INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
1st session
Agenda item 7

92FUND/EXC.1/9
30 October 1998
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RECORD OF DECISIONS OF THE FIRST SESSION OF THE EXECUTIVE COMMITTEE

(held from 28 to 30 October 1998)

Chairman:	Professor L S Chai (Republic of Korea)
Vice-Chairman:	Mr J Wren (United Kingdom)

Opening of the session

The 1st session of the Executive Committee was opened by the Director.

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document 92FUND/EXC.1/1.

2 Election of Chairman and Vice-Chairman

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

Chairman:	Professor L S Chai (Republic of Korea)
Vice-Chairman:	Mr J Wren (United Kingdom)

2.2 The Chairman, on behalf of himself and the Vice-Chairman, thanked the Executive Committee for the confidence shown in them.

3 Examination of credentials

3.1 The following members of the Executive Committee were present:

Cyprus	Japan	Philippines
Denmark	Liberia	Republic of Korea
Finland	Mexico	Spain
Greece	Netherlands	Tunisia
Ireland	Norway	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.

3.2 The following Member States were represented as observers:

Australia	Germany	Sweden
France	Marshall Islands	Uruguay

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

States which have deposited instruments of ratification, acceptance, approval or accession to the 1992 Fund Convention:

Algeria	Croatia	Singapore
Belgium	Latvia	United Arab Emirates
Canada	New Zealand	Venezuela

Other States:

Argentina	Estonia	Panama
Brazil	Fiji	Peru
Cameroon	Gabon	Poland
Chile	Guyana	Russian Federation
China	Indonesia	Saudi Arabia
Colombia	Italy	Slovenia
Côte d'Ivoire	Kenya	Syrian Arab Republic
Ecuador	Morocco	United States
Egypt	Nigeria	

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

Intergovernmental organisations:
International Oil Pollution Compensation Fund 1971 (1971 Fund)
International Maritime Organization (IMO)
United Nations

International non-governmental organisations:
Comité Maritime International (CMI)
European Chemical Industry Council (CEFIC)
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P & I Clubs
International Tanker Owners Pollution Federation Limited (ITOPF)
International Union for the Conservation of Nature and Natural Resources (IUCN)
Oil Companies International Marine Forum (OCIMF)

4 Incidents involving the 1992 Fund

4.1 Overview

The Executive Committee took note of document 92FUND/EXC.1/2 which contained a summary of the situation in respect of all six incidents dealt with by the 1992 Fund since the 2nd session of the Assembly.

4.2 Incident in Germany

4.2.1 It was recalled that on 20 June 1996 crude oil was found to have polluted a number of German islands close to the border with Denmark in the North Sea and that the German authorities had undertaken clean-up operations at sea and on shore. It was also recalled that investigations by the German authorities had revealed that the Russian tanker *Kuzbass* had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996 and that analysis of oil samples taken from the ship had matched the results of the analysis of samples taken from the polluted coastline.

4.2.2 It was noted that in July 1998 the German authorities had brought legal action in the Court of first instance in Flensburg against the shipowner and his insurer, claiming compensation for the cost of the operations for an amount of DM2 610 226 (£890 000).

4.2.3 The Committee endorsed the Director's view that the 1992 Fund should intervene in the legal proceedings to protect the Fund's interests, once the 1992 Fund was notified under Article 7.6 of the 1992 Fund Convention of the legal action against the shipowner and his insurer.

4.2.4 The German delegation stated that it would be an advantage if, once the action had been served, discussions could take place between the shipowner/his insurer and the 1992 Fund for the purpose of agreeing on the quantum of the losses suffered.

4.3 *Nakhodka* incident

4.3.1 The Executive Committee took note of the developments in respect of the *Nakhodka* incident, as contained in document 92FUND/EXC.1/4 and as set out in document 71FUND/EXC.59/9. It was noted that as at 12 October 1998 claims totalling ¥34 247 million (£170 million) had been received by the Claims Handling Office in Kobe and that payments totalling ¥5 359 million (£24.8 million) had been made by the 1971 Fund. It was also noted that, in addition, the shipowner's insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), had made payments totalling US$868 000 (£525 000).

