



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
24th session  
Agenda item 6

FUND/EXC.24/6  
25 September 1990

Original: ENGLISH

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

(held from 24 to 25 September 1990)

Chairman: Mr W W Sturms (Netherlands)

Vice-Chairman: Mr B Diarra (Côte d'Ivoire)

### 1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document FUND/EXC.24/1.

### 2 Examination of Credentials

The following members of the Executive Committee were present:

Bahamas	Liberia
Canada	Monaco
Côte d'Ivoire	Netherlands
Cyprus	Poland
Finland	Spain
Germany, Federal Republic of	Sweden
Japan	Union of Soviet Socialist Republics

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:

Denmark	Nigeria
Fiji	Norway
France	Sri Lanka
Greece	Tunisia
Indonesia	United Kingdom
Italy	

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

India	China
Argentina	Mexico
Australia	Morocco
Belgium	Saudi Arabia
Brazil	United States of America
Chile	

The following international non-governmental organisations participated as observers:

International Association of Independent Tanker Owners (INTERTANKO)  
 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.24/2 which contained information on the developments in the PATMOS case since the 23rd session of the Executive Committee.

3.1.2 With regard to the Italian Government's claim for damage to the marine environment, the Committee noted the report submitted by the experts appointed by the Court of Appeal in Messina in which the experts held, inter alia, that, except in respect of fishing activities, there was a lack of data for the purpose of evaluating the economic impact on other activities and that a precise assessment of the damage was impossible. 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. Concerning the economic loss which had allegedly been suffered by the tourist industry and fishermen, the Committee expressed the view that compensation could only be claimed by the individual person having suffered damage and who, in addition, must prove the amount of any economic loss sustained.

#### **3.2 ANTONIO GRAMSCI Incident**

3.2.1 The Director introduced document FUND/EXC.24/3 which contained information on the ANTONIO GRAMSCI incident.

3.2.2 The Executive Committee noted that all claims arising out of this incident had been settled. It also took note of the observations submitted by the Director to the Court in Riga, setting out the IOPC Fund's position as regards claims in which the assessment of the quantum of the damage is based on theoretical models, in accordance with the instructions given by the Committee at its 22nd session.

3.2.3 The Executive Committee, concurring with statements made by the delegations of Finland and the USSR, expressed its appreciation to the Director of the efficient way in which this incident had been

handled by the IOPC Fund, in particular as regards the problems concerning the distribution of the limitation fund which were very complicated since pollution damage had been caused in two States.

### 3.3 TOLMIROS Incident

3.3.1 The Executive Committee took note of the information contained in document FUND/EXC.24/5.

3.3.2 The Executive Committee instructed the Director to examine, with the assistance of experts, any evidence produced by the Swedish Government concerning the origin of the oil which polluted the Swedish coast, in order to establish whether the oil came from the TOLMIROS. It also directed him to examine, with the assistance of legal experts, whether the TOLMIROS could be considered to have carried oil in bulk as cargo during its voyage from Gothenburg to Teesport. In addition, the Director was instructed to report any developments to the 26th session of the Committee.

3.3.3 The Greek delegation informed the Executive Committee that an investigation undertaken by the Greek authorities at the request of the Swedish Government had concluded that the TOLMIROS had not caused the spill; the findings of the investigation had been submitted to the competent court for consideration.

### 3.4 Other Incidents

3.4.1 The Director introduced documents FUND/EXC.24/4 and FUND/EXC.24/4/Add.1, containing information with regard to oil pollution incidents (other than the PATMOS, ANTONIO GRAMSCI and TOLMIROS 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 the progress that had been made in respect of a number of incidents.

3.4.2 The Executive Committee was informed of the settlement reached with regard to the only outstanding issue in the KOSHUN MARU N°1 case, ie the recourse claims, and that there were no longer any outstanding issues in the BRADY MARIA case.

3.4.3 The Executive Committee noted that all claims for compensation and indemnification arising out of the OUED GUETERINI, HINODE MARU N°1, TAIYO MARU N°13, FUKKOL MARU N°12, TSUBAME MARU N°16 and KIFUKU MARU N°103 incidents had been settled and paid, and that all claims for compensation had been paid in respect of the TSUBAME MARU N°58 and DAINICHI MARU N°5 incidents. As for the THUNTANK 5 and KASUGA MARU N°1 incidents, it was noted that all claims presented so far had been settled, but that further claims could not be ruled out.

3.4.4 Concerning the AMAZZONE incident, the Committee agreed with the Director's position, as set out in paragraph 7.10 of the Annex to document FUND/EXC.24/4, that only one person, ie the registered owner, could benefit from the right of limitation of liability under the Civil Liability Convention.

3.4.5 With respect to the AKARI incident, the Executive Committee noted with satisfaction the Director's initiative to make the persons who had suffered pollution damage aware of their right to obtain compensation from the IOPC Fund. It agreed with the position taken by the Director in respect of what steps the claimants should be requested to take in order to establish that the shipowner should be treated as financially incapable of meeting his obligations (Article 4.1 of the Fund Convention). As regards the question of whether there was a right of direct action against the insurer, in cases where the vessel carried less than 2 000 tonnes of oil in bulk as cargo, the Committee did not consider it necessary to take any position as to the interpretation of the Civil Liability Convention on this point, in view of the solution arrived at by means of the agreement with the P & I insurer under which the latter would make an ex-gratia payment to the IOPC Fund.

3.4.6 With regard to the CZANTORIA incident, the Executive Committee agreed with the Director's analysis in paragraph 9.5 of the Annex to document FUND/EXC.24/4/4, in particular as regards the interpretation of the Civil Liability Convention and the Fund Convention that the Conventions did not

apply to damage sustained in a given State after the entry into force of the respective Convention for that State resulting from an incident occurring before the entry into force. The Committee supported the Director's position that consequently there was no right of compensation from the IOPC Fund in this case.

3.4.7 As for the DAITO MARU N°3 and HATO MARU N°2 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 previous cases 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 the DAITO MARU N°3 and HATO MARU N°2 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 these cases.

#### **4 Date of Next Session**

The Executive Committee decided to hold its 25th session on Thursday 27 September or Friday 28 September 1990, the exact time to be announced later.

#### **5 Any Other Business**

The Director informed the Executive Committee that a revised version of the IOPC Fund's Claims Manual, a draft of which had been examined by the Committee at its 22nd session, had been published in January 1990.

#### **6 Adoption of the Report to the Assembly.**

The draft report of the Executive Committee to the Assembly, as contained in document FUND/EXC.24/WP.1, was adopted, subject to some amendments.

---