



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
32nd session
Agenda item 6

FUND/EXC.32/8
6 October 1992

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

(held from 5 to 6 October 1992)

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

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document FUND/EXC.32/1.

2 Examination of Credentials

The following members of the Executive Committee were present:

Algeria	Italy
France	Japan
Germany	Kuwait
Ghana	Liberia
Greece	Norway
India	Russian Federation
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
Canada	Poland
Côte d'Ivoire	Spain
Cyprus	Sweden
Denmark	Syrian Arab Republic
Finland	Venezuela
Monaco	Yugoslavia, Federal Republic of
Netherlands	(Serbia and Montenegro)

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

Australia	Egypt
Belgium	Mexico
Brazil	Panama
Chile	Philippines
China	Republic of Korea
Colombia	United States of America
Ecuador	

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

International Maritime Organization (IMO)
 Cristal Ltd
 International Association of Independent Tanker Owners (INTERTANKO)
 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

The Director introduced document FUND/EXC.32/2 which contained summaries of the situation in respect of all incidents dealt with by the IOPC Fund since the 28th session of the Executive Committee.

3.2 AGIP ABRUZZO Incident

3.2.1 The Executive Committee took note of the information contained in documents FUND/EXC.32/3 and FUND/EXC.32/3/Add.1 concerning the AGIP ABRUZZO incident, in particular as regards the settlement of claims. It expressed its appreciation of the fact that all major claims presented so far had been settled.

3.2.2 The Italian delegation informed the Executive Committee that the Italian Government would soon submit a claim for Lit 1 333 million relating to the costs incurred in connection with the use of military aircraft and ships. In addition, this delegation stated that the Italian Government had not yet been able to decide whether to submit a claim relating to damage to the marine environment, since the investigations into the effects of the oil spill on the environment had not been completed.

3.2.3 The Executive Committee noted the Director's view that there were so far no indications that there was any fault or privity on the part of the owner of the AGIP ABRUZZO and that it would therefore not be possible to deprive the shipowner of the right to limit his liability.

3.2.4 The Director reported that the information available indicated that the collision between the AGIP ABRUZZO and the MOBY PRINCE resulted from the negligence of the crew of the latter vessel. The Committee therefore authorised the Director to take recourse action against the owner of the MOBY PRINCE to recover any amount paid by the IOPC Fund as a result of the incident, unless the findings of the Board of Enquiry appointed by the Ministry of Merchant Marine to investigate the cause of the incident were to show that there were no grounds for such an action. Noting the Director's view that, given the information currently available, it would not be possible for the IOPC Fund to break the limit of liability of the MOBY PRINCE, the Committee instructed him to re-examine this issue in the light of the findings of the Board of Enquiry. The Director was also instructed to submit to the Executive Committee for consideration the question of whether recourse action should be pursued, even if he were to find that the amount which the IOPC Fund might recover would be comparatively low.

3.3 HAVEN Incident

3.3.1 The Director introduced document FUND/EXC.32/4 setting out the developments in respect of the HAVEN incident.

3.3.2 It was noted that the Court of first instance in Genoa had not yet rendered its judgement on the opposition to the decision made on 14 March 1992 by the judge in charge of the limitation proceedings concerning the method to be applied for the conversion into Italian Lire of the maximum amount payable by the IOPC Fund. The Executive Committee instructed the Director to pursue in the court proceedings the IOPC Fund's position in respect of this issue, viz that the conversion should be made on the basis of the value of the SDR and not on the basis of the free market value of gold, as held by the judge. In addition, the Committee instructed him to appeal against the judgement to be rendered by the Court of first instance on this issue, if the Court were not to accept the IOPC Fund's position as to the method of conversion.

3.3.3 In relation to the mentioning in document FUND/EXC.32/4 (paragraph 3.9) of the fact that the French Government had supported the IOPC Fund's position as to the method of conversion, the Spanish delegation informed the Committee that the Spanish Government had notified the Court that it also supported the Fund's position on this point.

