

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES
DUS A LA POLLUTION PAR LES HYDROCARBURES

EXECUTIVE COMMITTEE -
2nd session
Agenda item 8

FUND/EXC.2/5/Add.1
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INFORMATION ON AND APPROVAL OF
SETTLEMENT OF CLAIMS

Note by the Director

1. After the issuance of document FUND/EXC.2/5, the Fund has been given further information with respect to the ANTONIO GRAMSCI incident, and negotiations have taken place resulting in an agreement between the Fund and the Kingdom of Sweden, the validity of which is subject to the Executive Committee's approval.

2. The claims submitted by the Swedish Government as specified on page 3 of document FUND/EXC.2/5 consist of expenses for off-shore clean-up operations (Swedish Coast Guard and Swedish Defence Forces) and on-shore clean-up operations (Stockholm County Administration and State Fire Service Board).

Off-shore Operations

3. The expenses for the off-shore operations have to be broken down as shown in Annex I. With respect to the expenses incurred by the Navy, the Army and the Civil Defence (see item 2 of Annex I), it was explained that most of these costs were incurred as extra costs such as overtime, extra food, and extra materials, i.e., these expenses would not have occurred had these Forces not been asked to deal with the pollution. Out of the total of 7,238,810 Swedish Crowns, the following were extra costs:

	Sw.Cr.
Navy	4,802,759
Army	349,987
Civil Defence	86,024
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	5,238,770
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The difference of about 2 million Swedish Crowns was compensation for the involvement of the Forces in the operation and was disputed by the Fund.

4. Out of the expenses incurred for the Coast Guard operations (see item 1 of Annex I) a total of about 4.8 million Swedish Crowns was disputed by the Fund (expenses not being extra costs, such as those for ordinary working time, lay-time of vessels, etc.).

5. According to the Swedish Government, the costs for the Defence Forces were calculated on the basis of rates fixed in 1976 and not on the basis of the 1979 rates; these rates are established by Swedish law. A calculation on the basis of the 1979 rates would have led to an increase of between 34% and 80%.

On-shore Operations

6. The on-shore clean-up operations were carried out in seven different municipalities and in three different phases. According to a detailed break-down provided by the Swedish Government, 64% of all expenses were incurred for the primary dispersal (phase 1), 15% for the intermediate dispersal (phase 2) and 21% for the final dispersal (phase 3).

Investigations

7. Computerised data for most of the operations in the municipalities of Norrträälje and Värmdö, which were the most heavily polluted areas, have been made available to the Fund and invoices in the Swedish language for all the expenses for which the Swedish Government is claiming compensation have been offered to the Fund.

8. The Fund employed experts from the International Tanker Owners Pollution Federation Limited. Mr. J. Nichols, from the Federation, was at the site of the incident in May and October 1979 and observed the extent of the spill and the measures taken to clean up the spill; furthermore, he discussed with the persons concerned the necessity of the operations carried out.

9. The third analysis of the oil samples taken from the ship and the polluted area, referred to on page 4 of document FUND/EXC.2/5, has, according to oral information, also proved the identity of the oils analysed.

Settlement

10. On 5 and 6 March 1980 representatives of the Swedish Government and the Fund discussed a possible settlement of the total claims made by Sweden against the Fund. The agreement, attached as Annex II to this document, was concluded and is hereby submitted to the Executive Committee for consideration and possible approval.

11. The agreed amount of 93 million Swedish Crowns represents the overall and final settlement of Swedish claims against the Fund. It includes the Swedish share in the Shipowner's limitation fund. The settlement is based on the consideration that not all expenses incurred for the three different phases of clean-up operations on-shore, especially with respect to phases 2 and 3, may have been necessary. With respect to the costs for the Coast Guard, the Navy and the Army, reductions have been made in respect of costs which were not extra costs, incurred only because of the incident. Expenses for possible future clean-up operations are not recoverable.

12. According to the Swedish law on interest, an interest rate of 4% above the official Swedish Minimum Lending Rate has to be paid for claims, beginning one month after the claims have been

presented to the debtor. Up to November 1979 the official Swedish MLR was 8%, on 23 November it rose to 9%, and on 18 January 1980 to 10%, where it still stands. The interest up to 31 March 1980 is included in the total of 93 million Swedish Crowns.

