



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
39th session  
Agenda item 5

FUND/EXC.39/8  
6 May 1994

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

(held from 5 to 6 May 1994)

Chairman: Mr C Coppolani (France)  
Vice-Chairman: Ms A Ogo (Nigeria)

### 1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document FUND/EXC.39/1.

### 2 Examination of Credentials

The following members of the Executive Committee were present:

Canada	Poland
France	Republic of Korea
Greece	Spain
Italy	Sweden
Netherlands	United Kingdom
Nigeria	

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:

Cyprus	Japan
Denmark	Norway
Finland	Russian Federation
Germany	Slovenia

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

Belgium	United States
Chile	

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

International Maritime Organization (IMO)  
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 RIO ORINOCO Incident**

3.1.1 The Executive Committee took note of the information contained in document FUND/EXC.39/2 concerning the measures which might be taken by the IOPC Fund in the light of the findings set out in the Report of the Transportation Safety Board of Canada which had carried out an investigation into the cause of the RIO ORINOCO incident. The Committee recalled the instructions which it had issued to the Director at its 38th session, as set out in document FUND/EXC.38/9, paragraph 3.2.4.

3.1.2 The Executive Committee noted that since the 38th session of the Committee, the Director had, with the assistance of the IOPC Fund's legal and technical experts, pursued his study of the matters referred to in the Committee's instructions. In view of the fact that the Director did not consider that he was yet in a position to make recommendations to the Committee on these matters, the Committee decided to defer further examination of these issues to its 40th session and instructed the Director to pursue his study.

3.1.3 In view of the possibility that certain measures might have to be taken by the IOPC Fund before the 40th session of the Executive Committee in order to protect the interests of the Fund in relation to the issues referred to in paragraph 3.1.1 above, the Committee authorised the Director to take any steps which he considered necessary in order so to do.

#### **3.2 AEGEAN SEA Incident**

##### *Claims Situation*

3.2.1 The Executive Committee took note of the information contained in document FUND/EXC.39/3 regarding the AEGEAN SEA incident, in particular that, as at 21 April 1994, 1 169 claims totalling Pts 14 936 million (£74 million) had been received by the Joint Claims Office in La Coruña and that payments had been made for a total amount of Pts 1 065 million (£5.2 million) in respect of 619 claims which had been wholly or partly approved by the Director, the shipowner and the insurer. It was noted that further claims for significant amounts would be presented shortly.

3.2.2 The Committee also noted that claims totalling Pts 21 000 million (£104 million) had been submitted to the Court in La Coruña, and that these claims corresponded, to a large extent, to the claims presented to the Joint Claims Office.

3.2.3 It was recalled that the Committee had decided at its 36th session that, in view of the fact that the total amount of the claims filed with the Court of first instance by far exceeded the amount of compensation available under the Civil Liability Convention and the Fund Convention, the IOPC Fund should at this stage only make partial payments in respect of accepted claims; such partial payments should not exceed 30-40% of the amount approved. It was also recalled that the Director had informed the Committee at its 38th session of his decision to limit any payments, at least for the time being, to 25% of the established damage suffered by the claimants concerned. The Director stated that he would reassess this decision in the light of the developments in respect of the total amount of the claims presented.

#### *Near-Shore Aquaculture*

3.2.4 The Committee took note of the situation concerning near-shore aquaculture as set out in paragraph 3.2 of document FUND/EXC.39/3.

3.2.5 In respect of the farmed mussels and salmon that were destroyed pursuant to the Resolution of the Fisheries Council of 12 April 1993, the Committee noted that the Director had accepted in April 1994 that on the basis of test results received it was not unreasonable to have destroyed the marketable sized mussels and salmon that would have been harvested during 1993. The Director informed the Committee that in the light of further test results obtained recently he had accepted also in respect of the remaining mussels and salmon that it was not unreasonable to have destroyed them.

3.2.6 The Committee noted that significant progress had been made once test results had been presented to the IOPC Fund.

3.2.7 The Spanish delegation informed the Committee that the restrictions on aquaculture in the Sada Lorbé area would probably be lifted soon, in the light of recent test results.

