



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
61st session
Agenda item 4

71FUND/EXC.61/7/1
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INCIDENTS INVOLVING THE 1971 FUND

SEA EMPRESS

Note by the United Kingdom delegation

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| Summary: | This paper proposes that the Fund reconsider its policy regarding the payment of compensation for safety measures taken in connection with pollution incidents. |
| Action to be taken: | See paragraph 3.3. |

1 Background

1.1 At its previous session, the Executive Committee decided to defer consideration of a claim submitted by the County Fire Service as a consequence of their involvement in operations arising from the grounding of the *Sea Empress*.

1.2 The Fire Service in question had presented a claim for expenses incurred in providing fire fighting capability during these operations. The Director's analysis (71FUND/EXC.60/8) concluded in summary that, with the exception of providing lighting units to beach cleaning parties, the fire brigade's activities related mainly to operations which had as their primary purpose the salvage of the *Sea Empress* and her cargo.

1.3 As a point of principle, the United Kingdom delegation stated that in its view there may be circumstances where it is necessary to have emergency services on hand to ensure that either the salvage operation or counter pollution measures could continue for longer than might otherwise be practicable, for example, for health and safety reasons.

2 Issue

2.1 This paper does not deal with the particular claim arising from the *Sea Empress* incident. Rather, it focuses on the point of principle brought to light by the Fire Service's claim. In the view of the United Kingdom delegation, it would be helpful for the Fund to clarify its policy in respect of such claims.

2.2 The response to a tanker incident generally has a dual purpose: salvage and counter-pollution. Both of these purposes might require the presence of a fire fighting capability. Fire fighters provide a safety element that is integral to any operation where there is the risk of injury to persons or property. Indeed, the presence of a dedicated fire service may be a requirement of national health and safety legislation. Further, States' oil response contingency plans may call for the presence of such services.

2.3 The primary purpose of a dedicated fire fighting and hazardous substance response (including oil) capability is not necessarily to perform salvage operations, but to provide an instant response, either physically or advisory, in the event of fire or explosion, or the spread of polluting substances. Moreover, the fire services in most States are provided by the local authority or the State. Often they do not gain any financial recompense from the activities of salvors.

2.4 The 1989 Salvage Convention defines a salvage operation as any act or activity undertaken to assist a vessel in danger. Consequently, fire brigades do not generally carry out salvage operations. Their priority is to protect and save human life rather than property.

2.5 In rare circumstances, fire brigades might be able to share in a payment awarded to property salvors. However, this is the case only when they take part in the services rendered and save human life. In such cases an additional claim made against the Fund may well be considered as inadmissible.

2.6 Therefore, when fire fighters are simply present as a precautionary measure because there is a threat of further pollution, fire or explosion, they would have no right to a salvage reward nor to share in any reward paid to the salvors.

2.7 Once it is established that a fire fighting service derives no benefit from a salvage operation (vessel or cargo), by definition their presence must have been primarily for the purposes of counter-pollution and the protection of life of those involved in the operation. Indeed, the presence of relevant emergency services may help to prolong salvage operations the incidental benefit of which is to prevent (further) pollution.

2.8 The United Kingdom delegation therefore considers that the issue of whether claims arising from such safety measures are eligible for compensation requires careful examination.

3 Proposal

3.1 Applying the Funds' working principle of a primary purpose test, ie was a salvage operation initiated to save property (the ship and cargo), or to prevent pollution of the marine environment, one must consider the reason(s) why the emergency services were present and the roles played in both the salvage operation and counter-pollution activity.

3.2 It is accepted that different incidents will necessitate different responses. However, the present criteria for determining the admissibility of claims from emergency services may be overly rigid and may not reflect the spirit of the primary purpose test.

3.3 The United Kingdom delegation proposes that:

- where there is a clear purpose or justification for the involvement of relevant emergency services, claims should be admissible;
 - when considering such claims, the Fund should have regard to the health and safety law in the State concerned or the role defined for the emergency services in any relevant national counter pollution plan.
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