



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
20th session  
Agenda item 7

FUND/EXC.20/6  
19 October 1988

Original: ENGLISH

RECORD OF DECISIONS OF THE TWENTIETH SESSION  
OF THE EXECUTIVE COMMITTEE

(held from 17 to 19 October 1988)

Chairman: Mr P Novia (Italy)  
Vice-Chairman: Mr H Mutttilainen (Finland)

1 Adoption of the Agenda (Agenda item 1)

The Executive Committee adopted the Agenda as contained in document FUND/EXC.20/1.

2 Examination of Credentials (Agenda item 2)

The following members of the Executive Committee were present:

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

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 Contracting States were represented as observers:

Bahamas	Norway
Denmark	Portugal
Japan	Spain
Liberia	Sri Lanka
Monaco	Sweden
Nigeria	Union of Soviet Socialist Republics

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

Argentina	Cyprus
Belgium	German Democratic Republic
Brazil	Ireland
Canada	Mexico
Chile	United States of America
China	

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

International Maritime Organization (IMO)  
Advisory Committee on Pollution of the Sea (ACOPS)  
CRISTAL Ltd  
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 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 documents FUND/EXC.20/2 and FUND/EXC.20/2/Add.1 and set out the developments that had taken place since the 19th session of the Executive Committee in respect of the TANIO incident. In particular, he gave a presentation of the out-of-court settlement reached in December 1987 in respect of the legal action which the IOPC Fund and the French Government had taken in France against the owner of the TANIO and third parties, resulting in an amount of £9.5 million being recovered by the IOPC Fund. He also confirmed that distribution had been made on 13 October 1988 of the remaining amount payable by the IOPC Fund to the claimants, FFr939 191, and that all expenses arising out of this incident had been met.

3.1.2 The Executive Committee expressed its satisfaction with the out-of-court settlement reached in respect of the legal action against the owner of the TANIO and other third parties. The Committee endorsed the position taken by the Director to certain problems which had arisen in connection with the final payments, ie in respect of the fees and expenses incurred for the administration of the limitation fund and in respect of the discrepancies between the amounts accepted for certain claims under the Fund Convention and those accepted under the Civil Liability Convention (paragraphs 4.4, 5.3 and 5.11 to 5.13 of document FUND/EXC.20/2). It also noted that all questions outstanding at the time of the 19th session of the Committee had been resolved and that there were thus no outstanding issues in connection with this incident.

3.1.3 The Executive Committee took note of the fact that the periods set out in Article 6 of the Fund Convention for bringing actions in respect of the TANIO incident had lapsed and that all claims arising out of this incident had been settled and paid and that all expenses had been met.

### 3.2 PATMOS Incident

3.2.1 The Director introduced document FUND/EXC.20/3 which contained information on the developments in the PATMOS case since the 19th session of the Executive Committee.

3.2.2 The Executive Committee noted with satisfaction that an out-of-court settlement had been reached in respect of the claim submitted by Esso Italiana Spa which excluded any payment in respect of the item of this claim that related to salvage. The Committee stressed that this settlement was in conformity with the position taken by the IOPC Fund in the PATMOS case in respect of salvage operations, ie that such operations could be considered as falling within the definition of "preventive measures" only if the primary purpose of the operations was to prevent pollution damage and that in the view of the IOPC Fund the operations covered by this item did not fulfil that condition.

3.2.3 With regard to the Italian Government's claim for damage to the marine environment, the Executive Committee reiterated the IOPC Fund's position that a claimant was entitled to compensation under the Civil Liability Convention and the Fund Convention only if he had suffered quantifiable economic loss. In view of the position of the Italian Government that this claim relates to actual damage to the marine environment, the Committee referred to the interpretation of the definition of "pollution damage" laid down in IOPC Fund Resolution N°3 adopted by the Assembly at its first extraordinary session in 1980. Concerning the economic loss that had allegedly been suffered by the tourist industry and fishermen, the Committee was of the opinion that compensation in respect of such damage could only be claimed by the individual person having suffered the damage who, in addition, had to prove the quantum of the economic loss sustained.

### 3.3 Incidents Other than the TANIO and PATMOS

3.3.1 The Director introduced documents FUND/EXC.20/4 and FUND/EXC.20/4/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 Committee took note of this information and noted with satisfaction that two incidents (the EIKO MARU N°1 and the JAN incidents) had been settled.

3.3.2 In connection with the JAN incident, the Executive Committee noted that all claims arising out of this incident had been settled and paid and that all expenses had been met. The Committee endorsed the position taken by the Director in the negotiations with regard to the admissibility of claims relating to fixed costs, ie costs which would have arisen even if the incident had not occurred, as set out in paragraphs 3.11 and 3.12 of document FUND/EXC.20/4. In particular, the Committee insisted that only those expenses which relate closely to the clean-up period in question and which do not include remote overhead charges should be compensated.

3.3.3 Concerning the ANTONIO GRAMSCI incident, the Director drew the attention of the Executive Committee to a claim submitted by the USSR authorities relating to environmental damage in respect of which the amount claimed had

been arrived at by the application of a formula, in accordance with Soviet legislation, under which the assessment of the damage is linked to the quantity of the oil collected in Soviet territorial waters. Referring to IOPC Fund Resolution N°3 mentioned in paragraph 3.2.3 above, the Executive Committee expressed its objection to this claim. In the view of the Committee, claims of this kind were not admissible under the Civil Liability Convention, because the claimant had not suffered any quantifiable economic loss. The Executive Committee considered that it was likely that, since the adoption of that Resolution, some Member States had refrained from submitting claims relating to damage to the marine environment, in view of the interpretation of the notion of "pollution damage" adopted by the Assembly. The Executive Committee instructed the Director to negotiate with the USSR authorities on the basis of Resolution N°3. In addition, he was instructed to examine the legal possibilities for the IOPC Fund to intervene in court proceedings in the USSR relating to this case and, if that is legally possible, to consider whether it would be appropriate to make such intervention.

3.3.4 With regard to the AMAZZONE incident, the Executive Committee approved a proposal by the Director to accept the claim submitted by the authorities in Jersey in the amount of £11 380.33 and a claim submitted by a French fisherman in the amount of FFfr55 576. In addition, the Committee authorised the Director to settle claims from private claimants arising out of this incident up to an aggregate amount of FFfr400 000, as well as a claim from the authorities in Guernsey, provisionally totalling £10 013, at an amount which he considers reasonable.

#### 4 Appraisal of Experience Gained from the TANIO Incident (Agenda item 4)

4.1 The Executive Committee took note of the information contained in document FUND/EXC.20/5.

4.2 The Executive Committee endorsed the observations made by the Director in paragraph 6.3 of that document with respect to the presentation of claims against the IOPC Fund. It also agreed with the Director that, except in collision cases, the IOPC Fund should only take recourse action in cases where there are very strong reasons for taking such actions and where, in addition, there is a considerable likelihood of success. In addition, the Committee stressed the importance of close co-operation between the IOPC Fund and the authorities in the State affected by an incident involving the IOPC Fund.

4.3 The Executive Committee expressed its gratitude to the present Director and his predecessor for the excellent manner in which the TANIO case had been handled.

#### 5 Date of Next Session (Agenda item 5)

The Executive Committee decided to hold its 21st session on Friday 21 October 1988 at 9.30 am.

6 Any Other Business (Agenda item 6)

No items were raised under this Agenda item.

7 Adoption of the Report to the Assembly (Agenda item 7)

The draft report of the Executive Committee to the Assembly, as contained in document FUND/EXC.20/WP.1, was adopted, subject to some amendments.

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