4.3.2 The Director stated that unfortunately the assessment of claims had progressed more slowly than had been anticipated. He mentioned that this was due to the large volume of documentation and the fact that important questions of principle had arisen. He stated that many of the questions of principle had been resolved, that extra staff had been recruited to the Claims Handling Office in Kobe and that he believed that the claims assessment would proceed more rapidly in the months to come. The Director informed the Committee that priority was being given to the following groups of claimants: contractors working under the Japan Marine Disaster Prevention Centre (JMDPC), fishery co-operative associations engaged in clean-up, fishermen for loss of earnings, contractors for costs of disposal of oily waste and claimants in the tourism sector.

4.3.3 The Director informed the Executive Committee that, on the basis of a preliminary assessment, the 1971 Fund had offered to make provisional payments to four of the fishery associations in one prefecture. He mentioned that the associations had declined the offer, since they preferred to wait until payments could be made to all associations in the prefecture.

4.3.4 The Japanese delegation expressed the hope that the IOPC Funds would make settlements of claims more rapidly on the basis of reasonable assessments. The delegation stated that the Japanese Government was concerned that some groups of claimants were beginning to voice criticisms of the way in which their claim settlements were being delayed.

4.3.5 In the light of the continuing uncertainty as to the level of the total amount of claims arising from the *Nakhodka* incident, the Executive Committee decided to maintain the level of the 1992 Fund's payments at 60% of the amount of the claims actually suffered by the respective claimants.

4.3.6 The Executive Committee instructed the Director to complete his investigation into the cause of the incident as soon as possible so as to enable the Committee to take a decision as to whether a recourse action should be pursued.

4.4 *Osung N°3* incident

4.4.1 The Executive Committee took note of the information on the *Osung N°3* incident contained in documents 92FUND/EXC.1/5 and 92FUND/EXC.1/5/Add.1.

4.4.2 It was recalled that the 1971 Fund Executive Committee had decided at its 54th session that the payments in respect of the *Osung N°3* incident should for the time being be limited to 25% of the established claims (documents 71FUND/EXC.54/10, paragraph 3.5.7).

4.4.3 It was noted that at its 2nd session the 1992 Assembly had decided that the 1992 Fund should pay the balance of the established claims relating to damage in Japan which were limited to 25% of the damage suffered by each claimant (document 92FUND/A.2/29, paragraph 17.3.6).

4.4.4 It was noted that at its 59th session the 1971 Fund Executive Committee had been informed that operations to remove oil from the *Osung N°3* had revealed very little oil as at 22 October 1998. It was noted that it had decided that claims for compensation in the Republic of Korea for the costs associated with these operations would be admissible in principle, even if no significant oil was found in the cargo tanks of the *Osung N°3* (document 71FUND/EXC.59/17, paragraph 3.6.11).

4.4.5 It was recalled that the 1992 Fund Assembly had adopted Resolution N°2 in which it was stated that the 1992 Fund should endeavour to ensure consistency, as far as possible, between the decisions of the 1992 Fund and those of the 1971 Fund on the admissibility of claims.

4.4.6 In the light of Resolution N°2, the Executive Committee endorsed the position taken by the 1971 Fund Executive Committee in respect of the admissibility in principle of the cost associated with the operation to remove the oil from the *Osung N°3* even if no significant oil was found in the cargo tanks (cf document 71FUND/EXC.59/17, paragraph 3.6.13).

4.4.7 It was noted that, in the light of the claims situation in Japan and the Republic of Korea, the 1971 Fund Executive Committee had decided to authorise the Director to increase the level of payments to 100% of the established claims if the removal of the oil from the *Osung N°3* was successfully completed without any significant release of oil and only a minor quantity of oil remained in the wreck, thereby eliminating any further pollution risk, provided that the Government of the Republic of Korea gave an undertaking to the effect that, if and to the extent that a claim by the Korean Government for the cost of the removal of the wreck of the *Osung N°3* were to result in the total amount of established claims arising out of the incident exceeding the maximum amount of compensation payable under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), the Government would not pursue that claim, in its entirety or in part, against the 1971 Fund.

