INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
46th session
Agenda item 6

FUND/EXC.46/12
12 December 1995

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

(held on 11 and 12 December 1995)

Chairman:	Mr W J G Oosterveen (Netherlands)
Vice-Chairman:	Miss A N Ogo (Nigeria)

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document FUND/EXC.46/1.

2 Examination of credentials

2.1 The following members of the Executive Committee were present:

Australia	Liberia	Norway
Canada	Mexico	Russian Federation
Finland	Netherlands	Spain
Germany	Nigeria	United Arab Emirates
Japan		

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 Member States were represented as observers:

Belgium	Greece	Sierra Leone
Denmark	Italy	Sweden
Fiji	Poland	Syrian Arab Republic
France	Republic of Korea	United Kingdom

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

Egypt
Saudi Arabia

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

International Maritime Organization (IMO)

Comité Maritime International (CMI)
Cristal Limited
International Association of Independent Tanker Owners (INTERTANKO)
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 *Braer* incident

3.1 Consideration of challenging the shipowner's right of limitation and possible recourse actions

3.1.1 The Director introduced document FUND/EXC.46/2 dealing with the question of whether the IOPC Fund should challenge the right of the owner of the *Braer* to limit his liability and whether the Fund should take legal action against the shipowner or any other person in order to recover the amounts paid by it in compensation.

3.1.2 The Executive Committee noted the arguments put forward by the owner of the *Braer* and by Assuranceföreningen Skuld (the Skuld Club - the shipowner's P & I insurer) in document FUND/EXC.46/2/2.

3.1.3 The observer delegation of the International Group of P & I Clubs made the following statement:

> This observer delegation does not seek to comment on the detailed merits of the issues raised in document FUND/EXC.46/2. However it is concerned that the approach to these issues involves considerations which may affect the relationship between the Fund and the Clubs.
>
> There are concerns as to the potential consequences of such recourse action being taken in the absence of strong reasons for taking such action, in addition to indications of a considerable likelihood of success. Particularly in circumstances where the advice received by the Fund is at variance with the conclusions of official investigations into the incident by flag and coastal states, care should be taken before embarking on speculative legal action for the purposes of recovery.
>
> It has long been recognised that close co-operation between the Clubs and the Fund is desirable for the proper functioning of the Conventions. The importance of this co-operation, and the many forms it takes, are well known.

It is not suggested that in order to maintain this co-operation, the Fund should forego any proper rights it may have to challenge rights of limitation or to pursue rights of recourse where there are strong reasons for such action in the particular case. The Clubs understand that their interests may in certain cases conflict with those of the Fund.

However the successful operation of the Conventions to date has owed much to the fact that rights to compensation in general do not depend on considerations of fault; that, as a result relatively few cases have led to the delays and complications of litigation; and that co-operation has been possible between the Clubs and the Fund. It would be regrettable if that co-operation were to be undermined by the prospect of speculative litigation over rights of limitation and recourse actions directly against Clubs.

Disputes on such matters will inevitably divert resources away from the main objective shared by the Fund and Clubs, namely that of ensuring the speedy and fair settlement of admissible claims.

This observer delegation would suggest that the policy to be adopted by the IOPC Fund in considering the pursuit of legal action for recovery is properly summarised in the following statement of the IOPC Fund's policy on recourse actions:

The Executive Committee has taken the position that, except in collision cases, the IOPC Fund should only take recourse action in cases where there were very strong reasons for taking such action and where, in addition, there was a considerable likelihood of success (document FUND/EXC.20/6, paragraph 4.2).

3.1.4 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 3.1.5-3.1.20 and 3.2.1-3.2.4, only the representatives of IOPC Fund Member States were present.

3.1.5 It was recalled that the Executive Committee had taken the view that the policy of the IOPC Fund should be to take recourse action whenever appropriate and that the Fund should in each case consider whether it would be possible to recover any amounts paid by it to victims from the shipowner or from other parties on the basis of the applicable national law. It was further recalled that the Committee had stated that if matters of principle were involved, the question of costs should not be the decisive factor for the Fund when considering whether to take legal action. It was noted that, in the Committee's view, the IOPC Fund's decision of whether or not to take such action should be made on a case by case basis, in the light of the prospect of success within the legal system in question (document FUND/EXC.42/11, paragraph 3.1.4).

3.1.6 The Executive Committee noted that on 10 October 1995 the owner of the *Braer* had presented a summons to the Court of Session in Edinburgh requesting an order that he should be entitled to limit his liability, and that the shipowner had agreed not to pursue this action until after the Committee's 46th session.

3.1.7 The Committee noted that the IOPC Fund's technical experts had stated that the cause of the casualty was the main engine failure and the loss of all main power through sea water contamination of the diesel oil. It was also noted that pipes, which had been stowed on deck broke loose in heavy weather and caused damage to some air pipes, which allowed sea water to enter the diesel storage tank. It was further noted that, in the experts' view, the deficiencies in the steam generating plant and the lack of sufficient diesel oil on board to complete a safe passage to Quebec in the event of complete steam plant failure caused the ship to be unseaworthy and that the shipowner was aware of these conditions.

3.1.8 It was noted that in their document the owner of the *Braer* and the Skuld Club had stated that the conclusions of the IOPC Fund's experts relied unduly on conjecture and speculation in the absence of hard evidence to support their theories, and that in such circumstances their theories should be given less weight than the findings of the enquiries carried out by the competent authorities in Liberia and the United Kingdom. The Committee took note of the fact that the shipowner and the Skuld Club had stressed that the United Kingdom investigation report had concluded that there was no evidence of unseaworthiness.

It was further noted that the shipowner and the Skuld Club had stated that, on the basis of the findings of the official enquiries, it was impossible to maintain that the incident had resulted in any way from the actual fault or privity of the shipowner.

3.1.9 One delegation questioned whether it was appropriate to allow the submission of documents from anyone other than Member States, observer States and observer organisations. The Executive Committee took the view that, in principle, such documents should not be admitted.

3.1.10 The Executive Committee noted the opinion of the IOPC Fund's legal advisers that, on the basis of the technical assessment made by the Fund's experts, the Fund had "a reasonably stateable case with at least some prospect of success" to challenge the right of the shipowner, the Braer Corporation, to limit its liability under the Merchant Shipping (Oil Pollution) Act 1971.

3.1.11 A number of delegations took the view that the IOPC Fund's case to challenge the shipowner's right of limitation was weak.

