

INTERNATIONAL OIL POLLUTION COMPENSATION FUND
FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES
DUS A LA POLLUTION PAR LES HYDROCARBURES

EXECUTIVE COMMITTEE -
6th session
Agenda item 7

FUND/EXC.6/4
27 May 1982
Original: ENGLISH

RECORD OF DECISIONS OF THE EXECUTIVE COMMITTEE
(held from 5 to 7 May 1982)

Chairman: Mr P Novia (Italy)
Vice-Chairman: Mr C Douay (France)

Opening of the Session

The Executive Committee, after being declared open by the Chairman, decided not to grant observer status under Rule 7 of the Fund's Rules of Procedure to a representative of a claimant who had requested to be admitted to the Executive Committee under this provision.

1 Adoption of the Agenda (Agenda item 1)

The Executive Committee adopted the Agenda as contained in document FUND/EXC.6/1.

2 Examination of Credentials (Agenda item 2)

The following members of the Executive Committee were present:

France	Norway
Federal Republic of Germany	United Kingdom
Indonesia	Yugoslavia.
Italy	

The Director informed the Executive Committee that representatives of all members of the Executive Committee present at the meeting had submitted credentials to the IOPC Fund and that they were in order.

The following States were represented as observers:

Bahamas	Netherlands
Brazil	Poland
Canada	Portugal
Denmark	Spain
Gabon	Sweden
Japan	Switzerland.
Liberia	

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

IMO	INTERNATIONAL GROUP OF P & I CLUBS
EEC	CRISTAL
ICS	OCIMF
ITOPF	PIANC.

3 Adoption of Claims Manual (Agenda item 3)

The Executive Committee discussed the draft Claims Manual submitted to it (document FUND/EXC.6/2) and adopted the amendments contained in document FUND/EXC.6/WP.1 (attached).

It requested the Director to publish this Manual in printed form and to make it available to the Members and observers of the IOPC Fund as well as to all interested persons and organisations, especially those considering making a claim for pollution damage against the IOPC Fund.

4 Discussion of Settlement of Claims Arising out of the TANIO Incident (Agenda item 4)

4.1 The Director introduced, and the Executive Committee discussed, the documents submitted to the sixth session of the Executive Committee with regard to this Agenda item. In addition, slides on the clean-up of the polluted coastline in France and a film on the pumping of the oil out of the sunken wreck were shown. Additional questions asked by delegates and observers were answered by the French delegation and by the experts employed by the IOPC Fund.

4.2 With regard to the pumping operation, the Executive Committee agreed that no final decision could be taken on the reasonability of the expenses incurred as long as the IOPC Fund's experts did not have all information on the performance of this operation available and had not submitted their report to the IOPC Fund.

It was agreed, therefore, that the additional information requested by the IOPC Fund's consultants should be made available by the French Government and that a technical working group, consisting of the IOPC Fund's consultants and the French technical experts should meet to discuss the technical aspects of the pumping operation. The Executive Committee could then consider the French claim for the pumping expenses in the light of the report to be submitted by the IOPC Fund's consultants.

4.3 With the reservation that a final opinion could be expressed only after the IOPC Fund's consultants' report had been examined, several delegates stated that they concurred with the view expressed by the Director and the representative of the UK P & I Club that the pumping of the oil appeared to be a reasonable response to the threat of further pollution arising from the oil in the sunken wreck. They were satisfied that the different technical solutions had been examined as thoroughly as the short time available permitted before the pumping contract was awarded. However, delegations also expressed their concern with respect to the increase of the cost from the agreed amount of about 47 million Francs to about 250 million Francs.

4.4 With regard to the settlement of the claims made against the IOPC Fund, the Executive Committee agreed with the Director that at the present stage it was not necessary to discuss the legal problem of establishing on which date the Fund's upper limit of 675 million (gold) francs had to be converted into national currencies, and the question of how the amount available for compensation could be distributed among claimants before the expiry of the six years' limitation period if not all claimants agreed on a distribution plan to be suggested by the Director.

4.5 The Executive Committee then discussed the individual claims. The Director informed the Committee of the information available and the status of the negotiations that had taken place with regard to the settlement of each of them. He explained that some of the claims had already been finally examined while with respect to others substantial information was still lacking and with regard to many claims no information at all had been submitted. The Director expressed the hope that, in spite of the present lack of information, it would be possible to negotiate a settlement of all claims before the expiry of the three years' limitation period in March 1983. He underlined the constructive co-operation with all claimants and expressed the hope that an amicable settlement could be reached and that no claimant would have to go to court to sue the IOPC Fund.

4.6 The Executive Committee accepted the claims made by the States of Jersey (£8,093.63), the States of Guernsey (£14,439.62) and the hotelier in Guernsey (£450.00).

