

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

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

ASSEMBLY -
1st extraordinary session
Agenda item 11

FUND/A/ES.1/9
8 August 1980

Original: ENGLISH

CONSIDERATION OF CERTAIN ASPECTS OF THE TERM "POLLUTION
DAMAGE" (ARTICLE 1.2 FUND CONVENTION)

Note by the Director

1. At its second session, the Executive Committee, in consideration of the settlement of claims against the IOPC Fund arising out of the ANTONIO GRAMSCI incident, approved an agreement concluded between the Swedish Government and the Latvian Shipping Company as the owner of the ANTONIO GRAMSCI. By virtue of this agreement, the Latvian Shipping Company undertakes to pay to the Swedish Government the equivalent of 607,900 Soviet Roubles constituting the Swedish share in the limitation fund established under Article IX, CLC, in the People's Court of Riga. This share was calculated on the basis of Swedish claims against the owner in the amount of about 111.9 million Swedish Crowns and Russian claims of about 48.3 million Soviet Roubles. The validity of this agreement was subject to the approval of the International Oil Pollution Compensation Fund and of the People's Court of Riga. For details, reference is made to the document FUND/EXC.2/5.

2. The Executive Committee noted that, in the agreement, the Swedish share in the CLC limitation fund was fixed at about only 25% of the total, as the USSR had raised claims against the owner which were about three times as high as the Swedish claims. The total of these USSR claims of about \$34 million consisted of different items, but more than 97% of this total was made up by a claim by the Soviet Ministry for Conservation and Control and Utilisation of Water. The claim is for damage to resources and for costs and expenses in restoring the polluted water to a clean condition.

3. This USSR claim for ecological damage is based on USSR legislation effective since March 1973. It is calculated the following way:

- (a) The quantity of oil spilled ($x m^3$) is determined (or estimated) by (one or more) conventional methods.
- (b) The oil spilled is assumed to disperse into the water to a concentration of 50 parts per million (p.p.m.) which is deemed to be a thousand times the allowable or background concentration (0.05 p.p.m.).
- (c) From the quantity of oil spilled and the assumed concentration, the volume of water theoretically affected (Q) is then calculated:

$$Q = \frac{x}{50} \cdot 10^6 m^3$$

- (d) At this stage, reference is made to tables which specify the "reduced specific expenses (E) for restoration of the properties of $Q m^3$ of water":

$$E = y \text{ roubles}/m^3$$

- (e) The amount of theoretical damage (D) inflicted on the State by the pollution is then calculated according to the formula:

$$D = Q \times E \text{ roubles}$$

$$= \frac{x}{50} \cdot y \cdot 10^6 \text{ roubles}$$

For the claim in the ANTONIO GRAMSCI incident the quantity of the oil spilled was estimated at approximately 1,100 tonnes, the factor y was 2 (i.e. 2 Soviet Roubles per m^3 polluted water).

4. The Executive Committee expressed its objection to the claim made by the USSR Ministry against the owner. It held the view that such a claim was not covered by the term "pollution damage" as defined in the CLC and the Fund Convention. It was pointed out especially that the Conventions did not allow damages to be quantified through the use of a mathematical model, leaving aside

the specific aspects and factors of a particular incident such as the location of the incident, the resources at risk, the composition of the oil, and its fate in the marine environment. Pollution damage claims should be based on quantifiable losses which can be positively attributed to a particular incident.

5. The Executive Committee took note of the information given by the Director that the Fund's position had been made clear to representatives of the USSR Government at the meeting at which the agreement between Sweden and the shipowner was negotiated. The Executive Committee felt, however, that it was necessary to make this point of view known to the public. As it did not see any possibility of raising these objections in court proceedings against the owner or the claimant, the Executive Committee requested the Assembly to consider this problem at its next session and to express its view by way of adopting a resolution or otherwise.

6. A draft resolution for consideration and possible adoption by the Assembly is submitted in the Annex.

ANNEX

DRAFT

RESOLUTION

The Assembly of the INTERNATIONAL OIL POLLUTION COMPENSATION FUND,

CONSCIOUS of the dangers of pollution posed by the world-wide maritime carriage of oil in bulk,

AWARE of the detrimental effect the escape or discharge of persistent oil into the sea may have on the environment and, in particular, on the ecology of the sea,

CONSCIOUS of the problems of assessing the extent of such damage in monetary terms,

NOTING that compensation payable for oil pollution damage as defined in the Civil Liability Convention and the Fund Convention is recoverable under the Fund Convention only to the extent that such damage has been caused by one specific incident,

FURTHER NOTING that under the Civil Liability Convention a claim for ecological pollution damage has been raised against the shipowner which was based on a theoretical/scientific model for assessment,

CONFIRMS ITS INTENTION

that the assessment of compensation to be paid by the International Oil Pollution Compensation Fund is to be made on the basis of the particular aspects of a specific incident, not allowing an abstract quantification of damage based on theoretical and scientific models, and only to the extent that the damage was caused by that incident.
