



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
26th session  
Agenda item 5

FUND/EXC.26/5  
14 March 1991

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

(held on 14 March 1991)

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.26/1.

### 2 Examination of Credentials

The following members of the Executive Committee were present:

Canada	Italy
Cyprus	Netherlands
Finland	Poland
France	Spain
Greece	Sri Lanka
Indonesia	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:

Bahamas	Nigeria
Denmark	Norway
Germany	Portugal
Japan	Sweden
Liberia	Union of Soviet Socialist Republics

The following non-Contracting States were also represented as observers:

Belgium  
Brazil  
Chile

China  
Saudi Arabia  
United States of America

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

International Maritime Organization (IMO)  
Cristal Ltd  
International Group of P & I Clubs  
International Tanker Owners Pollution Federation Ltd (ITOPF)

### **3 RIO ORINOCO Incident**

3.1 The Director introduced document FUND/EXC.26/2, containing information on the RIO ORINOCO incident which had occurred since the 25th session of the Executive Committee. The Committee was invited to consider various aspects of the case.

3.2 The Executive Committee authorised the Director, pursuant to Internal Regulation 8.4.2, to settle the claim submitted by the Swedish Club for the on-shore clean-up operations carried out during the period ending 10 November 1990.

3.3 With regard to the operations carried out to remove the remaining bunker oil from the RIO ORINOCO, the Executive Committee agreed with the Director that these operations fell within the definition of "preventive measures" laid down in the Civil Liability Convention, as there was a considerable risk that the bunker oil would otherwise escape and cause further pollution to the coast around the grounding site. The Committee considered, therefore, that the expenses incurred on behalf of the shipowner would be admissible under Article V.8 of the Civil Liability Convention and the second sub-paragraph of Article 4.1 of the Fund Convention. In view of this decision, the Committee authorised the Director, pursuant to Internal Regulation 8.4.2, to settle the claim presented by the Swedish Club in respect of these operations.

3.4 The Executive Committee considered whether the attempts made so far to remove the RIO ORINOCO and her cargo fell in principle within the definitions of "pollution damage" and "preventive measures" laid down in Article 1.6 and 1.7 of the Civil Liability Convention. Basing its considerations on the interpretation which the Committee had given to the definition of "preventive measures" in the PATMOS case, the Committee agreed with the Director that the primary purpose of the operations to remove the ship and cargo carried out up to 31 January 1991 in the RIO ORINOCO case, as described in paragraphs 2.12 and 2.13 of document FUND/EXC.26/2, had been to prevent pollution. The Executive Committee therefore decided that these operations fell, in principle, within the definition of "preventive measures".

3.5 The Executive Committee noted that further claims would be presented for considerable amounts.

### **4 Any Other Business**

#### **Legal Action Taken In Respect of the AMAZZONE Incident**

4.1 The Executive Committee took note of the information contained in document FUND/EXC.26/3 concerning the legal action taken by the Director, on behalf of the IOPC Fund, and the French Government against the shipowner, the charterer and the Standard Club, in respect of the AMAZZONE incident. The Director drew the Executive Committee's attention to the position taken by the Committee

at its 20th session 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* (document FUND/EXC.20/6, paragraph 4.2).

4.2 The Committee endorsed the measures taken by the Director, on behalf of the IOPC Fund, to bring legal action against the owner of the AMAZZONE as well as against the charterer of the vessel and its P & I insurer, for the purpose of recovering any amount paid by the IOPC Fund to claimants and for the purpose of preventing them from limiting their liability.

#### **Information on and Approval of Settlement of Claims (FUJI MARU N°3)**

4.3 The Executive Committee took note of the information contained in document FUND/EXC.26/4 with regard to the FUJI MARU N°3 incident, in particular, the P & I Club's request that the IOPC Fund should, in this case, waive the requirement to establish the limitation fund.

4.4 The Committee noted that, although the limitation amount in the FUJI MARU N°3 case was not particularly low, the legal costs which would be incurred in establishing the limitation fund in this case would be disproportionately high compared with the amount payable by the IOPC Fund in compensation and indemnification; in fact, the legal costs would exceed that amount. For this reason, and in view of the Executive Committee's decisions at its 22nd and 24th sessions in respect of other requests to the same effect, the Executive Committee agreed that the requirement to establish the limitation fund should be waived in the FUJI MARU N°3 case, so that the IOPC Fund could, as an exception, pay compensation and indemnification without the limitation fund being established.

#### **Other Incidents**

4.5 The Director informed the Executive Committee of three other incidents involving the IOPC Fund which had occurred since its 25th session, viz the BONITO, PORTFIELD and VISTA BELLA incidents.

### **5 Adoption of the Report to the Assembly**

The draft report of the Executive Committee to the Assembly, as contained in document FUND/EXC.26/WP.2, was adopted, subject to some amendments.

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