

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

EXECUTIVE COMMITTEE -
6th session
Agenda item 4

FUND/EXC.6/3/Add.1
15 March 1982
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DISCUSSION OF SETTLEMENT OF CLAIMS ARISING
OUT OF THE TANIO INCIDENT

Note by the Director

1 The claims arising from the TANIO incident that have so far been made against the Fund are summarised in the Annex. Upon request, the originals of these claims and the supporting documentation are available to delegates for perusal in the Fund's offices.

2 Regarding the claim made by the French Government, the Fund and the shipowner's insurer have jointly employed surveyors who are checking the justification of the items claimed including the expenses for the pumping operation. Their reports will be made available to the Executive Committee at a later stage.

3 With regard to the settlement of the claims, it is explained in document FUND/EXC.4/2 that two legal problems may arise from the fact that the total amount of compensation claimed considerably exceeds the Fund's ceiling of compensation. The claims received so far total approximately FFr 400 million.

4 The first problem is that of converting the amount of 675 million (gold) francs into national currencies. The Fund Convention does not specify the date on which conversions have to be made and different methods of conversion are used in France and in the Channel Islands (where the UK method of conversion is applicable) (see document FUND/A.4/13). The Director has agreed with the French Government that the method of conversion laid down in Internal Regulation 2 is to be applied for the French Government's claim and that the relevant date is the day of the

constitution of the limitation fund under the CLC. The Channel Islands' representatives and the P & I Club have agreed with this calculation. Hopefully the other claimants will not raise objections. The fund was constituted in the Court of Brest on 29 April 1980 and fixed at an amount of FFr 11,833,717.79. The value of 1 SDR in French Francs on that day was 5.4388, so that 675 million (gold) francs is equal to FFr 244,746,000. The Fund's net liability for this incident, ie 675 million (gold) francs minus owner's liability, calculated in the manner described, amounts therefore to FFr 232,912,280.21. There is no indemnification payable under Article 5 of the Fund Convention since the ship was not flying the flag of a Fund Member State.

5 The second problem is that of distributing the amount available for compensation. Following Article 4.5 of the Fund Convention all claims have to be pro-rated. However, the exact ratio cannot be calculated until all the claims are known and this may be the case only after the expiry of the six years' limitation period given in Article 6 of the Fund Convention. To overcome this problem and to make earlier payments possible, the Director is aiming at concluding an agreement between the Fund and all claimants in which the actual amount payable to each claimant is stated and which contains a provision, similar to clause 6 of the ANTONIO GRAMSCI Agreement with the Swedish Government (see Annex II of document FUND/EXC.2/5/Add.1), by which one party, possibly the French Government, undertakes to fully indemnify the Fund with respect to any possible future claim. Should it not be possible to reach such an agreement, the Fund will have to defer all payments until after the expiry of the limitation period or, at least, retain a substantial amount of its total liability for the payment of possible future claims.

6 The Executive Committee is invited to take note of the information given.

ANNEX

CLAIMS MADE AGAINST THE FUND

A GENERAL

1 The oil spilled from the TANIO polluted the coast of France and the coasts of the Channel Islands of Guernsey and Jersey. Pollution of other States has not been brought to the attention of the Fund and seems to be unlikely.

2 Claims have been submitted to the Fund:

- (a) with respect to the Channel Islands, by the authorities of the States of Jersey, the States of Guernsey (through the UK Home Office) and a private hotelier in Guernsey;
- (b) with respect to France, by the French Government, several local communes and the Comité des Assureurs Maritimes de Paris for damage suffered by private boatowners; and
- (c) by the shipowner's insurer, the United Kingdom Mutual Steamship Assurance (UK Club).

B CLAIMS WITH RESPECT TO THE CHANNEL ISLANDSI States of Jersey

1 About three weeks after the TANIO incident, oil from this ship reached the shores of Jersey and polluted the southern, northern and western beaches of the Island. The oil was of fairly thick consistency forming pats of different sizes. Because of its viscosity, it did not disperse or degrade naturally. It was manually removed but, since wind and tide brought oil at different times, many beaches were repeatedly polluted after having been cleaned.

