



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
43rd session  
Agenda item 8

FUND/EXC.43/7  
9 June 1995

Original: ENGLISH

## RECORD OF DECISIONS OF THE FORTY-THIRD SESSION OF THE EXECUTIVE COMMITTEE

(held on 9 June 1995)

Chairman: Mr C Coppolani (France)

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

### 1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document FUND/EXC.43/1.

### 2 Examination of Credentials

2.1 The following members of the Executive Committee were present:

Cameroon  
France  
Greece  
Italy

Japan  
Liberia  
Norway  
Republic of Korea

Sweden  
United Arab Emirates  
United Kingdom

The Executive Committee took note of the information given by the Director that all the above-mentioned members of the Committee had submitted credentials which were in order.

2.2 The following Contracting States were represented as observers:

Belgium	Indonesia	Slovenia
Canada	Netherlands	Spain
Cyprus	Nigeria	Syrian Arab
Finland	Papua New Guinea	Republic
Gabon	Poland	
Germany	Russian Federation	

2.3 The following non-Contracting States were represented as observers:

China  
Panama  
Saudi Arabia

2.4 The following intergovernmental organisation and international non-governmental organisations were represented as observers:

International Maritime Organization (IMO)  
International Association of Independent Tanker Owners (INTERTANKO)  
International Chamber of Shipping (ICS)  
International Group of P & I Clubs  
International Tanker Owners Pollution Federation Ltd (ITOPF)  
International Union for the Conservation of Nature and Natural Resources (IUCN)  
Oil Companies International Marine Forum (OCIMF)

### 3 Haven Incident

#### Question of time-bar

3.1 The Executive Committee recalled the discussions at its 40th session concerning the question of whether the majority of the claims arising out of the *Haven* incident were time-barred vis-à-vis the IOPC Fund (cf document FUND/EXC.40/10, paragraphs 3.3.4 and 3.3.7-3.3.14). It was also recalled that only a few claimants, namely the French State, the French communes, the Principality of Monaco and a few Italian claimants, had fulfilled the requirements of Article 6.1 by making a notification under Article 7.6 of the Fund Convention. It was noted that the Committee had taken the view that all other claims submitted in the limitation proceedings had become time-barred in respect of the IOPC Fund on or shortly after 11 April 1994, in the light of the provisions of Article VIII of the Civil Liability Convention and Article 6.1 of the Fund Convention (document FUND/EXC.40/10, paragraphs 3.3.4 and 3.3.8).

3.2 The Executive Committee recalled the concerns expressed at its 40th session by a number of delegations that this situation had arisen, since the IOPC Fund had as its purpose to pay compensation to victims of pollution damage. It was also recalled that the Committee had drawn attention to the fact that the situation was due to the complex legal proceedings in Italy resulting from certain claimants maintaining that the IOPC Fund's maximum cover should be calculated on the basis of the free market value of gold instead of on the basis of the Special Drawing Right (SDR), the latter conversion method being in accordance with the internationally accepted interpretation of the Fund Convention. It was noted at that session that claims had been submitted by the Italian Government and other public bodies relating to damage to the environment which, according to Resolution N°3 adopted by the IOPC Fund Assembly, were not admissible under the Civil Liability Convention and the Fund Convention (document FUND/EXC.40/10, paragraph 3.3.9).

3.3 The Committee took note of the positions expressed by the Japanese and Italian delegations at its 40th and 42nd sessions (documents FUND/EXC.40/10, paragraphs 3.3.10 and 3.3.11, and FUND/EXC.42/11, paragraphs 3.2.4-3.2.6).

### Negotiations with claimants

3.4 It was recalled that at its 40th session, while convinced of the legal validity of the IOPC Fund's position in respect of the time-bar issue, the Executive Committee had nevertheless recognised that the on-going legal proceedings in Italy gave rise to some uncertainty as regards the final outcome of this issue. It was also recalled that, for this reason, and conscious of the desirability of victims of pollution damage being compensated, the Committee had instructed the Director to enter into negotiations with all the parties concerned for the purpose of arriving at a global solution of all outstanding claims and issues. It was noted that the Committee had emphasised that any such solution must respect the following conditions (document FUND/EXC.40/10, paragraph 3.3.12):

- (i) the maximum amount payable under the Civil Liability Convention and the Fund Convention was 60 million SDR;
- (ii) claims could only be admissible if a claimant had suffered a quantifiable economic loss and claims for damage to the marine environment per se were not admissible;
- (iii) the negotiations should be without prejudice to the IOPC Fund's position in respect of the time-bar;
- (iv) the negotiations should, to the extent possible, take into account the economic interests of those claimants who had respected the requirements laid down in Article 6.1 of the Fund Convention.

