



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
36th session  
Agenda item 6

FUND/EXC.36/10  
5 October 1993

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

(held from 4 to 5 October 1993)

Chairman: Dr R Renger (Germany)

Vice-Chairman: Mr G B Cooper (Liberia)

### 1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document FUND/EXC.36/1.

### 2 Examination of Credentials

The following members of the Executive Committee were present:

Algeria  
Canada  
Germany  
India  
Japan  
Kuwait  
Liberia

Netherlands  
Nigeria  
Norway  
Poland  
Russian Federation  
Spain  
Venezuela

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
Côte d'Ivoire	Morocco
Croatia	Republic of Korea
Denmark	Slovenia
Finland	Sweden
France	Syrian Arab Republic
Greece	Tunisia
Ireland	United Kingdom
Italy	

The following non-Contracting States were represented as observers:

Belgium	Egypt
Brazil	Mexico
Chile	Panama
China	Saudi Arabia
Colombia	United States
Ecuador	

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

International Maritime Organization (IMO)  
Comité Maritime International (CMI)  
Cristal Ltd  
Friends of the Earth International (FOEI)  
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 Assembly took note of document FUND/EXC.36/2 which contained summaries of the situation in respect of all incidents dealt with by the IOPC Fund since the 32nd session of the Executive Committee.

#### **3.2 HAVEN Incident**

##### *Conversion of (gold) Francs into National Currency*

3.2.1 The Director introduced documents FUND/EXC.36/3 and FUND/EXC.36/3/Add.1 dealing with the method to be used for the conversion of (gold) francs into national currency.

3.2.2 The Executive Committee noted that, by judgement rendered on 26 July 1993, the Court of first instance in Genoa upheld the decision rendered on 14 March 1992 by the judge of that Court who was in charge of the limitation proceedings in the HAVEN case. It was also noted that, under that judgement, 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 gave 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 (£47 million), as maintained by the IOPC

Fund, calculated on the basis of the Special Drawing Rights (SDR) of the International Monetary Fund. The Executive Committee reiterated its concern as regards the consequences of the judgement for the future of the international regime of liability and compensation established by the Civil Liability Convention and the Fund Convention. It emphasised 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.

3.2.3 The Executive Committee noted that the IOPC Fund had appealed against the judgement of 26 July 1993. The Director was instructed to pursue this appeal and to inform the Committee of the developments in the appeal proceedings.

#### *Claims for Compensation*

3.2.4 The Director introduced document FUND/EXC.36/3/1 dealing with claims for compensation arising out of the HAVEN incident.

3.2.5 It was noted that the judge in the Court of first instance who was in charge of the limitation proceedings had held hearings concerning the claims, but that his decision on the various claims was not expected until 1994.

3.2.6 The Executive Committee recalled that the Committee had, at its 32nd session, authorised the Director to state in the on-going court proceedings in the Court of first instance in Genoa, when appropriate, the IOPC Fund's position as to the admissibility of individual claims and the amounts which, in the view of the Fund, were acceptable; the Director had been instructed to submit any questions of principle to the Executive Committee for consideration, if time allowed him to do so (document FUND/EXC.32/8, paragraph 3.3.8). The Committee took note of the fact that it had, at its 34th and 35th sessions, considered certain questions of principle, in particular concerning the extent to which "pure economic loss" should be compensated (documents FUND/EXC.34/9, paragraphs 3.1.6-3.1.11 and FUND/EXC.35/10, paragraphs 3.2.3-3.2.24).

#### *Losses Suffered by Travel Agent*

3.2.7 The Executive Committee considered a claim submitted by an Italian travel agent/tourist accommodation bureau, which arranged bookings of holiday flats and hotel rooms at the request of foreign travel agents, comprised as follows:

- (a) lost commission on contracts with hotels;
- (b) lost commission on contracts in respect of flats;
- (c) loss on "guaranteed" contracts in respect of flats;
- (d) loss of profit resulting from reduction in prices; and
- (e) cost of advertising campaign.

3.2.8 Some delegations took the view that the alleged losses covered by this claim were a more indirect result of the contamination than the losses suffered by owners of hotels, restaurants and shops which had been accepted in principle by the Committee at its 35th session, and that this claim should therefore be rejected.

3.2.9 The Italian observer delegation argued that items (a)-(d) of this claim should be accepted in principle, since there was a link of causation between the incident and the losses. It took the view that also item (e) relating to the cost of an advertising campaign should be accepted in principle.

