



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
31st session
Agenda item 6

FUND/EXC.31/7
28 May 1992

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RECORD OF DECISIONS OF THE THIRTY-FIRST SESSION OF THE EXECUTIVE COMMITTEE

(held on 28 May 1992)

Chairman: Dr R Renger (Germany)
Vice-Chairman: Mr E H Benabouba (Algeria)

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document FUND/EXC.31/1.

2 Examination of Credentials

The following members of the Executive Committee were present:

Algeria	Italy
France	Japan
Germany	Liberia
Ghana	Norway
Greece	Russian Federation
India	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:

Bahamas	Monaco
Cameroon	Netherlands
Canada	Poland
Cyprus	Spain
Denmark	Sweden
Fiji	Syrian Arab Republic
Finland	

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

Belgium	China
Brazil	Mexico
Chile	United States of America

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

International Maritime Organization (IMO)
 Cristal Ltd
 Friends of the Earth International (FOEI)
 International Group of P & I Clubs
 International Tanker Owners Pollution Federation Ltd (ITOPF)
 Oil Companies International Marine Forum (OCIMF)

3 HAVEN Incident

3.1 Method of Converting the Unit of Account Laid Down in the Civil Liability Convention and the Fund Convention into National Currency and Related Issues

3.1.1 It was noted that the Executive Committee had considered at its 28th and 30th sessions the question raised in the Court of first instance in Genoa as to the method of conversion into national currency of the maximum amount payable under Article 4.4 of the Fund Convention, which is expressed in (gold) francs (documents FUND/EXC.28/9, paragraphs 3.5.5-3.5.9 and FUND/EXC.30/5, paragraphs 3.2.1-3.2.5).

3.1.2 The Director introduced documents FUND/EXC.31/2 and FUND/EXC.31/2/Add.1.

3.1.3 The Executive Committee noted the decision rendered on 14 March 1992 by the judge of the Court of first instance in Genoa who is in charge of the limitation proceedings in the HAVEN case; under this decision, the maximum amount payable by the IOPC Fund pursuant to Article 4.4 of the Fund Convention should be calculated by the application of the free market value of gold, which gives an amount of Lit 771 397 947 400 (£360 million) (including the amount paid by the shipowner under the Civil Liability Convention), instead of Lit 102 864 000 000 (£48 million), as maintained by the IOPC Fund, calculated on the basis of the SDR. The Committee also took note of the information contained in documents FUND/EXC.31/2 and FUND/EXC.31/2/Add.1 concerning the positions taken by the parties, the pleadings presented by the IOPC Fund, the legal opinions submitted by the Fund in support of its position, the reasons given by the judge and the main points set out in the IOPC Fund's opposition. The decision by the judge on the other issues set out in paragraphs 7.3-7.6 was also noted.

3.1.4 The Executive Committee noted that in the court proceedings the French Government had supported the IOPC Fund's position as to the method of conversion whereas the Italian Government had not taken any position on this issue.

3.1.5 The Executive Committee expressed grave concern as regards the consequences of the decision rendered by the judge of the Court of first instance in Genoa for the future of the international

regime of liability and compensation established by the Civil Liability Convention and the Fund Convention. It shared the view expressed in the pleadings presented by the IOPC Fund that the universally accepted interpretation of the Fund Convention was that the limit of the IOPC Fund's cover should be determined by using the SDR. The Italian delegation stated that it did not take any position on this point.

3.1.6 The Executive Committee agreed with the legal analyses made in the various pleadings submitted by the IOPC Fund in the court proceedings, in particular with the line of argument contained in the IOPC Fund's opposition documents, as set out in paragraph 8.1 of document FUND/EXC.31/2 and in document FUND/EXC/31/2/Add.1.

3.1.7 The Executive Committee instructed the Director to pursue the IOPC Fund's opposition to the decision rendered on 14 March 1992 and to inform the Committee at its 32nd session of any developments.

3.2 Investigations into the Cause of the Incident

3.2.1 The Director introduced document FUND/EXC.31/3 dealing with the investigations carried out by the Italian authorities into the cause of the HAVEN incident.

3.2.2 The Italian delegation stated that the Ministry of Merchant Marine had received the report of the Panel of Enquiry on 11 May 1992 and that the report was being examined within the Ministry. This delegation confirmed that the Ministry would consider as soon as possible the IOPC Fund's request for a copy of the report.