3.5 It was noted that the Executive Committee had decided that any agreement relating to a global settlement would have to be approved by the Committee (document FUND/EXC.40/10, paragraph 3.3.16).

3.6 The Director reported the developments in the negotiations with the claimants, as set out in documents FUND/EXC.43/2 and FUND/EXC.43/2/Add.1. The Committee noted that agreements had been reached between the shipowner and his P & I insurer (the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd, the UK Club) and 403 Italian claimants in the categories of individuals or small businesses on the admissible quantum of their claims, for a total amount of Lit 10 809 million (£4.2 million), and that offers had been made to a further 202 claimants in these categories for a total amount of Lit 1 319 million (£509 000). It was further noted that these agreements contained a provision to the effect that the agreements would become null and void unless the amounts agreed were paid within six months of the signing of the respective agreements (from August 1995). The Committee also took note of the fact that agreements on the quantum had been reached with most of the Italian contractors who operated outside the so-called ATI consortium. Finally, it was noted that agreements on the quantum had been reached with the French Government which had accepted a reduction of its claim from FFfr 16 284 592 (£2 072 900) to FFfr 12 580 724 (£1 001 400), and with 20 municipalities in France whose claims, totalling FFfr 68 372 981 (£8 703 300), were agreed at FFfr 4 315 801 (£549 900).

3.7 The Executive Committee took note of the fact that the IOPC Fund's lawyers had followed the negotiations with the Italian claimants, and that the Director had been consulted by the shipowner and the UK Club before any agreements or offers on the quantum were made. The Committee noted that, in the Director's view, all claims in respect of which agreements had been reached or offers had been made fulfilled the criteria for admissibility laid down by the Executive Committee, in particular at its 35th session (document FUND/EXC.35/10, paragraphs 3.2.3-3.2.9). It was also noted that, in the Director's view, the amounts agreed or offered were reasonable and that, if the IOPC Fund had not raised the defence of time-bar, the Director would have recommended that these claims be accepted by the Executive Committee in the amounts agreed or offered.

3.8 The Executive Committee held a session in private, pursuant to Rule 12 of the Rules of Procedure, to discuss this issue. During the closed session, covered by paragraphs 3.9-3.26, only the representatives of IOPC Fund Member States and representatives of the UK Club were present.

3.9 The Committee considered the presentation made by the Director on the content of a possible global solution, as set out in document FUND/EXC.43/2/1. The Director stated that, in his discussions with the UK Club and the claimants, he had emphasised that any discussions concerning a global settlement were without prejudice to the IOPC Fund's position in respect of the time-bar issue. He also mentioned that

he had made it clear during the discussions that he was *not authorised* to enter into any agreement with claimants and that the discussions were held only for the purpose of exploring the possibilities of reaching a global settlement.

3.10 It was recalled that the IOPC Fund had argued that the bank guarantee constituting the shipowner's limitation fund should also cover interest and that the interest should accrue to the benefit of the IOPC Fund. It was noted that the shipowner/UK Club had maintained that no interest was payable. It was also noted that the Court of first instance had held that the bank guarantee should cover interest but that the interest should accrue to the benefit of claimants. The Committee recalled that both the IOPC Fund and the shipowner/UK Club had appealed against this decision. It was noted that the shipowner/UK Club had offered, without prejudice to their position, to pay interest at the legal rate on the limitation fund, if this amount could be made available to the claimants as part of a global settlement.

3.11 It was recalled that the 1984 and 1992 Protocols to the Fund Convention expressly stated that interest should be to the benefit of victims (Article 4.4(d)). It was noted that the States participating in the 1984 Diplomatic Conference had wished to amend the Fund Convention on this point, since it appeared unfair that interest should be to the benefit of the IOPC Fund and not to the victims.

3.12 The Executive Committee recalled that the IOPC Fund did not agree with the Court's interpretation of the 1971 Fund Convention on this point. However, in the light of the deliberations of the 1984 Diplomatic Conference, the Executive Committee decided to accept, in this case, that interest on the shipowner's limitation amount should go to the benefit of the victims. It was emphasised that this position was taken only in the context of a possible global settlement without prejudice to the IOPC Fund's position under the 1971 Fund Convention in future cases.

