



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
16th session  
Agenda item 3

FUND/EXC.16/2  
15 September 1986

Original: ENGLISH

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

Note by the Director

Introduction

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 GERAINTE 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.

2 The owner of the TARPENBEK, Partenreederei ms Tarpembek, 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.

3 The United Kingdom Government, the local authorities and the owner of the TARPENBEK instituted legal proceedings, seeking compensation from the IOPC Fund. The claim by the United Kingdom Government amounted to £1 134 615, those of the councils to £11 918 and that of the shipowner to £594 358, totalling £1 740 891.

4 The owner's liability under the CLC is £64 356.31, and indemnification of the shipowner, if any, would amount to £16 089.08.

5 The IOPC Fund was informed that the United Kingdom Government had notified CRISTAL of a claim for pollution damage amounting to £1 175 856, plus interest, and that the Nature Conservancy Council had notified CRISTAL that a claim would be made.

6 The delay in the settlement of this case was due to a dispute as to whether there was any spill of persistent oil as a result of the incident. There were also different opinions on the interpretation of the United Kingdom legislation and the Civil Liability and Fund Conventions as regards the question whether the liability of the IOPC Fund was dependent on whether, and if so when, such spill occurred.

#### Developments prior to the 14th session of the Executive Committee

7 At its 14th session, the Executive Committee was given a report on the positions of the parties and the developments of the case (document FUND/EXC.14/3). This report can be summarised as follows.

8 The Director had rejected any liability on the part of the IOPC Fund. He had maintained that the IOPC Fund was liable to pay compensation only if there was a spill of persistent oil as a result of the incident. Based on investigations by the IOPC Fund's surveyors, the Director had expressed the opinion that there was not sufficient evidence that any persistent oil was spilled.

9 In his report, the Director pointed out that the amount of compensation to be paid by the IOPC Fund, if any, depended largely on the apportionment of liability between the SIR GERAINT and the TARPENBEK as regards the cause of the collision. The investigation that had been carried out showed that the SIR GERAINT was more to blame for the collision. A distribution of liability with 75% for the SIR GERAINT and 25% for the TARPENBEK had been agreed between the hull insurers.

10 In an attempt to avoid lengthy legal proceedings, the Director had initiated discussions with the claimants on the possibility of reaching a compromise, while maintaining the IOPC Fund's position that there was no liability for the IOPC Fund to pay compensation since no proof had been given that any persistent oil escaped as a result of the incident. Discussions had also been held regarding the quantum of the claims. Agreement had been reached on the quantum of the major part of the claim presented by the United Kingdom Government. The Annex sets out the original claims, the claims as adjusted by claimants during the negotiations and the quantum accepted by the IOPC Fund in respect of the various claims. For details of the claims, reference is made to Annex II to document FUND/EXC.14/3.

#### Decision by the Executive Committee at its 14th Session

11 The Executive Committee, at its 14th session, instructed the Director to continue the negotiations with the claimants in order to arrive at an out of court settlement and authorized him to make

a final settlement of all claims against the IOPC Fund arising out of the TARPENBEK incident. The Committee indicated that the Director should take into account, during these negotiations, the uncertainty that existed both as to whether a spill of persistent oil actually occurred and as to the interpretation of the Civil Liability Convention and the relevant United Kingdom legislation (document FUND/EXC.14/7, paragraph 3.1.2).

Negotiations with the Claimants

12 In accordance with the instructions given to him by the Executive Committee, the Director continued negotiations with the claimants. In his consideration of the matter, the Director took into account the elements specifically referred to by the Executive Committee.

13 In addition, the Director considered the fact that claimants, under English law, were entitled to interest on their claims. 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 of such investments for the period in question was 12½% pa. Applying that rate, the total amount of interest accruing for the period of seven years which had elapsed since the incident would be considerable.

14 Having considered all the aspects of the case, the Director made offers to the various claimants for a total settlement out of court. These offers were accepted by the claimants. All claims against the IOPC Fund arising out of the TARPENBEK incident were thus settled at the following amounts (inclusive of any interest and costs):

<u>Claimant</u>	<u>Amount</u>
	£
United Kingdom Government	175 000
Shipowner	180 000
Isle of Wight County Council	7 000
South Wight Borough Council	150
Nature Conservancy Council	1 400
Total	<u>363 550</u>

15 A comparison between the amounts agreed and the amounts claimed is given in the Annex; in column 4, the amounts claimed have been adjusted by the addition of interest for seven years at 12½% pa.

16 The amounts agreed with the various claimants were paid by the IOPC Fund in September 1986. Legal fees, totalling £16 089.85, were also paid in September 1986.

17 The IOPC Fund has previously had expenses for surveyor's and legal fees totalling £4 963.

18 The total payments of the IOPC Fund in respect of the TARPENBEK incident were as follows:

	<u>Amount</u>
	£
Compensation to claimants	363 550.00
Fees	21 052.85
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Total payments	384 602.85
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19 Payments were also made to the United Kingdom Government by the owner's P & I Club and by CRISTAL as part of a total out-of-court settlement, and to the Nature Conservancy Council by CRISTAL.

Action to be Taken by the Executive Committee

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

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ANNEX

SUMMARY OF CLAIMS

Claimant	1 Original Claims	2 Adjusted Claims	3 Quantum Accepted by IOPC Fund	4 Adjusted Claims Plus Interest*	5 Claims as Settled
	£	£	£	£	£
<b>A <u>UK Government</u></b>					
1 Department of Trade	940 746.80	789 402.99	789 402.99**		
2 Ministry of Defence	190 103.60	189 452.40	124 471.55***		
3 Department of the Environment	3 764.46	3 764.46	3 764.46**		
	1 134 614.86	982 619.85	917 639.00	1 842 410	175 000
<b>B <u>Councils</u></b>					
1 Isle of Wight County Council	8 984.34	8 984.34	8 163.21	16 845	7 000
2 South Wight Borough Council	1 195.69	1 195.69	40.06	2 240	150
3 Nature Conservancy Council	1 738.52	1 511.76	1 511.76**	2 833	1 400
	11 918.55	11 691.79	9 715.03	21 918	8 550
<b>C <u>Shipowner</u></b>					
	594 357.79	594 357.79	- ***	1 114 419	180 000
<b>TOTAL</b>	1 740 891.20	1 588 669.43	927 354.03	2 978 747	363 550

• The amount of the adjusted claims in column 3 plus interest at 12½% pa for seven years.

\*\* Quantum agreed between claimant and IOPC Fund.

\*\*\* No agreement was reached on the quantum of this claim.