS case since the 17th session of the Executive Committee. The Executive Committee endorsed the position taken by the Director in respect of the claims. In view of the fact that a settlement of certain claims could be agreed within the next few days, the Executive Committee decided to postpone the further consideration of this incident to its 19th session.

3.3 TANIO Incident

3.3.1 The Director introduced document FUND/EXC.18/2 and set out the developments in the case since the issuance of that document.

3.3.2 In a closed session at which only representatives of Fund Member States were present, the Director informed the Committee of the main elements of a proposed agreement for an out-of-court settlement of the actions taken by the IOPC Fund and the French Government in the Court of Brest against the owner of the TANIO and other defendants.

3.3.3 The Committee, in its closed session, approved the proposed agreement on an out-of-court settlement between the IOPC Fund, the French State and various defendants, as presented by the Director, provided that the same agreement is approved by the competent authorities of the French State.

3.3.4 In its closed session, the Executive Committee authorised the Director to approve any necessary agreement concerning the details of this proposed settlement, to sign the necessary documents relating thereto on behalf of the IOPC Fund and to take any other decision on outstanding questions relating to the TANIO incident. The Committee also agreed that the actions taken by the IOPC Fund and the French State in the Court of Brest should be withdrawn once the necessary documentation regarding the settlement has been finalised and signed.

3.3.5 The Director was instructed by the Executive Committee in its closed session to inform Government of Member States as soon as possible of the position taken by the French Government and of other important developments concerning the proposed settlement.

4 Date of Next Session (Agenda item 4)

The Executive Committee decided to hold its 19th session on Friday 9 October 1987 at 9.30 am.

5 Any Other Business (Agenda item 5)

No items were raised under this Agenda item.

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

The draft report of the Executive Committee to the Assembly, as contained in document FUND/EXC.18/WP.1, was adopted, subject to some amendments.
