



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

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

Note by the Director

The Incident

1 On 11 September 1987, at 5.45 am, a Swedish passenger ferry sighted an oil slick which was one nautical mile long and 200 miles wide off the Skaw, the northern point of Jutland (Denmark), and reported its observations to the Swedish authorities which immediately commenced air reconnaissance flights. The prevailing winds and currents caused the oil to drift rapidly towards the west coast of Sweden. As the slick spread over a large area of the sea, no effective measures could be taken to prevent the oil from reaching the coast.

2 The oil started reaching the Swedish coast in the evening of 11 September 1987. It is estimated that 200 tonnes of oil came ashore. Extensive pollution was caused to a long stretch of coast, north of Gothenburg. The region affected by the oil consists of numerous small islands and a rocky mainland coast. The area is of great importance to tourism and some fishing activities are carried out there.

3 The clean-up operations at sea were carried out by the Swedish Coast Guard, whereas the onshore clean-up was the responsibility of the municipalities concerned. Extensive operations to clean the shoreline were carried out during the period September 1987 to December 1988 and also during the summer of 1989. The Swedish Government has reimbursed the municipalities for the costs incurred by them as a result of the incident. The total cost to the Swedish authorities, covering the operations of the Coast Guard and the onshore clean-up, has provisionally been indicated as SKr100 639 999 (£9.6 million).

The Legal Action

4 On 22 August 1990, the Swedish Government took legal action in the Court of Gothenburg against the owner of the Greek vessel TOLMIROS (48 914 GRT) and his P & I insurer, Assuranceforeningen Gard (the Gard Club), claiming compensation for pollution damage in the amount of SKr96 873 999 (£9.2 million) plus interest. The IOPC Fund was notified of the action on 4 September 1990, in accordance with Article 7.6 of the Fund Convention. A supplementary writ covering an additional amount of SKr3 766 000 (£360 000) was filed by the Swedish Government on

11 September 1990, bringing the total claim to SKr100 639 999 (£9.6 million). The IOPC Fund was notified of this latter writ on the same day. It should be noted that the claims arising out of this incident would have been time-barred on or shortly after 11 September 1990, ie on the expiry of the three-year periods laid down in Article VIII of the Civil Liability Convention and Article 6.1 of the Fund Convention.

5 The Director has notified the Court that the IOPC Fund avails itself of its right to intervene as a party to the legal proceedings, pursuant to Article 7.4 of the Fund Convention.

6 The limitation amount applicable to the TOLMIROS under the Civil Liability Convention is approximately SKr55 million (£5.2 million).

Grounds for the Swedish Government's Action

7 The Swedish Government has alleged that the oil causing the pollution emanated from the TOLMIROS and that the TOLMIROS at the time of the incident was carrying oil in bulk as cargo. The facts presented by the Swedish Government in support of its claim can be summarised as follows.

- 7.1 Samples taken from the oil, a Venezuelan crude oil with high asphalt content and special characteristics, show that the oil could not have been in the water for more than a few days. Although there is heavy traffic in the area, the oil slick was not reported until 11 September. For these reasons, the oil must have been spilt from a ship west of northern Jutland, probably on 9 or 10 September 1987.
- 7.2 The Swedish authorities investigated which ships, during the relevant period, had transported oil of the type in question in northern European waters. This investigation showed that only two vessels could have been involved, viz the French tanker CHRISTINA and the above-mentioned Greek tanker TOLMIROS.
- 7.3 With regard to the CHRISTINA, an investigation was made of her journey, the quantities of oil in her tanks on departure from the previous port and the quantities remaining on arrival at the next port. The results of this investigation showed that the CHRISTINA could not have been the source of the spill.
- 7.4 Concerning the TOLMIROS, the vessel loaded 70 000 tonnes of Venezuelan crude oil in August 1987 in Venezuela for transport to Gothenburg. The cargo was discharged in Gothenburg between 5 and 8 September 1987. The vessel left Gothenburg on 8 September at 9.30 am, heading for Teesport (United Kingdom). The ship passed the Skaw on 8 September at 14.45 and arrived at Teesport on 10 September 1987.
- 7.5 Samples of the oil taken from the cargo discharged by the TOLMIROS in Gothenburg were compared with samples of the oil which had polluted the coast, and this comparison showed that the samples corresponded very closely.
- 7.6 When the TOLMIROS was discharging its cargo in Gothenburg, certain problems arose as the storage tank in the port became over-full. For this reason, it was not possible to discharge the entire cargo. In addition, it was not possible to dispose of the cargo oil remaining in the vessel's pump and pipe system and in the lines ashore by the method normally used (so-called "blowing"). The exact quantity of the cargo oil remaining in the TOLMIROS on leaving Gothenburg cannot be indicated, but the quantity which had not been discharged was substantial.

