



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
41st session
Agenda item 7

FUND/EXC.41/2
21 October 1994

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

(held on 21 October 1994)

Chairman: Mr C Coppolani (France)

Vice-Chairman: Mrs C Asseng-Nguele (Cameroon)

Opening of the Session

The 41st session of the Executive Committee was opened by Mr C Coppolani (France), in his capacity as representative of the delegation from which the Chairman of the previous session had been elected.

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document FUND/EXC.41/1.

2 Election of the Chairman and Vice-Chairman

2.1 The Executive Committee elected the following delegates to hold office until the next regular session of the Assembly:

Chairman: Mr C Coppolani (France)

Vice-Chairman: Mrs C Asseng-Nguele (Cameroon)

2.2 The Chairman and the Vice-Chairman thanked the Executive Committee for the confidence shown in them.

3 Examination of Credentials

3.1 The following members of the Executive Committee were present:

Algeria	Italy	Norway
Cameroon	Japan	Republic of Korea
France	Liberia	Sweden
Greece	Mexico	United Kingdom

The Executive Committee agreed that the credentials submitted by these delegations to the 17th session of the Assembly should be understood as also covering the 41st session of the Executive Committee.

The Executive Committee was informed that all members participating had submitted credentials and that these were in order.

3.2 The following Contracting States were represented as observers:

Canada	Germany	Netherlands
Denmark	Kuwait	Spain
Finland	Morocco	Tunisia

3.3 The following non-Contracting State, inter-governmental organisation and international non-governmental organisation participated as observers:

United States
International Maritime Organization (IMO)
Oil Companies International Marine Forum (OCIMF)

4 Incidents Involving the IOPC Fund

4.1 AEGEAN SEA Incident

Partial Payments

4.1.1 It was noted that the Executive Committee had decided at its 36th session that, in view of the high amount of the claims arising out of the AEGEAN SEA incident, caution had to be exercised when making payments to claimants at that stage, in order to ensure that the provisions of Article 4.5 of the Fund Convention relating to equal treatment of victims were respected. It was also recalled that the Committee had instructed the Director that the IOPC Fund should, for the time being, only make partial payments which would not exceed 30-40% of the amount approved (document FUND/EXC.36/10, paragraph 3.3.21). The Committee recalled that the Director had decided to limit payments by the IOPC Fund to 25% of the established damage suffered by each claimant, in view of the continuing uncertainty as to the total amount of the claims.

4.1.2 The Committee noted that a document had been presented by the Director General of Fisheries and Agriculture of the Government of the Region of Galicia and the Director General of the Merchant Marine of the Central Spanish Government, in which three experts of the Spanish administrations involved in the assessment of claims had estimated the maximum amount of the claims arising out of this incident. It was also noted that these experts had stated that the total amount of the claims presented so far to the Joint Claims Office was Pts 20 338 million (£101 million) and that, on the basis of available information, they had estimated that the total amount of the claims would finally be approximately Pts 24 500 million (£121 million), without prejudice to the possibility of this amount varying as a result of further claims for minor amounts being presented in connection with the legal proceedings.

4.1.3 It was recalled that at the Executive Committee's 40th session the Spanish delegation had conveyed the concerns of the Spanish authorities that only relatively small amounts had been paid to the claimants who belonged mainly to the poorer groups of society. In the view of that delegation it was important, therefore, that the provisional payments were increased from 25% to 40% of the established damage. It was recalled that this delegation had emphasised that the estimated figure of Pts 24 500 million, representing the final total amount of all claims arising out of this incident, had been arrived at after a very careful assessment, in consultation with a number of persons involved in the case.

4.1.4 In the light of the statements made by the Spanish authorities and the Spanish delegation referred to in paragraphs 4.1.2 and 4.1.3 above, the Director informed the Executive Committee that in his view the uncertainty as to the total amount of the claims arising out of this incident had been reduced. The Committee was informed that, for this reason, the Director had decided to increase the partial payments to 40% of the damage suffered by the respective claimants as assessed by the IOPC Fund on the basis of the advice of its experts at the time when a partial payment or additional partial payment was to be made.

4.1.5 The Executive Committee endorsed the Director's decision as set out in paragraph 4.1.4 above.

Unemployment Benefit Payments

4.1.6 The Executive Committee considered the claims which had been submitted by two public bodies responsible for making unemployment benefit payments in the amounts of Pts 9 505 770 (£47 060) and Pts 6 897 323 (£34 150). It was recalled that these payments had been made to persons 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 noted that these claims gave rise to a question of principle similar to the one relating to claims for loss of income suffered by employees in sea-related activities who had been made redundant. It was also recalled that the question of the admissibility of claims of this latter type had been discussed by the 7th Intersessional Working Group which had not been able to draw any conclusions in respect of such claims and had referred the issue to the Assembly for consideration at its 17th session. It was further noted that the Assembly had not considered it appropriate to take any decision in respect of this issue, but had decided that the IOPC Fund should adopt a cautious approach in respect of such claims (document FUND/A.17/35, paragraph 26.10).

