



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
32nd session
Agenda item 3

FUND/EXC.32/2
10 September 1992

Original: ENGLISH

INCIDENTS INVOLVING THE IOPC FUND

Presentation of Documentation and Summary of Incidents

Note by the Director

Introduction

1 Article 26.1(b)(ii) of the Fund Convention provides that the Executive Committee shall approve settlements of claims against the IOPC Fund and take all other steps in relation to such claims envisaged in Article 18.7 of the Fund Convention.

2 Since the 28th session of the Executive Committee, two incidents have occurred that will give rise to claims against the IOPC Fund, namely the KUMI MARU N°12 and FUKKOL MARU N°12 incidents.

Presentation of Documentation

3 The documentation presented to the 32nd session of the Executive Committee has been structured in such a way as to distinguish three groups of incidents:

- (a) incidents which require decisions by the Executive Committee or which are of great importance;
- (b) incidents which, although not requiring decisions by the Committee or being of great importance, nevertheless may be of particular interest to delegations; and
- (c) incidents in respect of which the Director only reports on developments of lesser importance.

4 It goes without saying that the Director does not in any way intend that, by such a grouping, the Executive Committee should be prevented from discussing the developments in respect of any incident, or from taking such decisions and giving him such instructions as the Committee considers appropriate.

5 On the basis of these considerations, the following documents have been prepared:

(a) **Incidents Requiring Decisions by the Executive Committee or which are of Great Importance:**

AGIP ABRUZZO Incident (FUND/EXC.32/3)

HAVEN Incident (FUND/EXC.32/4)

RIO ORINOCO Incident (FUND/EXC.32/5)

(b) **Other Incidents of Particular Interest (FUND/EXC.32/6)**

(c) **Report on Incidents with Developments of Lesser Importance (FUND/EXC.32/7)**

Developments which take place after the drafting of the above-mentioned documents will be reported to the 32nd session of the Executive Committee in addenda to the respective documents.

6 In the above-mentioned documents, the conversion of currencies into Pounds Sterling has been made on the basis of the rates of exchange on 29 June 1992. However, for amounts representing actual payments by the IOPC Fund, the conversion has been made at the rate of exchange on the day of payment.

Summary of Incidents

7 The situation in respect of the incidents involving the IOPC Fund can be summarised as follows:

Document FUND/EXC.32/3

- AGIP ABRUZZO (Italy, 1991): Six claims have been settled at an aggregate amount of Lit 16 568 500 000 (£7.6 million). These claims have been paid by the shipowner. The limitation amount applicable to the shipowner is estimated at Lit 15 400 million (£7.2 million). A claim for Lit 10 303 035 703 (£4.7 million) presented by the shipowner is being examined by the IOPC Fund Secretariat, as are two minor claims by small businesses. It is expected that the Italian Government will submit a claim.

Decision requested:

- (a) Instructions regarding possible recourse action.
- (b) General instructions concerning the Director's general handling of this incident.

Document FUND/EXC.32/4

- HAVEN (Italy, 1991): The incident caused pollution damage in Italy, France and Monaco, and some 1 350 claims for compensation have been submitted for a total amount corresponding

to approximately £715 million; however, a number of claims are duplications. The claims are being examined by the IOPC Fund Secretariat. The aggregate amount of the claims greatly exceeds the total amount of compensation available under the Civil Liability Convention and the Fund Convention, viz 900 million (gold) francs, which in the IOPC Fund's view corresponds to 60 million Special Drawing Rights or Lit 102 864 million (£47 million). However, a judge in the Court of Genoa has fixed the maximum amount payable by the IOPC Fund at Lit 771 397 947 400 (£350 million) calculated on the basis of the free market value of gold. The IOPC Fund has lodged opposition to the judge's decision.

Decision requested: Instructions concerning the Director's handling of this incident.