#### *On-Shore Aquaculture*

3.2.8 The Committee took note of the situation concerning on-shore aquaculture as set out in paragraph 3.3 of document FUND/EXC.39/3.

#### *Payments by the Fisheries Council of the Region of Galicia and the Commission of the European Community*

3.2.9 The Executive Committee recalled that it had noted, at its 38th session, that the Fisheries Council of the Region of Galicia had submitted a claim for reimbursement of payments which it had made to fishermen and shellfish gatherers following the AEGEAN SEA incident. It was noted that the Committee had decided, at the request of the Spanish delegation, to postpone its consideration of this claim to its 39th session.

3.2.10 It was recalled that during the discussions at the Executive Committee's 38th session, a number of delegations had stated that these claims gave rise to questions of principle of considerable legal importance. It was noted that the view had been expressed that it was necessary for the IOPC Fund to ensure that claimants were not compensated twice for the same damage by receiving payments both under the Conventions and from other sources. The Committee also recalled that in the view of some delegations any payments from other sources should be deducted from the amount of the established claims, whether or not such payments were reclaimed by the payer.

3.2.11 The Spanish delegation introduced document FUND/EXC.39/3/1 concerning the basis on which the payment of aid was made by the Fisheries Council of the Region of Galicia.

3.2.12 The Executive Committee noted that, according to the Spanish delegation, the payments were intended as interim measures to mitigate the most imminent consequences of the pollution resulting from the AEGEAN SEA incident, that the payments were granted as humanitarian aid to alleviate in part the negative socio-economic consequences suffered by the fishermen and shellfish gatherers, and that in the relevant Regional Orders granting these payments it was stated that this aid did not affect the entitlement of victims to compensation in respect of loss or damage suffered. It was also noted that, according to the Spanish delegation, the Fisheries Council would not present a claim against the shipowner, the P & I Club and the IOPC Fund for the overall amount of the aid given, although if the IOPC Fund were to deduct the amounts paid by the Council from the compensation payable to claimants, the Fisheries Council would reclaim those amounts from the Fund and then reimburse the individual victims.

3.2.13 The Committee took note of the information set out in document FUND/EXC.39/7 concerning payments made by the Commission of the European Community in respect of this incident.

3.2.14 The Executive Committee noted that payments had been made by the Commission in respect of the AEGEAN SEA incident through Directorate-General XI (Environment, Nuclear Safety and Civil Protection) in the form of humanitarian aid and that the amounts paid would not be reclaimed from the shipowner, the P & I Club or the IOPC Fund. It was also noted that payments had been made through Directorate-General XIV (Fisheries) in the form of "tie-up allowances" in favour of owners and crews of fishing boats which were prevented from fishing, that the amounts granted by the Commission were to be distributed on the basis of criteria laid down by the Commission which related to the number of days that the victims were prevented from fishing, that these payments were considered by the Commission as a reimbursable advance should it be found that accident insurance covered these costs and that, if so, the Commission would take the necessary measures to ensure repayment.

3.2.15 The Executive Committee took the view that payments received by claimants in connection with an incident which were in the nature of a gift should not be deducted from compensation payable under the Civil Liability Convention and the Fund Convention, whereas payments which could be categorised as compensation or advances towards compensation should be deducted. It was agreed that the question into which category a payment fell would have to be decided in the light of the particular circumstances of the payment in question.

3.2.16 By virtue of the position reflected in paragraph 3.2.15, the Executive Committee decided that the payments made by the Fisheries Council of the Region of Galicia which had been presented by the Spanish delegation as being in the nature of a gift should not be taken into account when determining the amount of compensation payable under the Civil Liability Convention and the Fund Convention.

3.2.17 The Executive Committee decided that payments made by the Commission of the European Community through Directorate-General XIV should be deducted from any compensation payable under the Civil Liability Convention and the Fund Convention, since these payments related to losses which in principle, if proven, would qualify for compensation under the Conventions, whereas payments made through Directorate-General XI should not be taken into account when determining the amount of compensation payable under the Conventions, because these payments were in the nature of a gift.