3.13 The Executive Committee noted that the shipowner/UK Club had offered to make available an additional amount of Lit 25 000 million (£9.7 million) as an ex-gratia payment in an effort to assist in arriving at a global settlement.

3.14 The Committee took note of the fact that the offer of an additional amount of Lit 25 000 million (£9.7 million), in the form of an ex-gratia payment to be made by the shipowner/UK Club, and their offer to pay interest on the shipowner's limitation fund together with a waiver by the IOPC Fund of its right to that interest, would result in a total amount of some Lit 137 000 million (£53 million) being made available to victims in the context of a global settlement, calculated as follows:

	Lit
60 million SDR	102 643 800 000
Interest on the shipowner's limitation fund, calculated at the legal rate of 10% per annum, would give approximately	<u>10 000 000 000</u>
Sub-total	112 643 800 000
 Additional amount offered by the shipowner/UK Club as an ex-gratia payment	 <u>25 000 000 000</u>
 Total	 <u>137 643 800 000</u>

3.15 The representative of the UK Club stated that the Club was in agreement with the proposal set out in document FUND/EXC.43/2/1, subject to the conditions set out therein. He emphasised that the offer by the shipowner/UK Club to make an ex-gratia payment of Lit 25 000 million was entirely without prejudice and without any admission of liability of any parties in any proceedings, and subject to the conditions set out in paragraphs 4.8-4.10 of that document being satisfied, thereby bringing an end to all litigation in this case.

3.16 The Executive Committee noted that, in the Director's view, the proposed global settlement should also include a waiver by the shipowner/UK Club of any right to indemnification under Article 5 of the Fund Convention. The representative of the UK Club, speaking also on behalf of the shipowner, stated that the owner and the Club maintained that there were no grounds on which the IOPC Fund could decline to pay indemnification under Article 5. He also stated that, nevertheless, the shipowner/UK Club would waive the right to indemnification provided that all conditions of the proposed settlement were fulfilled.

3.17 Without prejudice to the IOPC Fund's position in respect of the payment of indemnification in this case, the Executive Committee noted the waiver by the shipowner/UK Club of the right to indemnification under Article 5.

3.18 The Italian delegation stated that, since the proposed global solution had been discussed with the representatives of the Italian Government only on 2 June 1995, the Government was not yet in a position to express any definite opinion on the proposal. The delegation expressed the view, nevertheless, that great progress had been made, that there were good prospects for a global solution and that the Italian Government would examine the proposal in depth with the highest priority and in an effort to reach a global settlement. This delegation added that it was important that the IOPC Fund would have a certain flexibility in respect of the details of the envisaged global settlement. He indicated, nevertheless, that even the proposed settlement would give rise to certain problems, both economic and of principle, for the Italian Government, in particular as regards environmental damage.

3.19 The Committee recalled that there were disputes concerning the issue of time-bar, the method of conversion of the maximum amount payable under the Fund Convention and the admissibility of claims for environmental damage. It was also noted that there was a dispute in respect of the question of who should benefit from the interest accruing on the shipowner's limitation fund. While remaining convinced of the legal validity of the IOPC Fund's position on these issues, the Executive Committee nevertheless recognised that the legal proceedings in Italy gave rise to some uncertainty. The Committee reiterated the desirability of victims of pollution damage being compensated.

3.20 Having considered all the issues involved, the Executive Committee decided to instruct the Director to continue the negotiations with the claimants and to authorise the Director to agree, on behalf of the IOPC Fund, to a global settlement within the framework of the amount of Lit 137 000 million referred to in paragraph 3.14 above, on the following terms and conditions:

- (a) Except as regards the shipowner's/UK Club's ex-gratia payment of Lit 25 000 million, payments would be made only to the extent that a claimant had suffered a quantifiable economic loss and no payment would be made in respect of claims for damage to the marine environment per se.
- (b) All parties to the on-going legal proceedings in Italy would withdraw their actions for compensation, irrespective of the grounds upon which the claims might be based, and irrespective of the identity of the defendant, including the claims submitted in the limitation proceedings and the claims for compensation presented in the criminal proceedings.
- (c) The IOPC Fund, the State of Italy and other claimants would terminate all proceedings in respect of the decision of the Court of first instance opening the limitation proceedings, in which they challenged the right of the shipowner (Venha Maritime Ltd) to limit his liability. All parties would also terminate their cases of oppositions to the "stato attivo", ie whether interest accrued on the shipowner's limitation fund and the method for the determination of the maximum amount available under the Fund Convention.
- (d) The IOPC Fund would withdraw its legal actions against all other parties for the purpose of recovering any amount that the IOPC Fund might have to pay as a result of the incident.
- (e) The State of Italy would give an undertaking to hold harmless the shipowner, the UK Club and the IOPC Fund against any claims by the enterprises forming ATI and their sub-contractors, Castalia and LOGECO, and the Italian territorial public entities to the extent that any of these parties did not formally withdraw their actions in accordance with sub-paragraphs (b) and (c) above.

