

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

EXECUTIVE COMMITTEE -
7th session
Agenda item 3

FUND/EXC.7/2/Add.1
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INFORMATION ON AND APPROVAL OF
SETTLEMENT OF CLAIMS

Note by the Director

- 1 The latest developments concerning some incidents since the issuance of document FUND/EXC.7/2 are given in the Annex.
- 2 The Executive Committee is invited to take note of the information given.

ANNEX

(figures in brackets indicate the paragraph numbers in which the respective incidents are dealt with in the Annex of document FUND/EXC.7/2)

1 TARPENBEK (1)

A writ, issued on behalf of the owner of the TARPENBEK and the P & I Club was filed at the Admiralty Court against the IOPC Fund on 18 June 1982. This claim is for the recovery of the shipowner's expenses for preventive measures.

2 FURENÄS (6)

2.1 The Swedish hull insurers who, on behalf of the other parties involved, had recovered the limitation amount from the KÄRNAN (the other ship involved in the collision) refuse to pay part of the recovered amount to the IOPC Fund. According to their view, the IOPC Fund is not entitled to recourse under the Swedish Insurance Law because this law allows an insurer a claim against a third party only if this claim is based on an intentional or grossly negligent act. The collision between the FURENÄS and the KÄRNAN is not based on intent or gross negligence on the part of the KÄRNAN. The hull insurers' and the P & I Club's rights of recourse are, according to the hull insurers' opinion, based on the "conditions of the insurance agreement".

2.2 The IOPC Fund has employed a lawyer in Sweden to examine the legal situation and to take care of the IOPC Fund's interests in the distribution of the amount recovered from the KÄRNAN. The amount to which the IOPC Fund may be entitled is SKr 425,614.28 (£40,114).

3 TANIO (5)

3.1 The French Government has submitted a fifth set of claims totalling FFr 2,670,251.37 which "subject to a few accounting documents ... completes almost entirely the set of supporting documents regarding the expenses incurred by the French State".

The additional claim consists of the following items:

	French Francs
Ministry of Defence	2,215,568.46
Ministry of Leisure (Tourism)	235,209.00
Ministry of Town Planning and Housing	219,473.91
TOTAL	<u>2,670,251.37</u>

With this final part, the total of the French Government's claim amounts to FFr 487,319,111.28 (£41,020.127). A summary of the items claimed is attached.

3.2 The IOPC Fund's surveyor examining the pumping operation has submitted a first preliminary report, the conclusions of which are as follows:

- "i) It is our opinion that due to the speed with which the operation was conceived and the original restricted timetable, insufficient time had been allowed by Comex Servicesto fully develop the design engineering aspects of the proposed system. Furthermore, this lack of detailed design led to many practical problems in the setting up stage, which consequently led to the operation not being ready for pumping till October, about 54 days late.
- ii) We must question the technical evaluation of the proposal, the likelihood of the operation being delayed and thus running into the winter period, should have been anticipated at the evaluation stage. If so, Comex Services should have been required to make provision for winter operations.
- iii) The large number of technical incidents is not to be unexpected when working in a hostile marine environment. Again this should have been anticipated and planned for at the design stage.

- iv) Our main conclusion is that the decision to proceed throughout the winter was not based on a sound statistical basis and we question validity of the data used, which ignores the heavy South Westerly swell prevalent in the winter months. Before deciding to proceed we believe that a more detailed meteorological investigation of the offshore site should have been undertaken. Our independent assessment of the options available would have resulted in recommending that the operation should be suspended for the winter. We believe that this decision would have resulted in a real reduction in overall cost.
- v) The argument that oil pollution is always a threat can always be made but on the basis of the Intersub leak sealing operation in April 1980 we do not see that the wreck would be subjected to any particular stresses likely to cause large scale leakage."

Copies of the full report will be submitted to members of the Executive Committee and observers at the meeting.

4 HOSEI MARU (7)

4.1 From document FUND/EXC.7/2 the information was omitted that out of the third party claims amounting to ¥249,089,648 (£559,752), the IOPC Fund paid ¥213,323,728 (£479,379) and the shipowner ¥35,765,920 (£80,373), this amount being his liability according to Article V of the CLC.

4.2 The surveyor's fees are ¥5,751,000 (£12,923). The IOPC Fund's share of this amount has not yet been refunded to JPIA.

5 ONDINA (12)

5.1 Upon application by the owner, an order of the Amtsgericht Hamburg was issued on 30 June 1982, requesting the owner of the ONDINA to establish the limitation fund in the amount of DM 10,325,602 (£2,418,173) within six weeks.

5.2 Copies of the invoices and working sheets regarding the clean-up operations were submitted by the P & I Club to the IOPC Fund. However, since a proper claim including a report on the clean-up operations and summaries of the expenses incurred has not yet been submitted to the IOPC Fund, the IOPC Fund has not been in a position to examine the reasonability of the claim. The P & I Club promised to submit the claim shortly. The invoices received so far by the IOPC Fund show a total expenditure of about DM 22,300,000 (£5,210,300).

5.3 With regard to the cause of the incident, the Director has received a copy of the police report drawn up immediately after the incident. This report shows that the officer responsible for the discharge noticed too late that oil escaped from a valve because one valve was not completely closed and another had a defect. The officer estimated that an amount of 1-2 tons of oil had escaped. He was fined DM 7,000 (£1,640). However, since this report does not explain satisfactorily the actual escape of at least 200 tons of oil, the Director is trying to get more information on the incident to be able to decide whether there is sufficient evidence to try to break the owner's limitation.

6 SHIOTA MARU (13)

The amount of fishery damage claims received so far by the IOPC Fund's surveyor is ¥143,000,000 (£321,348). The assessment of the claims by the surveyor is still in progress but he estimates that a reasonable amount would be approximately ¥15,000,000 (£33,708).

7 FUKUTOKU MARU NO 8 (14)

7.1 A claim for fishery damage was initially made in the amount of ¥1,814,000,000 (£4,076,404) but later it was reduced to ¥454,800,000 (£1,022,022). The surveyor employed by the IOPC Fund is negotiating with the fishermen and estimates that a reasonable amount for the fishery damage claim would be in the region of ¥150,000,000 (£337,079).

7.2 The lawyer employed by the IOPC Fund informed us that the collision between the FUKUTOKU MARU NO 8 and the KOSHU MARU occurred due to the fact that the FUKUTOKU MARU NO 8 was navigating at night without exhibiting any navigational lights and that the FUKUTOKU MARU NO 8 should therefore be 100% to blame for the incident. The lawyer concluded that, since navigation at night without any navigational lights is beyond the control of the shipowner provided he employs a qualified master and crew and the lights are technically in order, the incident did not occur as a result of the actual fault or privity of the owner of the FUKUTOKU MARU NO 8.

ATTACHMENT

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 16 August 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	Expenses for contracts agreed with private persons	TOTAL
Defence	69,707,650.98	-	-	251,007,399.96	320,715,050.94
Interior	3,077,444.35	11,835,735.00	-	-	14,913,179.35
Sea	9,622,912.11	-	714,222.74	-	10,337,134.85
Leisure (Tourism)	-	-	5,062,026.73	-	5,062,026.73
Town Planning & Housing	138,664,078.41	-	-	-	138,664,078.41
"CEDRE"	575,064.00	-	-	-	575,064.00
GROSS TOTAL	221,647,149.85	11,835,735.00	5,776,249.47	251,007,399.96	490,266,534.28
	<u>LESS:</u> Amount received less costs incurred				2,947,423.00
NET TOTAL					487,319,111.28