



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
3rd session
Agenda item 5

92FUND/EXC.3/7
29 April 1999
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RECORD OF DECISIONS OF THE THIRD SESSION OF THE EXECUTIVE COMMITTEE

(held from 27 to 29 April 1999)

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

Opening of the session

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document 92FUND/EXC.3/1.

2 Examination of credentials

2.1 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.

2.2 The following Member States were represented as observers:

Australia	Latvia	Sweden
Bahamas	Marshall Islands	United Arab Emirates
France	Monaco	Uruguay
Germany	Singapore	

2.3 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	China (Hong Kong Special Administrative Region)	New Zealand
Belgium		Panama
Canada	Iceland	Vanuatu
		Venezuela

Other States:

Argentina	Gabon	Poland
Brazil	Georgia	Portugal
Chile	Italy	Russian Federation
Colombia	Malaysia	Saudi Arabia
Ecuador	Morocco	Sierra Leone
Estonia	Nigeria	United States
Fiji	Peru	

2.4 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)

International non-governmental organisations:

Comité Maritime International (CMI)
Cristal Limited
European Chemical Industry Council (CEFIC)
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)

3 Incidents involving the 1992 Fund

3.1 Nakhodka

3.1.1 The Executive Committee took note of the information contained in documents 92FUND/EXC.3/2 and 71FUND/EXC.61/8 in respect of the *Nakhodka* incident, in particular noting that further claims had been settled for significant amounts. It was noted that payments of £5.1 million had been made on 27 April 1999, bringing the total amount of compensation paid by the 1971 Fund to £31 million, and that an additional payment of £2 million would be made shortly.

3.1.2 The delegation of Japan drew attention to the fact that the three-year time bar period would expire in eight months' time and asked the Director to endeavour to make prompt settlements of the outstanding claims.

Claim for cost of publicity campaign

3.1.3 The Committee considered a claim by the National Federation of Fishery Co-operative Associations (NFFCA) for the costs of a major publicity campaign aimed at preventing and mitigating losses in sales of fish from the area affected by the spill (document 71FUND/EXC.61/8, section 3.4).

3.1.4 The Committee took the view that the cost of the measures undertaken by NFFCA was reasonable and was not disproportionate to the losses which could have been sustained by fishermen in the affected area if no action had been taken. The Committee also considered that the measures were appropriate in the circumstances and offered a reasonable prospect of success. It was noted that the measures related to targeted markets where the produce from the area was sold and that the costs were in addition to NFFCA's normal marketing activities. The Committee took the view, therefore, that the marketing campaign undertaken by the NFFCA met the criteria for admissibility laid down by the 1992 Fund as set out in paragraph 3.4.4 of document 71FUND/EXC.61/8 and that the claim was therefore admissible in principle.

Level of payments

3.1.5 In the light of the continuing uncertainty as to the level of the total amount of the claims arising from the *Nakhodka* incident, and noting the decision of the 1971 Fund Executive Committee at its 61st session on that issue, the 1992 Fund Executive Committee decided to maintain the level of the 1992 Fund's payments at 60% of the amount of the damage actually suffered by the respective claimants.

Recourse action

3.1.6 It was noted that the Director would continue his investigation into the cause of the incident with a view to the IOPC Funds' taking recourse action, if appropriate.

3.1.7 The Japanese delegation stressed the importance that the Director make preparations for a possible recourse action in the near future.

3.2 *Milad 1*

3.2.1 The delegation of Liberia, supported by the delegation of Cyprus and the observer delegations of the Bahamas, Panama and Vanuatu, objected to the use of certain terminology in document 92FUND/EXC.3/3 and sought clarification from the Director in this regard.

3.2.2 The Director acknowledged that this terminology should not have been used and offered his apologies. He assured the Executive Committee that the terminology in question would not be used in the future in any documentation prepared by the Secretariat. The Director stated that a revised document would be prepared. Document 92FUND/EXC.3/3/Rev.1 was subsequently issued and circulated.

