



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
14th session  
Agenda item 3

FUND/EXC.14/3  
27 August 1985

Original: ENGLISH

INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS  
ARISING OUT OF THE TARPENBEK INCIDENT

Note by the Director

1 Introduction

1.1 The tanker TARPENBEK registered in the Federal Republic of Germany, loaded with about 1 600 tonnes of lubricating oil, collided on 21 June 1979 with the British Royal Fleet auxiliary ship SIR GERAINT off the English coast. As a result of the collision, the TARPENBEK capsized. The TARPENBEK was towed to a sheltered bay. In a technically difficult operation, the cargo oil was pumped out of the capsized ship and the ship was later parbuckled. The ship was towed to the port of Rotterdam (the Netherlands) where she was sold. A small spill of non-persistent bunker oil (light diesel oil) was observed during the pumping and parbuckling operations. It is in dispute whether any persistent oil was spilt from the TARPENBEK.

1.2 The owner of the TARPENBEK undertook the pumping, parbuckling and towage operations. The United Kingdom Government and local Councils carried out various measures to prevent a possible spill of oil which could have caused damage to beaches or the marine environment.

1.3 In June 1982 the Treasury Solicitor of the United Kingdom Government issued two writs seeking compensation from the IOPC Fund pursuant to Section 4 of the United Kingdom Merchant Shipping Act 1974, one on behalf of the Department of Trade and the Ministry of Defence and the other on behalf of the Nature Conservancy Council. Another writ has been issued against the IOPC Fund on behalf of the Isle of Wight County Council and the South Wight Borough Council. In addition, the owner of the TARPENBEK and the Skuld P & I Club have issued a writ claiming recovery from the IOPC Fund of the owner's expenses for preventive measures (Annexes to documents FUND/EXC.7/2, FUND/EXC.7/2/Add.1 and FUND/EXC.9/2).

1.4 The claims against the IOPC Fund originally amounted to £1 740 891.20, as set out in Annex I to this document.

1.5 The owner's liability under the CLC is £64 356.31, and indemnification, if any, amounts to £16 089.08.

1.6 The IOPC Fund has been informed that the United Kingdom Government has notified CRISTAL of a claim for pollution damage amounting to £1 175 856 plus interest.

1.7 The delay in the settlement in respect of this incident is due to a dispute as to whether there was any spill of persistent oil as a result of the incident. There are also different opinions on the interpretation of the United Kingdom legislation (the Merchant Shipping (Oil Pollution) Act, 1971 and the Merchant Shipping Act, 1974) and the Civil Liability and Fund Conventions as regards the question whether the liability of the IOPC Fund is dependent on whether, and if so when, such spill occurred.

1.8 Details of the claims and discussions on the interpretation of the United Kingdom legislation are contained in the Annexes to documents FUND/EXC.4/2, FUND/EXC.7/2, FUND/EXC.9/2 and FUND/EXC.12/3.

## 2 Position of the Parties

2.1 The shipowner has maintained that as regards claims from shipowners (but not as regards claims from other persons) the IOPC Fund is liable to pay compensation for expenses incurred by him in order to prevent or minimise pollution damage, irrespective of whether or not any spill of persistent oil occurred. In support of this, the shipowner has invoked Article 4.1, last sub-paragraph, of the Fund Convention. The shipowner has argued that this paragraph does not use the term "preventive measures" but rather the general expression of "expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise pollution damage." In his opinion, the Convention provides without exception that such expenses shall be treated as pollution damage for the purposes of this Article. In addition, the shipowner has alleged that there was a spillage of 1 150 litres of persistent oil in the form of lubricating oil from the vessel's engine room at the time of the collision. Furthermore, he has maintained that spillages of persistent cargo oil occurred on four separate occasions during the pumping and parbuckling operations in July 1979.

2.2 The position of the United Kingdom Government in this regard is not entirely clear. In the official report of the incident established within the Ministry of Trade, it was stated that there was no spill of persistent oil as a result of the incident. In some connections, however, the United Kingdom Government has stated that there was no "significant" spill of persistent oil. In any case, it is possible that the United Kingdom Government in court proceedings would maintain that a spill of persistent oil occurred in connection with the collision.

2.3 The Director has rejected any liability on the part of the IOPC Fund. He has maintained that the IOPC Fund is liable to pay compensation only if there is a spill of persistent oil as a result of the incident (document FUND/EXC.4/2). Based on investigations by the IOPC Fund's surveyors, the Director is of the opinion that the owner has not produced evidence to prove that persistent oil was spilled on the dates, and in the quantities, alleged by the owner (FUND/EXC.12/3, Annex, paragraph 1.1). The Director has further argued that if a spill of persistent oil did occur, the IOPC Fund is only liable for expenses incurred for preventive measures taken after such a spill occurred.