3.3.4 The Executive Committee took note of the fact that the IOPC Fund had not yet been given access to the report of the Panel of Enquiry which had carried out the investigation into the cause of the incident. The Italian delegation informed the Committee that, under the Code of Criminal Procedure, the report of the Panel of Enquiry had been sent to the Public Prosecutor; this report could not, under that Code, be made available to third parties until the Public Prosecutor had presented his request for prosecution to the competent judge. The Italian delegation added that not even the Italian Government was able to have access to this report until the Prosecutor had completed his examination.

3.3.5 The delegation of Cyprus informed the Executive Committee that any facts which may emerge from the investigations carried out by the Government of Cyprus into the cause of the HAVEN incident would be made available to the IOPC Fund and that the Government of Cyprus would keep the Director informed of any developments.

3.3.6 The Director was instructed to study, with the assistance of legal and technical experts, the findings of the Panel of Enquiry as soon as its report is made available. The Committee requested the Director to continue following the criminal investigations carried out in Italy. He was instructed to examine, together with the IOPC Fund's Italian lawyers, whether there were any possibilities under Italian law for the IOPC Fund to have access to any documents or other evidence which could be useful for the IOPC Fund in its examination of this issue. In the event that there is a long delay in the publication of the report of the Panel of Enquiry, the Director was instructed to make a preliminary

assessment as to the cause of the incident on the basis of the advice of the technical experts appointed by the IOPC Fund to consider this issue and to submit his findings to a later session of the Executive Committee. The Executive Committee emphasised that the Director's consideration of this issue should be made for the purpose of advising the Committee as to whether the IOPC Fund should take legal action to break the shipowner's right of limitation and whether it should 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.

3.3.7 The Executive Committee took note of the situation in respect of the examination of the claims and the hearings on the individual claims which will be held by the judge in charge of the limitation proceedings.

3.3.8 The Executive Committee authorised the Director to state in the court proceedings, when appropriate, on the basis of the examination carried out by the IOPC Fund's experts, the IOPC Fund's position as to the admissibility of the individual claims and the amounts which, in the view of the IOPC Fund, were acceptable. The Director was instructed to submit any questions of principle to the Executive Committee for consideration, if time allowed him to do so.

3.3.9 The Director informed the Executive Committee that informal discussions had been held in September 1992 between representatives of the Italian Government and the technical experts appointed by the IOPC Fund, the shipowner and the UK Club with a view to establishing which claims constitute duplications and assessing the reasonableness of the amounts in respect of various items claimed. The Director stressed the importance that these discussions should continue and that an agreement be reached as to the quantum of those items of the Italian Government's claim which related to clean-up operations and preventive measures. The Italian delegation agreed with the Director that the discussions held so far had been very useful and shared the Director's view that these discussions should continue.

3.3.10 The Committee noted with satisfaction that negotiations concerning the claims submitted by the French Government and other French claimants would start in the near future.

3.4 RIO ORINOCO Incident

3.4.1 The Executive Committee took note of the information contained in document FUND/EXC.32/5 and noted with satisfaction that all claims for compensation arising out of this incident had been settled and paid very rapidly.

3.4.2 The Executive Committee noted that the Report on the Canadian authorities' investigation into the cause of the incident was not yet available.

3.5 Certain Incidents of Particular Interest

3.5.1 The Executive Committee took note of the information regarding the PATMOS, TOLMIROS, AMAZZONE, VOLGONEFT 263 and VISTABELLA incidents contained in documents FUND/EXC.32/6, FUND/EXC.32/6/Add.1 and FUND/EXC.32/6/Add.2.

3.5.2 With regard to the PATMOS incident, the Executive Committee noted the second report of the Court experts. The Committee reiterated the view expressed at its 28th session that, in view of the link between the Italian Government's claim in the PATMOS case and the corresponding claim in the HAVEN case, the judgement of the Court of Appeal would deal with questions of great importance for the IOPC Fund. The Committee recalled the instructions given to the Director at that session 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, in the light of the judgement of the Court of Appeal.

3.5.3 As for the TOLMIROS incident, the Executive Committee noted with satisfaction that the Swedish Government had withdrawn its legal action against the shipowner and his P & I insurer, that consequently the IOPC Fund would not be called upon to pay any compensation in respect of this incident and that the IOPC Fund had been awarded compensation for its costs in the court proceedings.