7.7 The log of the TOLMIROS shows that the boilers and other equipment which are used for heating cargo and oil pipes were working during the voyage from Gothenburg to Teesport. The only reason for using this equipment would have been for pumping oil into the sea. In addition, this voyage lasted longer than would be normal.

8 As a subsidiary ground for its action, the Swedish Government has based its claim on the Swedish legislation relating to oil pollution damage caused by ships not covered by the Civil Liability Convention, should it be considered that the TOLMIROS was not carrying oil in bulk as cargo.

9 In the writ, the Swedish Government has referred to the Fund Convention and has stated that it takes for granted that the IOPC Fund will intervene and provide full compensation to the Swedish Government should it be considered that the TOLMIROS was carrying oil in bulk as cargo at the time of the spill.

10 The Swedish Government has stated that the action against the Gard Club is maintained only in case the Swedish legislation implementing the Civil Liability Convention is applicable, ie if the TOLMIROS was actually carrying oil in bulk as cargo.

Position of the Shipowner and the Gard Club

11 The owner of the TOLMIROS and the Gard Club have not yet submitted their response pleadings to the Court. However, the Director has been informed that both the owner and the Club reject any liability for the damage caused by this oil spill.

12 The shipowner and the Gard Club take the position that the oil which polluted the coast did not come from the TOLMIROS. They have pointed out that a thorough investigation undertaken by the Greek authorities at the request of the Swedish Government acquitted the TOLMIROS of the allegation of having caused the spill. In addition, the owner and the Gard Club maintain that the vessel was not carrying oil in bulk as cargo during its voyage from Gothenburg to Teesport. They have stated that, according to a "dry certificate after discharging" issued by an independent inspector in Gothenburg, all the tanks of the TOLMIROS were empty and dry on completion of the discharge.

IOPC Fund's Position

13 Under Article 4.2(b) of the Fund Convention, the IOPC Fund shall incur no obligation to pay compensation for pollution damage if the claimant cannot prove that the damage resulted from an incident involving one or more ships. A "ship" is defined in the Civil Liability Convention and the Fund Convention (Article 1.1 and Article 1.2, respectively) as "any sea-going vessel and any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo".

14 The Director has not had access to any documents setting out the results of the tests carried out on the oil samples collected by the Swedish authorities. For this reason, he is not yet in a position to express any opinion as to whether the oil which polluted the coast was released from the TOLMIROS. Once these documents have been received, he will seek expert opinion on the validity of the Swedish Government's position on this point.

15 As for the question of whether the TOLMIROS was actually carrying oil in bulk as cargo during her voyage from Gothenburg to Teesport, the Swedish Government has not presented any details in support of its position. The Director is therefore not able to express any definite opinion on this point.

However, on the basis of the facts known so far, the Director's initial view is that the TOLMIROS could not be considered as having been carrying oil in bulk as cargo during that voyage. Consequently, he believes that the Civil Liability Convention and the Fund Convention would not apply, even if it were proved that the oil which polluted the coast came from the TOLMIROS. He therefore intends at this stage to reject liability on the part of the IOPC Fund. The Director will seek legal advice on this issue when more information has been made available.

16 The IOPC Fund has not yet received any documents relating to the quantum of the Swedish Government's claim.

Action to be Taken by the Executive Committee

17 The Executive Committee is invited to:

- (a) take note of the information contained in this document; and
 - (b) give the Director such instructions as it considers appropriate in respect of the legal action taken by the Swedish Government in this case.
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