3.1.12 Some delegations were not so convinced of the weakness of the IOPC Fund's case and took the view that more time should be given for consideration of these very important and difficult issues.

3.1.13 It was noted that the Braer Corporation had been dissolved in March 1994 and that it was unlikely that there were any assets against which a judgement against the shipowner could be enforced.

3.1.14 After careful consideration and in view of the fact that a successful recovery by the Fund of any significant amounts was unlikely, the Executive Committee decided that the IOPC Fund should not challenge the shipowner's right of limitation or take legal action against him to recover the amounts paid by the IOPC Fund in compensation. However, the Committee also decided that, if new information became available showing that the IOPC Fund had greater prospects of success, the Director - after consultation with the Chairman - should take action to challenge the shipowner's right of limitation and take actions for recovery, if such actions were still possible.

3.1.15 The delegations referred to in paragraph 3.1.12 reserved their position in respect of the Committee's decision.

3.1.16 The Canadian delegation stated that it did not agree with the Committee's decision not to challenge the shipowner's claim to limit his liability. That delegation maintained that there was sufficient evidence of the owner's fault or privity to challenge the owner's claim.

3.1.17 The Committee noted that the Director had investigated whether the IOPC Fund should take legal action in the United Kingdom against the company managing the *Braer* (Navinvest Marine Services USA Inc, trading as B & H Shipmanagement Co). It was further noted that United Kingdom legislation (Merchant Shipping (Oil Pollution) Act 1971) effectively barred any such action, since the management company would be considered as belonging to the category of "servants or agents of the shipowner" and actions could not be brought against such persons. For this reason, the Committee decided not to take action in the United Kingdom against that company.

3.1.18 The Executive Committee noted that another option would be for the IOPC Fund to take legal action in the United States against the management company, other companies belonging to the same group and individual directors of these companies. The Committee noted that any such actions in the United States would give rise to complex legal issues and would be very costly, and that the outcome would be uncertain. The Committee took the view that the IOPC Fund should not submit to the jurisdiction of the courts of the United States, a non-Member State. For these reasons, the Executive Committee decided that the IOPC Fund should not take action in the United States against any company within the B & H Group, nor against any individual directors.

3.1.19 The Committee also considered whether the IOPC Fund should take legal action in the United Kingdom against the Skuld Club to recover the amounts paid by the Fund in compensation. It was noted that the Skuld Club Rules contained a "pay to be paid" clause (ie that the Club was under an obligation to

indemnify the shipowner only for compensation actually paid by him to the injured party), which had been upheld by the United Kingdom courts in recent cases. The Executive Committee therefore decided that the IOPC Fund should not take legal action against the Skuld Club in the United Kingdom.

3.1.20 As for the possibility of taking legal action against the Skuld Club in Norway, the Executive Committee noted the legal opinion that the Norwegian courts would not have jurisdiction to hear a recourse action brought by the IOPC Fund against the Skuld Club to recover the amounts which the Fund had paid in compensation for pollution damage in connection with the *Braer* incident. The Committee therefore decided that the IOPC Fund should not take legal action against the Skuld Club in Norway.

3.2 Indemnification of the shipowner

3.2.1 The Executive Committee considered the question of whether and, if so, to what extent the IOPC Fund was exonerated from its obligation to indemnify the shipowner and his insurer under Article 5.1 of the Fund Convention.

3.2.2 The Committee decided to postpone its decision on this issue to its 47th session.

3.2.3 It was noted that if legal action were to be taken against the IOPC Fund by the shipowner or the Skuld Club requesting indemnification, the Director would take the necessary steps to protect the Fund's position, pending a decision by the Executive Committee.

3.2.4 The Director was invited to discuss the indemnification issue with the shipowner and the Skuld Club and to suggest that they should consider not pressing for indemnification.

3.3 Claims for compensation

Loss of quotas

3.3.1 The Executive Committee recalled that, at its 44th session, it had considered a claim submitted by the Shetland Fish Producers Organisation (SFPO) relating to alleged loss of fishing quotas in respect of whitefish (haddock and whiting) and Norway lobster. It was noted that the discussion at that session had been based on a document presented by the Director (document FUND/EXC.44/17, paragraphs 3.4.13-3.4.20). It was also recalled that the Committee had decided, at the request of the United Kingdom delegation, that the matter would be re-examined after that delegation had provided further information on the quota system (document FUND/EXC.44/17, paragraph 3.4.20).

3.3.2 The Executive Committee took note of the further information on the legal framework of the operation of the quota management system in the United Kingdom, which had been provided by the United Kingdom delegation (cf document FUND/EXC.46/2/1, paragraphs 2.7-2.9).

3.3.3 The Executive Committee noted that the system for allocating fish quotas in the United Kingdom was operated within the framework of the Common Fisheries Policy of the European Union. It was noted that the quotas allocated to the United Kingdom were established on a yearly basis by the Council of Ministers of the European Union. It was further noted that the United Kingdom Fisheries Departments were responsible for the management of the United Kingdom's quotas, and that the rules for management of the system were issued by these Departments following consultation with the fishing industry. The Executive Committee noted that Fisheries Departments were constrained by these rules.

3.3.4 The Executive Committee recalled that fishing for whitefish within the exclusion zone was prohibited during the period 7 January - 24 April 1993, resulting, according to SFPO, in a reduction in the total catch of whitefish by its members in 1993. It was noted that, during 1993, the United Kingdom organisations did not catch their full quota allocations of whitefish in the North Sea, although the members of SFPO did catch their full quota. The Committee noted that SFPO had stated that, as a result of the *Braer* incident, this was achieved at a later date than would otherwise have been the case, which had reduced SFPO's chance of

obtaining an additional quota allocation, and that to compensate for this loss SFPO had purchased licences with a "track record" for a total cost of £720 000.

3.3.5 The Executive Committee noted that the Norway lobster fishery in the North Sea was subject to sectoral quotas for the first time in 1994, and that SFPO had been allocated its first Norway lobster quota in 1995, based on the actual catches during the years 1992, 1993 and 1994 by registered vessels in the SFPO membership. It was noted that SFPO had maintained that the Shetland Norway lobster fishery was only beginning to develop in 1993, and that the continued ban on fishing for this species within the exclusion zone had prevented the accumulation of a "track record", thereby reducing the sectoral quota for 1995 and future years. The Committee took note of the fact that SFPO had argued that it would have no alternative but to purchase additional Norway lobster quota or acquire licences with a "track record" to secure a reasonable allocation in future years.