Document FUND/EXC.32/5

- ▶ RIO ORINOCO (Canada, 1990): Claims for compensation were submitted by the Canadian Government and the shipowner's P & I insurer. These claims have been settled and paid in the amounts of Can\$11 791 848 (£5 645 200) and Can\$2 223 661 (£977 219) respectively. Indemnification of the shipowner has not yet been paid.

Decision requested: No decision requested.

Document FUND/EXC.32/6: No decisions requested

- ▶ PATMOS (Italy, 1985): Most claims have been settled and paid. The IOPC Fund is involved in complex legal proceedings in Italy concerning, in particular, a claim submitted by the Italian Government relating to damage to the marine environment. The judgement of the Court of Appeal is expected in 1993.
- ▶ TOLMIROS (Sweden, 1987): The Swedish Government took legal action against the shipowner and the P & I insurer, claiming compensation in the amount of approximately SKr100 million (£9.6 million). The IOPC Fund was notified of this action and intervened in the legal proceedings. The shipowner, the P & I insurer and the IOPC Fund rejected liability on the grounds that the oil causing the damage did not come from the TOLMIROS. The IOPC Fund maintained, in addition, that the Civil Liability Convention and the Fund Convention did not apply since the TOLMIROS did not carry oil in bulk as cargo; consequently, the IOPC Fund would not be under any obligation to pay compensation even if it were proved that the oil came from the TOLMIROS. In December 1991, the Swedish Government withdrew its legal action. The IOPC Fund will thus not be called upon to pay any compensation in respect of this incident.
- ▶ AMAZZONE (France, 1988): All claims have been settled and paid. The IOPC Fund took legal action against the owner of the AMAZZONE as well as against the charterer of the vessel and his P & I insurer, for the purpose of recovering the amounts paid by the Fund to claimants. As a result of an out-of-court settlement, the IOPC Fund recovered the major part of the amounts paid by it in compensation.
- ▶ VOLGONEFT 263 (Sweden, 1990): All claims for compensation have been settled and paid. The indemnification amount has been paid to the shipowner in September 1992.
- ▶ VISTABELLA (Caribbean, 1991): The French Government has begun legal proceedings against the shipowner and has submitted a claim to the court for clean-up operations carried out by the French Navy for FF7 million (£720 000). Claims by some 30 owners of yachts and fishing boats in St Barthélemy as well as two claims in respect of clean-up operations in the British Virgin Islands have been settled and paid.

Document FUND/EXC.32/7: No decisions requested

- ▶ THUNTANK 5 (Sweden, 1986): All claims submitted so far have been settled and paid. Further claims are unlikely but cannot be ruled out. Claims will become time-barred in December 1992.
- ▶ AKARI (United Arab Emirates, 1987): All claims have been settled and paid at a total amount of £240 046. The IOPC Fund received an ex gratia payment of US\$160 000 (£90 129) from the P & I insurer.
- ▶ KASUGA MARU N°1 (Japan, 1988): All claims submitted so far have been settled and paid. Further claims are unlikely but cannot be ruled out. Claims will become time-barred in December 1994.
- ▶ KAZUEI MARU N°10 (Japan, 1990): All claims have been settled and paid. The IOPC Fund expects to recover a considerable amount from the owner of the other vessel involved in this incident.
- ▶ BONITO (United Kingdom, 1990): The claims are being examined by the IOPC Fund and the shipowner. It is unlikely that the IOPC Fund will be called upon to make any payments in this case.
- ▶ PORTFIELD (United Kingdom, 1990): Claims totalling £303 437 have been settled and paid. Negotiations are being held concerning two additional claims.
- ▶ HOKUNAN MARU N°12 and KAIKO MARU N°86 (Japan, 1991): All claims for compensation have been settled and paid, whereas indemnification of the shipowner has not yet been paid.
- ▶ KUMI MARU N°12 (Japan, 1991): All claims for compensation have been settled. They have not yet been paid, nor has the indemnification of the shipowner.
- ▶ FUKKOL MARU N°12 (Japan, 1992): No claims have yet been submitted.

Action Requested by the Executive Committee

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