4.5 Incident in the United Kingdom

4.5.1 The Executive Committee took note of the information contained in document 92FUND/EXC.1/6 concerning an oil spill in the United Kingdom from an unidentified source.

4.5.2 The Committee noted that, although the claim arising out of this incident was very small and was unlikely to be pursued by the local authority involved, the 1992 Fund could expect to face more claims of this kind in the future due to the wider definition of 'ship' in the 1992 Civil Liability Convention.

4.6 *Santa Anna* incident

4.6.1 The Executive Committee took note of the information concerning the *Santa Anna* case, as set out in document 92FUND/EXC.1/7.

4.6.2 The Executive Committee recalled that the unladen tanker *Santa Anna* had grounded on rocks in the United Kingdom and had been refloated without any bunkers having been spilled. It was noted that a claim had been submitted for the cost of mobilising oil combatting equipment and surveillance aircraft to respond to the possible escape of persistent bunker oil.

4.6.3 It was noted that several legal questions had arisen, namely whether the occurrence fell within the definition of 'incident', whether the *Santa Anna* was a ship for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention and whether in this case the 1992 Civil Liability Convention could be applied in respect of a ship flying the flag of a non-Contracting State.

Definition of 'incident'

4.6.4 The Executive Committee noted that the 1992 Conventions applied to the cost of pre-spill preventive measures and pure threat removal measures, ie measures taken to prevent or minimise pollution damage although no spill occurred, provided that there was a grave and imminent threat of pollution damage.

4.6.5 The Committee shared the Director's view that in the *Santa Anna* case there had been such a grave and imminent threat and that therefore the 1992 Conventions did in principle apply to this incident. It was noted, however, that the usual criteria for admissibility would apply, ie that the measures were reasonable from an objective technical point of view.

Definition of 'ship'

4.6.6 The Committee considered whether the *Santa Anna* fell within the definition of 'ship' laid down in Article I.1 of the 1992 Civil Liability Convention, which reads:

> 'Ship' means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

4.6.7 The Executive Committee accepted that the *Santa Anna* had been constructed or adapted for the carriage of oil in bulk as cargo. The Committee took the view that the issue in question was how to interpret the proviso in Article I.1, ie that "a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard".

4.6.8 It was generally considered that the word 'oil' in the proviso should be interpreted in accordance with the definition of oil in Article I.5, namely any persistent hydrocarbon mineral oil.

4.6.9 Some delegations took the view that the phrase "unless it is proved that it has no residues of such carriage of oil in bulk aboard" indicated that spills from unladen tankers were covered only if residues of persistent oil were on board. Other delegations maintained that this phrase related only to combination carriers and that dedicated tankers in ballast would always be covered whether or not they were carrying residues of persistent oil.

4.6.10 A number of delegations raised the question of the interpretation of the expression 'any voyage', and in particular whether that expression referred to any voyage following the carriage of persistent oil or only to the first voyage following such carriage. Some delegations considered that the expression covered only the first ballast voyage and that the *Santa Anna* incident therefore did not fall within the scope of the Conventions.

4.6.11 Some delegations stated that it might be useful to obtain an opinion from a Legal Counsel on the interpretation of the definition of 'ship', whereas other delegations were of the view that the bodies of the Fund were better placed to interpret the Convention on the point under consideration.

4.6.12 One delegation made the point that the Convention represented the written reflection of an agreement between States following a Diplomatic Conference and therefore that the intention of the States participating at the Conference should be taken into account. Another delegation stated that not only the intentions of the participants at the Conference but also the wishes of the Contracting Parties to the Convention should be taken into account.

4.6.13 Several delegations expressed the view that the definition of 'ship' was open to different interpretations. Given the importance of this matter it was suggested that it might be appropriate to refer the issue to a Working Group for detailed consideration.