3.3.6 It was noted that SFPO had requested that Fisheries Departments should, in view of the exceptional circumstances due to the *Braer* oil spill, discount the *Braer* impact on catches and restore quotas to the levels which they would have had but for the *Braer* incident. The Executive Committee noted that the United Kingdom delegation had informed the Director that the rules for the management of the quotas referred to in paragraph 3.3.3 above did not allow Fisheries Departments to take into account anything but actual catches.

3.3.7 The Committee noted that SFPO had maintained that, in this situation, it had no alternative but to continue to purchase licences that had a "track record" which would attract a quota allocation, and that the cost of such purchases would be financed by SFPO from levies on its members, who would thus incur an economic loss as a result of the *Braer* incident. It was noted that SFPO had argued that the cost of purchasing licences should be compensated by the IOPC Fund.

3.3.8 The observer delegation of the United Kingdom stated that the administrative system governing quota allocation could not be changed to reflect the effects of the *Braer* incident and therefore could not be held to be the cause of the alleged losses.

3.3.9 The Executive Committee took the view that the alleged losses incurred by the members of SFPO could not be considered as damage caused by contamination. The Committee decided, therefore, that a claim for the recovery of these costs would not be admissible.

Property damage claims

3.3.10 The Executive Committee noted that some 290 claims totalling £3.7 million had been submitted for damage to asbestos cement tiles and corrugated sheets that were used as roof covering for homes and agricultural buildings. It was noted that the claimants had alleged that the damage, which consisted of the disintegration of the material, was a result of the pollution following the *Braer* incident.

3.3.11 The Director informed the Committee of the results of a detailed investigation carried out by consulting engineers engaged by the IOPC Fund to determine whether or not oil was capable of affecting these materials in this way. It was noted that the consulting engineers had concluded that the analysis of the physical characteristics of the materials revealed nothing which was inconsistent with the age of the roofs, their degree of exposure, and the standard of workmanship and maintenance. It was also noted that, according to the consulting engineers, the physical and microstructural analysis had revealed no evidence that oil from the *Braer* had contributed to the deterioration of the materials examined, and that the chemical analysis and the petrographic examinations had revealed no evidence that petroleum hydrocarbons had penetrated the materials or that the materials had suffered any kind of deterioration as a result of contamination by hydrocarbons.

3.3.12 It was noted that, in the light of the results of the investigation, the Director had rejected these claims. The Committee endorsed the position taken by the Director.

3.3.13 Concern was expressed by some delegations as to the extensive investigation of these claims which had been carried out by the IOPC Fund. It was emphasised that it was for the claimant to prove the losses claimed.

3.3.14 The Director stated that in his view the IOPC Fund had to investigate the validity of any claim in order to take a position as to whether it was admissible.

Shetland Islands Council

3.3.15 The Executive Committee took note of the situation in respect of the claim presented by the Shetland Islands Council, as set out in paragraph 4 of document FUND/EXC.46/2/1.

3.3.16 The Committee noted in particular the position taken by the Director in respect of those items which were considered inadmissible in principle, namely those relating to environmental impact studies, to the handling of the media and to legal fees.

3.3.17 As regards environmental impact studies, it was noted that the Council had claimed compensation for the costs associated with commissioning impact assessment studies in respect of various aspects of the Shetland economy following the *Braer* incident. The Executive Committee noted that separate studies had been undertaken to consider the impact of the incident on the seafood industry, tourism, transport, the environment and agriculture, and that copies of the reports of these studies had been made available to the IOPC Fund in March 1994. The Committee noted that, in the Director's view, the reports were of a fairly general nature and did not include a level of detail which would support any particular claim, that the reports relied to a great extent on information that was available from other sources, and that due to the timing of their publication they did little to contribute to clarification of the issues relating to compensation. The Committee shared the Director's view that, for these reasons, these studies did not contribute to the submission of admissible claims for compensation and that the claim for the costs associated with such studies should be rejected.

3.3.18 With regard to the item relating to the cost of handling representatives of the media and of receiving cabinet ministers and other important persons who visited Shetland in connection with the *Braer* incident, the Executive Committee shared the Director's view that these costs could not be considered as damage caused by contamination and that they were therefore not admissible.

3.3.19 As for the item of the Council's claim relating to compensation for legal fees, the Executive Committee agreed with the position taken by the Director that advice given by an American firm which related to American legislation was not admissible, since the work carried out by this firm was not relevant for the purpose of presenting claims under the Civil Liability Convention and the Fund Convention. The Committee noted that one United Kingdom law firm had carried out work which related mostly to matters other than the preparation and presentation of claims under the Civil Liability Convention and the Fund Convention as implemented in United Kingdom law by the Merchant Shipping Acts 1971 and 1974. It was further noted that another United Kingdom law firm had focused its work on the question of wreck removal, the United Kingdom authorities' enquiry and the cause of the incident, and on potential heads of damage and prospects of recoverability. The Executive Committee agreed with the Director that the advice given by these United Kingdom firms for the most part did not relate to subjects which might form the basis of admissible claims against the IOPC Fund and that the fees relating to these matters were therefore not admissible.

Total amount of the claims

3.3.20 The Executive Committee recalled that, at its 44th session, it had instructed the Director to suspend any further payments of compensation until the Committee had re-examined at its 46th session the question of whether the total amount of the established claims would exceed the maximum amount available under the Civil Liability Convention and the Fund Convention, viz 60 million Special Drawing Rights (SDR). It was also recalled that the Committee had instructed the Director to continue negotiations concerning the outstanding claims, for the purpose of arriving at agreements on the quantum of the losses sustained (cf document FUND/EXC.44/17, paragraphs 3.4.40-3.4.46).

3.3.21 The Committee noted the information contained in paragraphs 5.8-5.15 of document FUND/EXC.46/2/1 on developments since its 44th session. It was noted that since that session, agreements on quantum had been reached with claimants for a total of £982 877.

3.3.22 The Director informed the Committee that he was not able to make any reasonable estimate of the total amount which might be awarded in the legal actions which had been or might be taken against the IOPC Fund.

3.3.23 In view of the remaining uncertainty as regards the outstanding claims, the Executive Committee decided that the suspension of payments should be maintained until the matter had been re-examined at the Committee's 47th session, to be held on 26 and 27 February 1996. The Committee expressed the hope that the situation would be clearer at the Committee's 47th session, since further claims against the IOPC Fund would be time-barred by then. The Director was instructed to continue negotiations on outstanding claims, for the purpose of arriving at agreements on quantum.

