



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE -  
10th session  
Agenda item 3

FUND/EXC.10/2  
1 August 1983  
Original: ENGLISH/  
FRENCH

INFORMATION ON AND APPROVAL OF SETTLEMENT OF  
CLAIMS IN RESPECT OF THE TANIO INCIDENT

Note by the Director

1 At its ninth session, the Executive Committee devoted most of its time to the TANIO incident. The Executive Committee approved the legal actions taken by the Director against the shipowner and other parties. It accepted the agreement reached by the Director and the French Government that, for the purpose of distributing the amount of compensation available under the Fund Convention among different claimants, the French Government's claim was settled at FF326 921 936.70. Reference is made to documents FUND/EXC.9/3 and FUND/EXC.9/4.

2 Recent developments regarding the TANIO incident since the ninth session of the Executive Committee can be summarised as follows:

- (a) With regard to the settlement of claims, the Director has reached the final stages in coming to agreements with the Département des Côtes-du-Nord and 20 of its Communes, and with the UK P & I Club. Concerning the claims from eight Communes in Finistère and from private claimants, negotiations are being held, on the basis of an assessment made by the IOPC Fund, with representatives and lawyers acting on behalf of these claimants. Further claims against the IOPC Fund are still likely, although they will probably not be substantial.

- (b) Agreement has been reached between the Director and the French Government concerning the conclusion of a Protocol on the settlement of the French Government's claim for pollution damage.
- (c) With regard to the legal actions taken by the IOPC Fund against the owner and other parties, the first hearing has been held at the Civil Court of Brest.

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ANNEX1 Claims Settlement

1.1 To date, the following claims have been made against the IOPC Fund. The total sum of the claims so far is FFr517 126 829.37 plus £162 611.46 plus US \$878 608.67.

	FFr	£	US \$
(a) French Government	489 820 401.45		
(b) French Local Authorities			
(i) <u>Côtes-du-Nord</u>			
Département	2 728 798.26		
Binic	2 404.23		
Bréhat	159 068.10		
Lanmodez	9 000.70		
Lézardrieux	10 268.00		
Louannec	336 202.85		
Paimpol	5 008.67		
Penvénan	1 067 737.59		
Perros-Guirec	3 054 394.98		
Plestin-les-Grèves	50 088.85		
Pleubian	168 895.00		
Pleumeur-Bodou	340 943.85		
Ploubazlanec	22 820.70		
Plougrescant	892 555.69		
Plouguiel	20 867.74		
Plouha	26 559.30		
Trébeurden	13 426.74		
Trégastel	693 921.69		
Tréguier	5 356.72		
Trélevern	995 300.10		
Trévou-Tréguignec	490 982.00		
	<hr/>		
	11 094 601.76		
(ii) <u>Finistère</u> (Note 1)			
Cléder	398 123.23		
Ile de Batz	480 355.93		
Locquirec	195 650.00		
Morlaix	33 996.03		
Plouescat	38 985.73		
Plougasnou	813 487.20		
Sibiril	146 850.42		
Tréfléz	702 209.79		
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	2 809 658.33		
Sub-total (i) and (ii)	13 904 260.09		