2 By letter of 8 September 1981, Jersey claimed the following expenses:

	£
(a) three air reconnaissance flights	616.91
(b) suppliers' and contractors' accounts (inclusive of contract labour)	7,730.65
(c) direct labour and transport	1,186.75
(d) staff overtime	265.32
TOTAL	<u>9,799.63</u>

The claim was supported by a report summarising the clean-up work, a chemical analysis proving the identity of the oil polluting the beaches as being that of the cargo of the TANIO and invoices supporting the expenses claimed.

3 During a visit to Jersey, the Director held discussions with representatives of the Island and viewed the areas that had been polluted. It was agreed with the authorities that the claim should be reduced by £1,706 taking into consideration that some of the materials purchased either were not used at all for this incident or were still in a condition to be used again for other purposes. By letter of 28 September 1981, the authorities of Jersey informed the Fund that their claim now was £8,093.63.

II States of Guernsey

1 The pollution damage suffered by the Channel Island of Guernsey was very similar to the damage suffered by Jersey. The pollution occurred mainly on the north-western coast but some southern and eastern areas were also affected. The cleaning of the polluted areas was effected by removing the polluted material from the beaches and spraying polluted rocks and pebbles with detergents.

2 The expenses claimed by Guernsey are as follows:

	£
(a) dispersants	4,340.98
(b) transport and plant	4,537.15
(c) direct labour	4,360.41
(d) stores	115.47
(e) supervisory staff	1,085.61
TOTAL	<u>14,439.62</u>

Interest on this amount was also claimed.

The claim was supported by a chemical analysis proving the identity of the cargo of the TANIO as that of the oil that had polluted the beaches. All items claimed were supported by detailed invoices and vouchers.

3 During a visit to Guernsey, the polluted areas were visited by the Fund and discussions on the claim were held with the Guernsey authorities. After clarification of several specific items was given, it was agreed that the total amount claimed was compensable under the CLC and the Fund Convention.

III Private Hotelier

By letter of 16 November 1981, Mr A Nussbaumer, owner of the Cobo Bay Hotel at Cobo Bay on the north-west coast of Guernsey, claimed compensation for loss of income. This loss was suffered because the hotel, the restaurant and the lounge bar had to be closed on 29 and 30 March 1980 after the approach to the hotel had been covered with oil. The coastal road passing by the hotel had also been closed to traffic. The hotelier specified and proved by Chartered Accountants' Certificate that his income during this time, calculated on the basis of actual income on comparable weekends, would have been £1,386.09. On the basis that the average net profit is 33½% of the takings, a claim was made for £450. This was accepted by the Director.

C CLAIMS WITH RESPECT TO FRANCE

I French Government

1 By letters of 12 January and 19 February 1982, the French Government submitted to the Fund two sets of claims for pollution damage totalling FFr 357,019,321.88. The submission of further claims was advised.

The claims, summarised by the French Government in two different ways, are as follows:

S U M M A R Y

MINISTRY OF DEFENCE

	French Francs
Army	37,056,913.13
Police Force	1,170,352.21
Navy	
Own resources	24,600,296.00
Pumping (till December 1980)	96,396,420.03
Pumping (December 1980 to August 1981)	152,676,838.28
Air Force	6,598,662.83

MINISTRY OF THE INTERIOR
AND OF DECENTRALISATION

Local Authority Division	11,835,735.00
Civil Security Division	3,077,444.35

MINISTRY OF LEISURE

4,826,817.73

MINISTRY OF TOWN PLANNING
AND HOUSING

21,152,201.32

CENTRE DE DOCUMENTATION DE
RECHERCHES ET D'EXPERIMENTATIONS
SUR LES POLLUTIONS ACCIDENTELLES
DES EAUX (CEDRE)