3.3.24 The Executive Committee also recalled that, at its 44th session, the Director had been instructed to study the legal and practical problems that would arise if, in a given case, a number of claims had been paid in full and the total amount of the established claims were to exceed the limit of 60 million SDR. The Committee recalled that the Director had stated, at its 44th session, that in many major cases it was difficult to establish at an early stage whether the total amount of the established claims would ultimately exceed 60 million SDR. It was recalled that he had indicated that, if it were to be required that before any payments were made in full to claimants there would have to be absolute certainty that this limit would not be exceeded, it would be impossible to pay any claims in full, or even to pay a high percentage of any agreed amounts, until the periods of three and six years laid down in Article 6 of the Fund Convention had expired and all claims brought before the courts had been decided by final judgement. The Committee recalled that the Director had considered that if such certainty were required, the IOPC Fund would not be able to pursue its present policy of ensuring the prompt payment of compensation to victims, and that the Director had mentioned that, in every case, he examined together with the Fund's experts the likely level of the established claims, but could not be sure that his estimate of the total figure would be correct.

3.3.25 The Director drew attention to the fact that, in the event that the total amount of the established claims were to exceed 60 million SDR and a number of claims had already been paid in full, the IOPC Fund would find itself being subject to conflicting obligations pursuant to the Fund Convention: under Article 4.5 the IOPC Fund should ensure that all claimants are treated equally, whereas under Article 4.4 the compensation under the Civil Liability Convention and the Fund Convention should not exceed 60 million SDR. The Director stated that he could not see how both these obligations could be fulfilled in this situation. The Committee noted that he considered that it would not be possible to reclaim any amounts from those claimants who had already been paid in full.

3.4 General observations

3.4.1 The United Kingdom observer delegation stated that, in general, the IOPC Fund had handled the claims arising out of the *Braer* incident successfully, and the delegation thanked Member States, the IOPC Fund Secretariat and all involved for having ensured that payments were made from the earliest stage and for the efforts to solve many complex issues raised as a result of the incident. This delegation considered, nevertheless, that a number of lessons could be learned from this case. The delegation mentioned the bridging fund set up by the United Kingdom Government to facilitate the prompt payment of claims in the early stages, and it was suggested that similar arrangements might be appropriate in other cases. This delegation also mentioned that it was crucial that all parties were prepared to conduct negotiations in an open manner.

3.4.2 In the view of the United Kingdom observer delegation, it was unfortunate that not all claims had been finally settled before the expiry of the time-bar period and that some claimants would have to take legal action to protect their rights. It was mentioned that States should take the necessary steps to ensure

that claimants were aware of the provisions on time-bar in the Civil Liability Convention and the Fund Convention. It was stated that, although the IOPC Fund had to be careful to avoid over-payment situations, the Fund should not be too cautious in making payments at an early stage. Reference was also made to the importance of full explanations being given to claimants whose claims were rejected.

4 Information on other incidents

4.1 *Haven* incident

4.1.1 The Executive Committee recalled that only a few claimants, namely the French State, the French municipalities, the Principality of Monaco and a few Italian claimants, had fulfilled the requirements of Article 6.1 of the Fund Convention by making a notification under Article 7.6. The Committee further recalled that it 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). It was also noted that the conditions set by the Executive Committee for a global solution in the *Haven* case had not been met, and that the Committee had referred the matter to the Assembly (document FUND/EXC.44/17, paragraph 3.2.26).

4.1.2 The Executive Committee recalled that the French delegation had expressed the view, at both the *44th session of the Executive Committee and the 18th session of the Assembly* in October 1995, that it now appeared very difficult for a global settlement to be reached in the *Haven* case. It was also recalled that the delegation had stated that, for those claimants who had observed the time-bar provisions of the Fund Convention, the claims should therefore be paid promptly. It was noted that the French delegation had therefore requested that the Director should take the necessary steps in the coming weeks so that compensation could be paid to French claimants immediately after the Committee's 46th session (documents *FUND/EXC.44/17, paragraphs 3.2.28 and 3.2.29, and FUND/A.18/26, paragraph 11.13*).

4.1.3 The Executive Committee noted that the Assembly had decided, at its 18th session, to authorise the Executive Committee to approve at least partial payments to claimants in France, Monaco and Italy who had taken the steps required under the Conventions to prevent their claims from becoming time-barred. The Committee also noted that the Assembly had instructed the Director to study this matter further, in consultation with the French delegation, and to refer the matter to the Committee at a future session for decision (document FUND/A.18/26, paragraph 11.14). The Committee took note of the Director's study of the matter, as set out in document FUND/EXC.46/3.

4.1.4 The Committee noted that of the claims which were not time-barred, agreements on quantum had been reached in the amount of Llt 11 357 million (£4.6 million), whereas agreements had not yet been reached with certain claimants whose claims totalled Llt 17 687 million (£7.1 million).

4.1.5 The Director informed the Executive Committee that the French Government had made a formal request to the IOPC Fund regarding payment to French claimants. It was noted that in its request the French Government had stated that, in its view, it would not be possible to find a solution acceptable to the victims on a purely technical basis. It was mentioned in the request that the uncertainty in respect of the on-going court proceedings would not permit partial payment of those claims in respect of which an agreement on quantum had been reached. It was also noted by the French Government in the request that the shipowner's insurer would not be able to make any payment until the Italian courts had established the admissible amount of all claims and, in particular, the claims relating to damage to the marine environment. The Executive Committee noted that the French Government maintained that, in these circumstances, only a payment by the IOPC Fund based on equity would meet the concerns expressed by the French delegation and supported by a number of other delegations in October 1995.

4.1.6 The Executive Committee noted that the French Government had suggested that payments of the French claims could be made in stages, with the claims presented by the 31 French municipalities, Direction départementale des Services d'incendie et de secours du Var and Parc National de Port Cros being paid in full during the weeks following the Committee's 46th session, while the question of payment

to the French State, as well as the payment of interest and legal costs to all French claimants could be referred to a future session, after the court of first instance in Genoa had issued its decision on the list of established claims ("stato passivo"). The Committee noted that the French Government considered that such a solution would be equitable and would take account of the technical difficulties for the IOPC Fund of making payments.

4.1.7 The Committee shared the Director's view that the question of payments to claimants whose claims were not time-barred vis-à-vis the IOPC Fund had to be considered not only for the French claimants but also for the claimants in Monaco and Italy who had also fulfilled the requirements of Article 6.1 of the Fund Convention.

