



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
14th session  
Agenda item 3

FUND/EXC.14/2  
1 August 1985

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INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS  
(TANIO INCIDENT)

Note by the Director

1 Decisions of the Executive Committee up to its 13th Session

1.1 At the 12th session of the Executive Committee, the Director reported that claims had been agreed as follows (paragraphs 1.1 and 2.1 of document FUND/EXC.12/2):

French Government	FFr326 921 937
Département des Côtes-du-Nord	2 410 595
20 Communes in Côtes-du-Nord	4 985 659
7 Communes in Finistère	1 513 899
54 private claimants	4 637 997
	<hr/>
	FFr340 470 087

1.2 At its 10th session, the Executive Committee accepted the quantum of the claim made by the United Kingdom P & I Club, in the amount of FFr7 437 243 (paragraph 1.2 of document FUND/EXC.12/2). The Director accepted, thereafter, a further amount of FFr187 174 (£16 500), bringing the total amount of the agreed quantum to FFr7 624 417 (paragraph 2.5 of that document). The question of whether the UK Club's claim was time-barred, however, was not resolved and was explicitly left open. The Executive Committee authorized the Director, at its 11th session, to agree on a final settlement with the UK Club after having considered all legal aspects of the question of time-bar.

1.3 The other claims outstanding at the time of the 13th session of the Executive Committee were those made by the Port Autonome du Havre, the Commune of St Pol de Léon and five private claimants who submitted their claims independently (paragraphs 2.2 to 2.4 of document FUND/EXC.12/2). The Director was authorized by the Executive Committee at its 10th session to settle these claims.

1.4 For details of the claims mentioned in paragraphs 1.1 - 1.3 above and the decisions of the Executive Committee at previous sessions, reference is made to the documents listed in paragraph 1.3 of document FUND/EXC.12/2.

## 2 Development of Claims Settlement Since the 13th Session of the Executive Committee

2.1 The five private claimants referred to in paragraph 2.2 of document FUND/EXC.12/2, who had submitted their claims independently, have not taken legal action against, nor notified, the IOPC Fund in order to break the time bar under Article 6.1 of the Fund Convention, despite the Director's advice that this would be necessary. Another private person lodged a claim for compensation in November 1984. Having examined these claims, the Director found that the damage in question was suffered in either 1980 or 1981. The Director is of the opinion that that these claims have now been time-barred and that the IOPC Fund will not be required to pay compensation with regard to these six private claimants.

2.2 It has now been confirmed that the Commune of St Pol de Léon has no claim against the IOPC Fund.

2.3 As regards the claim made by the Port Autonome du Havre in the amount of FFfr116 594 (as reduced after discussion with the Director), the question was whether the expenses incurred by the Port should be considered as salvage expenses rather than costs of measures to prevent or minimise pollution damage. After a careful examination of the documents submitted, the Director came to the conclusion that the expenses were related to preventive measures as defined in the Civil Liability Convention. He therefore accepted the claim in its entirety. A part payment in the amount of FFfr71 563 was made in November 1984, viz 61.37836136% of the agreed claim, this being the percentage applied in respect of the payments made to other claimants in February 1984 (see paragraph 4.3 of document FUND/EXC.12/2).

2.4 Part payment of compensation was made in December 1984 with regard to the two claims submitted by private claimants mentioned in paragraph 2.1 of document FUND/EXC.12/2. The amount paid was FFfr6 926, being 61.37836136% of the agreed claims.

2.5 The UK Club's claim has been accepted by the Director, under the authority given to him by the Executive Committee. The settlement of this claim is dealt with in paragraph 3 below.

2.6 The agreed claims amount to FFfr348 211 098. It should be noted that the agreements as to the amounts were reached for the purpose of distributing the money available under the Fund Convention, without prejudice to each claimant's right to claim beyond the amount agreed by the IOPC Fund against the shipowner and others. The IOPC Fund has so far paid FFfr221 201 452 (including the payment to the UK Club; cf paragraph 3.11).

2.7 The situation as at 31 July 1985 with respect to the settlement and payment of claims is shown in the Annex to this document.