	FFr	£	US \$
(c) <u>Le Havre Port Authorities</u>	132 132.50		
(d) <u>Channel Islands Authorities</u>			
(i) States of Guernsey		14 439.62	
(ii) States of Jersey		8 093.63	
Sub-total (i) and (ii)		<u>22 533.25</u>	
(e) <u>UK P &amp; I Club</u>			
(i) British Oceanics Ltd			326 769.53
(ii) Underwater Security Consultants Ltd			14 384.77
(iii) Inter-sub Ltd		139 628.21	537 454.37
Sub-total (i),(ii) and (iii)		<u>139 628.21</u>	<u>878 608.67</u>
(f) <u>Private Claimants</u>			
(i) Hotelier (Guernsey)		450.00	
(ii) Comité des Assureurs Maritimes de Paris (12 boatowners)	47 000.00		
(iii) Association Inter- professionnelle des Victimes de la Marée Noire (49 claimants)	12 872 646.00		
(iv) 3 Boatowners	18 848.33		
(v) 3 Private Claimants <sup>(Note 2)</sup>	331 541.00		
Sub-total (i) - (v)	<u>13 270 035.33</u>	<u>450.00</u>	
<u>Summary</u>			
(a) French Government	489 820 401.45		
(b) French Local Authorities	13 904 260.09		
(c) Le Havre Port Authorities	132 132.50		
(d) Channels Islands Authorities		22 533.25	
(e) UK P & I Club		139 628.21	878 608.67
(f) Private Claimants	13 270 035.33	450.00	
<b>TOTAL CLAIMS</b>	<u>517 126 829.37</u>	<u>162 611.46</u>	<u>878 608.67</u>

Note 1: A writ of summons was served at the Civil Court of Brest, on behalf of the Commune of St Pol de Léon, Finistère. However, the IOPC Fund has not received a claim from this Commune.

Note 2: One of these three private claimants has informed the IOPC Fund merely of his intention to claim, and not of any amount.

1.2 As set out in paragraph 3.3 of the Annex to document FUND/EXC.9/3, the claims made by the States of Guernsey (£14 439.62), the States of Jersey (£8 093.63), the hotelier in Guernsey (£450.00) and the Comité des Assureurs Maritimes de Paris for 12 private boatowners (FFr47 000.00) were accepted by the Executive Committee at its sixth and seventh sessions. The UK P & I Club, which paid these claims in full, now claims against the IOPC Fund on the basis of subrogated rights. The Executive Committee may wish to accept the claims made by the UK P & I Club on the basis of its subrogated rights in the total amount of £22 983.25 and FFr47 000.00.

### 1.3 French Government

At its ninth session, the Executive Committee accepted the agreement reached between the French Government and the Director that, for the purpose of distributing the amount of compensation available under the Fund Convention, the French Government's claim was settled at FFr326 921 936.70 (£27 942 046 at the exchange rate of 7 July 1983).

### 1.4 Département des Côtes-du-Nord and Communes

At its ninth session the Director informed the Executive Committee that the settlement of claims with regard to the Côtes-du-Nord Département and 14 Communes had reached the final stages. In further discussions between the Département des Côtes-du-Nord and 14 of its Communes and the Director it has been agreed that, for the purpose of distributing the compensation available under the Fund Convention, their claims are settled at FFr7 333 208.04 (£626 770 at the rate of exchange on 7 July 1983).

The Commune of Ploubazlanec made a new claim in May 1983 of FFr22 820.70 (£1 950), thus replacing its former claim by a smaller amount. After careful and thorough examination, the Director is of the view that the claim is reasonable and acceptable in its entirety.

In June five other Communes in Côtes-du-Nord submitted claims totalling FFr42 638.06 (£3 644). In submitting these claims the Communes have taken into consideration the methods of assessment applied by the IOPC Fund to the other Communes' claims. Except for a very small amount, these claims therefore appear justified. However, final agreement has not been reached at the time of drafting this document.

As reported in paragraph 3.6 of the Annex to document FUND/EXC.9/3, the IOPC Fund has paid about FFr500 000 (£47 148 at the date of payment) to the Département des Côtes-du-Nord in order to obtain subrogated rights, needed for the IOPC Fund's legal actions against the owner and other parties.

#### 1.5 Communes in Finistère

The total sum claimed by eight Communes in Finistère amounts to FFr2 809 658.33 (£240 142 at the rate of exchange of 7 July 1983). The items of damage claimed are, in general, similar to those claimed by the Communes of Côtes-du-Nord, ie expenses incurred for clean-up operations, road repairs, beach restoration and loss of earnings at municipal camping sites. Several claims have been presented without sufficient proof or justification; such justification has been requested by the Director, and some Communes have supplied supporting documentation.

