

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  
19 February 1980  
Original: ENGLISH

INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS

Note by the Director

General

1. Article 26.1(b)(ii) of the Fund Convention provides that the Executive Committee shall approve settlements of claims against the Fund and take all other steps envisaged in relation to such claims in Article 18.7 of the Fund Convention.
2. Regulation 8.4.1 of the Internal Regulations authorizes the Director to make final settlements if he estimates that the total costs to the Fund of satisfying all claims arising out of the relevant incident are not likely to exceed 25 million francs.
3. Details of the eight incidents in respect of which the Fund has been or may be held liable are given below.
4. To date, no final settlement in respect of any one incident has been made. As regards the "Miya Maru No.3" incident, however, the third party claims, excluding the owner's clean-up costs, have been satisfied. As the total amount of all claims arising out of that incident will remain well below the 25 million francs limit the satisfaction of the third party claims does not require the Executive Committee's approval. The Director would, however, like the Executive Committee to take note of, and comment on, the agreement concluded between the IOPC Fund, the shipowner and the owner's insurer.

5. As to the "Antonio Gramsci" incident, negotiations with the Swedish Government on a settlement have not yet been finalized. A draft agreement between the IOPC Fund and the Swedish Government can, therefore, not yet be put before the Executive Committee for consideration and final approval. The Director proposes, however, that the Agreement concluded between the Kingdom of Sweden and the Latvian Shipping Company be considered for approval by the Executive Committee.

### Incidents

#### A. ANTONIO GRAMSCI

On 27 February 1979 the Soviet tanker "Antonio Gramsci" (27,694 GRT) grounded in the Baltic Sea off Ventspils, USSR, resulting in the release of about 5,500 tons of crude oil.

On 2 April 1979 the Swedish authorities discovered an oil slick approaching the Swedish Archipelago near Stockholm. Small patches of viscous, emulsified oil mixed with ice were scattered over a wide area polluting 4,000 islands in the Archipelago which represents an important natural resource in terms of amenities, fisheries (herring, sprat, etc.) and wildlife (particularly local Eider duck).

The clean-up operations commenced immediately after the oil had reached the Swedish Archipelago. They were initiated by the County Board, the Fire Service Board and local authorities. They were continued until 20 September 1979, and may be taken up again in some areas in spring this year if this is felt necessary by the local authorities concerned. About 2,170 islands with a coastline of about 300 kilometres were cleaned. The cleaning was done in three different phases, i.e. about 163 kms of rough cleaning, 94 kms of intermediate cleaning and 42 kms of intensive cleaning. The rough cleaning was completed by 28 May and the intensive cleaning continued until the end of the summer season.

The expenses incurred by the Swedish authorities for the clean-up operations are as follows:

	Swedish Crowns	£
(a) Stockholm County Administration	28,259,786	2,990,454
(b) State Fire Service Board	63,205,000	6,688,360
(c) Swedish Board of Customs (Swedish Coast Guard)	13,183,541	1,395,084
(d) Swedish Defence Forces	7,238,810	766,012
	<u>111,887,137</u>	<u>11,844,671</u>

The IOPC Fund is currently investigating the Swedish claims as to the necessity and reasonableness of the expenses incurred and is checking the documents submitted by Sweden. It is hoped that by the time of the session of the second Executive Committee, a first report can be given.

In addition to the Swedish coastline, damage was caused by the incident to the Finnish Åland Islands and the USSR coast (Latvia and Estonia). The Finnish expenses are estimated at £2 million. The claims made by USSR interests are the following:

	Roubles	£
(a) Ministry of Merchant Marine	901,658	640,382
(b) State Committee for Hydrometeorology	200,000	142,045
(c) Ministry of Defence	129,877	92,242
(d) Co-operative Fishery Association	68,000	48,295
(e) Oil Spill Laboratory	48,000	34,091
(f) Ministry of Waters	46,984,000	33,369,318
	<u>48,331,535</u>	<u>34,326,373</u>

The USSR, giving these figures, stated that it may well be possible that in addition to these claims, further claims may be made against the Latvian Shipping Company by Estonian interests.

The claims from the Ministry of Waters are based on the USSR law which allows that Ministry to claim in cases of oil pollution for ecological damage. The amount of this damage is calculated by multiplying the quantity of polluted water (to be estimated according to the oil spilt) by 2 Roubles per cubic metre.

The Latvian Shipping Company, as owner of the "Antonio Gramsci", has established a limitation fund under the Civil Liability Convention in the People's Court of Riga. The amount of the fund is 2,431,854 Roubles (£1,727,169). The Swedish Government has claimed in the Stockholm City Court against the Latvian Shipping Company for an amount of 68,328,537 Swedish Crowns (£7,192,477).