### 3 UK Club's Claim: Question of Time-Bar

#### Introduction

3.1 As was reported at the 7th session of the Executive Committee, the question had arisen as to whether the UK Club's claim against the IOPC Fund was time-barred. The question was discussed at the 10th and 11th session of the Executive Committee, but no decision was taken as to the substance of the matter. As stated above, the Executive Committee, at its 11th session, authorized the Director to agree on a final settlement with the UK Club after having considered all legal aspects of the question of time-bar.

3.2 An amount of FFfr4 687 703, representing 61.37836136% of the agreed claim, was paid into a joint deposit (escrow) account on 16 February 1984. This amount, plus the interest accruing, would be paid to either the UK Club or the IOPC Fund when agreement had been reached or a judgement had been obtained regarding the time-bar in respect of this claim (document FUND/EXC.12/2, paragraph 4.4).

3.3 In view of the importance of the issue, the Director has sought further legal advice from an independent French consultant of the highest reputation, who has carried out an examination of all elements of the case and an in depth study of the question of prescription. The Director has now come to the conclusion that the UK Club's claim should be paid, as it is most likely that a French court would consider that this claim is not time-barred. This position is based on the following considerations.

#### Relevant Provisions of the Fund Convention

3.4 The question of time-bar is governed by Article 6.1 of the Fund Convention which reads:

"Rights to compensation under Article 4 or indemnification under Article 5 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage."

3.5 The reference to Article 7.6 concerns the procedure for notification to the IOPC Fund of proceedings under the Civil Liability Convention. Each party to such proceedings against the shipowner or his insurer shall be entitled under the national law of the court seized to notify the IOPC Fund of such proceedings. If such notification has been made in accordance with the formalities required by that law, and in such time and in such a manner that the IOPC Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in these proceedings will, after it has become final and enforceable in the State where it was given, become binding upon the IOPC Fund.

Facts of Particular Relevance to the Question of Time-Bar

3.6 In a letter of 22 February 1982 to the IOPC Fund, the UK Club recorded formally its claim against the IOPC Fund. The receipt of that letter was acknowledged by the IOPC Fund in a letter of 9 March 1982. The UK Club outlined the circumstances in which its expenses were incurred in a letter of 22 April 1982. The IOPC Fund acknowledged that letter in a letter of 10 May 1982. The IOPC Fund sent a letter of 9 February 1983 in French to all claimants, including the UK Club, advising them to take legal action against the owner of the TANIO and to notify the IOPC Fund in accordance with Article 7.6 of the Fund Convention before the expiry of the three year prescription period; it was suggested that 7 March 1983 should be taken as the date of expiry. By letter of 21 February 1983, the UK Club informed the IOPC Fund of the fact that a claim had been lodged by the UK Club with the liquidator of the shipowner's limitation fund. The UK Club's writ against the owner of the TANIO at the court of Brest was, in fact, served on the liquidator of the shipowner's limitation fund on 3 March 1983. The IOPC Fund was formally notified of the proceedings under Article 7.6 of the Fund Convention on 5 May 1983.

Legal Analysis of the Situation

3.7 If no settlement out of court were made, the dispute between the IOPC Fund and the UK Club concerning the question of time-bar would be decided by the Court of Brest. In the opinion of the Director, French law would be applicable, as the quasi-totality of the damage resulting out of the TANIO incident was sustained in France. Under French private international law, liability in tort is governed by the law of the place where the damage occurred. If, however, the French Court were to decide that English law should apply to the UK Club's claim, questions of prescription are under English law as matters of procedure governed by the law of the court seized (lex fori). French substantive law would, also under this hypothesis, govern the case.