4.6.14 The Executive Committee decided that it would be useful if the interpretation of the definition of 'ship' in the 1992 Civil Liability Convention could be studied by a Working Group. The Committee took the view that this issue could be examined by the Working Group which had been established by the Assembly to consider the applicability of the 1992 Conventions in respect of offshore units and invited the Assembly to give the Working Group the mandate to do so.

4.6.15 Although the delegations in general agreed with the Director's conclusion on this issue, the Executive Committee took the view that it was premature to take a decision on this important issue.

Applicability of the 1992 Civil Liability Convention

4.6.16 The Executive Committee also considered whether the 1992 Civil Liability Convention could be applied to the *Santa Anna* which was registered in a State Party to the 1969 Civil Liability Convention but not to the 1992 Civil Liability Convention. It was noted that since the occurrence had taken place before 16 May 1998 (the date when the United Kingdom's denunciation of the 1969 Civil Liability Convention took effect), the United Kingdom was under a treaty obligation to respect the provisions of the 1969 Civil Liability Convention in respect of ships registered in Panama and that that Convention did not cover pre-spill preventive measures. The Committee took the view, however, that since the 1969 Civil Liability Convention dealt only with laden tankers, the United Kingdom could apply the 1992 Civil Liability Convention to an unladen tanker registered in Panama.

4.7 *Milad 1* incident

4.7.1 The Executive Committee noted that on 5 March 1998 the Belize registered coastal tanker *Milad 1* had been intercepted by the United States Coast Guard (USCG), 25 nautical miles north east of Bahrain and within its Exclusive Economic Zone (EEZ). The Committee noted that the tanker had been carrying 1 500 tonnes of mixed diesel/crude oil and was found to have a crack in the hull approximately 6 metres long,

allowing sea water into the ballast tanks, that the USCG had considered that the *Milad 1* was in danger of sinking and that she posed a grave and imminent threat of pollution to the coast of Bahrain. It was noted that the USCG had placed damage control experts on board to stabilise the tanker using pumps to compensate for the flooding, that the USCG had subsequently escorted the tanker to a more central location in the Gulf, some 50 nautical miles to the north-east of Bahrain and that the shipowner had sent another tanker to lighten the *Milad 1*. It was also noted that the Marine Emergency Mutual Aid Centre (MEMAC) in Bahrain had engaged a contractor to undertake temporary emergency repairs to the *Milad 1* to prevent the risk of pollution, at a cost of BD21 168 (£33 000).

4.7.2 The Committee noted that no oil had been spilled while the lightening operation and temporary repairs were carried out.

4.7.3 The Committee noted that the owner of the *Milad 1* was, according to MEMAC, an individual based in the United Arab Emirates at the time of the incident and that according to the Federal Environmental Agency of the United Arab Emirates, he had disappeared after the event.

4.7.4 The Committee noted that in the view of the Director the USCG report on the events should be examined before a position was taken on the admissibility of the claim by MEMAC. It was also noted that the Director considered that more information concerning the shipowner was required before a decision could be taken as to whether MEMAC had fulfilled its obligation to take all reasonable steps to pursue the legal remedies available to it, in accordance with Article 4.1(b) of the 1992 Fund Convention.

4.7.5 The Executive Committee instructed the Director to investigate the various issues further in order to establish whether or not the occurrence had constituted a grave and imminent risk of pollution damage to the territory, territorial sea or EEZ of a State Party to the 1992 Fund Convention and, if so, whether the claim for the cost of the temporary repairs was admissible.

5 Future sessions

5.1 The Executive Committee decided to hold its next session during the week of 1 - 5 February 1999.

5.2 The Committee also decided to hold a session during the week of 26 - 30 April 1999.

5.3 It was decided that the Committee would hold its normal autumn session during the week of 18 - 22 October 1999.

6 Any other business

No items were raised under this agenda item.

7 Adoption of the Record of Decisions

The draft Record of Decisions of the Executive Committee, as contained in document 92FUND/EXC.1/WP.1, was adopted, subject to certain amendments.