4.1.8 In view of the very high aggregate amount of the claims and the uncertainty as regards the position which would ultimately be taken by the Italian courts on a number of issues, the Executive Committee agreed with the Director that it was not possible to make any meaningful calculation of a pro rata reduction of the payments which could be made to claimants who had taken the steps required in the Fund Convention to prevent their claims from becoming time-barred vis-à-vis the IOPC Fund. The Committee shared the Director's view that, if the percentage were fixed at such a level as to guarantee that all claimants would receive the same percentage of their established claims, whatever the outcome of the on-going court proceedings in Italy, the percentage would have to be set at such a low level that it would not be attractive to the claimants.

4.1.9 The Executive Committee noted that, if payment of the claims under consideration were made, each claimant should in principle receive a proportional payment from the shipowner's limitation fund. It was noted that, in view of the on-going legal proceedings, it appeared that the Court of first instance in Genoa would not permit the limitation fund to be used for any such payments, and that it was unlikely that the shipowner's P & I insurer (the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (the UK Club)), which had established the limitation fund on behalf of the shipowner, would be prepared to make any such payments. The Committee took note of the fact that any payments of these claims would therefore have to be made entirely by the IOPC Fund.

4.1.10 The Committee recalled that, although convinced of the legal validity of the IOPC Fund's position in respect of the time-bar issue, it had nevertheless recognised that the legal proceedings in Italy gave rise to some uncertainty as regards the final outcome of this issue. The Executive Committee recognised that, depending on the outcome of these proceedings, the total amount of the established claims against the Fund could be fixed by the Italian courts at an amount which exceeded the total amount available under the Civil Liability Convention and the Fund Convention. It was noted that in such a situation, each claim would be reduced pro rata. The Committee noted that if, in such a hypothetical situation, the IOPC Fund had paid a number of claimants more than their pro rata share, a complex legal situation would arise.

4.1.11 The French observer delegation recalled the position taken by the French Government and drew the Executive Committee's attention to the particular case of the 31 French municipalities, Direction départementale des Services d'incendie et de secours du Var and Parc National de Port Cros. It was indicated that, by proposing to defer payment of its own claim until the legal situation had become clearer, the French Government envisaged guaranteeing the IOPC Fund - up to the level of the French State's own claim - against the risk of overpayment which might result from immediate payment to the other French claimants who had been caught up in this procedure.

4.1.12 Some delegations considered it important that those claimants who had taken steps to prevent their claims from becoming time-barred should be paid as soon as possible. For this reason, those delegations took the view that at least partial payments could be made to those claimants in France, Monaco and Italy. It was suggested that partial payments of 50% or 65% of the agreed amounts could be made to those claimants, in view in particular of the guarantee given by the French Government to protect the IOPC Fund from overpayment.

4.1.13 Other delegations expressed their sympathy for the situation of the claimants under consideration but expressed the view that the IOPC Fund would have to exercise caution in view of the uncertainty that existed in relation to the total amount of the claims which would in the end be approved by the Italian courts. Some delegations also referred to the possible impact that payments to those claimants would have on the IOPC Fund's position in the on-going court proceedings in Italy.

4.1.14 At the invitation of the Chairman, the IOPC Fund's Italian lawyer stated that payments, whether in full or partial, to the claimants in France would cause a very serious reaction in Italy against the IOPC Fund. He stated that such payments could undermine any remaining possibility of arriving at a global settlement of all claims. He also considered that such payments would prejudice the IOPC Fund's position in the on-going court proceedings in Italy.

4.1.15 A representative of the UK Club, at the invitation of the Chairman, stated that the Club agreed with the Director's analysis set out in document FUND/EXC.46/3. He stated that as regards the UK Club all claimants had complied with the time-bar provisions and that for this reason the Club did not consider it appropriate to differentiate between claimants on the grounds of time-bar. He also stated that the UK Club did not consider it appropriate at this time to consider payments to selected claimants, particularly while there remained any prospect of a settlement which would release funds to all claimants equally. He mentioned that discussions had continued with the Region of Liguria and the affected Italian provinces and municipalities for the purpose of determining whether a settlement of their claims could be reached within the framework of the previous offer for a global settlement. He reported that progress had been made in these discussions and was hopeful that the remaining claimants in this group would accept the offer, in which case the Italian State would be the only major claimant whose acceptance of the terms of the previous proposal for a global settlement had to be obtained. Finally he stated that if the Committee were to approve payment to claimants who had taken steps to prevent their claims from becoming time-barred, equal treatment should be given to the claims presented by the shipowner and the UK Club, although the shipowner and the Club would be prepared to wait for some time before making a formal request to this effect, pending clarification of the situation in Italy.

4.1.16 The Executive Committee shared the concern of the French delegation that those claimants who had taken the necessary steps to prevent their claims from becoming time-barred should be paid as soon as possible. Nevertheless, the Committee took into account the remaining uncertainty as to the outcome of the legal proceedings in Italy. It also noted the advice given by the IOPC Fund's Italian lawyer as to the consequences which payments to the French claimants might have on the possibility of reaching a global settlement in this case and on the on-going court proceedings in Italy. For these reasons, the Committee decided to postpone further consideration of this issue to its 47th session.

4.1.17 The French observer delegation took note of the Executive Committee's decision to postpone consideration of this question to the Committee's 47th session, to be held in February 1996. That delegation stressed, however, that it did not consider that the psychological effect in Italy of immediate payment being made to certain claimants was an acceptable argument. The delegation added, nevertheless, that the decision to postpone consideration of the question to the next session of the Executive Committee might damage the image of the IOPC Fund in France.

4.2 *Aegean Sea* incident

4.2.1 The Director introduced document FUND/EXC.46/4 concerning developments which had arisen in the *Aegean Sea* case since the 45th session of the Executive Committee.

4.2.2 The Executive Committee noted that the Penal Court in La Coruña had fixed the hearing in the criminal proceedings against the master of the *Aegean Sea* and the pilot to start on 9 January 1996. It was noted that in the criminal proceedings the Court would also consider the claims for compensation which had been presented in these proceedings.