3.2.18 The Executive Committee noted that payments which were in the nature of a gift could not be reclaimed from the IOPC Fund. The Committee also noted that payments which could be categorised as compensation or advances towards compensation could be reclaimed from the shipowner and the IOPC Fund, provided that such payments related to loss or damage which fell within the scope of application of the Conventions and provided further that the payer could invoke a valid subrogation.

#### *Social Security Payments*

3.2.19 It was recalled that at its 38th session, the Executive Committee had considered claims which had been submitted by two public bodies in Spain in respect of unemployment benefits paid to

32 individuals who allegedly had been made redundant due to the reduction in work as a result of the restrictions placed on fishery activities following the incident. It was also recalled that the Committee had examined a claim presented by one of these public bodies for loss of income due to a reduction in contributions made to the Social Security Fund by employers who had reduced their workforce. It was noted that, at the request of the Spanish delegation, the Committee had decided to postpone its consideration of these claims to its 39th session, so as to enable the Spanish Government to submit additional information, and to enable it to consider the results of the deliberations of the Intersessional Working Group on this matter.

3.2.20 The Spanish delegation presented the Committee with detailed information concerning the items covered by the claims referred to in paragraph 3.2.19.

3.2.21 The Executive Committee decided to postpone its consideration of these claims to its 40th session and instructed the Director to prepare a document on the issues involved, in consultation with the Spanish delegation, for consideration at its next session.

#### *Legal Proceedings*

3.2.22 The Director informed the Executive Committee of the developments concerning the legal proceedings in respect of the AEGEAN SEA incident.

#### *Investigations Into the Cause of the Incident*

3.2.23 The Director informed the Committee that the IOPC Fund had on 4 May 1994 received a report on the investigation concerning the incident which had been carried out by a Commission set up by the Spanish administration. The Spanish delegation stated that the conclusions of the Commission were that a major part of the blame for the incident rested with the master of the AEGEAN SEA and that a contributing factor had been the rapidly deteriorating weather immediately before the incident.

3.2.24 The Director stated that the IOPC Fund would examine this report, with the assistance of its lawyers and any technical experts as required, and that the position of the IOPC Fund in respect of the cause of the incident would be determined on the basis of this report and the results of any other relevant investigations.

### 3.3 BRAER Incident

#### *Claims Situation*

3.3.1 The Executive Committee took note of the information contained in document FUND/EXC.39/4 regarding the BRAER incident, in particular that, as at 20 April 1994, some 900 claims for compensation had been approved, wholly or partly, for a total amount of approximately £26.4 million.

3.3.2 It was recalled that the United Kingdom Government had, through the Scottish Office, set up a Bridging Fund which should make advance payments to claimants whose claims were considered by the IOPC Fund and the P & I insurer of the BRAER (the Skuld Club) to be admissible in principle under the Civil Liability Convention and the Fund Convention, if liquid funds available to the Club and the IOPC Fund were insufficient to ensure prompt payments. It was noted that payments had been made from the Bridging Fund for a total amount of £2 651 090 relating to claims in respect of salmon farms. The Director informed the Committee that the IOPC Fund had reimbursed the United Kingdom Government for this amount on 18 February 1994.

3.3.3 The Committee recalled that the IOPC Fund and the Skuld Club had on 8 January 1993 established a Local Claims Office in Lerwick (Shetland) to handle claims arising out of the incident. The Director informed the Committee that the IOPC Fund and the Skuld Club had decided, after consultation with the United Kingdom Government and the Shetland Islands Council, that the Office in Lerwick would be closed by the end of May 1994, in view of the fact that the major part of the claims

had been settled and paid. He stated that a Claims Office would be maintained for some months in Aberdeen, that arrangements were being made to handle claims locally on Shetland to the extent necessary and that the IOPC Fund's experts would continue to visit Shetland when appropriate.