The Latvian Shipping Company maintains that the oil that polluted the Swedish Archipelago cannot have originated from the "Antonio Gramsci" since all the oil released after the grounding which was not recovered or burnt immediately after the incident had remained in Soviet waters. Sweden claims that the oil that polluted the Swedish Archipelago is identical to the oil of the "Antonio Gramsci". Two analyses being carried out in Sweden and London seem to indicate that the oil in fact did come from the "Antonio Gramsci". A third analysis is at present being carried out at Moscow University.

The question of whether there are indications that the owner may not be entitled to limit his liability or whether there may be a recourse action against the USSR authorities responsible for maintenance of navigational aids, is at present being checked by the Director.

The Kingdom of Sweden and the Latvian Shipping Company have agreed that Sweden be paid by the owner a certain percentage of the limitation fund and in turn waives all claims against that limitation fund in the People's Court of Riga.

Item 6 of that Agreement provides that the IOPC Fund and the People's Court of Riga give their approval. The wording of this Agreement is annexed to this document.

The Director, who participated in the negotiations between Sweden on the one hand, and the Latvian Shipping Company and the USSR Ministry of Merchant Marine on the other, promised to submit the Agreement to the Executive Committee at its second session for consideration and possible approval.

Whether it can be recommended that the Executive Committee approves this Agreement depends on

- (a) whether the Swedish share of 25% of the limitation fund is a fair proportion of that fund according to Article V.4 of the Civil Liability Convention, and
- (b) whether the Fund intends to contest the owner's right to limit his liability.

The Director hopes that by the time of the Assembly he can give detailed information to the members of the Executive Committee so as to put them in a position where they are able to decide whether that Agreement should be approved or not.

B. MIYA MARU NO.8

On 22 March 1979 the Japanese tanker "Miya Maru No.8" (997 GRT) collided with the motor vessel "Daikoku Maru No.18" in the Japanese Inland Sea. As a result of the collision, about 540 kilolitres of minas heavy oil were spilt from the cargo tank of the "Miya Maru No.8". The oil polluted areas of very intensive fishing.

The Maritime Safety Board ordered the Maritime Disaster Prevention Centre to undertake the clean-up operation. The latter commenced the clean-up operation by the use of independent contractors and local fishermen. Then the shipowner took over the clean-up operations which were completed on 30 March 1979.

The final amounts of clean-up operation costs and compensation for fishery damage are as follows:

	¥	£
(a) Shipowner's and charterer's clean-up costs	27,645,081	50,263
(b) Clean-up costs effected by Maritime Safety Board	10,673,267	19,406
(c) Clean-up costs effected by Maritime Disaster Prevention Centre	99,502,574	180,914
(d) Fishery damage	40,000,000	72,727
TOTAL AMOUNT	<u>177,820,922</u>	<u>323,310</u>

Compensation for fishery damage is for oil pollution damage to seaweed, oyster farms, black sea bream breeding ponds and for the loss of earnings caused by the suspension of fishery during the clean-up operation.

The shipowner's liability under the Civil Liability Convention is ¥37,710,340 (£68,564). Indemnification under Article 5 of the Fund Convention is ¥9,427,585 (£17,141).

Limitation proceedings were commenced in the District Court of Takamatsu. These proceedings, however, have not yet been brought to an end because the IOPC Fund would like to keep the possibility of intervening in these proceedings if the official investigations into the collision should produce evidence that the incident occurred as a result of the actual fault or privity of the owner of the "Miya Maru No.8". The investigations into the collision have not been finalised. The proceedings in the Court of Takamatsu have been postponed.

As the incident caused considerable loss and damage to fishermen who depend for their livelihood on regular income, it seemed important that compensation was paid very quickly to the fishermen. Furthermore, it appeared that quick settlement of the fishermen's claims facilitated the negotiations with the claimants and made a final settlement at a lower figure possible. For these reasons

the Fund agreed with the owner and the owner's insurer that third party claims be settled as quickly as possible by the owner's insurer and the IOPC Fund, even if the limitation proceedings in the Court had not yet finally established the owner's right to limit his liability.