4.1.7 It was recalled that the Executive Committee had previously rejected claims for loss of income suffered by persons who had been made redundant and that, since the Assembly had not taken a position on this issue, the Executive Committee's decision was maintained. The Executive Committee took the view that public bodies paying unemployment benefits could not be given a more favourable position vis-à-vis the IOPC Fund than persons who had been made redundant. For this reason, the Executive Committee rejected the claims under consideration.

4.1.8 The Spanish delegation stated that it reserved its right to revert to this issue and to submit further information for consideration by the Executive Committee.

4.2 Incidents with Developments of Lesser Importance

4.2.1 The Executive Committee took note of the information contained in documents FUND/EXC.40/9 and FUND/EXC.40/9/Add.1, submitted to the 40th session of the Executive Committee, concerning certain incidents of lesser importance.

4.2.2 As regards the DAITO MARU N°5 incident, the Executive Committee took note of the information contained in document FUND/EXC.40/9/Add.1 with regard to the P & I insurers' request that the IOPC Fund should waive the requirement to establish the limitation fund. The Executive Committee noted that disproportionately high legal costs would be incurred in establishing the limitation fund compared with the low limitation amount under the Civil Liability Convention in this case, and took note of the

Committee's decisions at previous sessions in respect of other requests to the same effect. In view of these facts, the Executive Committee decided that the requirement to establish the limitation fund should be waived in respect of the DAITO MARU N°5 case, so that the IOPC Fund could, as an exception, pay compensation and indemnification without the limitation fund being established.

4.3 TOYOTAKA MARU Incident

4.3.1 With regard to the TOYOTAKA MARU incident, which had occurred on 17 October 1994 in Japan, the Executive Committee noted that, according to the lawyer and the surveyors engaged by the shipowner's P & I insurer and the IOPC Fund, it was expected that the aggregate amount of the established claims would be in the region of ¥1 500-1 700 million (£9.6-10.9 million). It was also noted that the limitation amount applicable to the TOYOTAKA MARU was estimated at ¥81 823 680 (£522 770) (cf document FUND/A.17/18/Add.2).

4.3.2 It was recalled that the Assembly had decided, at its 17th session, to levy 1994 annual contributions to the TOYOTAKA MARU Major Claims Fund in the amount of £9 million, payable by 1 February 1995, in order to enable the IOPC Fund to make prompt payments to claimants (document FUND/A.17/35, paragraph 21.3). In the light of this decision by the Assembly, the Executive Committee decided to authorise the Director to make final settlement of all claims arising out of this incident, except to the extent that questions of principle arose in respect of which the Committee had not previously taken a decision.

5 Date of Next Session

5.1 The Executive Committee decided to hold its 42nd session from 10 to 12 April 1995.

5.2 It was decided that the Committee would hold its normal autumn session during the week of 16 to 20 October 1995.

6 Any Other Business

6.1 The United Kingdom delegation recalled that there were two issues on which the 7th Intersessional Working Group had been unable to draw any conclusions, namely,

- (a) as regards costs for measures taken to prevent pure economic loss, whether the fact that costs relating to marketing campaigns or similar activities had been paid from funds allocated in the claimant's normal budget should result in a claim for compensation being rejected (document FUND/A.17/23, paragraphs 7.2.38-7.2.40); and
- (b) whether and, if so, to what extent the IOPC Fund should pay compensation for loss of income suffered by employees in certain sea-related activities, who had been made redundant or put on part-time work as a result of an oil pollution incident (document FUND/A.17/23, paragraphs 7.2.46-7.2.55).

6.2 The United Kingdom delegation drew attention to the fact that, at its 17th session, the Assembly had not considered it appropriate to take any decision on the issues referred to in paragraph 6.1 above. For this reason, this delegation proposed that the Executive Committee should study these issues further. This delegation suggested also that the Committee should study further the issue of the position taken by the IOPC Fund in respect of the admissibility of claims relating to so-called "fixed costs", ie claims submitted by public authorities carrying out clean-up operations or preventive measures for costs which would have arisen for the authorities concerned even if the incident had not occurred (eg normal salaries for permanently employed personnel), as distinguished from additional costs, ie costs incurred solely as a result of the incident which would not have been incurred had the incident and the related operations not taken place. The United Kingdom delegation

also referred to the question of the extent to which the cost of salvage operations could be considered as preventive measures to be compensated by the IOPC Fund.

6.3 The Executive Committee took the view that it was not the task of the Executive Committee to make general studies of the type proposed by the United Kingdom delegation. It was noted, however, that it was likely that the issues raised by the United Kingdom delegation would have to be addressed by the Executive Committee in the future in connection with individual claims for compensation.

7 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.