3.21 The Executive Committee decided that the offer of a settlement on the conditions set out in paragraph 3.20 above would be open until 31 July 1995 and that this time-period could be extended by the Chairman if he considered such extension justified in view of the progress being made in the negotiations.

3.22 The Executive Committee decided to authorise the Director to:

- (a) sign binding agreements on behalf of the IOPC Fund with claimants in the context of a global settlement fulfilling the conditions set out in paragraph 3.20; and
- (b) make payments to the following claimants if a global settlement were reached:

Individuals and small businesses in Italy  
Region of Liguria and Municipalities in Italy (claims for clean-up and admissible expenses)  
Clean-up contractors, excluding the ATI consortium, Castalia and LOGECO  
Claimants in France and Monaco

3.23 The Executive Committee also decided to submit to the Assembly for consideration at its 18th session a draft Resolution, the text of which is reproduced at the Annex to the present document.

3.24 The Executive Committee reiterated its position that the negotiations with the claimants should be without prejudice to the IOPC Fund's position in respect of the question of time-bar, pending a global solution of all outstanding issues.

3.25 The Executive Committee emphasised that neither the decision to enter into negotiations nor the decision to agree to a global solution in the *Haven* case constituted a precedent but should be seen in the context of the very special circumstances of this case.

3.26 The Executive Committee expressed its gratitude to the UK Club for its efforts to arrive at a global solution of all outstanding issues arising out of the *Haven* incident.

#### **4 Seki Incident**

4.1 The Director introduced document FUND/EXC.43/3 which set out the developments in the *Seki* case since the 42nd session of the Executive Committee.

4.2 The delegation of the United Arab Emirates introduced document FUND/EXC.43/3/1 in which it presented its position on various aspects of the case. The delegation expressed concern that there were still delays in the payment of various claims presented by the Government of Fujairah, in particular the fisheries claim.

4.3 The Executive Committee was informed of the recent visit to Fujairah of the team of fisheries experts appointed by the Britannia P & I Club and the IOPC Fund to investigate the fisheries claim. It was noted with appreciation that valuable documentation had been presented by the Fujairah authorities but that more documents were awaited from the Government of Fujairah. It was also noted that the experts expected to complete their analysis of the information in order to report to the Director on their assessment of the fisheries claim within some six weeks.

4.4 The United Arab Emirate's delegation confirmed the willingness of the Government of the United Arab Emirates and the Government of Fujairah to co-operate fully with the Britannia P & I Club and the IOPC Fund in order to make progress in the assessment of the outstanding claims.

4.5 Some delegations expressed sympathy for the fishermen and concern at the delay in paying compensation caused by the lack of documentary evidence to support the fisheries claim. It was recognised that this was a difficulty that would be encountered in many countries, and particularly in developing countries.

4.6 The delegation of the United Arab Emirates requested that the Director be authorised to make a final settlement of the fisheries claim as soon as the team of experts had completed its assessment of the claim.

4.7 The Executive Committee recalled that it had, at its 42nd session, reiterated its position that a claim was admissible only to the extent that the quantum of the loss actually suffered was demonstrated. It was acknowledged that, however, a certain flexibility would have to be exercised as it could not be expected that the same types of evidence could be supplied in every case.

4.8 Several delegations took the view that this case gave rise to a very important question of principle, viz the level of evidence which should be required. They stated that for this reason this claim should be referred to the next session of the Executive Committee for consideration.

4.9 The Executive Committee noted with satisfaction the progress made in this case. The Committee considered, nevertheless, that it was not yet possible to approve the fisheries claim, either wholly or partially, nor was it possible at this stage to authorise payments of compensation. The Director was instructed to continue working in close co-operation with the authorities in the United Arab Emirates, and to report the developments to the Committee at its 44th session.

## **5 Information on other incidents**

### **Braer incident**

5.1 The Director informed the Executive Committee that further progress was being made in the settlement of the remaining claims arising out of the *Braer* incident. He stated that most of the remaining claims did not raise any questions of principle, but that the few that did would be referred to the Committee for consideration at its 44th session.