No final agreement has been reached with any of the Communes in Finistère.

#### 1.6 UK P & I Club

As reported in paragraph 3.8 of the Annex to document FUND/EXC.9/3, the UK P & I Club has made claims against the IOPC Fund with respect to the expenses incurred for the first survey of the wreck and the provisional sealing operation of the sunken

foresektion. The total claim of the UK P & I Club has not yet been finally settled because the negotiations between the UK P & I Club and the bankers of the bankrupt company which did the sealing operation (Inter-sub Ltd) on the bonus payment have not yet led to an agreement. The sum so far claimed amounts to US \$878 608.67 (£574 254 as at 7 July 1983) plus £139 628.21.

Unlike the claim based on its subrogated rights, mentioned in paragraph 1.2 above, the UK P & I Club is, under English law, entitled to make its claim in US dollars. This is because the UK P & I Club has, as a primary contractor for the above operations, incurred the expenses in US dollars in accordance with its internal accounting policy.

As reported in paragraph 3.8 of the Annex to document FUND/EXC.9/3, the IOPC Fund's surveyor is of the opinion that all items claimed appear to be justified and reasonable, except for the bonus payable by the UK P & I Club to Inter-sub Ltd for the successful sealing of the wreck. With regard to this bonus, only 50% of the claim appears acceptable to the IOPC Fund.

#### 1.7 Private Claimants

Modification of the amount claimed in the table in paragraph 3 of the Annex to document FUND/EXC.9/3 is made following the submission of new claims and the alteration of earlier claims. The total sum of the claims made to date stands at FFr13 270 035.33 (£1 134 119 as at 7 July rate of exchange) plus £450.00. Out of these claims the Executive Committee has already accepted the claims amounting to FFr47 000 and £450.00, as explained in paragraph 1.2 above. The IOPC Fund has not yet been informed of the amount of the claim with regard to one private claimant who notified the IOPC Fund in June 1983 of his intention to submit a claim. Furthermore, it is still possible that further claims may be made against the IOPC Fund.

With regard to the Association Inter-professionnelle des Victimes de la Marée Noire (49 private claimants) and the three private boatowners, who are all represented by a French lawyer, the Director has entered into negotiations with the representatives and the lawyer of the claimants. A first assessment by the IOPC Fund showed that some claims for economic loss have been made on the basis of uncertified loss and profit accounts or balance sheets, and that other claims have been made for loss or damage caused only indirectly by the TANIO incident; these claims will not be accepted by the Director. It is expected that further information on progress regarding the settlement of these claims will be available by the tenth session of the Executive Committee.

#### 1.8 Summary

A table summarising the claims that have been agreed is at Attachment I.

#### 2 Agreement with Claimants

As explained in paragraph 3.5.4 of the Annex to document FUND/EXC.9/3, an agreement laying down the figure accepted by the IOPC Fund as the French claim, for the purpose of distributing the amount available under the Fund Convention, and other particulars such as date of payment of compensation, subrogation, final release and an undertaking by the French Government to indemnify the IOPC Fund in the case of claims being made after the payment of compensation, has been negotiated between the French Government and the Director. A draft text of such agreement was informally distributed to the Executive Committee at its ninth session. The final text of a Protocol has now been agreed between the French Government and the Director and is submitted to the Executive Committee for consideration and ratification (Attachment II). It will be signed by the Director on behalf of the IOPC Fund after it has been approved by the Executive Committee.



2.2 Agreements corresponding to the Protocol concluded with the French Government have to be negotiated between the IOPC Fund and the other claimants, ie the Côtes-du-Nord Département and Communes, Finistère Communes, the UK P & I Club and the private claimants. Talks on the agreements have been held by the Director with the claimants.

