



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

ASSEMBLY  
15th session  
Agenda item 21

FUND/A.15/18/Add.1  
2 October 1992

Original: ENGLISH

## INTERPRETATION OF THE NOTION OF "RECEIVED" IN ARTICLE 10 OF THE FUND CONVENTION

Note by the Director

1 Since the issue of document FUND/A.15/18, the Minister of Economic Affairs of the Netherlands has rendered his decision on the appeal lodged by Paktank (paragraphs 16 – 20 of that document).

2 An oral hearing on the appeal was held on 8 September 1992. The IOPC Fund had submitted pleadings prior to this hearing. At the hearing the IOPC Fund was represented and presented its views on the issues raised by the appeal.

3 The Minister of Economic Affairs rendered his decision on 28 September 1992. In this decision the appeal lodged by Paktank was rejected.

4 The reasons given by the Minister for his decision can be summarised as follows:

The States party to the Fund Convention have always been aware of the fact that the system of contributions under the Fund Convention must be workable. For this reason a broad concept of the notion of "receiver" had been applied. The system leaves the States parties to the Fund Convention a flexibility to provide in their national legislation that the physical receiver who stores oil on behalf of another person should be regarded as the receiver under Article 10 of the Convention. The Record of Decisions of the 1st extraordinary session of the IOPC Fund Assembly confirms that various persons can be regarded as "receiver" under Article 10 of the Fund Convention and that the States parties to the Convention have a certain flexibility in setting up the reporting system, in particular to make a choice between receivers where several persons can be regarded as such. The narrow concept of the notion of "receiver" maintained by Paktank is therefore rejected. Consequently, the Royal Decree of 18 August 1982 is not in conflict with Article 10 of the Fund Convention. The choice

of the physical receiver is only made for cases where it is impossible or very difficult to trace the person for whom storage takes place. The Decree is a valid part of the national legislation and must be enforced by the Minister without any questioning of the effect or the reasonableness thereof.

- 5 Paktank may appeal against this decision to the Administrative Court of Appeal.

**Action to be Taken by the Assembly**

- 6 The Assembly is invited to take note of the information contained in this document.
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