5.2 The United Kingdom delegation stated that it was unlikely that the United Kingdom Government's claim would be finally settled by 5 January 1996, ie at the expiry of the three-year period laid down in Article VIII of the Civil Liability Convention and Article 6.1 of the Fund Convention for bringing legal action to prevent claims from being time-barred. This delegation informed the Committee that, for this reason, the United Kingdom Government intended to take legal action against the shipowner, the shipowner's P & I insurer (the Skuld Club) and the IOPC Fund in September 1995, in order to protect its rights under the Conventions.

5.3 The Executive Committee recalled that the IOPC Fund and the Skuld Club had established a local Claims Office in Lerwick (Shetland) to handle claims arising out of the incident, and that the office had been relocated from Shetland to Aberdeen since 1 June 1994. The Committee was informed that the Claims Office would be closed on 15 July 1995, since the remaining claims could be handled directly by the IOPC Fund Secretariat in London and by the Skuld Club in Oslo, with the assistance of the various experts involved. The Director added that the IOPC Fund's experts would continue to visit Shetland when required.

## **6 Revision of Claims Manual**

6.1 The Committee recalled that, at its 17th session, the Assembly had welcomed the Director's proposal to publish a revised edition of the IOPC Fund's Claims Manual. It was also recalled that the Assembly had agreed with the Director that this revised edition should be expanded so as to present the criteria applied by the IOPC Fund in respect of the admissibility of claims for compensation, reflecting the position on major questions of principle taken by the Assembly on the basis of the report of the 7th Intersessional Working Group (document FUND/A.17/35, paragraph 16.1). It was noted that a draft

prepared by the Director had been submitted to the Executive Committee for consideration at its 42nd session (document FUND/EXC.42/8), that the Committee had decided to postpone its consideration of the text of the draft Claims Manual to a future session and that Member States had been invited to submit comments in writing, to reach the Secretariat by 15 May 1995 (document FUND/EXC.42/11, paragraph 4.3).

6.2 The Director introduced document FUND/EXC.43/4 which contained in the Annex the text of the draft Claims Manual as submitted by him to the 42nd session of the Executive Committee, together with amendments suggested by the Director on the basis of comments received from the Governments of Canada, France, the Netherlands and the United Kingdom and from the Oil Companies International Marine Forum (OCIMF).

6.3 The delegation of the United Arab Emirates informed the Committee that it had reservations in respect of the draft text presented by the Director on a number of points. The delegation stated that the draft addressed a number of questions not explicitly dealt with in the text of the Conventions and that the language of the draft differed on a number of points from the language of the Conventions. For this reason, this delegation took the view that the draft text should be given further consideration.

6.4 Several delegations stated that the draft text reflected properly the instructions given to the Director by the Assembly, ie that the new edition of the Claims Manual should present the criteria for the admissibility of claims applied by the IOPC Fund. It was pointed out that the Claims Manual was not intended to be a legal commentary to the Conventions but should be a practical guide to presenting claims against the IOPC Fund. For this reason, it was considered that the draft text presented by the Director should be approved, subject to certain amendments.

6.5 The Executive Committee examined the amendments to the draft text of the Claims Manual proposed by the Director, as set out in paragraph 4 of document FUND/EXC.43/4. The Committee decided to include these amendments in the text, with the exception of (a), (j), (l) and (p) which were replaced by the following:

- (i) Page 1, 1st paragraph Add two sentences after the third sentence to read:

The IOPC Fund is financed by a levy on certain types of oil carried by sea. This levy is paid by entities which receive oil after sea transport, and normally not by States.

- (ii) Page 6, 4th paragraph Add the following text at the end of the first sentence:

, or make formal notification to the IOPC Fund of a court action against the shipowner or his insurer within that three-year period (see Articles 6.1 and 7.6 of the Fund Convention).

- (iii) Page 9, 3rd paragraph Add a new paragraph under "General Criteria" as follows:

A claim is thus admissible only to the extent that the amount of the loss or damage is actually demonstrated. A certain flexibility is nevertheless exercised in respect of the requirement to present documents, taking into account the particular circumstances of the claimant or industry concerned or of the country in question. All elements of proof are considered, but the evidence provided must give the IOPC Fund the possibility of forming its own opinion on the amount of the loss or damage actually suffered.