### 3 Legal Actions against the Owner and Other Parties

Since the Executive Committee meeting in April 1983 the following procedural developments have taken place:

3.1 The IOPC Fund's writ has been served on all seven defendants and all of them except Guardiola Shipping Corporation have entered appearance thereto. Upon information being received from the service agent as to why Guardiola has not appeared, a decision can be taken as to whether to serve process on any of Guardiola's directors in accordance with a procedure laid down in Panamanian law.

3.2 The court in Brest has set 18 October 1983 as the date for the next hearing. At this hearing the court will decide on applications made by the parties and will set the dates by which various further procedural steps must be taken and on which the next hearing will be held. The IOPC Fund will apply for the court to make an order that any defendant who has not produced a defence by 18 October 1983 should do so by 18 November 1983.

3.3 The IOPC Fund will, in mid-August, file with the court in Brest

- (a) the evidence it has so far obtained in support of the allegations in its writ;
- (b) an application for the production by the Expertise Judiciaire of Le Harve of the evidence submitted to it;
- (c) an application for the production by the defendants of documents required either to support the IOPC Fund's case or likely to cast light on the causes of the loss.

3.4 A further experiment needs to be done on one of the samples taken from the hull of the ship. The IOPC Fund is trying to get permission for these tests (which are relatively simple) to be done, but it may be that an application will have to be made to the court for this to be done by an Expertise Judiciaire.

3.5 The United Kingdom P & I Club has instituted an action against Locafrance and Petromad for the sums it spent on surveying the wreck and sealing the holes - a procedure required under the Civil Liability Convention. However, there is some doubt as to whether the Club has complied with the requirements of Article 7.6 of the Fund Convention when notifying the IOPC Fund of these actions. This matter is being investigated and should be resolved by the time of the Executive Committee meeting.

3.6 The Director is trying to arrange a meeting with the liquidator of the shipowner's limitation fund to discuss with him co-ordination and procedure. This meeting should be held before the tenth session of the Executive Committee.

3.7 All procedural steps have been taken in full consultation with the French Government. Similar co-operation is being sought with other claimants.

ATTACHMENT I

Summary of Agreed Claims

Claimant	Agreed Amount
French Government	FFr326 921 936.70
Côtes-du-Nord Département and 14 Communes	FFr7 333 208.04
States of Guernsey	£14 439.62
States of Jersey	£8 093.63
UK P & I Club	US \$878 608.67
Hotelier (Guernsey)	£450.00
Comité des Assureurs Maritimes de Paris (12 boatowners)	FFr47 000.00

ATTACHMENT II

AGREEMENT

The French State, represented by the Agent Judiciaire du Trésor ("the State"), and

The International Oil Pollution Compensation Fund ("the IOPC Fund"),

Conscious of the considerable pollution damage caused by the loss of the Malagasy tanker TANIO on 7 March 1980 off the coast of Brittany, resulting in substantial economic loss and high expenses for cleaning the polluted area and for measures to prevent further damage;

Noting that it appears, after careful examination of all claims submitted to the IOPC Fund, that the total amount of damage suffered as a result of this incident exceeds the amount of FFr244 746 000, being the equivalent to 675 million (gold) francs, and being the total amount up to which the IOPC Fund is liable to pay compensation as specified in Article 4.4(a) of the Fund Convention;

Being aware that the shipowner has established a limitation fund under Article V.3 of the Civil Liability Convention in the court of Brest amounting to FFr11 833 717.79, which may be distributed to claimants in accordance with the provisions of the Civil Liability Convention and that therefore the amount of FFr232 912 280.21 would be available for distribution to all claimants by the IOPC Fund;

Recalling that legal actions against the shipowner and other parties have been taken both by the State and the IOPC Fund to recover the full amount of damage suffered as a result of the TANIO incident, these actions and their outcome being the subject of an agreement to be negotiated between the parties hereto;

Bearing in mind that Article 4.5 of the Fund Convention stipulates that the amount available for compensation under the Civil Liability Convention and the Fund Convention is to be distributed proportionately amongst the claimants on the basis of their established claims;