3.8 As stated above, the UK Club informed the IOPC Fund by letter of 21 February 1983 of the fact that a claim had been lodged by the UK Club with the liquidator of the limitation fund. The letter did not state that it was a notification under Article 7.6 of the Fund Convention. The information given to the IOPC Fund concerned a claim against the liquidator and not proceedings against the shipowner or his guarantor; such proceedings were not initiated until 25 February 1983. Nevertheless, the Director has reached the conclusion, on legal advice, that a French Court would very likely consider that the letter of 21 February 1983 constituted a valid notification under Article 7.6 of the Fund Convention, thus interrupting the prescription period. Even if the Court were to find that the requirements under the said Article were not entirely fulfilled by that letter, the IOPC Fund was formally notified of the proceedings on 5 May 1983. The Court would then most probably take the position that any defect in the fulfilment of the requirements that remained after the IOPC Fund had received the letter of 21 February 1983 were remedied by the

formal notification of 5 May 1983. It is true that this formal notification was made after the critical date of 7 March 1983. However, as the proceedings against the shipowner were in its very early stages, the Court would probably take the position that the IOPC Fund had not suffered any prejudice by the formal notification being made after that date and would therefore consider that the letter of 21 February 1983, together with the subsequent notification on 5 May 1983, were sufficient for interrupting the prescription period.

3.9 If, however, the Court were to find that notification had not been made in accordance with Article 7.6, it is quite possible that the Court would take the position that the IOPC Fund had recognised the claim of the UK Club and had accepted it, in principle, as valid, by the exchange of letters in 1982 and by entering into discussions on the merits of the claim without making any explicit reservation as regards time-bar. There are reasons to believe that the Court would consider that the IOPC Fund should, therefore, be prevented from invoking that the UK Club's claim was time-barred.

#### Position Taken by the Director

3.10 In view of the foregoing, the Director became convinced that the IOPC Fund could not maintain the position that the UK Club's claim was time-barred. He decided, therefore, to accept the UK Club's claim on the basis of the authorisation given to him by the Executive Committee at its 11th session.

3.11 An amount of FFr4 679 742, together with accrued interest will be paid from the joint (escrow) account to the UK Club on 2 August 1985. The remaining amount of the principal, FFr7 961, together with accrued interest, will be refunded to the IOPC Fund on that date. This repayment is due to the fact that when the calculations were made in February 1984, the rate of exchange between the pound sterling and the US dollar as regards part of the UK Club's claim was not available to the IOPC Fund. A recalculation based on the correct rate has shown that the UK Club should only be entitled to FFr4 679 742.

#### 4 Further Part Payments by the IOPC Fund

4.1 In September 1984 the liquidator of the owner's limitation fund, who was appointed by the Civil Court of Brest, made a first distribution of the limitation fund, amounting to FFr19 147 973. An amount was reserved for the final distribution of the limitation fund, since not all claims had been settled by the time of the first payment. This reserve (including interest) amounted to FFr2 992 853 as at 30 June 1985.

4.2 The owner's limitation fund is earning interest at market rate, and the amount of compensation actually paid under the CLC increases as time passes. The total amount of compensation to be paid by the IOPC Fund is FFr244 746 000, including the amount actually paid under the Civil Liability Convention. The amount of

compensation to be paid by the IOPC Fund will, therefore, be reduced as the final distribution of the owner's limitation fund is delayed (paragraph 4.2 of document FUND/EXC.12/2). As a consequence thereof, a situation could arise in which the aggregate amount already paid by the IOPC Fund exceeds the total amount to be paid by the IOPC Fund under the Fund Convention, ie FFr244 746 000 minus the amount actually paid under the Civil Liability Convention. With the present rate of interest, this could be the case in five years. Since one of the outstanding claims against the shipowner's limitation fund has been lodged by the owner himself, it can be expected that it will take some time before the final distribution of the limitation fund can be made. In view of the above considerations, the Director has decided not to make a second part payment of compensation, at least for the time being, in order to prevent such a situation arising.

4.3 It should be noted that the possibility of an "overpayment" by the IOPC Fund was foreseen in February 1984 when an additional payment of FFr7 475 225 was made by the IOPC Fund to the French Government. It was then agreed that the French Government would, in such a case, repay to the IOPC Fund the difference between the amount due to the French Government and the amount received from the IOPC Fund (FUND/EXC.12/2, paragraph 4.2). This agreement was concluded in order to make it possible to pay a fair amount to claimants as soon as possible. In view of this agreement, it is very unlikely that an "overpayment" situation will arise.