3.5.4 Concerning the AMAZZONE incident, the Executive Committee expressed its satisfaction that all claims had been settled and paid, and that the major part of the amount paid by the IOPC Fund in compensation had been recovered by the Fund in an out-of-court settlement.

3.5.5 With respect to the VOLGONEFT 263 incident, the Executive Committee noted that all claims arising out of this incident had been settled and paid.

3.5.6 As for the VISTABELLA incident, the Executive Committee noted the problems encountered by the IOPC Fund due to the fact that the vessel was not entered in any P & I Club and that there was uncertainty as to the extent of insurance cover, if any. The Director was instructed to submit to the Executive Committee for consideration at its next session the problems which would arise in respect of the payment of the French Government's claim, if no limitation fund were to be established by the shipowner.

3.6 Incidents with Developments of Lesser Importance

3.6.1 The Director introduced document FUND/EXC.32/7 which contained information with regard to oil pollution incidents not dealt with in documents FUND/EXC.32/3 - 32/6.

3.6.2 The Executive Committee noted that all claims for compensation and indemnification arising out of the AKARI and KAZUEI MARU N°10 incidents had been settled and paid, and that only the claims for indemnification were outstanding in the HOKUNAN MARU N°12 and KAIKO MARU N°86 incidents. As for the KAZUEI MARU N°10 incident, the Committee took note of the fact that the IOPC Fund had recovered from the owner of the other vessel involved in the incident a substantial part of the amount of the compensation paid by the Fund to victims.

4 Date of Next Session

4.1 The Executive Committee decided to hold its 33rd session on Thursday 8 or Friday 9 October 1992, the exact time to be announced later.

4.2 The Executive Committee decided to retain the dates of 11 and 12 March 1993 for an extra session of the Executive Committee, should the need for such a session arise.

5 Any Other Business

5.1 The Director informed the Executive Committee of three incidents which the Fund Secretariat has been following very closely but in respect of which the IOPC Fund will not be called upon to pay compensation or indemnification as follows:

- (a) On 9 February 1992 the Maltese vessel BLUE SEA (14 515 GRT) spilled 15 to 20 tonnes of oil outside Tunis (Tunisia) as a result of a discharging pipeline bursting. The limitation amount of the ship is estimated at around £1.3 million. The total amount of the claims as settled fall well below this figure.
- (b) On 16 April 1992 the Maltese vessel KATINA P (30 890 GRT) spilled 300 tonnes of crude oil in Maputo Bay (Mozambique) in heavy weather which caused damage to the ship's hull. Oil came ashore in Mozambique and also contaminated part of the coast of South Africa. The ship

was towed out of Maputo Bay but sank in deep water before the remaining cargo could be transhipped. Mozambique is not Party to the Civil Liability Convention or to the Fund Convention. South Africa is Party to the Civil Liability Convention, but as the damage in South Africa was very limited, the IOPC Fund will not become involved in the payment of indemnification.

- (c) On 3 May 1992 the Russian vessel GEROI CHERNOMORYA (28 259 GRT) was involved in a collision off Skyros Island in the Aegean Sea (Greece) and caught fire. The island of Mykonos was contaminated and the rocky coastline and beaches were cleaned by hand. It is expected that the claims for compensation will fall well below the limitation amount applicable to the ship.

- 5.2 The Executive Committee was also informed of the NAGASAKI SPIRIT incident which occurred during the night of 19 and 20 September 1992 as follows:

The Liberian tanker NAGASAKI SPIRIT (52 787 GRT), which was carrying 40 000 tonnes of crude oil, collided with the container vessel OCEAN BLESSING in the northern Straits of Malacca. As a result of the incident both vessels caught fire and a number of crew members from the two vessels lost their lives. It is estimated that some 12 000 tonnes of oil escaped from the NAGASAKI SPIRIT as a result of the incident, but most of the oil appears to have burned or dissipated. Of the States in the area, Indonesia is Party to both the Civil Liability Convention and the Fund Convention, whereas Singapore is Party to the Civil Liability Convention but not to the Fund Convention. Malaysia is not Party to either of these Conventions. It is unlikely that the IOPC Fund will be called upon to pay compensation as a result of this incident. The Director has been closely following the developments.

- 5.3 No other 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.32/WP.1, was adopted, subject to some amendments.