3.2.10 The Executive Committee decided that the losses suffered by this claimant in respect of loss of commission on contracts with hotels, loss of commission on contracts in respect of flats, and loss on "guaranteed" contracts in respect of flats were not different in character from those suffered by owners of hotels in the same area and that these items of the claim should therefore be accepted in principle. The Committee emphasised, however, with regard to these items that the claimant would have to substantiate the amount of his loss.

3.2.11 As regards the item of this claim relating to loss of profit resulting from reduced prices, the Committee instructed the Director to study this claim in more detail in order to establish whether there was a general reduction in prices in the area during 1991 for hotel rooms and tourist flats, whether any such reduction in prices in the region was due to the HAVEN incident and whether the claimant had made the price reductions in order to get a competitive advantage vis-à-vis other operators.

3.2.12 With respect to the item relating to the cost of an advertising campaign, the Executive Committee decided that this item should be rejected since it did not fulfil the criteria for the admissibility of so-called "preventive measures" of an abstract kind laid down by the Committee at its 35th session (document FUND/EXC.35/10, paragraph 3.4.9).

#### *Cost of Promotion of Tourism*

3.2.13 The Executive Committee considered a claim submitted by the Region of Liguria concerning the cost of the promotion of tourism following the HAVEN incident, including an item relating to damage to the "touristic image" which was not quantified, and claims relating to costs for the same purpose presented by the Municipality of Diano Marina and the Province of Savona.

3.2.14 The Italian observer delegation maintained that costs for activities of this kind fell within the scope of the Civil Liability Convention since they should be considered as costs of "preventive measures", and that these items should therefore be admissible in principle since a marketing campaign was considered necessary to counteract the negative effects of the incident on the area. In the view of that delegation, also the item relating to damage to the "touristic image" was admissible.

3.2.15 The Committee decided that the claim presented by the Region of Liguria should be rejected, since the Region had not allocated any extra funds but only used funds already allocated in the budget for tourism promotion, and had therefore not suffered any actual economic loss or incurred any additional expense. As regards the item of the claim relating to damage to "touristic image", the Committee recalled that the Assembly had, at its 4th session, decided that only a claimant who had suffered a quantifiable economic loss was entitled to compensation. This item was therefore also rejected by the Committee.

3.2.16 It was noted that claim submitted by the Municipality of Diano Marina related to payment to a body formed by businesses involved in tourism, as a contribution to the financing of a mass media campaign to promote the image of the town which had been carried out before the payment was granted. The Committee considered that this claimant had not shown that the expenses covered by the claim were linked to the HAVEN incident.

3.2.17 With respect to the claim submitted by the Province of Savona, it was noted that the claim related to a payment to the tourist office in the province for a tourism promotion campaign on television. The Committee decided that this claim should also be rejected since, in its view, it had not been shown that the activities covered by the claim had contributed to counteracting the negative effects on tourism of the publicity resulting from the HAVEN incident.

#### *Pleadings on Claims Relating to Clean-Up Operations*

3.2.18 The Executive Committee noted that the IOPC Fund had, jointly with the shipowner and his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), presented pleadings to the Court in respect of all claims relating to clean-up operations, excluding the clean-up operations carried out in France.

#### *Italian Government's Claims Relating to Damage to the Marine Environment*

3.2.19 With regard to the Italian Government's claim relating to environmental damage, the Executive Committee noted that there had been no developments since the Committee's 35th session.

*Discussions with Italian Government*

3.2.20 The Executive Committee recalled that, while recognising the great complexity of the issues involved, it had, at its 34th session instructed the Director to enter into discussions with the Italian and French Governments for the purpose of exploring the possibilities of out-of-court settlements in respect of the claims arising out of the HAVEN incident (document FUND/EXC.34/9, paragraph 3.1.4). The Committee took note of the fact that a working group, composed of representatives of the Italian Government and technical experts appointed by the IOPC Fund, had held a first meeting in September 1993 for the purpose of establishing the main problems involved and that further meetings would be held in the near future.

3.3 AEGEAN SEA Incident

3.3.1 The Executive Committee took note of the situation as regards the various types of claims arising out of the AEGEAN SEA incident, as set out in document FUND/EXC.36/4.

*Boat fishermen and shellfish gatherers; near shore aquaculture*

3.3.2 The Committee was informed that claims for compensation had been received from a number of individual fishermen, shellfish gatherers and operators of mussel rafts who appeared to carry out their activities without holding a valid licence for this purpose.

