



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
43rd session  
Agenda item 7

FUND/EXC.43/6  
5 June 1995

Original: ENGLISH

## ANY OTHER BUSINESS

### Record of Decisions of the Executive Committee's 42nd Session

#### SEKI INCIDENT

#### Note by the Chairman

1 The Record of Decisions of the Executive Committee's 42nd session, as contained in document FUND/EXC.42/11, contains the following text in relation to the position taken by the Executive Committee:

3.5.11 In conclusion, the Executive Committee reiterated the IOPC Fund's position that a claim was admissible only to the extent that the quantum of the loss actually suffered was demonstrated. The Committee accepted, however, that a certain flexibility would have to be exercised as regards the application of the requirement of proof to be submitted by a claimant in order to demonstrate the quantum of his loss, taking into account the particular situation of the country concerned and in accordance with the conclusions of the 7th Intersessional Working Group. In the view of the Committee, it was necessary to investigate all possible elements of proof available, which would not be limited to accounts or taxation documents. The Committee took the view that the findings of a government committee or similar body could not be considered as proof in itself, but was an element which should be taken into consideration for the assessment of the loss suffered. The Committee stated that other elements should be taken into account, including statistics relating to the level of catches in previous years and to the income of fishermen during previous years in the area under consideration. It was emphasised that it was necessary that the IOPC Fund's experts were given the possibility of forming an independent opinion of the quantum of the losses actually suffered.

2 In April 1995, the United Arab Emirates delegation to the Executive Committee's session contacted the Director and maintained that paragraph 3.5.11 of the Record of Decisions was incorrect, since the Committee's decision had been to include the expression "for example" instead of "including"

in the sentence marked with asterisks in paragraph 1 above, and requested that the Record of Decisions be amended accordingly.

3 The adoption by the Executive Committee of the Record of Decisions was based on a draft text prepared by the Director, as set out in document FUND/EXC.42/WP.1/Add.1. The sentence referred to by the United Arab Emirates delegation reads in that document as follows:

The Committee stated that other elements should be taken into account, including for example statistics relating to the level of catches in previous years and to the income of fishermen during previous years in the area under consideration.

4 On receiving the request by the United Arab Emirates delegation, the Director checked the notes taken by the Secretariat as well as those kept by the Chairman, which confirmed that the Committee's decision had been to delete the expression "for example" and retain the word "including".

5 The transcript of the tape recording of the discussions concerning this paragraph of the Record of Decisions is reproduced in the Annex to the present document.

6 The United Arab Emirates delegation was informed by the Director of the results of the checking of the notes and the tape recording. The Director stated that the text could not be amended, since it correctly reflected the decision taken by the Executive Committee.

7 In a document submitted to the Executive Committee's 43rd session (document FUND/EXC.43/3/1), the Government of the United Arab Emirates has raised the question of the wording of paragraph 3.5.11 of the Record of Decisions of the Committee's 42nd session. In that document it is stated.

"5.1 The United Arab Emirates delegation has noted that the decisions of the Executive Committee are being passed without voting. This has resulted in an inconvenience to our delegation. The inconvenience was invoked during the 42nd session and immediately thereafter taken up with the Director. In this respect, we refer to decision 3.5.11 in FUND/EXC.42/11 where it reads:

"The Committee stated that other elements should be taken into account, including statistics relating to...."

Our delegation objected to the insertion of the word "*....including ....*" in the original text and requested that this word, should be deleted. Only one delegation disagreed and to our understanding other delegations and the Director were in favour, but notwithstanding this fact, the decision maintained the word "*including*" and deleted "*for example*" thus weakening the rule of flexibility adopted as to the Fishery Claim and rendering the decision inconsistent with the said rule.

We, therefore, recommend that decision 3.5.11 be amended."

8 According to established practice over 17 years, Records of Decisions of the IOPC Fund Assembly and Executive Committee are normally adopted at the end of the relevant session, on the basis of a draft elaborated by the Director. The draft text is amended if so decided by the Assembly or Executive Committee, as the case may be. Any amendments are announced by the Chairman in accordance with the outcome of the discussions on the wording, and they are included in the Record of Decisions.

9 As is clear from the tape recording of the proceedings reproduced in the Annex, the Chairman ruled that the expression "for example" should be deleted and the word "including" be retained. This ruling was not challenged by any delegation. It is clear, therefore, that the text as set out in document FUND/EXC.42/11 is a correct reflection of the Committee's decision on this point. For this reason, it is not possible to make the amendment recommended by the Government of the United Arab Emirates.

**Action to be taken by the Executive Committee**

10 The Executive Committee is invited to take note of the information contained in this document.

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ANNEXTRANSCRIPTION OF TAPE RECORDING OF THE 42ND SESSION  
OF THE EXECUTIVE COMMITTEE

## ADOPTION OF THE REPORT (Extract)

- Chairman* "3.5.11 La délégation des Emirats, vous avez la parole."
- UAE* "Thank you. Please I notice here that the Committee, where is that the Committee stated the last paragraph, the Committee stated that other elements should be taken into account including for example statistics related to the level of catches of the previous year and the income of fisheries during the previous years. I think, if we leave it as it said in the previous paragraph for the experts and for the Committee and for the representative of the Club to determine but to, I mean this is probably putting conditions on the type of the evidence to, I mean that it has to include "for example". I don't know, if it is for example, if it is just a matter or it has to include. I mean the type of documents I think has been explained in paragraphs 3.5.9 and 3.5.10 and that. Thank you."
- Chairman* "Merci. Monsieur l'Administrateur."
- Director* "I think Dr Khalil has a point here. My idea was rather by using the example indicated this is not the only possibility, but on the other hand it was not neither conclusive nor exhaustive. So I can see that the wording is not ideal. One could of course delete the words "for example" or I think perhaps "including" and "for example" is too much. One could delete "including" and just keep "for example"."
- UAE* "Even, excuse me, since the spirit don't mind, the most important understanding even, if, remember, this understanding is what you said. It can remain as you like, but the spirit is what we meant."
- Chairman* "Oui, je pense que c'est une traduction du français, donc il faut qu'on voie un petit peu la"
- Director* "Chairman, if we delete the word "including" then "for example" means, of course, this is one way of doing it but there are also other ways, and I totally agree that "including for example" is not very good English nor very clear."
- Chairman* "La Délégation du Canada, Monsieur Popp."
- Canada* "We don't want to hold up the proceedings but I think it would be correct to simply take out "for example" and then leave, stay with the word "including". I think that gives us maximum flexibility. No, maximum flexibility."
- Chairman* "Très bien, si ça convient à tout le monde. Le Mexique."
- Mexico* "Merci beaucoup, Monsieur le Président. Monsieur le Président, je ne sais pas si cela conviendra la Délégation des Emirats, mais selon ce que cette Délégation se souvient, cette phrase s'agit plutôt d'une suggestion faite par vous-même, peut-être ça est le problème. Merci beaucoup, Monsieur le Président."
- Chairman* "Donc, je crois que c'est clair qu'on laisse "including" n'est-ce pas, et on supprime "for example"."
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