### 3 Possibility of an Out of Court Settlement

3.1 In an attempt to avoid lengthy legal proceedings, the Director has initiated discussions with the United Kingdom Government and the shipowner and other claimants on the possibility of reaching a compromise, while maintaining the IOPC Fund's position that there is no liability for the IOPC Fund to pay compensation as no proof has been given that any persistent oil escaped as a result of the incident.

3.2 As a first step towards arriving at a compromise solution, the Director has had discussions with the claimants regarding the quantum of their claims. After lengthy negotiations, agreement has been reached as regards the quantum of the claims presented by the UK Government (except for those presented by the Ministry of Defence) and the Nature Conservancy Council. As shown in Annex I to this document, the total agreed quantum stands at £802 842.42 as at 15 August 1985. Details of the claims are given in Annex II.

3.3 Outstanding claims are those lodged by the Ministry of Defence (£189 452.40), the Isle of Wight County Council (£8 984.34), South Wight Borough Council (£1 195.69) and the shipowner (£594 357.79). The total amount of the adjusted claims stands at £1 588 669.43 as at 15 August 1985.

3.4 The claim by the Ministry of Defence relates to dock yard costs in respect of three naval ships, boom costs and costs for the use of six naval ships (charges for use of vessels, fuel consumed and stores consumed). The point to be resolved is the assessment of costs as regards the vessels belonging to the Royal Marine Auxiliary Service and to Her Majesty's Service. The Director has requested to be given further information in that regard. He believes that an agreement can be reached in respect of the quantum of this claim.

3.5 With respect to the claim by the Isle of Wight County Council, agreement has been reached on the quantum of all items of the claim, except as regards costs for legal fees (£821.13). These costs were incurred by the Council when applying for a High Court injunction against certain preventive measures; the injunction was not granted. The Director is of the opinion that such costs do not fall within the definition of "pollution damage" as laid down in the Civil Liability Convention.

3.6 Concerning the claim by South Wight Borough Council, the Director expects that an agreement as to the quantum will be reached in the near future.

3.7 The shipowner's claim relates to the costs for the towing of the TARPENBEK from the place of the collision to a sheltered bay, the pumping of the oil from the capsized ship and the parbuckling operation as well as the towing of the empty wreck to the port of Rotterdam. The shipowner has maintained that all these operations should be considered as "preventive measures" within the meaning of the Civil Liability Convention and the Fund Convention.

3.8 In the opinion of the Director, the major purpose of the operations carried out by the salvor was to prevent oil pollution. It is clear that as long as there was any oil on board the TARPENBEK, there was a considerable risk of a major oil spill. For this reason, the Director considers that the measures taken up to the moment when the pumping of the oil from the ship was concluded should be considered as "preventive measures". The costs of these measures are therefore, in principle, compensable under the Conventions. On the other hand, costs incurred for measures taken after the wreck was emptied, such as costs for towing the empty wreck to Rotterdam, clearly cannot be considered as costs of preventive measures.

3.9 In addition to the amounts indicated above, the UK Government, the Isle of Wight County Council and the shipowner have claimed interest on these amounts. This question has so far been left open. It should be mentioned that, under English law, the award of interest is a matter of discretion for the Court. English Courts usually award interest for the whole period of time and at the rate applicable to short-term investment of court funds. The average rate on such investments for the period in consideration was 12½% pa. Applying that rate, the total amount of interest in respect of these claimants for a period of six years that has already lapsed since the incident would be approximately £1 185 000, bringing the total amount claimed up to approximately £2 770 000.

3.10 The Director is of the opinion that these claimants are entitled to interest on their claims, at least in respect of part of the time that has lapsed since the date of the incident.

3.11 As reported in paragraph 1.4 of the Annex to document FUND/EXC.12/3, the amount of compensation to be paid by the IOPC Fund, if any, depends largely on the distribution of liability between the SIR GERAINTE and the TARPENBEK in connection with the cause of the collision. The SIR GERAINTE is owned by the UK Government as part of its Royal Auxiliary Fleet. The investigation into the cause of the incident shows that the SIR GERAINTE was more to blame for the collision. A distribution of liability with 75% for the SIR GERAINTE and 25% for the TARPENBEK has been agreed between the hull insurers.

3.12 The limitation amount applicable to the SIR GERAINTE under the UK legislation, ie the global limitation, is approximately £200 000. It is questioned whether the owner of the SIR GERAINTE is entitled to limit his liability.

3.13 Any final settlement must involve not only the UK Government as a victim of pollution damage but also the UK Government as the owner of the SIR GERAINT. As stated above, the SIR GERAINT was more to blame for the collision. If the IOPC Fund were to be liable at all, the UK Government should therefore only receive compensation in respect of part of its claim from the IOPC Fund. Furthermore, the UK Government should, in the view of the Director, pay at least part of the salvage costs, and this also to the extent that these costs can be regarded as costs of preventive measures within the meaning of the Civil Liability Convention. An important element in any settlement would be to what extent the UK Government, in its capacity of owner of the SIR GERAINT, would be willing to pay compensation in excess of the limitation amount applicable to that ship.