#### *Sale of Farm*

3.3.4 The Executive Committee was informed that the owner of one of the largest farms on Shetland, which was located on the cliffs below which the BRAER went aground, had shortly before the BRAER incident taken steps to put the farm up for sale, that the negotiations for the sale of the farm were at an advanced stage and that, according to the seller, the proposed purchase price was less than would have been expected had the BRAER incident not occurred. It was noted that a claim had been made for the difference between the value of the property in December 1992 and the offer made by the prospective purchaser. It was also noted that this farm was the most contaminated property on Shetland, that the farmland had nevertheless been declared fit for grazing in September 1993 and that the farmer had been provided, at the IOPC Fund's expense, with equipment, materials and labour, as well as feed for livestock, in order to overcome the effects of the wind-blown oil spray on the land.

3.3.5 It was recalled that at its 38th session, the Executive Committee had taken the view that this claimant would in principle be entitled to compensation if and to the extent that the property had suffered an on-going loss of value as a result of the BRAER incident. It was noted that the Committee had emphasised that there were many other factors which could have influenced the selling price of the property which were not related to the incident. It was also recalled that the Executive Committee had taken the view that, if operating difficulties of the farm resulting from the incident remained, the cost of overcoming these difficulties would in principle qualify for compensation (document FUND/EXC.38/9, paragraphs 3.4.3 and 3.4.5).

3.3.6 The Executive Committee noted that the Director had obtained opinions on the matter from a chartered surveyor and from the District Valuer (a chartered surveyor appointed by the United Kingdom Commission of Inland Revenue to be the primary provider of advice and assessments on property values to Government and other public bodies).

3.3.7 The Committee endorsed the Director's position that since the District Valuer and the chartered surveyor had expressed the opinion that there was no permanent damage to the farm but only a possible depreciation of a psychological nature, the farmer was not entitled to compensation for on-going diminution of value. The Committee took note of the Director's intention to settle this claim by offering the farmer compensation based on the on-going costs of overcoming the remaining operating difficulties for the near future.

#### *Salmon Farms*

3.3.8 The Executive Committee noted that the disposal of the 1992 salmon intake within the exclusion zone had been completed on 24 March 1994, that payments made so far in respect of the destroyed quantities of the 1992 intake amounted to £7.2 million, and that further payments in the region of £5 million would be made.

#### *Tourism*

3.3.9 It was noted that the report of the study commissioned by the Shetland Islands Council into the Shetland tourist industry had been made available to the IOPC Fund in late March 1994. The Executive Committee noted that the Director's assessment of the claim submitted by Shetland Islands Tourism for the cost of a proposed marketing campaign to counteract the negative effect of the BRAER incident on tourism was awaiting the findings of the examination of the report by the IOPC Fund's consultants.

3.3.10 The Director informed the Executive Committee that a preliminary examination of this report carried out by the IOPC Fund's consultants had not convinced him that the claim fulfilled the criteria laid down by the Committee in respect of claims relating to the cost of marketing activities and that, for this reason, he had been unable to make any advance payments for such activities.

*Loss of Income Suffered by Fish Processors Due to Reduction in Prices*

3.3.11 The Executive Committee noted the situation in respect of claims relating to loss of income suffered by fish processors due to reduction in prices, as set out in paragraph 7 of document FUND/EXC.39/4.

*Unlicensed Fishing*

3.3.12 It was noted by the Executive Committee that fishing without a licence was a criminal offence under United Kingdom law. For this reason, the Committee shared the Director's view that, as regards the BRAER incident, claims for compensation presented by professional fishermen could be accepted only if the claimant held a licence, since the IOPC Fund should not pay compensation for the loss of proceeds from criminal activities.

3.3.13 Some delegations, while agreeing with the position set out in paragraph 3.3.12, questioned whether this would not lead to inconsistency in comparison with the position taken by the IOPC Fund in accepting claims from unlicensed fishermen and shellfish gatherers in the context of the AEGEAN SEA incident, since the admissibility of a claim should not, in their view, depend on the categorisation of the offence under national law, for example as a criminal offence or as a breach of administrative law.

*Landcatch Ltd: Smolt Supplier*

3.3.14 The Director presented document FUND/EXC.39/4/Add.1 which contained information on the claim for £2 601 506 plus interest submitted by Landcatch Ltd, as well as the Director's analysis of the claim.