3.3.3 The Executive Committee considered whether a claimant would be entitled to compensation only if he held a valid licence. The Committee took the position that – since the question of whether a claimant was entitled to compensation was governed by civil law – the decisive criteria should be whether the claimant had suffered an actual economic loss and that the right of compensation should not depend upon whether or not a licence was held.

*Employees Made Redundant*

3.3.4 The Executive Committee recalled that, at its 35th session, it had considered a number of claims presented by persons who had been made redundant, some of them employed at purification plants and who had been laid off because the fishing ban brought their respective employer's operations to a virtual halt, others employed at offshore mussel farms which had been closed as a result of the incident, and one person working as a filleter of fish who had been laid off allegedly due to a reduction in work at his employer's factory as a result of the incident. It was noted that the Executive Committee had considered that the losses suffered by these employees were a more indirect result of the contamination than losses suffered by companies or self-employed persons, since the losses of the employees were the result of their employers being affected by the consequences of the spill and therefore having to reduce their workforce. It was also recalled that for these reasons, the Committee took the view that the losses suffered by these employees could not be considered as damage caused by contamination and therefore did not fall within the definition of "pollution damage" and that the claims for losses suffered by these employees should be rejected (document FUND/EXC.35/10, paragraph 3.3.23).

3.3.5 The Committee noted that some claimants had expressed their disappointment at the Committee's decision.

3.3.6 Some delegations maintained that the Executive Committee's decision in respect of these claims was most unfortunate since these claimants were the weakest in society and that it was not appropriate to make the distinction set out in paragraph 3.3.4 above between such employees, on the one hand, and companies and self-employed persons, on the other. These delegations requested, therefore, that this decision be reconsidered. Other delegations, whilst recognising the difficult position of these claimants, took the view that the decision was correct, for the reasons given by the Committee at its 35th session.

3.3.7 The Executive Committee decided that this question should be reconsidered if new evidence or new facts were presented to justify such a re-examination.

*Car Repair Firm*

3.3.8 The Executive Committee examined a claim presented by the operator of a car repair firm located in the area closed off by the authorities in the period immediately following the incident who had claimed compensation in respect of losses allegedly suffered as a result of eight days' loss of business.

3.3.9 The Committee noted that the closure of the area was decided upon by the authorities mainly in order to ensure that preventive measures, clean-up operations and other activities in connection with the grounding of the AEGEAN SEA would not be obstructed by the general public. For this reason, the Committee took the view that the losses allegedly suffered by the claimant should be considered as damage caused by "preventive measures" and that the claim should, therefore, be accepted in principle.

*Loss of Hire; Passenger Ferry Operator*

3.3.10 The Executive Committee considered claims submitted by:

- (a) the time charterer of a vessel for the recovery of hire payments made to the shipowner, although the vessel could not be used since it was detained in La Coruña for three days as the port had been closed by the authorities;
- (b) a shipowner relating to six days' loss of hire, due to the fact that the closure of the port of La Coruña prevented his ship, which was to be launched from a repair slip, from sailing; and
- (c) an operator of a passenger ferry relating to losses suffered whilst the ferry service had to be suspended as a result of the AEGEAN SEA incident and to losses resulting from a reduction in the number of passengers carried during the period thereafter.

3.3.11 The Executive Committee considered that the losses allegedly suffered by the claimants referred to in paragraph 3.3.10 above should be considered as "damage caused by contamination". For this reason, the Committee decided that these claims should in principle be accepted.

*Ship Agencies*

3.3.12 The Executive Committee considered claims presented by five ship agencies for losses resulting from vessels which had been booked for entry into the port of La Coruña being diverted.

3.3.13 Several delegations expressed their doubts as to whether the losses allegedly suffered by these claimants should be considered as "damage by contamination".

3.3.14 The Executive Committee instructed the Director to examine these claims further and submit them to the Committee for consideration at its 38th session.

*Oil Inspection Companies*

3.3.15 The Executive Committee also examined claims by two oil inspection companies for loss of work on six tankers which were diverted to other ports due to the closure of the port of La Coruña.

3.3.16 In the view of the Executive Committee, it was likely that quantities of oil corresponding to those on board the diverted ships would later be transported to the port of La Coruña on other ships, and that the claimants would then inspect these cargoes. The Committee considered, therefore, that these claimants had not shown that they had suffered any economic loss. For this reason, the Committee decided that these claims should be rejected.

