



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
22nd session  
Agenda item 7

FUND/EXC.22/5  
25 October 1989

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## RECORD OF DECISIONS OF THE TWENTY-SECOND SESSION OF THE EXECUTIVE COMMITTEE

(held from 24 to 25 October 1989)

Chairman: Mr P Novia (Italy)

### 1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document FUND/EXC.22/1.

### 2 Examination of Credentials

The following members of the Executive Committee were present:

Bahamas	Kuwait
France	Liberia
Greece	Sweden
Indonesia	Tunisia
Italy	Union of Soviet Socialist Republics
Japan	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 Contracting States were represented as observers:

Canada	Monaco
Côte d'Ivoire	Netherlands
Cyprus	Norway
Denmark	Poland
Fiji	Syrian Arab Republic
Finland	Yugoslavia
Germany, Federal Republic of	

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

Argentina	Ireland
Belgium	Mexico
Brazil	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)  
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**

#### **3.1 PATMOS Incident**

3.1.1 The Director introduced document FUND/EXC.22/2 which contained information on the developments in the PATMOS case since the 21st session of the Executive Committee.

3.1.2 The Executive Committee noted with satisfaction that an out-of-court settlement had been reached in respect of the owner of a Libyan vessel who had claimed compensation for loss resulting from that vessel having to be moved from the shipyard in Messina to leave room for the PATMOS at the shipyard's jetty.

3.1.3 With regard to the Italian Government's claim for damage to the marine environment, the Executive Committee noted the non-final judgement rendered by the Court of Appeal in Messina on 30 March 1989. The Executive Committee expressed concern about this judgement and 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 related 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. The Committee endorsed the steps taken by the Director to reserve the IOPC Fund's right of appeal before the Supreme Court against this non-final judgement in conjunction with appeal against the Court of Appeal's final judgement.

#### **3.2 Incidents other than the PATMOS**

3.2.1 The Director introduced documents FUND/EXC.22/3, FUND/EXC.22/3/Add.1 and FUND/EXC.22/3/Add.2, containing information with regard to oil pollution incidents (other than the PATMOS incident) 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 the progress that had been made in respect of several major incidents, viz the OUED GUETERINI, THUNTANK 5, ANTONIO GRAMSCI and KASUGA MARU N°1 incidents.

3.2.2 The Executive Committee noted that the claims for compensation arising out of the OUED GUETERINI incident had been settled and paid.

3.2.3 Concerning the THUNTANK 5 incident, the Executive Committee examined the Director's proposal to settle the claim submitted by the Swedish Government. The Committee endorsed the position taken by the Director in negotiations with the Swedish Government 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 3.3 and 3.4 of document FUND/EXC.22/3/Add.1. In particular, the Committee insisted that only those expenses which related closely to the clean-up period in question and which did not include remote overhead charges should be compensated. The Executive Committee approved the settlement agreement set out in the Annex to document FUND/EXC.22/3/Add.1, under which the Swedish Government's claim was accepted at an aggregate amount of SKr21 931 232 plus interest.

3.2.4 As for the ANTONIO GRAMSCI incident, the Executive Committee noted that agreement had been reached between the Finnish Government, on the one side, and the Director (on behalf of the IOPC Fund) and the shipowner's P & I insurer, on the other, to settle the claim submitted by the Finnish Government at a total amount of FM9 758 250, as set out in paragraph 4.2 of document FUND/EXC.22/3/Add.1. The Committee noted the position taken by the Director in this case as to the admissibility of claims relating to fixed costs.

3.2.5 The Executive Committee was informed of the situation in respect of the claims relating to damage in the USSR in the ANTONIO GRAMSCI case. The Director drew attention to a claim submitted by the Estonian State Committee for Environmental Protection and Forestry relating to damage to the marine environment in respect of which the amount claimed had been arrived at by the application of a formula, the so-called "metodika", in accordance with Soviet legislation; under this formula, the assessment of the damage is linked to the quantity of the oil collected in USSR territorial waters. The Director informed the Committee that, in accordance with instructions given to him by the Committee at its 20th session, he had negotiated with the Estonian State Committee on the basis of Resolution N°3. He also stated that the Estonian State Committee maintained its claim, on the ground that the claim was based on the metodika which formed part of Soviet law and which therefore had to be applied by the USSR courts.

3.2.6 Referring to IOPC Fund Resolution N°3 mentioned in paragraph 3.1.3 above, the Executive Committee reiterated its objection to the claim submitted by the Estonian State Committee in the ANTONIO GRAMSCI case. 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 Committee drew attention to the opinion of the Assembly, expressed at its 11th session, that a uniform interpretation of the definition of "pollution damage" was essential for the functioning of the regime of compensation established by the Civil Liability Convention and the Fund Convention.