3.3.15 The United Kingdom delegation stated that it would not be appropriate for the delegation to participate in the discussions on the details of this claim.

3.3.16 The Executive Committee held a session in private, pursuant to Rule 12 of the Rules of Procedure, to discuss the legal aspects of this claim. During this closed session, covered by paragraphs 3.3.17 and 3.3.18 below, only the delegations representing Fund Member States and the representative of the shipowner's P & I insurer (the Skuld Club) were present.

3.3.17 The Executive Committee took the view that the claim presented by Landcatch did not fulfil the criteria laid down by the Committee and decided to reject the claim. The principal reasons for the Committee's view were those set out in paragraph 3.3.18 below.

3.3.18 The Executive Committee took into account a number of considerations including the following. The Committee was of the opinion that the loss allegedly suffered by Landcatch could not be considered as damage to property rights. The Committee took the view that the loss could not be considered as caused by contamination but was due to the unwillingness of customers to conclude contracts for delivery of smolt and to Landcatch's lack of adequate alternative markets. In the Committee's view the smolt rearing activity of Landcatch was not in reasonable geographical proximity to the area affected by the oil spill from the BRAER. The Committee was of the opinion that although the smolt provided by Landcatch formed 25-30% of the smolt supplied to the Shetland salmon farmers, the smolt rearing activity of Landcatch did not form an integral part of the economic activity of the area affected by the oil spill.

*Kinloch Damph Ltd: Smolt Supplier*

3.3.19 The Committee examined a claim for £195 011 received from Kinloch Damph Ltd, a company supplying smolt from its installation on mainland Scotland. It was noted that, according to the claimant, a quantity of this smolt was to be reared on its behalf under contract by a salmon farmer within the exclusion zone and that smolt could not be introduced in March 1993 in the cages allocated as planned, since these cages were still occupied by the 1991 intake of salmon which had not yet been

destroyed. It was also noted that the claimant had maintained that he subsequently sold these smolt at a reduced price to another farm within the exclusion zone where cages were available. The Committee took note of the statement by the claimant that he had suffered loss of profit through not being able to implement the rearing contract.

3.3.20 The Executive Committee took the view that the claim presented by Kinloch Dampf did not fulfil the criteria laid down by the Committee in that the claimant's activities did not form an integral part of the economy of the area affected by the contamination. The Committee decided to reject this claim.

*Shetland Sea Farms Ltd: Salmon Farmer*

3.3.21 The Committee examined a claim for £2 004 867 presented by a company farming salmon within the exclusion zone (Shetland Sea Farms Ltd). It was noted that this claimant had stated that it had been planning to place smolt in the cages in January and March 1993, that it was contracted to buy smolt at a predetermined price and that it fulfilled the contract but that, due to the contamination of the farm, disposed of the fish elsewhere at a loss, and that the claimant also had suffered loss of profit through not growing these fish.

3.3.22 It was noted that the claimant was supplied with smolt by a smolt producing company on mainland Scotland, that both these companies were members of a group of aquaculture companies with a common majority share holding, and that the company to which the smolt were eventually sold at 50% of the purchase price and which had reared and sold the fish also belonged to the same group. It was noted that the group was controlled by a single individual who was a director of all the companies within the group.

3.3.23 The Executive Committee considered that, in view of the close link between the three companies involved, it had not been shown that the group of companies had suffered any economic loss in relation to the smolt in question. For this reason, the Executive Committee decided to reject the claim presented by Shetland Sea Farms.

*Norwegian Salmon Trader: Claim for Lost Commission*

3.3.24 The Executive Committee considered a claim for £138 644 submitted by a salmon trader having his place of business near Oslo (Norway) for lost commission on the sales of the produce of two salmon farms located within the exclusion zone. The Committee shared the Director's view that this claim did not fulfil the criteria for the admissibility of claims for pure economic loss laid down by the Committee, in particular since the claimant could not be considered an integral part of the economic activity of the area affected by the contamination. The Executive Committee therefore decided to reject this claim.