### *Court Proceedings in La Coruña*

3.3.17 The Executive Committee noted that the IOPC Fund had become involved in criminal proceedings in the Court of first instance in La Coruña. It took note of the decision rendered by an investigating judge of the Court on 31 August 1993 who, inter alia, stated that the P & I insurer of the AEGEAN SEA, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), and the IOPC Fund were liable, jointly and severally, with the master and the pilot within their respective legal limits. It noted that the Court had ordered the UK Club and the IOPC Fund to provide security for Pts 12 000 million (£60 million) and that if this security was not provided, the Court could arrest their property in accordance with the provisions of the Act on Criminal Procedure.

3.3.18 The Committee also noted that the IOPC Fund had appealed against this decision, maintaining that the Fund did not have a direct liability under the Fund Convention since the IOPC Fund was liable only when the amounts actually paid under the Civil Liability Convention were insufficient to meet all claims in full, that criminal proceedings were actions against individuals, and that there was no link between the IOPC Fund and the accused persons, namely the master and the pilot. The Committee endorsed the position of the IOPC Fund set out in the appeal. It was further noted that the IOPC Fund's appeal had been rejected, since under Spanish law decisions of this kind were not subject to appeal, and that the decision would be reviewed in connection with the final judgement.

3.3.19 The Executive Committee held a session in private, pursuant to Rule 12 of the Rules of Procedure, to discuss the Court's decision. During this closed session, covered by paragraphs 3.3.20 and 3.3.21 below, only the delegations representing Fund Member States were present.

3.3.20 The Executive Committee expressed its serious concerns in respect of the decision rendered by the Court in La Coruña. The Committee was concerned that the position taken by the Court requesting the IOPC Fund to provide security was at variance with the Fund Convention which formed part of Spanish law. The Committee instructed the Director not to put up any security in the Court. The Director was also instructed to take all legal measures to protect the IOPC Fund's assets in the event that enforcement of the Court's decision was sought. In addition, the Director was instructed to inform the Spanish Government of the IOPC Fund's position and the reasons therefor.

3.3.21 The Executive Committee took note of the situation in the court proceedings in respect of the claims filed with the Court. It noted that claims had been presented to the Court for a total amount of some £110 million. In view of this situation, the Executive Committee took the view that caution had to be exercised when making payments to claimants at this stage in order to ensure that the provisions of Article 4.5 of the Fund Convention relating to equal treatment of victims were respected. The Committee instructed the Director, therefore, that the IOPC Fund should, at this stage, only make partial payments in respect of accepted claims which should not exceed 30-40% of the amount approved. In addition, the Committee decided that all payments should be suspended if attempts were made to enforce the Court's decision against the assets of the IOPC Fund.

### 3.4 BRAER Incident

3.4.1 The Executive Committee took note of the situation as regards the various types of claims, as set out in documents FUND/EXC.36/5 and FUND/EXC.36/5/Add.1.

### *Salmon Farms*

3.4.2 The Executive Committee held a session in private, pursuant to Rule 12 of the Rules of Procedure, to discuss certain problems relating to the 1992 salmon intake within the exclusion zone imposed by the United Kingdom Government, in particular whether it was reasonable for the salmon farmers to destroy that intake. During this closed session, covered by paragraphs 3.4.3-3.4.12 below, only the delegations representing Fund Member States were present.

3.4.3 The Director informed the Committee of the developments in respect of this issue since the Committee's 35th session. He dealt with the results of the testing carried out by the Scottish Office and set out the possible consequences of marketing the 1992 salmon intake after it had been shown that it was free of contamination. He also referred to the relevant provisions of the United Kingdom legislation relating to food safety.

3.4.4 The Director recalled that the Executive Committee had, at its 35th session, considered the general question as to the position to be taken by the IOPC Fund in respect of claims for compensation based on the destruction of fish or other marine products in accordance with orders issued by public authorities or in respect of claims relating to economic loss suffered as a result of government decisions, such as the imposing of fishing bans or exclusion zones. It was noted that the Committee had taken the view that in such cases the IOPC Fund would be liable to pay compensation only if and to the extent that the destruction of the produce was reasonable on the basis of scientific and other evidence available, taking into account, inter alia, whether or not the produce in question was contaminated, whether it was likely that the contamination would disappear before the normal harvest time, whether retention of the produce in the water would prevent further production and whether it was likely that the produce would be marketable at the time of normal harvesting (document FUND/EXC.35/10, paragraphs 3.3.10 and 3.3.11).