13. As the figure of 93 million Swedish Crowns is a compromise between the proposals made by the Fund and by the Swedish Government, a detailed break-down agreed between the parties to this agreement cannot be given. The following, however, represents the Fund's approach to the final settlement:

(a) Deductions made from off-shore measures:

1/3 of expenses for personnel and lay-time of vessels (see paragraphs 3 and 4 above)	2,300,000 Sw.Cr.
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(b) Deductions with respect to on-shore measures:

	C o s t s		D e d u c t i o n s	
Primary phase	58,537,463	10% approx	5,800,000	
Intermediate phase	13,719,718	25% "	3,400,000	
Final phase	19,207,605	75% "	14,400,000	
Total	91,464,786		23,600,000	Sw.Cr.

Total Deductions, (a) and (b)	<u>25,900,000</u> Sw.Cr.
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Total Claim	111,887,137
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Interest as from 1.1.79 up to 31.3.80 (approx)	4,300,000
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<u>116,187,137</u> Sw.Cr.

Less Total Deductions (approx)	- 25,900,000
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<u><u>90,287,137</u></u> Sw.Cr.

The Swedish Government, however, did not agree with this calculation, especially with the deduction of 10% of the primary phase of on-shore operations. As a compromise, the figure of 93 million Swedish Crowns was agreed.

14. According to the Swedish Agreement with the Latvian Shipping Company, Sweden may receive from the Owner an amount of approximately 3.9 million Swedish Crowns (equalling 607,900 Soviet Roubles). The amount payable to Sweden by the Fund will, therefore, be 89.1 million Swedish Crowns or £9.37 million. This amount exceeds the limit of 25 million francs up to which the Director has authority to make final settlements (Regulation 8.4.1 Internal Regulations).

15. According to Article 26.1(b)(ii) of the Fund Convention the Executive Committee is invited to consider this agreement between the Fund and the Swedish Government for approval.

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ANNEX I

EXPENSES FOR OFF-SHORE OPERATIONS

	Sw.Cr.	Sw.Cr.	Sw.Cr.
1. <u>Swedish Coast Guard</u>			
(a) Personnel			
(i) Ordinary working time	2,043,357		
(ii) Overtime	547,140		
(iii) Qualified overtime	2,911,343		
(iv) Travel expenses	471,605		
	5,973,445	5,973,445	
(b) Material			
(i) Vessels	3,095,040		
(ii) Aeroplanes	130,390		
(iii) Oil combatting material	72,375		
	3,297,805	3,297,805	
(c) Bought or rented material and service		3,912,291	
		13,183,541	13,183,541
2. <u>Swedish Defence Forces</u>			
(a) Navy		6,618,259	
(b) Army		534,527	
(c) Civil Defence		86,024	
		7,238,810	7,238,810

ANNEX II

AGREEMENT

between the Kingdom of Sweden, represented by the Chancellor of Justice of Sweden, and the International Oil Pollution Compensation Fund (the Fund) under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) because of damage caused by pollution resulting from the escape of oil from the tanker ANTONIO GRAMSCI as a result of an incident on 27 February 1979 outside the port of Ventspils (USSR).

1. The aggregate of claims for compensation raised by the Kingdom of Sweden in respect of the above-mentioned incident amounts to about 111.9 million Swedish Crowns.
2. In October 1979 the Kingdom of Sweden submitted to the Stockholm City Court claims amounting to about 68.3 million Swedish Crowns against the Latvian Shipping Company as the owner of the ANTONIO GRAMSCI.
3. On 7 February 1980 an Agreement was concluded between the Kingdom of Sweden and the Latvian Shipping Company in respect of the apportionment of the limitation fund established under the International Convention on Civil Liability for Oil Pollution Damage in the People's Court of Riga. According to this Agreement, the validity of which is subject to approval by the People's Court of Riga as well as the Fund, the Latvian Shipping Company shall pay to the Kingdom of Sweden the equivalent in Swedish Crowns of 607,900 Soviet Roubles, the actual equivalent to be notified by the Swedish Chancellor of Justice to the Fund.

4. The Fund shall pay to the Kingdom of Sweden an amount of 93 million Swedish Crowns minus the amount paid by the shipowner. This amount includes interest up to 31 March 1980. From 1 April 1980 up to the date of payment, interest on 90 million Swedish Crowns shall be paid at a rate of 4% above the official Swedish Minimum Lending Rate, according to the Swedish national law on interest.

5. Payment shall be made as soon as possible but not later than 31 March 1981.

6. After payment of the amount stated in paragraph 4 above, the Kingdom of Sweden fully and finally releases the Fund in respect of all claims arising from the above-mentioned incident.

7. This Agreement is subject to approval by the Fund's Executive Committee, in accordance with Article 26.1(b)(ii) of the Fund Convention and Regulation 8 of the Fund's Internal Regulations.

Done in London, this sixth day of March, 1980.

For and on behalf of the
Kingdom of Sweden

For and on behalf of the
International Oil Pollution
Compensation Fund

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