Request for the IOPC Fund to pay 60 million SDR into Court

4.2.3 The Director informed the Committee that a lawyer representing a large number of claimants had filed a request on 30 November 1995 that the Penal Court should order the IOPC Fund to constitute a fund with the Court of 60 million SDR. It was noted that in his petition to the Court, the lawyer had maintained that such a payment would be in conformity with the IOPC Fund's obligation under the Civil Liability Convention and the Fund Convention to constitute a fund, and had referred to the fact that the total amount of the claims pursued in the Penal Court exceeded the amount available under the Civil Liability Convention and the Fund Convention. It was also noted that the lawyer had drawn attention to the fact that his clients had reserved in the criminal action their civil rights to be pursued later before a civil court and that he had also mentioned that there were other potential claims. It was further noted that the lawyer had maintained that for this reason the total amount payable under the Conventions should be paid into the Court so that it would be available for distribution by the Court.

4.2.4 The Executive Committee shared the Director's view that there was no basis in the Fund Convention for this request. The Committee stated that unlike under the Civil Liability Convention, where the shipowner's entitlement to limit his liability was conditional on the establishment of a limitation fund, the maximum amount of 60 million SDR in the Fund Convention applied without the establishment of any "fund" with the Court. For these reasons, the Executive Committee decided that the IOPC Fund should oppose the request made by this lawyer as having no basis in the Fund Convention, which formed part of Spanish law.

4.2.5 The Spanish delegation stated that it reserved its position on this issue.

Time-bar

4.2.6 It was recalled that, on the basis of a document submitted by the United Kingdom delegation (document FUND/EXC.44/16), the Executive Committee had, at its 44th session, considered certain questions concerning the need for claimants to take legal action to prevent their claims from becoming time-barred.

4.2.7 It was also recalled that, at the Executive Committee's 44th session, the United Kingdom delegation had stressed the importance of Member States ensuring that claimants were informed of the existence of the time-bar provisions in the Civil Liability Convention and the Fund Convention. The Committee had noted that the United Kingdom Government intended to provide such publicity to claimants following the *Braer* incident.

4.2.8 The Executive Committee recalled that a number of delegations had stated that the United Kingdom delegation had raised some very interesting legal questions, although most of these delegations had expressed the view that it would not be for the IOPC Fund to interpret the provisions in the Conventions relating to time-bar, since the Fund should not act as a legal adviser to claimants. It was recalled that the point had also been made that the provisions of the Conventions concerning the time-bar were very clear and imposed very strict rules which claimants had to observe, and that, since the legal situation in respect of time-bar varied from one jurisdiction to another, it would be very dangerous for the IOPC Fund to give any advice to claimants. It was further recalled that a number of delegations had pointed out that claimants should not take any risks in this regard, but should take legal action to protect their rights whenever they thought it appropriate.

4.2.9 The Committee recalled that it had taken the view that the IOPC Fund should not give any interpretation of the relevant provisions in the Conventions relating to time-bar and should not give legal advice to claimants. It was also recalled that the Committee had endorsed the view that the strict provisions in the Conventions should be applied in every case (document FUND/EXC.44/17, paragraph 3.15.4).

4.2.10 It was noted that at the 18th session of the Assembly, the United Kingdom delegation had invited the Assembly to clarify the legal situation of those claimants with whom the IOPC Fund had agreed a full settlement on the admissible quantum of their claims, but where no payment or only a partial payment had

been made. The Committee noted that the Assembly had taken the view that, if such claimants did not take legal action, the IOPC Fund would not consider their claims to be time-barred (document FUND/A.18/26, paragraphs 29.1 and 29.2).

4.2.11 The Executive Committee noted that the three-year time period specified in Article 6.1 of the Fund Convention had expired in the *Aegean Sea* case for most claimants on or shortly after 3 December 1995.

4.2.12 At the invitation of the Chairman, the IOPC Fund's Spanish lawyer gave information on Spanish law in respect of time-bar and the likely position of the Spanish courts in respect of the various groups of claims dealt with paragraphs 4.2.13-4.2.20 below.

4.2.13 The Executive Committee noted that a number of claimants in the *Aegean Sea* case had exercised their right to claim compensation from the shipowner and the insurer in the criminal proceedings, as permitted under Spanish procedural law, and that the IOPC Fund had been notified of these actions (cf document FUND/EXC.46/4, paragraph 4.7). It was further noted that actions for compensation had also been taken by these claimants, through the public prosecutor and in some cases directly, against the IOPC Fund in these proceedings. The Committee shared the Director's view that these claims were not time-barred vis-à-vis the IOPC Fund.

4.2.14 The Committee noted that a number of claimants in the fishery and aquaculture sectors (represented by the same lawyer) had filed criminal accusations against four individuals (cf document FUND/EXC.46/4, paragraph 4.8). It was noted that these claimants had not submitted claims for compensation in these proceedings, but had only reserved their right to claim compensation in future proceedings (ie in civil proceedings to be brought at a later date after the completion of the criminal proceedings) without any indication of the amounts involved. The Committee noted that, in their request to the Penal Court, these claimants had expressly reserved the right to exercise civil actions resulting from the criminal offence without naming any particular defendants. It was noted that the effect of such a reservation under Spanish law would be to preserve rights against those later condemned criminally and the persons financially liable for their acts, including the shipowner. It was also noted that, in view of the IOPC Fund's obligation to pay compensation under the Fund Convention, the Penal Court had considered, on the basis of the petitions of the public prosecutor and some of the parties, that the IOPC Fund might be held directly liable in the same way as the shipowner's P & I insurer (the UK Club). The Committee noted that the IOPC Fund, which had become party to the criminal proceedings at the request of the public prosecutor and a number of claimants, had become aware of the position of these claimants.

4.2.15 As regards the claims referred to in paragraph 4.2.14, the Spanish delegation expressed the view that, on the basis of the provisions in Spanish procedural law, the reservation of the right to pursue action for compensation in future civil proceedings was sufficient to prevent their claims from becoming time-barred under the Fund Convention.

4.2.16 As for the question of whether the claimants referred to in paragraph 4.2.14 had prevented their claims for compensation from becoming time-barred vis-à-vis the IOPC Fund, it was recognised that these claimants had neither brought legal action against the IOPC Fund within the prescribed time period, nor notified the IOPC Fund of an action for compensation against the shipowner or the UK Club. In view of the relationship in Spanish law between criminal and civil proceedings, the Committee noted the possible argument that the above-mentioned reservation of the right to exercise civil action might be considered as a notification to the IOPC Fund which would prevent these claims from becoming time-barred vis-à-vis the Fund. It was noted that provisional payments had been made by the IOPC Fund and the UK Club to some of these claimants, although no agreement had been reached on the admissible quantum of these claims. Recalling that it had previously decided that the strict provisions on time-bar in the Civil Liability Convention and the Fund Convention should be applied in every case, the Executive Committee took the view that these claims should be considered time-barred vis-à-vis the IOPC Fund. It was agreed that the payments made to some claimants in this group had been correctly made.