3.4.5 The Executive Committee took note of the position taken so far by the Director that a total destruction of the 1992 intake within the exclusion zone had not been justified, in the light of the improvement of the situation which had taken place in respect of hydrocarbon levels and taint. It was also noted that the Director had recognised that a number of farmers within the exclusion zone would, in normal circumstances, have started harvesting the 1992 intake in August 1993 and that the inability to harvest as normal had caused serious financial difficulties to many of the farmers within the exclusion zone. The Director informed the Committee that he had therefore accepted as a reasonable course of action the slaughter and disposal of the proportion of the 1992 intake which would normally be harvested on a month-by-month basis from each individual site. The Committee noted that all farmers within the exclusion zone had accepted the offer relating to month-by-month destruction, with the exception of one farm which would not be harvesting until 1994.

3.4.6 The Committee took note of the results of the tests carried out by the Scottish Office on samples taken from sites inside and outside the exclusion zone at intervals from January up to late July 1993. It was noted that the results of the July tests showed a significant improvement both as regards hydrocarbon levels and as regards taint in comparison with previous test results, showing that hydrocarbon levels were within background level for samples at all farms and that only three out of 13 farm sites had some fish classed as tainted or suspect whereas the remaining ten were clear; however, one farm which was clear in May had shown one suspect fish in July. It also took note of the position of the United Kingdom Government that there were sufficient doubts as to the present state of contamination to require the retention of the exclusion zone.

3.4.7 The Committee also noted that the United Kingdom Government had expressed its concern regarding the position taken by the IOPC Fund in respect of the 1992 salmon intake in that the Fund had not addressed the arguments put forward by the Shetland salmon farming industry regarding marketability. The Committee took note of the Government's view that it would be difficult to see justification for any policy other than the total destruction of farmed caged fish which had been shown by clear scientific evidence to have been contaminated following an oil pollution incident. It was also noted that, in the Government's view, once caged fish had been contaminated it would be very difficult to guarantee their subsequent condition by any level of sampling and testing and that such fish should therefore not be placed on the market for human consumption. It was acknowledged by the Committee that expert opinions varied considerably on whether fish which had previously been contaminated should be sold and the consequences of marketing the fish.

3.4.8 The Director expressed the view that any destruction of fish should be based on a thorough examination of all aspects of the case. It was, in his opinion, important that in any such case an exhaustive sampling programme, using internationally accepted techniques, was carried out at regular intervals. He pointed out that, as natural depuration took place, an increasing sampling effort was

required. He stated that, in his view, the position taken by the Executive Committee, at its 35th session, implied that the fact that a government had imposed or not lifted an exclusion zone or fishing ban should not be regarded as conclusive that the IOPC Fund would pay or continue to pay compensation to those affected by the exclusion zone or ban, and that each case should be looked at on its own merits on the basis of scientific, technical and other factors.

3.4.9 The Director stated that he had considered the main factors involved – scientific and technical aspects, the timing of a possible sale and the marketing consequences of such a sale – against the criteria laid down by the Executive Committee. He mentioned that, although he would have preferred to have had the results of a more exhaustive sampling, he recognised that there existed a serious time constraint, in view of the fact that the main marketing season for salmon was before Christmas. He took the view that, at this stage, it would not be an unreasonable course of action for the salmon farmers concerned to slaughter the 1992 intake and that, if this was done, the IOPC Fund should pay compensation for the destroyed fish. He emphasised, however, that it would be for the individual salmon farmer to decide what course of action to follow in respect of his farm.

3.4.10 The United Kingdom delegation, speaking as an observer, outlined the view taken by the United Kingdom Government and by the Secretary of State for Scotland in exercising his powers and responsibilities under United Kingdom public health and food safety legislation. It was stressed that the United Kingdom Government's view favouring destruction of the 1992 salmon was a Government view derived from all the information available to the Government and was not based on the position, or interests of, any Shetland claimant. The delegation expressed the hope that destruction of the 1992 salmon, and further testing if needed, would allow the exclusion zone to be lifted for farmed salmon and that steps could be taken to lift the shadow that had been cast over the 1993 salmon arising from questions raised over their eligibility for receipt of quality gradings.