4.7 With respect to the claims submitted by the Comité des Assureurs Maritimes de Paris for the pollution of private boats, the Executive Committee took note of the information given by the Director that some items of the claims were still under discussion but that an agreement would probably be reached fairly soon.

4.8 The Director introduced the claim made by the United Kingdom P & I Club as set out in document FUND/EXC.6/3/Add.1, Annex, IV. He explained that this claim seemed generally justified because the surveyance of the wreck and the provisional sealing had been necessary to allow the final solution of the pumping of the oil. However, because negotiations were still taking place between the P & I Club and Intersub on the amount payable under their contract, the final amount claimed by the P & I Club against the IOPC Fund could not yet be specified. As soon as these negotiations come to an end the Director will finalise his examination of the P & I Club's claim. No difficulties were expected to arise.

4.9 Regarding claims made by the Département des Côtes du Nord and Communes in the Départements des Côtes du Nord and Finistère, the Director informed the Committee that certain claims had been submitted but very little information as to their justification had so far been given. In addition, he had received information that further claims would be made. He also explained that some of the claims contained items like claims for "global ecological damage" and "loss of enjoyment of the coastal area" which the Assembly had agreed to be admissible only if the claimant had suffered a quantifiable economic loss. The Director pointed out that some of the items claimed by Communes may also be included in the claim put forward by the central Government and that it would perhaps be difficult to find out to what extent there was an overlapping. In this context, the French delegation informed the Executive Committee that they would submit to the IOPC Fund a detailed analysis showing to what extent the central Government had refunded expenses to the Communes. This analysis would allow the Director to establish whether expenses claimed by the central Government were also included in the Communes' claims and to deduct these amounts accordingly.

4.10 The Director asked the Executive Committee for advice on a request for provisional payment under Regulation 8.6 of the Fund's Internal Regulations presented by the Département des Côtes du Nord. After discussing this request, the Committee agreed with the Director that this request should not be granted because it was not shown that a non-payment would lead to undue financial hardship. It was furthermore pointed out that it was not certain whether the IOPC Fund would be liable at all for the damage caused by the TANIO incident because the owner might not be entitled to limit his liability.

4.11 With respect to the claim submitted by the French Government, the Director explained the procedure agreed between the French Government and the IOPC Fund as to the examination of the French claim. Following this agreement, the French Government will present to the IOPC Fund, in addition to the documents already submitted, reports giving the details of the clean-up operation

and establishing the link between the items claimed and the actual operations. The experts employed by the IOPC Fund will examine these reports together with the claims and discuss in a working group with French experts all questions that may arise from their investigation. The report of these examinations will be made available to the Director for approval. The Executive Committee agreed with this procedure.

4.12 Going into some details of the French Government's claim, the Director mentioned some items in respect of which he felt that further information and discussions with the French Government were necessary. He was assured by the French delegation that all his queries would be answered. The French delegation expressed its confidence that it would be possible to agree on compromises should differences of opinion on certain items remain.

4.13 The Executive Committee then took up the legal question of whether the IOPC Fund should pursue the possibility of breaking the owner's limitation or taking recourse action against a third party (document FUND/EXC.6/3/Add.2). Delegations agreed that it would be difficult to establish either the owner's unlimited liability or the liability of another person. However, the Committee asked the Director to continue with his efforts to examine the possibility and advisability of legal actions. Although the Executive Committee did not recommend any specific measures, it was suggested that the Director obtains independent legal advice on the question of whether and how to proceed in this respect. The Executive Committee appreciated the promise given by the French delegation that the French Government would continue to assist the Director in his efforts to pursue the possibilities of breaking the owner's limitation or taking recourse actions.

4.14 The Executive Committee agreed with the Director's proposal that provision should be made for a meeting of the Committee in January or February 1983. This meeting would allow the IOPC Fund to deal with the claims and their settlement and to decide on the taking of legal actions before the expiry of the three years' limitation period (Article 6.1 of the Fund Convention), bearing

in mind that it may not be possible to conclude the discussions on these questions at the Executive Committee's next session in September this year due to the late submission of some claims and supporting documents.

5 Date of Next Session (Agenda item 5)

It was decided that the seventh session of the Executive Committee should be held on 27 and 28 September 1982, with the possibility of extending this meeting to 29 September.

6 Any Other Business (Agenda item 6)

6.1 The delegation of the Bahamas informed the Executive Committee that they would request that Article 10 of the Fund Convention be amended in a way which would exclude from the term "contributing oil" those quantities of oil which were received in storage tanks for transshipment only and not for treatment. It was agreed that this proposal should be discussed at the next meeting of the Fund's Assembly.