*Landcatch Ltd and Scotfish Supplies Ltd: Claims for Lost Sales Commission*

3.3.25 The Executive Committee examined a claim for £81 295 submitted by Landcatch Ltd which operated its business on mainland Scotland and a claim for £128 148 presented by Scotfish Supplies Ltd, a company in Glasgow on mainland Scotland for alleged loss of sales commissions. It was noted that in both these cases, the salmon in question was owned by BP Nutrition (UK) Ltd and reared under contract within the exclusion zone by Shetland Sea Farms Ltd and that compensation for the destroyed fish had been paid to the former company.

3.3.26 The Executive Committee took the view that this claim did not fulfil the criteria for the admissibility of claims for pure economic loss laid down by the Committee, in particular since the activities of these two claimants to sell salmon reared within the exclusion zone could not be considered as an integral part of the economic activity of the area affected by the oil spill from the BRAER. The Committee therefore decided to reject these claims.

*Punds Voe Salmon (George L Williamson): Contract Salmon Harvesting*

3.3.27 The Executive Committee considered a claim relating to alleged loss of income due to the claimant not having been able to harvest, on a contractual basis, certain quantities of the 1992 salmon intake from two salmon farms located within the exclusion zone, since the fish had been destroyed as a result of the BRAER incident.

3.3.28 The Committee noted that the agreements between the IOPC Fund and the salmon farmers operating within the exclusion zone relating to the destruction or the 1992 intake of salmon contained a provision to the effect that the price used for the calculation of compensation covered all costs which would normally have been incurred in rearing, harvesting and first sale of the fish. It was generally considered that the IOPC Fund should not pay compensation twice for the same damage. The Committee decided, nevertheless, in view of the particular circumstances in this case and of the small amount involved, that this claim was eligible, subject to proof of the loss suffered, since the claimant's harvesting activities were considered an integral part of the economic activity of the area affected by the oil spill from the BRAER.

*Shetland Salmon Group Ltd: Claim for Lost Levies*

3.3.29 On the basis of further information supplied by the claimant, the Executive Committee reconsidered this claim which had been rejected by the Committee at its 35th session (document FUND/EXC.35/10, paragraph 3.4.33). After due consideration, however, the Committee took the view that the new information did not alter the basis for the rejection, ie that the losses suffered by the Shetland Salmon Group Ltd could not be considered as damage by contamination. For this reason, the Committee decided to maintain the decision to reject the claim.

*Impact Assessment Studies*

3.3.30 The Executive Committee noted that the IOPC Fund Secretariat was examining, with the assistance of experts, the reports on studies commissioned by the Shetland Islands Council of the impact of the BRAER incident on various aspects of Shetland life, including agriculture, the environment, the seafood industries, tourism and transport.

3.4 TAIKO MARU Incident

3.4.1 The Director introduced document FUND/EXC.39/5 which gave details of the developments in the TAIKO MARU case since the 38th session of the Executive Committee. The Committee noted that all claims presented had been settled and paid for a total amount of £7 565 299, within only slightly more than ten months of the incident, and that it was very unlikely that any further claims would be submitted.

3.4.2 The Executive Committee instructed the Director to continue his examination of whether the IOPC Fund should take recourse action against the owner of the other vessel involved in the collision. The Committee also instructed the Director to pursue his investigation of whether it could be considered that there was any fault or privity on the part of the owner of the TAIKO MARU which would deprive him of the right to limit his liability.

3.5 KEUMDONG N°5 Incident

3.5.1 The Executive Committee took note of the claims situation, as set out in document FUND/EXC.39/6.

3.5.2 It was recalled that the Director had informed the Executive Committee at its 38th session that, as the total amount of the claims submitted exceeded the maximum amount available under the Civil Liability Convention and the Fund Convention, he had decided that the IOPC Fund's payments would –

at least for the time being – be limited to 50% of the established damage suffered by each claimant. It was noted that the Committee had endorsed the Director's position and instructed him to consider whether this percentage should be adjusted, in the light of developments (document FUND/EXC.38/9, paragraph 3.6.5).