4.2.17 The Executive Committee considered the position of a third group of claimants who had presented their claims to the Joint Claims Office in La Coruña but not to the Court (cf document FUND/EXC.46/4, paragraph 4.9). In respect of this group of claims, the Spanish delegation recalled that the Joint Claims

Office had been set up for the very purpose of receiving claims and that it had been very useful for all parties. For this reason, it was necessary in this delegation's view to adopt a flexible approach and consider that the submission of claims to the Joint Claims Office was a tacit notification to the IOPC Fund. It was also pointed out that the notification of further claims to the Joint Claims Office had been made only two days before the expiry of the three-year period and that the notification was clearly made for the purpose of protecting the claims from becoming time-barred. The Committee took the view that these claimants had not taken the steps required under the Fund Convention to prevent their claims from becoming time-barred vis-à-vis the IOPC Fund, again referring to the Committee's position that the strict provisions on time-bar in the Fund Convention should be applied in every case.

4.2.18 The Executive Committee also examined the position of those claimants with whom agreements had been reached as to the admissible quantum of their claims, many of whom had been paid in full or in part (cf document FUND/EXC.46/4, paragraph 4.10). On the basis of the position taken by the Assembly at its 18th session (cf paragraph 4.2.10 above), the Committee shared the Director's view that these claims were not time-barred vis-à-vis the IOPC Fund and that the claimants in this group who had not been paid in full retained the right to further payments on the basis of their respective settlement agreements.

4.2.19 The Director informed the Committee that he had recently learned of a claim having been presented to the Civil Court in La Coruña by the shipowner and the UK Club against the IOPC Fund claiming compensation for 17.5 million Guilders (£6.9 million), relating to payments made under Article 14 of Lloyds Open Form 90 Contract, and that according to the information available this claim had been presented to the Court on 30 November 1995. The Committee agreed with the Director that these claimants had apparently taken the necessary steps to prevent their claim from becoming time-barred vis-à-vis the IOPC Fund.

4.2.20 The Committee was also informed of a further group of claims in respect of which "conciliation acts" had recently been presented to the Civil Court in La Coruña. The Committee took note of the fact that so far the IOPC Fund had not been served with the documents and that the Fund did not have any information concerning the claimants, the defendants or the amounts claimed. The IOPC Fund's Spanish lawyer informed the Committee that conciliation acts, according to a decision by the Spanish Supreme Court, had the effect of interrupting prescription but not of preventing the extinction of rights ("caducidad"). In view of the fact that there was still insufficient information about these claims, the Committee decided to postpone its decision in respect of the time-bar issue to its 47th session. The Committee instructed the Director to present a study on the time-bar issue in respect of these claims. He was also instructed to refrain from taking any action which could prejudice the IOPC Fund's position in respect of the time-bar issue, pending the decision of the Committee.

4.2.21 The Spanish delegation stated that it might be appropriate to revert to the time-bar issue in respect of all groups of claims at the Committee's 47th session to be held in February 1996, when further information would be available.

Level of provisional payments

4.2.22 It was recalled that a document had been presented in October 1994 by the Director General of Fisheries and Aquaculture 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 the *Aegean Sea* incident. It was also recalled 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 (cf document FUND/EXC.41/2, paragraph 4.1.2).

4.2.23 The Committee recalled that, at its 41st session, it had endorsed the Director's decision to increase partial payments from 25% 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, since the uncertainty as to the total amount of the claims had been reduced (document FUND/EXC.41/2, paragraphs 4.1.4 and 4.1.5).

4.2.24 The Director informed the Executive Committee that the Spanish Government had requested an increase in the level of provisional payments to claimants in the *Aegean Sea* case from 40% to 50% of the amounts accepted by the IOPC Fund, without prejudice to a new assessment of the damage at a later stage in the light of available documentation. The Committee noted that the Spanish Government maintained in its request that the IOPC Fund should take a flexible approach to the interpretation and application of Article 4.5 of the Fund Convention, so that further provisional payments could be made before the end of 1995. It was noted that the Spanish Government had expressed its continued support for the position taken by the Executive Committee as regards the necessity for the claimants to provide evidence to substantiate their losses, but nevertheless maintained that the evidence presented showed that damage suffered by the members of the fishery unions (cofradías) greatly exceeded the provisional payments received so far.

4.2.25 The Spanish delegation referred to the points raised in its recent request as set out in paragraph 4.2.24 and stressed the importance that further provisional payments be made in order to mitigate the financial hardship of victims, in particular those in the fishery and aquaculture sectors. It emphasised that the loss actually suffered by these claimants by far exceeded the amount of the provisional payments made to date. The Spanish delegation stated that there were very good reasons for this request: there was evidence which justified further provisional payments, it was reasonable to make such payments - which would only be for a fairly low amount - to avoid possible discrimination in comparison with other incidents and attempts were being made to reduce the total amount claimed. The delegation stated that further provisional payments would be very low and would not be against the letter and spirit of Article 4.5 of the Fund Convention.

4.2.26 The Spanish delegation stated that if the Executive Committee were not prepared to increase the percentage payable, it might consider authorising the Director to take a decision on this point if binding agreement could be reached with all claimants to the effect that the total amount of all claims arising out of this incident would be in the region of 60 million SDR. They informed the Committee that discussions were at present being held with the claimants to this effect.

4.2.27 The Spanish delegation stated further that the criminal proceedings scheduled for 9 January 1996 and the other complex proceedings currently in progress should not affect endeavours being made to achieve a new assessment of the damage at a later stage in the light of available documentation.

4.2.28 The Japanese delegation stated that it should not be the role of the Executive Committee to negotiate but to take decisions on proposals made by the Director and to give instructions and guidance to him, as required. This view was supported by some other delegations.

4.2.29 The Executive Committee decided that, in view of the remaining high degree of uncertainty as to the total amount of the established claims, it would not be appropriate at this stage to increase the provisional payments beyond 40% of the damage actually suffered by the claimants as assessed by the IOPC Fund's experts.

