



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
28th session  
Agenda item 6

FUND/EXC.28/9  
8 October 1991

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

(held from 7 to 8 October 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.28/1.

### 2 Examination of Credentials

The following members of the Executive Committee were present:

Canada	Italy
Cyprus	Netherlands
Fiji	Poland
Finland	Spain
France	Sri Lanka
Greece	United Kingdom
Indonesia	

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:

Algeria	Liberia
Bahamas	Monaco
Denmark	Norway
Germany	Portugal
Ghana	Sweden
India	Syrian Arab Republic
Japan	Union of Soviet Socialist Republics
Kuwait	United Arab Emirates

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

Malta	Jamaica
Belgium	Morocco
Brazil	Republic of Korea
Chile	Saudi Arabia
China	United States of America
Democratic People's Republic of Korea	

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

International Maritime Organization (IMO)  
 United Nations Environment Programme (UNEP)  
 Cristal Ltd  
 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 Incidents Involving the IOPC Fund**

#### **3.1 Overview**

3.1.1 The Director introduced document FUND/EXC.28/2 which contained summaries of the situation in respect of all incidents dealt with by the IOPC Fund since the 25th session of the Executive Committee.

3.1.2 The Executive Committee noted that the Director had restructured the documentation relating to incidents involving the IOPC Fund in comparison with previous years and expressed its appreciation of the revised structure of the documentation.

#### **3.2 PATMOS Incident**

3.2.1 The Director introduced document FUND/EXC.28/3 which contained information on the developments in the PATMOS case since the 25th session of the Executive Committee.

3.2.2 With regard to the Italian Government's claim in respect of damage to the marine environment, the Executive Committee noted that the judgement of the Court of Appeal was expected to be rendered during October 1991. The Committee recognised the link between the Italian Government's claim in the PATMOS case and the corresponding claim in the HAVEN case and emphasised that the judgement dealt with a question of principle of great importance for the IOPC Fund.

3.2.3 The Executive Committee instructed the Director to lodge an appeal against a judgement accepting the Italian Government's claim if the judgement could lead to the IOPC Fund being called upon to pay compensation as a result of this incident. In addition, the Director was instructed to submit the matter to the Committee for reconsideration at its next session, in the light of the judgement of the Court of Appeal.

### 3.3 RIO ORINOCO Incident

3.3.1 The Director introduced documents FUND/EXC.28/4 and FUND/EXC.28/4/Add.1 which contained information on the RIO ORINOCO incident. A video film on this incident was shown to the Committee.

3.3.2 With regard to the operations carried out during the summer of 1991 by Groupe Desgagnés under contract with the Canadian Coast Guard to remove the RIO ORINOCO from its grounded position and bring it to a safe place, the Executive Committee agreed with the Director that these operations, like the operations carried out during the winter of 1991 to remove the RIO ORINOCO and her bunker oil and cargo, fell within the definitions of "pollution damage" and "preventive measures" as laid down in Article 1.6 and 1.7 of the Civil Liability Convention, since the primary purpose of these operations was to prevent pollution.

3.3.3 The Executive Committee approved the settlements proposed by the Director concerning the claims submitted by the Canadian Government, viz in respect of the operations carried out by or on behalf of the Coast Guard up to 31 January 1991 for an amount of Can\$6 950 000 and in respect of the operations for removal of the RIO ORINOCO covered by the contract between the Coast Guard and Groupe Desgagnés for an amount of Can\$3 268 848.

3.3.4 The Executive Committee authorised the Director, pursuant to Internal Regulation 8.4.2, to settle the claim presented by the Swedish Club in subrogation in respect of the clean-up operations carried out during the summer of 1991.

3.3.5 The Director informed the Executive Committee that an investigation into the cause of the incident was being carried out by the Canadian authorities; he would keep the Committee informed of the results of this investigation.

3.3.6 The Executive Committee noted the excellent co-operation between the Canadian authorities and the IOPC Fund in connection with this incident. It congratulated the Director on the speed with which the claims presented by the Canadian Government had been settled, and considered that the RIO ORINOCO incident was a good example of the efficiency of the liability and compensation system established by the Civil Liability Convention and the Fund Convention.