3.2.3 The Executive Committee instructed the Director to continue to follow the investigations into the cause of the incident, with the assistance of such experts as he deems necessary, and to submit to the Executive Committee at a later session proposals as to whether the IOPC Fund should pursue legal action to break the shipowner's right of limitation or take legal action against any person (other than the owner) for the purpose of recovering any amount which the IOPC Fund may have to pay in compensation or indemnification. The Committee stressed the importance of the IOPC Fund obtaining the report of the Panel of Enquiry at the earliest opportunity.

3.3 Situation in Respect of Claims

3.3.1 The Director informed the Executive Committee of the situation in respect of the examination of the claims, as presented in document FUND/EXC.31/4.

3.3.2 The Executive Committee noted with regret the fact that the IOPC Fund would not be able in this case to follow the established policy of providing rapid payment of claims, in view of the complexity of the case and the very high aggregate amount of the claims. The Committee expressed its concern about the hardship that this might cause individuals and small businesses in particular. The Director was instructed to study this problem and report to the Committee on the possibility of making provisional payments when the situation in respect of the claims had become clearer.

4 Information on Other Incidents

4.1 RIO ORINOCO

4.1.1 The Executive Committee took note of the information contained in document FUND/EXC.31/5 in respect of the RIO ORINOCO incident.

4.1.2 The Executive Committee approved the Canadian Government's claim in respect of the operations carried out by or on behalf of the Coast Guard after 31 January 1991 and in respect of the operations carried out by the Ministry of Environment and the Ministry of Fisheries and Oceans, for an aggregate amount of Can\$1 573 000.

4.1.3 The Executive Committee also approved the claim presented by the Swedish Club in respect of disposal of collected waste in the amount of Can\$111 223.53.

4.1.4 The Canadian delegation expressed its great satisfaction with the way in which this incident had been handled and the speed with which the Canadian Government's claims had been settled and paid. This delegation stressed the value of the close co-operation between the Canadian administration and the IOPC Fund and other parties and experts involved during the operations and in connection with the preparation and examination of the claims. In the view of the Canadian delegation, this incident demonstrated the viability of the system of compensation established by the Civil Liability Convention and the Fund Convention.

4.1.5 The Executive Committee expressed its agreement with the Canadian delegation's statement.

4.2 AGIP ABRUZZO

4.2.1 The Executive Committee took note of the information relating to the AGIP ABRUZZO incident contained in document FUND/EXC.31/6.

4.2.2 The Committee decided to authorise the Director pursuant to Internal Regulation 8.4.2 to settle the claim submitted by SNAM (document FUND/EXC.31/6, paragraphs 5.1-5.2).

4.2.3 The Italian delegation explained that the Italian Government had not so far presented any claim in respect of costs incurred in connection with this incident since most operations had been carried out by private companies; it was possible, however, that the Italian Government might submit a claim relating to certain costs, in particular in relation to the use of military aircraft and ships. This delegation added that the Italian Government was investigating whether this incident had caused any damage to the marine environment; once this study had been completed, the Government would decide whether a claim for such damage would be submitted.

4.3 Other Incidents

4.3.1 The Director informed the Executive Committee that agreement had been reached on 19 May 1992 with the Swedish Government in the VOLGONEFT 263 case to settle the Swedish Government's claim (which covered off-shore operations carried out by the Swedish Coast Guard as well as on-shore clean-up operations carried out by local authorities) at the aggregate amount of SKr17 365 000 (£1.6 million); the settlement agreement had not yet been finalised.

4.3.2 The Executive Committee was informed of the developments in respect of the AKARI and AMAZZONE incidents.

4.3.3 The Director informed the Executive Committee of three recent incidents in which the IOPC Fund had been involved, viz the BLUE SEA incident in Tunisia, the KATINA P incident off Mozambique and the GEROI CHERNOMORYA incident in Greece. The Committee noted that the BLUE SEA incident would not give rise to any claims against the IOPC Fund, and that it was unlikely that the IOPC Fund would be called upon to make any payments as a result of the KATINA P and GEROI CHERNOMORYA incidents.

5 Any Other Business

No relevant 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.31/WP.1, was adopted, subject to some amendments.