Conscious that the purpose of the Fund Convention is to provide prompt payment to victims of oil pollution incidents;

Convinced that in order to fulfil such purpose, an agreement between all the claimants on the compensation payable to each of them is advisable and that payment of compensation is therefore made by the IOPC Fund irrespective of the outcome of any action taken against the owner of the TANIO or other parties and without prejudice to the rights of claimants and the IOPC Fund to make further claims against persons that may eventually be held liable for the full pollution damage caused by the TANIO incident;

Considering on the one hand the necessity of allowing prompt payment to all claimants and on the other hand the fact that all the other claimants have accepted the amounts specified in the attached Annex\* as compensation payable by the IOPC Fund for the damage suffered as a result of the TANIO incident, the State has accepted that its compensation should be fixed on the basis of an already proven claim not requiring further justification in an amount of FFr326 921 936.70, all claimants reserving their rights to claim compensation for the damage exceeding this amount from those responsible;

\* The table referred to and to be annexed to this Agreement will be compiled after agreement has been reached with all claimants on their claims.

Have agreed as follows:-

1 The amount payable by the IOPC Fund to each claimant (as agreed between the IOPC Fund and that claimant), taking into account the compensation payable by the owner of the TANIO under the Civil Liability Convention, is as specified in the Annex attached to this agreement.

2 Payment of the amounts agreed will be made by the IOPC Fund not later than .....(1). If by this date the total contributions required for the compensation has not been received, payment will be made to the extent of the amount received by the IOPC Fund.

3 The IOPC Fund will pay and the State will accept the payment of ( ) French Francs in accordance with Clause 2 above in final settlement of all actions, demands, rights and remedies which it has or may have against the IOPC Fund in respect of pollution damage arising out of or in connection with the loss of the TANIO including interest, legal and other fees and costs. On receipt of the amount stated above the State will take all necessary steps to withdraw or discontinue all actions or proceedings instituted by it against the IOPC Fund in respect of such pollution damage.

4 On payment of the compensation and to the extent thereof the IOPC Fund shall be subrogated to the rights of the State in accordance with Article 9 paragraphs 1 and 2 of the Fund Convention. The French State will provide the IOPC Fund with all information, documents and, should the need arise, assistance to enable it to exercise its right of subrogation. During the period between the signature of this agreement and effective payment of the compensation due to the State, the State and the IOPC Fund will co-operate in conducting the actions taken against those presumed to be responsible.

(1) A date in early 1984 to be decided by the IOPC Fund in September 1983.

5 It is agreed that the IOPC Fund shall not in any event be liable to pay a sum in excess of 675 (six hundred and seventy-five) million (gold) francs on account of compensation for damage done by the loss of the TANIO.

Therefore it is agreed as follows:-

Where payment is made in accordance with Clause 3 above before the expiry of the six year period referred to in Article 6 of the Fund Convention, all claims for compensation presented during that period will be examined by the IOPC Fund.

If the Director of the IOPC Fund considers that the damage is compensable under the terms and according to the procedures laid down in the Convention, he will notify his decision to the State by registered letter addressed to 'l'Agent judiciaire du Trésor public'.

The State has thirty days in which to contest this decision. In the case of silence, it is deemed to acquiesce therein and shall reimburse the IOPC Fund. If the State contests the right to be compensated, it will so inform the Director of the IOPC Fund giving detailed reasons for its opposition.

The State and the Director shall then consult together, and if they cannot agree the decision will be taken by the Executive Committee of the IOPC Fund and the State shall comply with that decision.

If in accordance with such decision the Director demands of the State the repayment of the necessary amounts, the State shall promptly repay such sums to the IOPC Fund and waives all rights to reclaim such repayment from the IOPC Fund in all circumstances.

Such repayment shall be made by the State without prejudice to its right of recourse against the recipient of the compensation concerned.

In all circumstances the repayment will be made by the State without prejudice to its right of recourse against the other recipients of compensation.

6 This agreement is governed by French law.

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