6.2 The Director informed the Executive Committee of new developments regarding incidents. He mentioned the five new incidents which had happened since the Executive Committee's last meeting in September 1981 and which involved the IOPC Fund, namely the SUMA MARU NO 11, the GLOBE ASIMI, the ONDINA, the SHIOTA MARU NO 2 and the FUKUTOKU MARU NO 8. He informed the Committee that these incidents may lead to liabilities for the IOPC Fund of about £2.7 million.

6.3 The Director explained to the Committee the difficulties he had encountered with respect to the lease agreement with the International Maritime Organization regarding the new headquarters building, ie that the IOPC Fund may not be given the permission by the International Maritime Organization to sublet three of the ten rooms to be rented by the IOPC Fund which were not needed in the immediate future. The Executive Committee expressed the view that the International Maritime Organization should be asked for an arrangement which allowed the IOPC Fund to make use of these additional rooms whenever required without charge should the IOPC Fund not be allowed to sublet them. As a fall-back position

the Director was asked to rent eight rooms instead of ten and leave one room for general purposes, including use by delegations to Fund meetings.

6.4 The observer from Switzerland informed the Executive Committee that Switzerland was interested in the Fund Convention and was presently considering its ratification.

7 Adoption of Report to the Assembly (Agenda item 7)

The Executive Committee adopted the report as contained in document FUND/EXC.6/WP.2 with some small amendments. It asked the Director to complete this report in co-operation with the Chairman.

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EXECUTIVE COMMITTEE -
6th session
Agenda item 3

FUND/EXC.6/WP.1
5 May 1982
Original: ENGLISH

ADOPTION OF CLAIMS MANUAL

Note by the Director

The following amendments to the draft Claims Manual submitted to the Executive Committee, document FUND/EXC.6/2, have been adopted by the Executive Committee.

1 In paragraph 1 (Introduction), sub-paragraphs (a) and (b), there is a semicolon instead of a comma at the end of the sentence.

2 Fourth sub-paragraph of paragraph 1 reads as follows:

"The Liability Convention and the Fund Convention provide for compensation for oil pollution damage up to an amount of at present 675 million (gold) francs per any one incident (as at 1 January 1982 equivalent to US \$52.3 million). This amount may be increased by the Fund's Assembly up to 900 million (gold) francs. The oil causing the damage must have been "persistent" and must have escaped or been discharged from a sea-going vessel actually carrying oil in bulk as cargo. Only damage caused on the territory, including the territorial sea, of a State Party to the Fund Convention can be claimed against the IOPC Fund. The term "pollution damage" is defined as "loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, ...". It covers the costs of reasonable preventive measures taken after an

incident has occurred and further loss or damage caused by preventive measures, including the costs of preventive measures taken outside the territorial sea to prevent the territory or territorial sea of a Contracting State being polluted."

3 The first sub-paragraph of paragraph 2 (Who is eligible to claim?) reads as follows:

"Any person who has suffered pollution damage may make a claim against the IOPC Fund. It may be any individual or partnership or any public or private body, including a State or any other public authority."

4 The first sentence of the second sub-paragraph of paragraph 4 (Within what period has a claim to be made?) in the English text reads as follows:

"Rights to compensation shall be extinguished unless an action is commenced within three years of the date on which the damage occurred."

There is no amendment to the French text.

5 Paragraph 5 (How should a claim be presented?) reads as follows:

"A claim against the IOPC Fund should be made in writing (including cable or telex) and must be supported by the appropriate documentation (eg invoices and vouchers). If the documentation is very voluminous, claimants should discuss its presentation with the Director. The Director may request the claimant to provide further information. Claimants are informed that the working languages of the IOPC Fund are English and French; it would therefore facilitate speedy settlement if claims were to be submitted in one of these languages."

6 Sub-paragraph (d) of paragraph 6 (What particulars should a claim contain?) reads as follows:

"the type of oil and the kind of pollution damage as well as the place where it was experienced;"

7 The first sentence of sub-paragraph 2 of paragraph 6 reads as follows:

"Depending on the amount claimed and the kind of pollution damage suffered, a claim should be broken down into different items."

8 A new sub-paragraph 6.1.7 is added to paragraph 6.1, reading as follows:

"6.1.7 Costs of final disposal of recovered oil."

9. Sub-paragraph 6.4 reads as follows:

"There may be other categories of claims. There may also be proceeds from the sale of recovered oil which have to be set off against the claim. In all cases, the break-down of the amount claimed has to be done in such a way that the IOPC Fund is in a position to assess the amount of damage suffered on the basis of the facts and the documentation presented."

10 In paragraph 7 (Claims procedure) the words in parenthesis "approximately £1 million" are replaced by "(approximately US \$2 million)".