### 3.4 AGIP ABRUZZO Incident

3.4.1 The Executive Committee took note of the information contained in document FUND/EXC.28/5 concerning the AGIP ABRUZZO incident, in particular the details given in paragraphs 4.1 and 4.2 regarding the claims for compensation.

3.4.2 The Italian delegation informed the Executive Committee that the Italian Government would at a later stage submit a claim for compensation in respect of the operations of the various Government agencies involved.

3.4.3 The Executive Committee instructed the Director to continue to follow the investigations into the cause of the incident so as to enable him to submit to the Committee at a later session a proposal as to whether the IOPC Fund should bring recourse action against the owner of the MOBY PRINCE or take any other legal action.

### 3.5 HAVEN Incident

#### *General Discussion*

3.5.1 The Director introduced documents FUND/EXC.28/6 and FUND/EXC.28/6/Add.1, setting out the developments in respect of the HAVEN incident.

3.5.2 The Italian delegation stated that, in the view of the Italian Government, the HAVEN no longer represented any danger to navigation nor constituted any risk of further significant oil pollution. It also emphasised that the paramount consideration of the Italian authorities when deciding what measures to take had been and would be the need for efficiency and economy.

3.5.3 The Italian delegation expressed its appreciation of the fruitful discussions between the Director and the representatives of the Italian Government and for the valuable support given by the IOPC Fund's experts.

3.5.4 The Executive Committee stressed the importance in this major incident of a dialogue between the IOPC Fund and the Governments involved. The Director was instructed to continue his discussions with these Governments as well as with other claimants concerning the possibility of speedy settlement of claims.

#### *Method of Converting (gold) francs*

3.5.5 The Executive Committee considered the question raised at the first hearing in the Court of first instance in Genoa as to the method of conversion of the maximum amount payable under Article 4.4 of the Fund Convention, which is expressed in (gold) francs.

3.5.6 The Committee noted that the Assembly, in 1978, had adopted an interpretation of the provisions in the Fund Convention dealing with (gold) francs under which the amount determined in francs shall be converted into SDRs on the basis that 15 (gold) francs are equal to 1 SDR; the number of SDRs thus found shall be converted into national currency in accordance with the method of evaluation applied by the International Monetary Fund (IOPC Fund Resolution N°1).

3.5.7 During the discussion of this issue, it was emphasised that the inclusion of the word "official" in the text of 1969 Civil Liability Convention was made deliberately by the Diplomatic Conference in order to ensure stability in the system and was clearly meant to rule out the application of the free market price of gold. It was stressed that the application of different units of account in respect of the Civil Liability Convention and the Fund Convention would lead to unacceptable results, in particular as regards the relationship between the portion of liability to be borne by the shipowner and the IOPC Fund, respectively, on the basis of Article 5.1 of the Fund Convention. It was also mentioned that the IOPC Fund's Internal Regulations already had substituted the (gold) franc for the Special Drawing Right, 1 SDR equalling 15 (gold) francs.

3.5.8 The Executive Committee agreed with the Director's analysis of this problem. The Committee instructed the Director to base the IOPC Fund's position in the court proceedings on the above-mentioned Resolution.

3.5.9 The Italian delegation stated that the Italian Government reserved its position on this point until it had been able to examine the legal problems in detail. This delegation added that it would be for the Court to interpret Italian law on this point.

#### *Damage to the Marine Environment*

3.5.10 The Executive Committee noted that in the legal proceedings in Genoa the question had been raised of whether claims relating to damage to the marine environment which were not admissible under the Civil Liability Convention and the Fund Convention, as a consequence of the Resolution

adopted by the Assembly in 1980 on this matter (IOPC Fund Resolution N°3), could be made against the shipowner outside the Conventions.

3.5.11 During the discussion on this issue some delegations questioned whether it fell within the competence of the IOPC Fund to express any opinion on this matter, since it did not directly relate to the operations of the IOPC Fund. It was pointed out, on the other hand, that the IOPC Fund, having opposed the claims submitted in the HAVEN case in respect of the environmental damage, should in its pleadings indicate the reasons for its opposition; it might be difficult to submit well reasoned pleadings in supporting the IOPC Fund's position without dealing with this question.

