



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
49th session
Agenda item 3

71FUND/EXC.49/5
20 May 1996

Original: ENGLISH

INCIDENTS INVOLVING THE IOPC FUND

KIHNU

Note by the Director

1 The Incident

1.1 The Estonian tanker *Kihnu* (949 GRT) grounded close to the port of Tallin (Estonia) on 16 January 1993. The ship was carrying around 1 000 tonnes of heavy fuel oil and 460 tonnes of diesel oil. It is estimated that some 100 tonnes of heavy fuel oil and 40 tonnes of diesel oil were spilled as a result of the grounding.

1.2 The Estonian authorities carried out certain clean-up operations.

1.3 In response to a request of the Estonian authorities made under the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), the Finnish Environment Agency despatched two oil combatting vessels and a helicopter to Estonia to assist the Estonian authorities in dealing with the spill.

1.4 The Finnish authorities informed the IOPC Fund of the incident on 18 January 1993. The IOPC Fund requested further information, but no such information was given.

1.5 The limitation amount applicable to the *Kihnu* calculated in accordance with the Civil Liability Convention is estimated at 113 000 Special Drawing Rights (£110 000).

1.6 It should be noted that the Civil Liability Convention and the Fund Convention entered into force for Estonia on 1 March 1993, ie after the *Kihnu* incident.

1.7 The owner of the *Kihnu* at the time of the incident was an Estonian company, AS PKL Ltd. The vessel had P & I insurance with Ocean Marine Mutual Protection and Indemnity Association Ltd which is registered in the Turk and Caicos Islands, British West Indies.

2 Claims for Compensation

2.1 In December 1995 the Finnish Environment Agency submitted a claim to the IOPC Fund for FM713 055 (£105 000). As the basis for the claim, the Finnish authorities have maintained that there was a risk that the oil would be taken by winds and currents to the coast of Finland. The Finnish authorities have referred to the fact that the Finnish coast is only some 80 kilometres north of Tallin. They have argued that for this reason the measures taken by the Finnish authorities were carried out in order to prevent and minimise pollution damage in Finland, and that the costs incurred are admissible for compensation under the Civil Liability Convention and the Fund Convention.

2.2 The IOPC Fund's technical experts are examining the claim submitted by the Finnish authorities. The Director has reserved the IOPC Fund's position as to the admissibility of this claim.

3 Legal Action

3.1 The State of Finland, through the Finnish Environment Agency, lodged a legal action against the IOPC Fund in the Helsinki District Court on 16 January 1996, ie on the last day of the three year time bar period provided in the Civil Liability Convention and the Fund Convention. Under Finnish law it is sufficient that the action is filed in the court before the expiry of that period. For this reason the State's claim is not time-barred, although it has not yet been served on the IOPC Fund.

3.2 The Director has been informed that the State of Finland has taken legal action in the Helsinki District Court also against the shipowner's insurer (the Ocean Marine Mutual Protection and Indemnity Association Ltd).

3.3 The Finnish authorities have referred to the fact that several of the vessel's tanks had been damaged and that on 19 January 1993 it was estimated that 450 tonnes of oil had been spilled. In view of this condition of the ship and the prevailing weather conditions, the Finnish authorities assessed the situation and took the view that if the ships broke before its tanks had been emptied up to 1 000 tonnes of heavy fuel oil would have been spilled, causing considerable pollution damage to large areas. The Finnish authorities have argued that it was most likely that the oil would have drifted into Finnish water and affected the Finnish coast, and that for this reason it was important that measures to prevent this were taken. At the request of the Estonian authorities, the Finnish authorities sent two oil combatting vessels and one coast guard helicopter which took part in the salvage and oil combatting operations. The remaining oil in the *Kihnu's* cargo tanks was transferred to oil tanks ashore. The cost incurred by the Finnish authorities, FM 713 055 (£100 700) related mainly to the operating costs of the vessels and helicopters and to salaries of the personnel involved in the operations.

3.4 The IOPC Fund's technical experts have advised the Director as follows:

The port of Tallin lies some 50 nautical miles (90km) south of the Finnish coast. In the event of the total loss of the heavy fuel oil aboard the *Kihnu*, it is likely that clean-up efforts would have failed to prevent escape of oil from the port. It is also likely that prevailing winds and the current circulation in the inner Gulf of Finland would rapidly have carried any persistent oil escaping from the vicinity of the port of Tallin into Finnish waters and on to Finnish shores. The clean-up response and the transfer of the remaining cargo from the *Kihnu* to onshore storage tanks by the Finnish response vessels prevented any escape of oil from the port.

4 Director's Analysis

4.1 Under Article II of the Civil Liability Convention and Article 3 of the Fund Convention, the Conventions apply exclusively to pollution damage caused on the territory, including the territorial sea of a Contracting State, and to preventive measures taken to prevent or minimise such damage.

4.2 Estonia deposited its instrument of accession to the Fund Convention on 1 December 1992, and the Fund Convention entered into force for Estonia on 1 March 1993. Estonia was not Party to the Fund Convention when the *Kihnu* incident occurred.

4.3 The generally accepted interpretation of the provisions of the Conventions on their territorial scope is that preventive measures fall within the scope of application, wherever they are taken, if they were taken to prevent or minimise pollution damage in the territory or territorial sea of a State Party. This interpretation was codified at the 1971 International Conference which adopted the Fund Convention by a statement to this effect in the preamble to that Convention: The fourth paragraph of the preamble reads: " Considering that the International Convention of 29 November 1969 on Civil Liability for Oil Pollution Damage, by providing a regime for compensation for oil pollution damage in Contracting States and for the costs of measures, wherever taken, to prevent or minimize such damage, represents a considerable progress towards the achievements of this aim."

4.4 The Director submits to the Executive Committee for consideration the question of whether the assistance rendered by the Finnish authorities fall within the scope of application of the Civil Liability Convention and the Fund Convention.

4.5 In view of the facts of this incident, the Director takes the view that the Finnish authorities had reasons to consider the assistance rendered by them to the Estonian authorities was given to prevent or minimise pollution damage in the Finnish territory and territorial sea. The Director considers, therefore, that the measures covered by the Finnish State's claim in principle fall within the scope of application of the Conventions.

4.6 The Director is investigating whether and, if so, to what extent the Finnish authorities have taken the necessary steps to recover these costs from the shipowner and his insurer.

4.7 The Director is also examining the reasonableness of the amount claimed.

5 Action to be taken by the Executive Committee

The Executive Committee is invited to:

- (a) take note of the information contained in this document;
 - (b) decide whether the measures taken by the Finnish authorities fall within the scope of application of the Civil Liability Convention and the Fund Convention; and
 - (c) give the Director such instructions in respect of this incident as the Committee may deem appropriate.
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