575,064.00

GROSS TOTAL

359,966,744.88

LESS: Net amount of the sale to Société SMP of the oil pumped from the
fore-section of the wreck (FFr3,173,905.00 - FFr226,482.00)

- 2,947,423.00

NET TOTAL

357,019,321.88

Paris, 10 February 1982

Signed by Mr C Coppolani for

Le Chef du Service Juridique
Agent judiciaire du Trésor

Statement of expenses incurred by the French State to combat
oil pollution of the French territorial sea and coasts
following the TANIO incident

(Statement as at 10 February 1982)

Ministry (or Division)	Extraordinary expenses of State Departments (Direct costs)	Expenses incurred on behalf of local authorities	Expenses incurred on behalf of individual victims of oil pollution damage	Expenses for contracts agreed with private persons	TOTAL
Defence	69,426,224.17	-	-	249,073,258.31	318,499,482.48
Interior	3,077,444.35	11,835,735.00	-	-	14,913,179.35
Leisure (Tourism)	-	-	4,826,817.73	-	4,826,817.73
Town Planning & Housing	21,152,201.32	-	-	-	21,152,201.32
"CEDRE"	575,064.00	-	-	-	575,064.00
GROSS TOTAL	94,230,933.84	11,835,735.00	4,826,817.73	249,073,258.31	359,966,744.88
	<u>LESS:</u> Amount received less costs incurred				2,947,423.00
NET TOTAL					357,019,321.88

2 The claims have been broken down in great detail and are supported by vouchers. The Fund's surveyors are investigating the claims. Their report will be submitted to the Executive Committee as soon as it is available.

II French Local Communes

Claims totalling FFr 41,987,909.04 have been made by the following French local authorities:

	<u>French Francs</u>
Département des Côtes du Nord	20,000,000.00
Association interprofessionnelle des Victimes de la marée noire	16,000,000.00
Commune de Pleumeur-Bodou	2,388,011.20
Commune de Louannec	993,102.66
Commune de Trégastel	773,210.82
Commune de l'Ile de Batz	500,000.00
Commune de Trébeurden	400,000.00
Commune de Cléder	300,000.00
Commune de Tréfléz	230,000.00
Commune de Plougasnou	200,000.00
Commune de Pleubian	113,948.63
Commune de Ploubazlanec	46,000.00
Commune de Plouescat	38,985.73
Commune de Lanmodez	4,650.00
	<hr/>
	41,987,909.04

The claims are for refund of expenses, loss of earnings, damage to the environment and other items. Some of them are supported by documentation, others are not. The settlement of these claims is being discussed between the Director and representatives of the claimants.

III Private Boatowners

1 The oil spilled by the TANIO tainted several boats lying in the waters of the affected area. So far, claims for compensation totalling FFr 51,477.51 have been made with respect to 12 boats. All these claims were made under a private insurance contract and were paid in full by the insurers. The Comité des Assureurs Maritimes

de Paris, representing the insurers, is now, in turn, seeking recourse under the CLC and the Fund Convention. The claims are for expenses for cleaning and painting the polluted ships and other expenses directly related thereto (eg crane-lifting).

2 It is expected that, by the time of the Executive Committee meeting, an agreement will have been reached with the Comité on the amount compensable under the CLC and the Fund Convention.

IV UK P & I Club

The United Kingdom P & I Club, the shipowner's liability insurer, undertook to survey the wreck and to provisionally seal the holes in the hull of the sunken fore-section from which oil was constantly leaking. These measures were taken to prevent and minimise further pollution damage and to allow more time for the permanent removal of the threat of pollution damage by pumping out the oil. The expenses claimed by letter of 22 February 1982 are the following:

	£
British Oceanics Ltd (surveyance of wreck)	151,333.59
Intersub Ltd (provisional sealing)	232,920.64*
Underwater Security Consultants Ltd (surveyance of Intersub work)	6,266.51
TOTAL	<u>390,520.74</u>

* £191,982.48 paid to date, remainder under negotiation.

The Director will report on the examination of this claim at the Executive Committee meeting.