4.3 *Sea Prince* incident

4.3.1 The Director introduced document FUND/EXC.46/5 which contained information on the *Sea Prince* incident.

4.3.2 The Executive Committee recalled that it had, at its 44th session, expressed its concern that the total amount of the established claims arising out of this incident might exceed the total amount of compensation available under the Civil Liability Convention and the Fund Convention. It was noted that

for this reason, the Committee had considered it necessary for the IOPC Fund to exercise caution in the payment of claims. It was also recalled that the Executive Committee had authorised the Director to make final settlements as to the quantum of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee, but that the Director had not been authorised to make any payments (cf document FUND/EXC.44/17, paragraphs 3.8.2 and 3.8.3).

4.3.3 In the light of the information contained in document FUND/EXC.46/5 on the aggregate amount of the claims presented, the Executive Committee considered that the Director could now be authorised to make partial payments of claims which had been settled. In view of the fact that the aggregate amount of the claims presented or indicated still greatly exceeded the maximum amount available under the Civil Liability Convention and the Fund Convention, however, the Committee decided that the IOPC Fund's payments should for the time being be limited to 25% of the established damage suffered by each claimant.

4.4 *Yeo Myung* incident

4.4.1 The Executive Committee took note of the information contained in document FUND/EXC.46/6 on the *Yeo Myung* incident.

4.4.2 On the basis of the assessment made by the IOPC Fund's experts, the Executive Committee agreed with the Director that it was unlikely that the total amount of the established claims arising out of this incident would exceed Won 3 000 million (£2.5 million), and therefore endorsed his decision that the established claims could be paid in full by the IOPC Fund.

4.5 *Yuil N°1* incident

4.5.1 The Executive Committee took note of the information contained in document FUND/EXC.46/7 on the *Yuil N°1* incident.

4.5.2 The Executive Committee recalled that it had, at its 44th session, expressed its concern that the total amount of the established claims arising out of this incident might exceed the total amount of compensation available under the Civil Liability Convention and the Fund Convention. It was noted that for this reason, the Committee had considered it necessary for the IOPC Fund to exercise caution in the payment of claims. It was also recalled that the Committee had authorised the Director to make final settlements as to the quantum of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee, but that the Director had not been authorised to make any payments (cf document FUND/EXC.44/17, paragraphs 11.2 and 11.3).

4.5.3 The Committee noted that, after consultation with the IOPC Fund's experts, the Director took the view that the claims in respect of which agreements had been reached represented at least 50% of the total damage suffered by fishery interests and some 80% of the estimated total cost of the clean-up operations. It was also noted that some uncertainty remained as to whether a further spill of oil might occur either from the wreck or during wreck removal operations.

4.5.4 The observer delegation of the Republic of Korea expressed its gratitude to the IOPC Fund Secretariat for its efforts in dealing with the claims arising out of the recent major oil spills in Korea. As for the *Yuil N°1* incident, the delegation drew attention to the fact that, although agreement had been reached on the quantum of the claims for clean-up operations for a total amount of Won 10 300 million, only Won 627 million had so far been paid by the P & I insurer. The delegation emphasised that this delay in payment had given rise to public complaints from local labour, and requested that the IOPC Fund should give prompt attention to this matter.

4.5.5 The observer delegation of the Republic of Korea informed the Committee that a compensation federation had been set up by six fisheries co-operatives, and that joint surveys had been carried out in

November 1995 by the federation's experts and by the IOPC Fund's experts. The delegation stated that of these six co-operatives only a part of one co-operative had reached agreement on the quantum of its claim, and that the others were preparing their claims. The delegation considered therefore that it was too early to assess that the agreed claims represented at least 50% of the total damage suffered by fishery interests.

4.5.6 In the light of the information contained in document FUND/EXC.46/7 on the aggregate amount of the claims, the Executive Committee authorised the Director to make payments of claims which were settled. In view of the remaining uncertainty concerning the total amount of the claims, however, the Committee decided that the IOPC Fund's payments should for the time being be limited to 60% of the established damage suffered by each claimant.

4.6 *Honam Sapphire* incident

4.6.1 *The Executive Committee took note of the information contained in document FUND/EXC.46/8 on* the *Honam Sapphire* incident, which had occurred on 17 November 1995 in the Republic of Korea.

4.6.2 The Executive Committee expressed its concern that the total amount of the established claims arising out of this incident might exceed the total amount of compensation available under the Civil Liability Convention and the Fund Convention. For this reason, the Committee considered it necessary for the IOPC Fund to exercise caution in the payment of claims.

4.6.3 The Executive Committee authorised the Director to make final settlements as to the quantum of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee. The Director was not authorised at this stage to make any payments.

5 Any Other Business

5.1 TOVALOP and CRISTAL

5.1.1 The Executive Committee noted that the Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP) and the Contract Regarding a Supplement to Tanker Liability for Oil Pollution (CRISTAL) would not be renewed when their present terms ended in February 1997 (cf document FUND/EXC.46/9).

5.1.2 The observer delegation of the International Tanker Owners Pollution Federation Limited (ITOPF - the company which administers TOVALOP) stated that ITOPF and Cristal Limited (the company which administers CRISTAL) would take every opportunity to encourage States to ratify the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention.

5.1.3 The Executive Committee welcomed the confirmation in document FUND/EXC.46/9 that the discontinuation of TOVALOP would not affect the provision of technical services by ITOPF in the field of oil response.

5.2 1992 Civil Liability Convention: Issuing of certificates of insurance during the transitional period and recognition of certificates of insurance

5.2.1 The Director introduced document FUND/EXC.46/10 which dealt with certain questions concerning the issuing and recognition of certificates of insurance during the transitional period referred to in Article XII bis of the 1992 Civil Liability Convention.

5.2.2 The United Kingdom delegation stated that it had discussed this issue with the International Group of P & I Clubs and had reached a practical solution. The delegation invited the competent authorities of other Member States, if they so wished, to contact the United Kingdom delegation for further information.

5.3 Entry into force of the 1992 Protocols Amending the 1969 Civil Liability Convention and the 1971 Fund Convention

The Executive Committee took note of the information contained in document FUND/EXC.46/11 concerning further ratifications of the 1992 Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention.

5.4 Date of next session

The Executive Committee decided to hold its 47th session on 26 and 27 February 1996.

6 Adoption of the Report to the Assembly

The Executive Committee adopted the parts of the Record of Decisions contained in documents FUND/EXC.46/WP.1, FUND/EXC.46/WP.1/Add.1 and FUND/EXC.46/WP.1/Add.2 (viz paragraphs 1-4.2), subject to certain amendments. The Committee authorised the Director to prepare the remaining part of the Record of Decisions (paragraphs 4.3-6), in consultation with the Chairman.