3.4.11 The Executive Committee agreed with the Director's analysis as well as with his conclusion, namely that – in the light of all the factors in this case – it would not be an unreasonable course of action for the salmon farmers concerned to slaughter the 1992 salmon intake within the exclusion zone and that, if this was done, the IOPC Fund should pay compensation for the destroyed fish.

3.4.12 The Committee also agreed with the Director that, if the Assembly were to follow the Director's proposal to set up an Intersessional Working Group to examine the criteria to be applied by the IOPC Fund for the admissibility of claims, it would be useful if the Working Group were to consider in depth problems relating to contamination of farmed fish and shellfish, in order to spell out the sampling and technical requirements to assess claims for compensation for destroyed fish.

*Claims by Organisations within the Shetland Fishing Industry relating to Marketing Activities*

3.4.13 The Executive Committee took note of the developments in respect of the joint claim by the Shetland Salmon Farmers' Association, the Shetland Fish Processors' Association and the Shetland Fish Producers' Organisation for costs relating to activities to be undertaken in order to counteract the negative effect of the BRAER incident on the reputation of Shetland fish products. It noted the complications which had arisen due to the fact that a claim for the same purpose had been submitted by the Shetland Salmon Group.

3.4.14 The Director emphasised that these claims were being examined against the criteria laid down by the Executive Committee at its 35th session (document FUND/EXC.35/10, paragraph 3.4.19). The Committee endorsed the Director's position that payments should be made only in respect of activities which fulfilled these criteria.

*Fishing Equipment Repair Facility, Diver, Collector of Offal, Ice Maker and Box Maker*

3.4.15 The Executive Committee considered the claims submitted by:

- (a) a company which repaired equipment used in the fishing industry, such as trawls, nets, gear and lobster pots, for loss of income due to the suspension of fishing activities within the exclusion zone;

- (b) a diver who carried out underwater maintenance work on nets and cages of salmon farms, including farms located within the exclusion zone, for loss of income during the period that the cages were not cleared of fish and therefore not available for maintenance work;
- (c) a person who collected and disposed of offal from one of the fish processing plants on Shetland which processes fish from only two farms within the exclusion zone and which had therefore not operated since the exclusion zone was imposed; the claim related to losses allegedly suffered by the claimant due to his not having been able to collect and sell offal from this processing plant, since the 1991 salmon intake had been slaughtered and disposed of elsewhere;
- (d) an operator of an ice factory for loss of income due to a reduction in the sale of ice as a result of the reduced sales of farmed salmon and whitefish following the imposition of the exclusion zone; and
- (e) a company manufacturing the boxes in which fresh salmon was transported from Shetland, in respect of losses resulting from a reduction in the sale of such boxes following the destruction of the 1991 salmon intake.

3.4.16 The Executive Committee took the view that the losses allegedly suffered by these claimants should be considered as "damage caused by contamination", since these activities were an integral part of the fishing activities in the affected area. For this reason, the Committee decided that these claims should be accepted in principle and authorised the Director to settle these claims.

*Employees Put on Part-time Work or Made Redundant and Employees Kept in Employment*

3.4.17 It was recalled that the Executive Committee had, at its 35th session, considered claims relating to loss of income submitted by employees on Shetland who had suffered a reduction in working hours or who had been made redundant from fish processing plants which received most of their supply from salmon farms located within the exclusion zone. It was noted that as regards these claims, the Executive Committee had referred to its decision in respect of similar claims arising out of the AEGEAN SEA incident that losses suffered by employees as a result of having been made redundant could not be considered as "damage caused by contamination" and therefore did not fall within the definition of "pollution damage", and that such claims should therefore be rejected (document FUND/EXC.35/10, paragraph 3.4.24).

3.4.18 It was noted that some claimants falling within this category had expressed their disappointment at the decision of the Executive Committee and had asked that the Committee review its decision.

3.4.19 The Executive Committee decided that this question should be reconsidered if new evidence or new facts were presented to justify such a re-examination.

*Remaining Issues*

3.4.20 The Executive Committee decided to postpone the consideration of the remaining issues relating to the BRAER incident to its 37th session.

### 3.5 TAIKO MARU Incident

3.5.1 The Japanese delegation stated that, in order to ensure a balanced and impartial discussion and to achieve fairness and neutrality in the examination of claims, it would not be present during the discussions on the TAIKO MARU incident. This delegation added that it would be prepared to join the meeting to answer any questions which might be raised. It stated that it expected that such a procedure would be followed as a general rule in the examination of specific cases.