3.2.3 The Executive Committee considered a claim by the Marine Emergency Mutual Aid Centre (MEMAC) for BD 21 168 (£33 000) for the cost of providing a salvage tug and repair team to attend the *Milad 1*.

3.2.4 It was recalled that at its 2nd session the Executive Committee had decided that, in the light of the critical condition of the *Milad 1* and the prevailing wind conditions, the events in this case fell within the

definition of "incident" in Article I.8 of 1992 Civil Liability Convention. It was also recalled that the Director had been instructed to discuss with MEMAC what course of action might be available to it to recover the costs incurred from the registered owner.

3.2.5 The Committee considered the various steps which MEMAC could in principle take to trace the owner, with a view to recovering the costs incurred.

3.2.6 A number of delegations expressed the view that there were various additional steps which MEMAC could take to trace the shipowner. It was suggested that enquiries could be made of the Belize Registry regarding the status of the vessel and whether it was free from mortgages, any other registered encumbrances and other liens or charges. It was pointed out that a vessel of the size of the *Milad 1* should comply with SOLAS and the ISM Code and that the accompanying ISM certificate should identify a physical person representing the vessel. Those delegations considered that, notwithstanding the small amount of money involved, important principles were at stake and that every effort should be made to protect the 1992 Fund's interests in respect of MEMAC's claim.

3.2.7 Many delegations, whilst noting that other steps could be taken, considered that the question of proportionality should not be overlooked and drew attention to the fact that the amount claimed was only £33 000. They expressed the view that in this particular situation MEMAC had taken all reasonable steps to trace the shipowner. Those delegations made the point that the 1992 Fund was in a better position to pursue the shipowner by recourse action.

3.2.8 The Executive Committee decided that, taking all factors into account, MEMAC had taken all reasonable steps to pursue the legal remedies available to it and that MEMAC's claim was therefore admissible.

3.2.9 The Director was instructed to investigate the possibilities for the 1992 Fund of taking recourse action against the shipowner. The Director was invited to contact those delegations which had suggested alternative steps which could be taken to trace the shipowner. The Director was instructed to present his findings to the Executive Committee at its 4th session in October 1999 on the prospects of a successful recourse action and the potential cost implications. It was recognised that the investigation necessary to make a report to the Committee would result in some costs being incurred.

3.2.10 The Committee emphasised that in future similar cases it would be important to examine carefully whether, in the light of the particular circumstances of the case, the claimant had taken all reasonable steps to pursue the legal remedies available to him.

3.3 Sea Brothers 1

3.3.1 The Executive Committee took note of the information in document 92FUND/EXC.3/4 regarding the bunkering tanker *Sea Brothers 1* which had sunk in Manila harbour (Philippines) on 19 March 1999, spilling approximately 280 tonnes of bunker fuel. It was noted that claims for pollution damage were unlikely to exceed the shipowner's limit under the 1992 Civil Liability Convention, but that this could not yet be ruled out.

3.3.2 The Philippines' delegation expressed its appreciation to the Director for the information in document 92FUND/EXC.3/4 and noted that this was the first oil spill incident in the Philippines under the 1992 Conventions. The delegation informed the Committee that the Philippines Coast Guard was preparing a detailed report on the incident which would be made available to the Director in due course.

4 Any other business

4.1 Implementation of organisational changes within the Secretariat

The Executive Committee noted the developments in respect of the organisational changes and related issues, as set out in document 92FUND/EXC.3/5.

4.2 Status of the 1992 Fund Convention

4.2.1 The Executive Committee noted the information in document 92FUND/EXC.3/6 regarding the status of the 1992 Fund Convention.

4.2.2 The delegation of the Russian Federation informed the Committee that procedures had commenced regarding the denunciation of the 1971 Fund Convention and accession to the 1992 Protocols and that it was hoped that this could be achieved by the end of 1999.

4.3 1998 annual contributions

The Director informed the Executive Committee that approximately 98% of the 1998 annual contributions, due on 1 February 1999, had been paid.

5 Adoption of the Record of Decisions

The draft Record of Decisions of the Executive Committee, as contained in document 92FUND/EXC.3/WP.1, was adopted, subject to certain minor amendments.