## 5 Legal Action Against the Shipowner and Other Parties

5.1 In 1983, the IOPC Fund took legal action in the Tribunal de Grande Instance in Brest against the following persons:

- (a) La société Industrie Navale Meccaniche Assini (INMA), the shipyard that repaired the TANIO in 1979;
- (b) La société Locafrance International Leasing (Locafrance), the registered owner of the TANIO at the time of the incident;
- (c) La société Guardiola Shipping Corporation (Guardiola), charterer of the TANIO at the time of the incident;
- (d) La compagnie Malgache de Transports Pétroliers (PETROMAD), the company having sub-chartered the vessel and being responsible for the management of the TANIO at the time of the incident;
- (e) La Société Française des Transports Pétroliers (SFTP), responsible for the technical management of the TANIO at the time of the incident;
- (f) Le Bureau Véritas, the classification society that monitored the repairs to the TANIO in 1979;

- (g) The United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd, (UK Club), in its capacity of insurer of any defendant other than Locafrance.

The French Government has taken action against the same defendants. The grounds on which the actions are based are set out in document FUND/EXC.9/3, paragraph 2.5.

5.2 So far, the case has concentrated largely on procedural matters. In 1984, the President of the Court in Brest reconvened the Expertise Judiciaire, under Mr Bensussan, with the task of giving its opinion on the causes of the loss of the TANIO in the light of all the information already filed and to be made available by the parties, and, in particular, to supervise the carrying out of an experiment devised by the IOPC Fund's technical advisers, the object of which was to establish more accurately how the crack which broke the ship developed.

5.3 At the request of the IOPC Fund and the French Government, the Service Technique des Constructions et Armes Navales (STCAN), in Paris, has carried out a test on a piece taken from the sunken vessel, piece 35. After that test was carried out, the Expertise Judiciaire met in order to study the report of that test in the light of the comments made by the parties. It is expected that the Expertise Judiciaire will issue its new report during the autumn of 1985.

5.4 The response by the defendants to the requests of the IOPC Fund and the French Government for documentary evidence has been very slow. Documents have now been communicated by INMA, SFTP, Véritas and the UK Club, but the response from these defendants is not complete. The IOPC Fund and the French Government have, therefore, made requests for supplementary documentary evidence from these defendants and have renewed the requests as regards the defendants who have so far not responded.

5.5 Progress in the case has been held up by a number of factors, including the heavy workload of the Court in Brest, the complexity of the case, and the time-consuming procedure of obtaining documentary evidence from the defendants. The technical examination carried out at the request of the IOPC Fund and the French Government and the need to reconvene the Expertise Judiciaire has also contributed to the delay. As the results of the experiment carried out by STCAN are now available and the Expertise Judiciaire will soon submit its report, it could be expected that the case will enter a more active phase and proceed faster in the future.

## 6 Action to be Taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document.

ANNEXSituation of Claims as at 31 July 1985

1 AGREED CLAIMS			<u>Agreed</u>	<u>Paid</u>
			FFr	FFr
French Government			326 921 937	208 134 552
Local Authorities in France	FFr			
- Côtes-du-Nord Département		2 410 595		
- Côtes-du-Nord 20 Communes		4 985 659		
- Finistère 7 Communes		<u>1 513 899</u>		
		8 910 153	8 910 153	5 468 892
Port Autonome du Havre			116 594	71 563
Association Interprofessionale des Victimes de la Marée Noire: 50 Members			4 452 214	2 732 674
4 Private Claimants			185 783	114 029
UK P & I Club				
Own Expenses	\$	FFr		
- British Oceanics	326 769.53			
- Underwater Security	14 384.77			
- Intersub	<u>560 579.12</u>			
	901 733.42	7 298 630		
Subrogated Claims	£			
- Comité des Assureurs Maritimes		47 000		
- State of Jersey	8 093.63	98 176		
- State of Guernsey	14 439.62	175 153		
- Hotelier	450.00	<u>5 458</u>		
		7 624 417	7 624 417	4 679 742
			<u>348 211 098</u>	<u>221 201 452</u>
2 CLAIMS MADE IN THE COURT BUT NOT PURSUED			FFr	
Association de Marins Pêcheurs			<u>500 000</u>	