The Agreement stipulates that the settlement of third party claims is made with the mutual consent of the insurer and the Fund. The insurer pays the owner's clean-up costs (including payments made to fishermen who were employed by the owner for clean-up operations) and in addition the amount equivalent to the limitation fund under the Civil Liability Convention, while the Fund pays the remaining balance to the satisfaction of third parties. Owner and insurer agreed to refund to the IOPC Fund any sum paid by the IOPC Fund under that Agreement, in case it is held by the Court that the owner is not entitled to limit his liability under the Civil Liability Convention. The rate of interest payable on this amount was also agreed. Indemnification to the owner under Article 5 of the Fund Convention will be paid after the establishment of the owner's right to limit his liability.

So far, only payments to third parties have been made. The Court proceedings are still postponed. The question of possible recourse actions against the other ship involved in the collision is under investigation.

C. GINO

On 28 April 1979 the Liberian OBO carrier "Gino" (26,166.93 GRT) collided with the Norwegian tanker "Team Castor" (13,673 GRT) off Ushant, Brittany, France. The "Gino" was laden with about 42,000 tons of carbon black oil; she sank with the cargo still on board. The "Team Castor" was on ballast voyage.

Following the collision a certain amount of oil, probably from the bunkers of the "Team Castor", spilt into the sea. The French Navy immediately sprayed detergent to break up the oil slick.

Although the cargo in the tanks of the wreck was heavier than water and therefore sank to the seabed, subsequent surveys of the wreck have shown that some oil has leaked from the wreck and spread around the ship. How much oil has escaped from the tanks, whether more is likely to escape and whether such oil will have any detrimental effect on marine life are unknown to the Fund.

The extent of pollution damage depends on the actions to be taken by the French authorities. The expenses so far incurred by France or the owner are not known to the Fund. The ship's limitation amount under the Civil Liability Convention is estimated at about \$4,000,000.

D. TARPENBEK

The German tanker "Tarpenbek" (1,785 dwt), loaded with about 1,600 tons of five different lubricating oils, collided on 21 June 1979 in thick fog with the British Royal Fleet Auxiliary ship "Sir Geraint" (3,370 tons) off Selsey Bill, England.

The cargo tanks of the "Tarpenbek" remained undamaged. Only some light diesel oil from the damaged bunker tanks spilt into the sea, but was effectively dispersed with detergents.

Arrangements were made to transfer the cargo from "Tarpenbek" into lighters. However, the exposed position of the wreck at the point of collision made this operation impossible and the ship turned over with all the cargo still on board. Because of the possibility of the "Tarpenbek" breaking up if left where she was, she was towed to the sheltered conditions of Sandown Bay, Isle of Wight, where the oil was discharged by pumping into barges. Finally, the "Tarpenbek" was successfully parbuckled and towed away for Rotterdam.

The amount of oil pollution damage arising out of this incident is not yet known. The United Kingdom Government has informed the IOPC Fund that, although it was not yet in a position to quantify the amount and to submit a formal statement of claim, it looked as though its total expenditure in the incident would be between £750,000 and £1,000,000. The owner's expenses for preventive measures may amount to more than £500,000. The limitation amount under the Civil Liability Convention is about £86,000.



E. VERA BERLINGIERI

On 26 June 1979 the Italian tanker "Vera Berlingieri" (4,942 GRT) collided with the French carrier "Emmanuel Delmas" (2,202 dwt) in thick fog about 35 kilometres west of Fiumicino, Italy. The engine room of the "Vera Berlingieri" exploded and both vessels caught fire, resulting in the release of 4,000 tons of gasoline super and 1,200 tons of gas oil.

Vessels with fire-fighting and anti-pollution equipment were engaged in extinguishing the blaze and spraying dispersants.

Invoices for clean-up operations which have been presented to the shipowners of "Vera Berlingieri" by the Italian Ministry of Merchant Marine amount to approximately 1,100 million Lira (£591,398). Receipt of further invoices is anticipated relating to expenses incurred by the Italian Navy and Air Force for reconnaissance after the collision and for control of the pollution clean-up operation. The limitation amount is approximately £220,000.

As the cargo carried by the "Vera Berlingieri" (gasoline super and gas oil) is not one of the oils specifically mentioned in Article I.5 of the Civil Liability Convention, it is being examined whether such oil is covered by the term "persistent oil". Pending the result of this investigation it is not yet established whether the Fund will ultimately be liable for pollution damage exceeding the owner's liability. The size of pollution damage cannot yet be estimated.

F. MEBARUZAKI MARU NO.5

On 3 December 1979 the Japanese ship "Mebaruzaki Maru No.5" (19.73 GRT), carrying 30 tons of heavy oil, sank in Mebaru Port in the Japanese Inland Sea after taking water through a bilge in the stern. The ship released about 10 kls of heavy oil.