3.5.2 It should be noted that the Japanese delegation was not present during the part of the session covered by paragraphs 3.5.3-3.5.8 below.

3.5.3 The United Kingdom delegation, speaking as an observer, indicated that the delegation had concerns about a possible conflict of interest between its future membership of the Executive Committee and the fact that the Committee would be considering claims from United Kingdom claimants. As the United Kingdom had no choice but to join the Executive Committee after the forthcoming Assembly, the delegation wished to indicate that though it would participate in the work of the Committee, including discussions of claims submitted by United Kingdom claimants, but that it had voluntarily decided that it would not cast a vote in respect of any decision the Committee had to take in respect of any claims submitted by United Kingdom claimants, or claims made in respect of other incidents which had a bearing on claims by United Kingdom claimants that were also before the Committee. The United Kingdom delegation stated that, when summing up after the Committee's discussion of such claims, the Chairman should not have regard to the views expressed by the United Kingdom delegation when determining if a majority of the Committee were for or against any particular course of action.

3.5.4 The Director introduced documents FUND/EXC.36/6 and FUND/EXC.36/6/Add.1 concerning the TAIKO MARU incident which had occurred in Japan on 31 May 1993.

3.5.5 The Executive Committee authorised the Director to settle the claims in respect of clean-up operations submitted by the entities referred to in paragraphs 3.1-3.4 of document FUND/EXC.36/6/Add.1.

3.5.6 The Executive Committee also authorised the Director to make final settlement of claims relating to losses suffered by fishermen referred to in paragraphs 3.5-3.11 of document FUND/EXC.36/6/Add.1, provided, however, that this authorization did not extend to losses which might be suffered in the future.

3.5.7 It was noted that further claims were expected. The Executive Committee authorised the Director to make final settlements of claims, if presented by the following entities, except to the extent that questions of principle arose in respect of which the Committee had not previously taken a decision:

- (a) Maritime Safety Agency, Fukushima Prefecture and City of Iwaki in respect of clean-up operations;
- (b) a power station and a chemical factory in respect of costs for cleaning their water intakes;
- (c) hotels, restaurants and other tourist related businesses for loss of income;
- (d) a shop providing diving equipment in respect of loss of income; and
- (e) Meisei University for cleaning two yachts.

3.5.8 The Executive Committee decided that claims presented by fish processing factories, if any, should be submitted to the Committee for consideration.

### 3.6 KEUMDONG N°5

3.6.1 The Executive Committee took note of the information concerning the KEUMDONG N°5 incident which had taken place in the Republic of Korea on 27 September 1993, as set out in document FUND/EXC.36/9.

3.6.2 The Director informed the Committee that some fishery associations had stated that they would make an investigation into the damage caused, that they were not prepared to allow the IOPC Fund's experts to participate in any such investigation nor in any assessment of the damage, and that they expected the IOPC Fund to pay compensation in accordance with their assessment. The Executive Committee endorsed the Director's position that any payment of compensation should be based on an objective assessment of the damage carried out by experts in the field.

### 3.7 Certain Incidents of Particular Interest

3.7.1 The Executive Committee took note of the information regarding the PATMOS, RIO ORINOCO, VISTABELLA, AGIP ABRUZZO and SAMBO N°11 incidents contained in documents FUND/EXC.36/7 and FUND/EXC.36/7/Add.1.

3.7.2 With regard to the SAMBO N°11 incident, the Executive Committee noted that the tanker was carrying less than 2 000 tonnes of oil in bulk as cargo and that the shipowner was therefore not obliged to maintain insurance pursuant to the Civil Liability Convention. It was also noted that the shipowner was financially incapable of meeting his obligations under the Civil Liability Convention and that the insurer had made it clear that he would not constitute a limitation fund. The Committee took note of the claims for clean-up operations and the fishery claims which had been settled or which were being examined.

### 3.8 Incidents with Developments of Lesser Importance

The Executive Committee took note of documents FUND/EXC.36/8 and FUND/EXC.36/8/Add.1 which contained information with regard to oil pollution incidents not dealt with in documents FUND/EXC.36/3 - 36/7 and 36/9.

## 4 Date of Next Session

The Executive Committee decided to hold its 37th session on Friday 8 October 1993, the exact time to be announced later.

## 5 Any Other Business

No matters were raised under this agenda item.

## 6 Adoption of the Report to the Assembly

The Executive Committee decided to authorise the Director to prepare, in consultation with the Chairman, the final report of the present session.

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