3.5.12 Several delegations stated that in view of the importance of this issue, which had been drawn to their attention only shortly before the session, they were not prepared to take any decision at the present session.

3.5.13 The Executive Committee decided that this important matter would have to be considered further at an extra session to be held later in 1991, subject to budgetary approval by the Assembly. The Director was instructed to prepare a study of this issue, in consultation with the IOPC Fund's Italian lawyer, for consideration by the Committee at that session.

### **3.6 Certain Incidents of Particular Interest**

3.6.1 The Executive Committee took note of the information regarding the TOLMIROS, AMAZZONE, PORTFIELD and VISTABELLA incidents contained in document FUND/EXC.28/7.

3.6.2 With regard to the TOLMIROS incident, the Executive Committee endorsed the position taken by the Director in the court proceedings in Sweden that the TOLMIROS should not be considered as having actually carried oil in bulk as cargo at the time of the incident and that therefore the Civil Liability Convention and the Fund Convention did not apply even if it were proved that the oil which polluted the coast came from the TOLMIROS.

3.6.3 Concerning the AMAZZONE incident, the Executive Committee expressed its satisfaction that an agreement of principle had been reached in respect of the French Government's claim. The Committee instructed the Director to pursue his efforts in the context of the legal actions taken in France against the owner and the charterer of the AMAZZONE and their P & I insurer to recover any amounts paid in compensation by the IOPC Fund.

3.6.4 The Committee took note of the position taken by the Director in the PORTFIELD case in respect of the relationship between salvage and preventive measures.

3.6.5 With respect to the VISTABELLA incident, the Executive Committee noted that this incident had caused pollution damage in five jurisdictions of which some were not covered by the Fund Convention. The Committee expressed the view that this incident clearly demonstrated the advantage of Fund membership to States in the Caribbean.

### **3.7 Incidents with Developments of Lesser Importance**

3.7.1 The Director introduced documents FUND/EXC.28/8 and FUND/EXC.28/8/Add.1, containing information with regard to oil pollution incidents not dealt with in documents FUND/EXC.28/3 - 28/7.

3.7.2 The Executive Committee noted that all claims for compensation and indemnification arising out of the TSUBAME MARU N°58, DAINICHI MARU N°5, DAITO MARU N°3, KAZUEI MARU N°10, FUJI MARU N°3 and HATO MARU N°2 incidents had been settled and paid. As for the THUNTANK 5 and KASUGA MARU N°1 incidents, it was noted that all claims presented so far had been settled and paid, but that further claims could not be ruled out.

3.7.3 As for the THUNTANK 5 incident, the Swedish delegation informed the Executive Committee that the Swedish Government would not present any claims for compensation in respect of the pollution which took place in 1990 and 1991.

3.7.4 Concerning the AKARI incident, the Executive Committee noted that settlements had been agreed in respect of all claims except one.

3.7.5 With respect to the CZANTORIA incident, the Executive Committee noted that the claimants had accepted the IOPC Fund's position that the Fund Convention did not apply to this incident, since it had occurred before the entry into force of the Convention in respect of the State concerned. It was also noted that the Director had taken the same position in respect of claims presented in the NESTUCCA case.

3.7.6 With regard to the VOLGONEFT 263 incident, the Swedish delegation informed the Executive Committee that the Swedish Government's claim, which would be submitted shortly, would probably not exceed SKr20 million.

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

4.1 The Executive Committee decided to hold its 29th session on Thursday 10 or Friday 11 October 1991, the exact time to be announced later.

4.2 The Executive Committee decided to retain the dates of 12 and 13 March 1992 for an extra session of the Executive Committee, should the need for such a session arise.

4.3 The extra session referred to in paragraph 3.5.13 was provisionally scheduled for 16 and 17 December 1991, subject to the approval of the Assembly.

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

No matters were raised under this agenda item.

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

The draft report of the Executive Committee to the Assembly, as contained in document FUND/EXC.28/WP.1, was adopted, subject to some amendments.

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