3.2.7 The Executive Committee was of the opinion that it would be possible for the IOPC Fund to intervene in the court proceedings in the Court of Riga in order to challenge the claim submitted by the Estonian State Committee in the ANTONIO GRAMSCI case on the ground that the claim was at variance with the definition of "pollution damage" in the Civil Liability Convention, as interpreted by the IOPC Fund Assembly. However, the Committee recognised that such an intervention would raise a number of complex legal issues and would be very costly. It also took into account the fact that the USSR was not Party to the Fund Convention at the time of the incident. In addition, the Committee recognised that, in view of the reduction in the Finnish Government's claim and in the Estonian State Committee's claim, the financial consequences for the IOPC Fund of an acceptance by the Court of the Estonian State Committee's claim would be rather limited. For these reasons, the Executive Committee decided that the IOPC Fund should not intervene in the proceedings in the Court of Riga for the purpose of challenging the latter claim. The Committee instructed the Director to inform the Court of Riga, in an appropriate way, of the position of the IOPC Fund in respect of this claim and, in particular, of the principles embodied in Resolution N°3 adopted by the Assembly in 1980. The Executive Committee invited the Assembly to endorse the position taken by the Committee in respect of these principles.

3.2.8 As for the HINODE MARU N°1, FUKKOL MARU N°12 and TSUBAME MARU N°16 incidents, the P & I insurer had requested that the IOPC Fund should waive the requirement to establish the limitation fund. The Executive Committee noted that it had in the SHINKAI MARU N°3 case decided that the IOPC Fund normally required the establishment of the limitation fund in order to be able to pay compensation and that this requirement could be waived only in exceptional cases, such as the SHINKAI MARU N°3 case. The Committee took into account the Memorandum of Understanding, signed on 25 November 1985 by the P & I insurer of these vessels (the Japan Ship Owners' Mutual Protection and Indemnity Association, JPIA) and the IOPC Fund, under which JPIA undertakes to repay in full any amount paid by the IOPC Fund in compensation if it is held by the competent court that the shipowner is not entitled to limit his liability under the Civil Liability Convention. In view of the disproportionately high legal costs that would be incurred in establishing the limitation fund compared with the low limitation amounts under the Civil Liability Convention in these cases, and referring to the Memorandum of Understanding, the Executive Committee agreed that the IOPC Fund could, as an exception, pay compensation without the limitation fund being established in the HINODE MARU N°1, FUKKOL MARU N°12 and TSUBAME MARU N°16 cases.

3.2.9 The Executive Committee authorised the Director to waive the requirement to establish the limitation fund also in the KIFUKU MARU N°13 case, for the reasons set out in paragraph 3.2.8, if a request to this effect were made.

3.2.10 The Executive Committee instructed the Director to prepare a document for submission to its 24th session concerning the special problems caused by incidents involving small vessels.

3.2.11 In respect of the KASUGA MARU N°1 incident, the Executive Committee endorsed the position taken by the Director that the costs for a proposed underwater inspection of the sunken vessel would not be covered by the notions of "pollution damage" and "preventive measures", since this inspection would not have been taken for the purpose of preventing damage by contamination. The Committee also endorsed the Director's rejection of those parts of the claims submitted by four fishery co-operative associations which related to the expenses for the creation of a crab protection area, as the purpose of the creation of such an area would not be to prevent damage by contamination but to prevent physical damage to fishing nets; these expenses could therefore not be considered as falling within the definition of "pollution damage".

3.2.12 Concerning the KASUGA MARU N°1 incident, the Executive Committee approved the Director's proposal to settle the claims submitted by the Maritime Safety Agency, the Marine Disaster Prevention Centre, the shipowner and 20 sub-contractors at an aggregate amount of ¥387 928 351. The Committee authorized the Director, under Internal Regulation 8.4.2, to settle the claims which had been submitted by four fishery co-operative associations, except the parts of these claims relating to the creation of a crab protection area referred to in paragraph 3.2.11 above. In addition, the Committee authorised the Director to settle any claims arising out of this incident which may be submitted in the future up to an aggregate amount of ¥100 million.

3.2.13 The Executive Committee endorsed the Director's view that the damage resulting from the TSUBAME MARU N°58 and TSUBAME MARU N°16 incidents should be considered as covered by the definition of "pollution damage" laid down in the Civil Liability Convention.

#### 4 Revision of Claims Manual

The Executive Committee examined a draft revised Claims Manual elaborated by the IOPC Fund Secretariat which was reproduced as the Annex to document FUND/EXC.22/4. The Committee approved in principle the revised text and authorized the Director to finalize the text of the revised Claims Manual, in the light of any comments received by 1 December 1989.

#### 5 Date of Next Session

The Executive Committee decided to hold its 23rd session on Friday 27 October 1989 at 9.30 am.

#### 6 Any Other Business

No items were raised under this Agenda item.

#### 7 Adoption of the Report to the Assembly

The draft report of the Executive Committee to the Assembly, as contained in document FUND/EXC.22/WP.1, was adopted, subject to some amendments.

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