#### 4 Director's Proposal

4.1 The Director is of the opinion that an attempt should be made to reach a settlement out of court. Even though the Director still considers that there is not sufficient evidence to prove that any spill of persistent oil occurred in connection with the incident, either at the time of the collision or during the pumping and parbuckling operations, there is some evidence which may possibly lead the Court to the conclusion that some persistent oil could have been spilled at some time during the operations. There is evidence that the full quantity of the vessel's own lubricating oil, which was persistent oil, is not accounted for. In addition, the disagreement between the Director and the shipowner as regards the interpretation of the Conventions and the UK legislation could lead to protracted litigation, in spite of the fact that the Director cannot see that there is anything to support the shipowner's position in this regard. Such litigation would entail considerable legal fees. As time passes, the total amount of interest which the IOPC Fund would have to pay if the IOPC Fund were ultimately held liable for the amount claimed or part thereof will also increase. In any event, because of the apportionment of liability between the ships involved, any settlement would, as regards the IOPC Fund, be only for part of the total amount claimed.

4.2 The Director proposes that he be instructed to continue the negotiations with the claimants in order to arrive at an out of court settlement of all claims arising out of the incident. If the Executive Committee were to share the Director's opinion that an out of court settlement is desirable, the Committee may wish to authorise the Director to make a final settlement of all claims.

#### 5 Action to be Taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document and to give the Director such instructions in respect of this incident as it considers appropriate.

ANNEX I  
SUMMARY OF CLAIMS

Claimant	Original Claims	Adjusted Claims	Agreed Quantum as at 15.8.85
<u>A UK Government</u>			
1 Department of Trade	940 746.80	789 402.99	789 402.99
2 Ministry of Defence	190 103.60	189 452.40	pending
3 Department of the Environment	3 764.46	3 764.46	3 764.46
	<u>1 134 614.86</u>	<u>982 619.85</u>	<u>793 167.45</u>
<u>B Councils</u>			
1 Isle of Wight County Council	8 984.34	8 984.34	8 163.21*
2 South Wight Borough Council	1 195.69	1 195.69	pending
3 Nature Conservancy Council	1 738.52	1 511.76	1 511.76
	<u>11 918.55</u>	<u>11 691.79</u>	<u>9 674.97</u>
<u>C Shipowner</u>			
	594 357.79	594 357.79	pending
<b>TOTAL</b>	<u>1 740 891.20</u>	<u>1 588 669.43</u>	<u>802 842.42</u>

\* An amount of £821.13 relating to legal fees is in dispute

Note In addition interest has been claimed by the UK Government, the Isle of Wight County Council and the shipowner.

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ANNEX II

## DETAILS OF CLAIMS AS AT 15.8.85

A <u>UK Government</u>	£	£	£
1 <u>Dept of Trade</u>			
(a) Cost of dispersant	28 228.34		
(b) Hire of spraying vessels	229 400.00		
(c) Spraying costs	15 837.54		
(d) Hire of boom support vessels	152 804.18		
(e) Boom deployment costs	269 366.34		
(f) Aircraft charter	42 332.48		
(g) Miscellaneous costs	3 651.95		
(h) Depreciation	42.09		
(i) Dept's standing charges	12 831.21		
(j) Cost of survey staff	26 042.36		
(k) WSL expenditure	<u>8 866.50</u>		
	789 402.99	789 402.99	
2 <u>Ministry of Defence</u>			
(a) Dockyard costs	31 892.26		
(b) HM Ships (use of 6 ships)	<u>157 560.14</u>		
	189 452.40	189 452.40	
3 <u>Dept of the Environment</u>			
Costs relating to use of specialised equipment	3 764.46	3 764.46	
Sub-total			982 619.85
B <u>Councils</u>			
1 <u>Isle of Wight County Council</u>			
(a) Materials	182.70		
(b) Machinery & equipment	2 507.07		
(c) Labour	4 684.50		
(d) Travel & subsistence	221.08		
(e) Control & communications	25.30		
(f) Overheads	500.00		
(g) Miscellaneous	<u>863.69</u>		
	8 984.34	8 984.34	
2 <u>South Wight Borough Council</u>			
(a) Legal costs	822.16		
(b) Fees	333.47		
(c) Miscellaneous claims	<u>40.06</u>		
	1 195.69	1 195.69	
3 <u>Nature Conservancy Council</u>			
(a) Staff costs	1 448.67		
(b) Travel & subsistence	<u>63.09</u>		
	1 511.76	1 511.76	
Sub-total			11 691.79
C <u>Shipowner</u>	594 357.79		594 357.79
TOTAL			<u>1 588 669.43</u>