Immediately after the oil spill was discovered, the clean-up operations were carried out, but "nori" seaweed farms had already been polluted. The clean-up expenses are estimated by the surveyor employed by the Fund at about ¥8,000,000; the damage to fishery interests is estimated at some ¥4,000,000.

It has not been established whether the Fund will finally be liable for the damage exceeding the owner's liability. Investigations are being carried out on whether the ship was at all a "sea-going vessel". Furthermore, the Fund is looking into the question of whether the incident occurred as a result of the actual fault or privity of the owner, since the incident was caused by the Master carrying out repair work, and it is not clear whether the Master was sufficiently qualified for that kind of work.

G. SHOWA MARU

On 9 January 1980 the Japanese tanker "Showa Maru" (199.96 GRT; limitation tonnage 176.59), carrying 500 kls of heavy oil, collided with a Panamanian chemical tanker "Chemicary No.18" (629.08 GRT) in the Naruto Straits, Japan. As a result of that collision 100 kls of heavy oil were released and polluted "nori" and "wakame" seaweed farms.

The damage to the seaweed farms and the fishing grounds is preliminarily estimated at ¥70,000,000, the expenses for clean-up operations at ¥50,000,000. The limitation amount is ¥8,123,140.

H. UNSEI MARU

On 9 January 1980 the Japanese tanker "Unsei Maru" (99 GRT), carrying 1,400 tons of heavy fuel oil, collided with "Sun Edelweiss" (about 3,000 GRT). As a result, the "Unsei Maru" sank and was declared a total loss. Some oil was spilled. The Maritime Safety Board and local fishermen undertook clean-up operations.

The question of whether the wreck will be removed has not yet been decided. It is uncertain whether there is still oil on board the ship. No preliminary estimate of the pollution damage arising out of this incident can as yet be made.

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ANNEX

## AGREEMENT

between the Kingdom of Sweden, represented by the Chancellor of Justice of Sweden, and Latvian Shipping Company (hereinafter referred to as "the Company") in respect of the apportionment of a limitation fund established under the International Convention on Civil Liability for Oil Pollution Damage, (hereinafter referred to as "the 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 February 27, 1979 outside the port of Ventspils.

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1. The aggregate of claims for compensation raised by the Kingdom of Sweden against the Company under the Convention in respect of the above-mentioned incident amounts to 111.9 million Swedish Crowns.
2. The other claims for compensation raised as of 15 January, 1980 against the Company under the Convention in respect of the same incident come to a total figure of about 48.3 million Soviet Roubles.
3. Pursuant to the provisions of the Convention the Company has established on 14 September, 1979 with the People's Court of Riga a limitation fund amounting to 40,734,580 Francs as defined in Article V, paragraph 9, of the Convention. The size of the fund in Soviet currency is 2,431,584 Soviet Roubles.
4. Considering what is stated in paragraphs 1-3 above and the right of the Kingdom of Sweden to take part in the apportionment of the above-mentioned limitation fund, the Company shall pay to the Kingdom of Sweden the equivalent in Swedish Crowns of 607,900 Soviet Roubles at the rate of exchange applicable on the day of payment.
5. After the Company having paid compensation to the Kingdom of Sweden in accordance with paragraph 4 of this agreement, the Kingdom of Sweden waives all further claims under the Convention against the Company for damage resulting from the above-mentioned

oil spill and agrees to indemnify and hold harmless the Company of and from any claims and suits based upon the Convention for damage occurred on Swedish territory as a result of the above-mentioned incident.

After the payment mentioned in paragraph 4 has been made the Company acquires to the extent of the payment by subrogation the rights to compensation from the limitation fund which the Kingdom of Sweden would have enjoyed.

6. The validity of this agreement is subject to approval by the People's Court of Riga as well as the International Oil Pollution Compensation Fund. The Company shall notify the Kingdom of Sweden of the approval of the People's Court of Riga. The agreement is valid only if the approval of the International Oil Pollution Compensation Fund is given before June 1, 1980 and the approval of the Court is given not later than three months after the approval by the Fund.

7. If it is found that the Company is not entitled to limit its liability according to Article V of the Convention persons or organizations having paid compensation with respect to damage occurred on Swedish territory as a result of the above-mentioned incident and by that having acquired rights by subrogation are not precluded from recovering from the Company the amounts paid.

8. The amount referred to in paragraph 4 of this agreement shall be paid by the Company to the Kingdom of Sweden within 45 days after the approval by the People's Court of Riga.

Stockholm, February 7, 1980

For and on behalf of the  
Kingdom of Sweden

For and on behalf of the  
Latvian Shipping Company

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