- (iv) Page 10, 3rd paragraph Replace the 5th sentence "Claims for costs.... ineffective" with the following:

Claims for costs are not accepted when it could have been foreseen that the measures taken would be ineffective.

and divide this paragraph into two, starting the second paragraph at "Claims for costs are not accepted".



6.6 At the proposal of the delegation on the United Arab Emirates, the Director was invited to insert on the first page of the Claims Manual a sentence to the effect that the Claims Manual was not intended to be an interpretation of the Civil Liability Convention and the Fund Convention and that the texts of the Conventions would prevail.

6.7 The Executive Committee adopted the IOPC Fund's Claims Manual, as contained in the Annex to document FUND/EXC.43/4, subject to the amendments set out in paragraphs 6.5 and 6.6 above.

6.8 The Committee authorised the Director, in consultation with its Chairman and the French delegation, to make linguistic alterations to the French text in order to ensure that it conformed with the English text.

6.9 The Executive Committee instructed the Director to publish the new edition of the Claims Manual.

## **7 Any other business**

### **7.1 Entry into force of the 1992 Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention**

7.1.1 The Executive Committee noted that the requirements for the entry into force of the 1992 Protocols Amending the 1969 Civil Liability Convention and the 1971 Fund Convention had been met, and that the Protocols would enter into force on 30 May 1996 (document FUND/EXC.43/5).

7.1.2 The Executive Committee took note of the information presented by the Director concerning denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention (Articles 31 and 34.5 of the Final Clauses of the 1992 Protocol to the Fund Convention), and concerning the end of the application of the system for capping contributions (Article 36 ter of the 1992 Fund Convention).

7.1.3 It was noted that, under Article 36 of the Fund Convention as modified by the 1992 Protocol thereto, the Secretary-General of the International Maritime Organization (IMO) should convene the first session of the Assembly of the organisation set up under that Protocol (the "1992 Fund"), to be held as soon as possible after the entry into force of the Protocol and, in any case, not more than 30 days after the entry into force. The Committee was informed that the Secretary-General intended to convene that Assembly for the week commencing 24 June 1996.

### **7.2 Record of Decisions of the 42nd session of the Executive Committee**

7.2.1 The Executive Committee took note of the observations on the text of paragraph 3.5.11 of the Record of Decisions of the Committee's 42nd session, as set out in paragraph 5.1 of document FUND/EXC.43/3/1, and in particular the recommendation of the Government of the United Arab Emirates to replace the word "including" by the expression "for example".

7.2.2 The Chairman introduced document FUND/EXC.43/6 which set out the background to the adoption of the text of paragraph 3.5.11 of the Record of Decisions. He stated that the text of paragraph 3.5.11 set out in document FUND/EXC.42/11 correctly reflected the decision taken by the Committee as to the wording of the Record of Decisions and that, for this reason, it was not possible to make the amendment recommended by the Government of the United Arab Emirates.

## **8 Adoption of the report to the Assembly**

The Executive Committee adopted the parts of the Record of Decisions contained in documents FUND/EXC.43/WP.1 and FUND/EXC.43/WP.1/Add.1, including the draft Resolution set out in document FUND/EXC.43/WP.1/Rev.1 (viz paragraphs 1-4 and the Annex), subject to certain amendments. The Committee authorised the Director to prepare the remaining parts of the Record of Decisions (viz paragraphs 5-8), in consultation with the Chairman.

**ANNEX**

**DRAFT RESOLUTION  
TO BE SUBMITTED TO THE  
ASSEMBLY AT ITS 18TH SESSION**

Elaborated by the Executive Committee

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND (IOPC FUND)

RECOGNIZING the position taken by the IOPC Fund that many of the claims for compensation following the *Haven* incident had not fulfilled the requirements to avoid the time-bar under Article 6.1 of the Fund Convention;

FURTHER RECOGNIZING, however, that individuals and small businesses suffered oil pollution damage following the *Haven* incident and that, in the exceptional circumstances of this case, it is necessary that their established losses should be covered and that this can only be achieved through a global settlement;

TAKING INTO ACCOUNT that all claimants have accepted the global solution offered by the shipowner, his insurer and the IOPC Fund, and that no claims, or legal actions relating to compensation, are outstanding;

HAS DECIDED:

- (1) to provide appropriate payments to those claimants to whom the time-bar would have applied by means of:
    - (a) monies released from the *Haven* Major Claims Fund, and
    - (b) an additional levy on those who contributed to that Fund;
  - (2) that this decision does not constitute a precedent.
-