3.5.3 The Committee took note of the information given by the Director that further claims for substantial amounts would be presented shortly. In the light of this development, the Committee instructed the Director to exercise caution in making payments, in order to ensure equal treatment of claimants in accordance with Article 4.5 of the Fund Convention.

3.5.4 The Committee took note of the information contained in document FUND/EXC.39/6/Add.1 concerning the on-going auction proceedings in the Republic of Korea in respect of the other vessel involved in the collision (the BI JIA SHAN).

3.5.5 The Executive Committee decided that the IOPC Fund should join the auction proceedings for the purpose of recovering part of the amount paid to the claimants. The Committee agreed with the Director that the IOPC Fund should not seek to arrest the BI JIA SHAN on the basis of a pre-judgement attachment in order to obtain security for the Fund's future recourse claims relating to compensation to be paid to the fishery interests.

### 3.6 SEKI Incident

3.6.1 The Director informed the Executive Committee of the SEKI incident which occurred on 30 March 1994 in the Gulf of Oman, affecting the United Arab Emirates and Oman.

3.6.2 The Committee noted that, in view of the high limitation amount applicable to the ship (US\$19 million), it was unlikely in the Director's view that the IOPC Fund would be called upon to make any payments as a result of this incident, but that the Director was following the developments closely.

## 4 Any Other Business

### 4.1 Payments by the Commission of the European Community

4.1.1 The Director introduced document FUND/EXC.39/7 which contained information on funds allocated by the Commission of the European Community in respect of the AEGEAN SEA, BRAER and ILIAD incidents.

4.1.2 The Executive Committee endorsed the Director's view that in order to avoid complications the Commission should concentrate on payments in respect of items not covered by the Civil Liability Convention and the Fund Convention, such as payments to families of killed or injured crew members, studies of long-term effects of a given oil spill on the environment and measures to strengthen the infrastructure of the fishing industry. The Committee agreed with the Director that, should the Commission make payments in respect of loss or damage covered by the Conventions, it would greatly facilitate matters if the Commission were to make clear to the Government and competent authorities of the State concerned, as well as to the recipients of the funds allocated, that the amounts received would be deducted from any compensation payable under the Conventions and the applicable national law. The Director was instructed to continue the discussions with the Commission in order to promote a co-ordination of compensation payments.

### 4.2 Payment of Contributions

4.2.1 It was recalled that the Assembly had, at its 16th session, decided to levy 1993 annual contributions to the General Fund and four Major Claims Funds for a total amount of £78 million, payable by 1 February 1994. The Director informed the Executive Committee that invoices totalling

£77 417 593 had been issued and that, as at 3 May 1994, £76 311 060 had been paid, representing 98.58% of the invoiced amounts.

4.2.2 The Executive Committee noted with satisfaction the situation in respect of the payment of contributions.

#### 4.3 New Member State

The Director informed the Committee that the Fund Convention would enter into force for Albania on 5 July 1994, bringing the number of Member States to 58.

#### 4.4 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention

4.4.1 A number of delegations informed the Executive Committee of the situation in their respective States as regards the preparations for the ratification of the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention.

4.4.2 The delegations of France, Germany, Japan and the United Kingdom informed the Committee that bills implementing the Protocols had been submitted to Parliament and that they hoped that ratification would take place during the summer or autumn 1994. The delegation of Sweden stated that the preparation of the necessary legislation was under way in Denmark, Finland, Norway and Sweden and that it was expected that these States would ratify the 1992 Protocols in the first half of 1995. The delegations of Poland and Spain notified the Committee that preparations for the drafting of the necessary implementing legislation were under way. The delegation of the Republic of Korea stated that the Korean Government was studying the 1992 Protocols.

4.4.3 It was recalled that the Parliament of Australia had approved accession to the 1971 Fund Convention, the 1976 Protocol thereto and the 1992 Protocols to the Civil Liability Convention and the Fund Convention.

### 5 Adoption of the Report to the Assembly

The draft report of the Executive Committee to the Assembly, as contained in documents FUND/EXC.39/WP.1 and FUND/EXC.39/WP.1/Add.1, was adopted, subject to certain amendments.

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