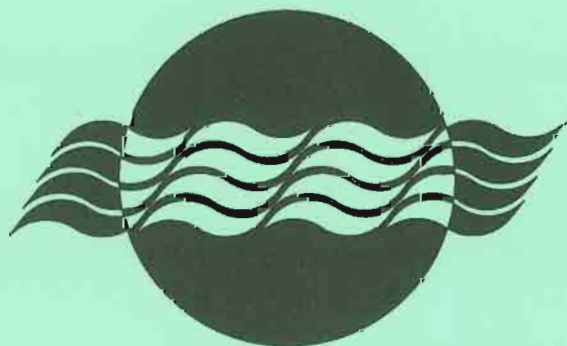


**INTERNATIONAL  
OIL POLLUTION  
COMPENSATION FUND**

**ANNUAL REPORT  
1988**



**REPORT ON THE ACTIVITIES OF THE  
INTERNATIONAL OIL POLLUTION  
COMPENSATION FUND  
IN THE CALENDAR YEAR 1988**

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# 1 INTRODUCTION

The International Oil Pollution Compensation Fund (IOPC Fund) was set up in October 1978 for the purpose of providing compensation for oil pollution damage resulting from spills of persistent oil from laden tankers. This Annual Report for the calendar year 1988 covers the activities of the IOPC Fund during its tenth year of operation. Since the organisation has been in existence for ten years, the Report includes a résumé of the major developments over the years.

Compensation for damage caused by oil spills from laden tankers is governed by two international conventions, the 1969 International Convention on Civil Liability for Oil Pollution Damage (Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention). These Conventions were elaborated under the auspices of the International Maritime Organization (IMO) as a result of the TORREY CANYON incident off the English coast in March 1967 which caused oil pollution damage of an extent previously unknown. This incident made the world aware of the need for international regimes of liability and compensation for oil pollution damage.

The Civil Liability Convention governs the liability of shipowners for oil pollution damage. This Convention lays down the principle of strict liability for shipowners and creates a system of compulsory liability insurance. The shipowner is normally entitled to limit his liability to an amount which is linked to the tonnage of his ship. The Convention entered into force in 1975. As at 31 December 1988, 62 States were Party to this Convention.

The Fund Convention, which is supplementary to the Civil Liability Convention, establishes a regime for compensation to victims when the compensation under the Civil Liability Convention is inadequate. The IOPC Fund was set up under the Fund Convention, when the Convention entered into force on 16 October 1978. The IOPC Fund is a worldwide inter-governmental organisation established for the purpose of administering the regime of compensation created by the Fund Convention. By becoming Party to the Fund Convention, a State becomes a Member of the IOPC Fund. The organisation has its headquarters in London. Details of the IOPC Fund's organs (the Assembly, the Executive Committee and the Secretariat) are given in Annex I.

The main functions of the IOPC Fund are to provide supplementary compensation to those who cannot obtain full compensation for oil pollution damage under the Civil Liability Convention, and to indemnify shipowners for a portion of their liability under that Convention. The compensation payable by the IOPC Fund in respect of any one incident is limited to 60 million Special Drawing Rights (corresponding to £45 million or US \$81 million), including the sum actually paid by the shipowner or his insurer under the Civil Liability Convention.

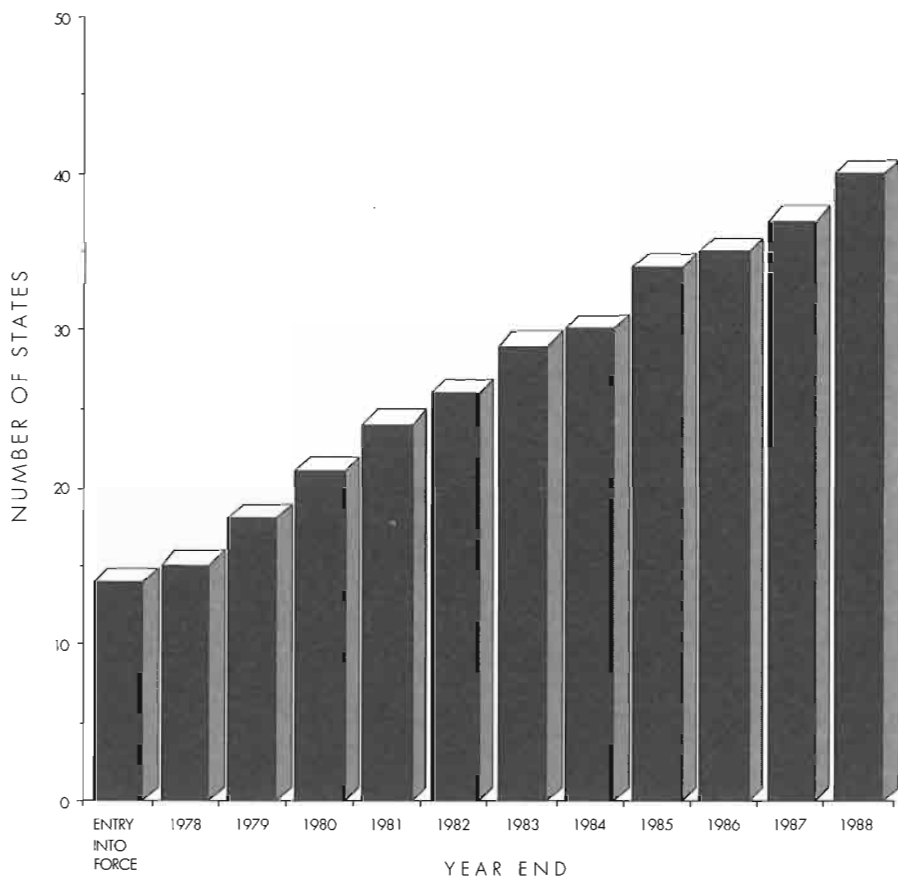
## 2 MEMBERSHIP OF THE IOPC FUND

At the time of the entry into force of the Fund Convention, 14 States were Party to the Convention. Since then, there has been a constant growth in the number of Member States. At the end of 1983, ie after five years, there were 28 Member States. As at 31 December 1988, 40 States were Members of the IOPC Fund.

Three States became Members of the IOPC Fund during 1988. The Fund Convention entered into force for the Republic of Côte d'Ivoire on 3 January 1988, for the Republic of Seychelles on 11 July 1988 and for the State of Qatar on 31 August 1988.

The development of the IOPC Fund's membership is illustrated in the following graph.

**MEMBERSHIP OF THE IOPC FUND**



As at 31 December 1988, the following 40 States were Members of the IOPC Fund:

Algeria	Monaco
Bahamas	Netherlands
Benin	Nigeria
Cameroon	Norway
Côte d'Ivoire	Oman
Denmark	Papua New Guinea
Fiji	Poland
Finland	Portugal
France	Qatar
Gabon	Seychelles
Germany, Federal Republic of	Spain
Ghana	Sri Lanka
Greece	Sweden
Iceland	Syrian Arab Republic
Indonesia	Tunisia
Italy	Tuvalu
Japan	Union of Soviet Socialist Republics
Kuwait	United Arab Emirates
Liberia	United Kingdom
Maldives	Yugoslavia

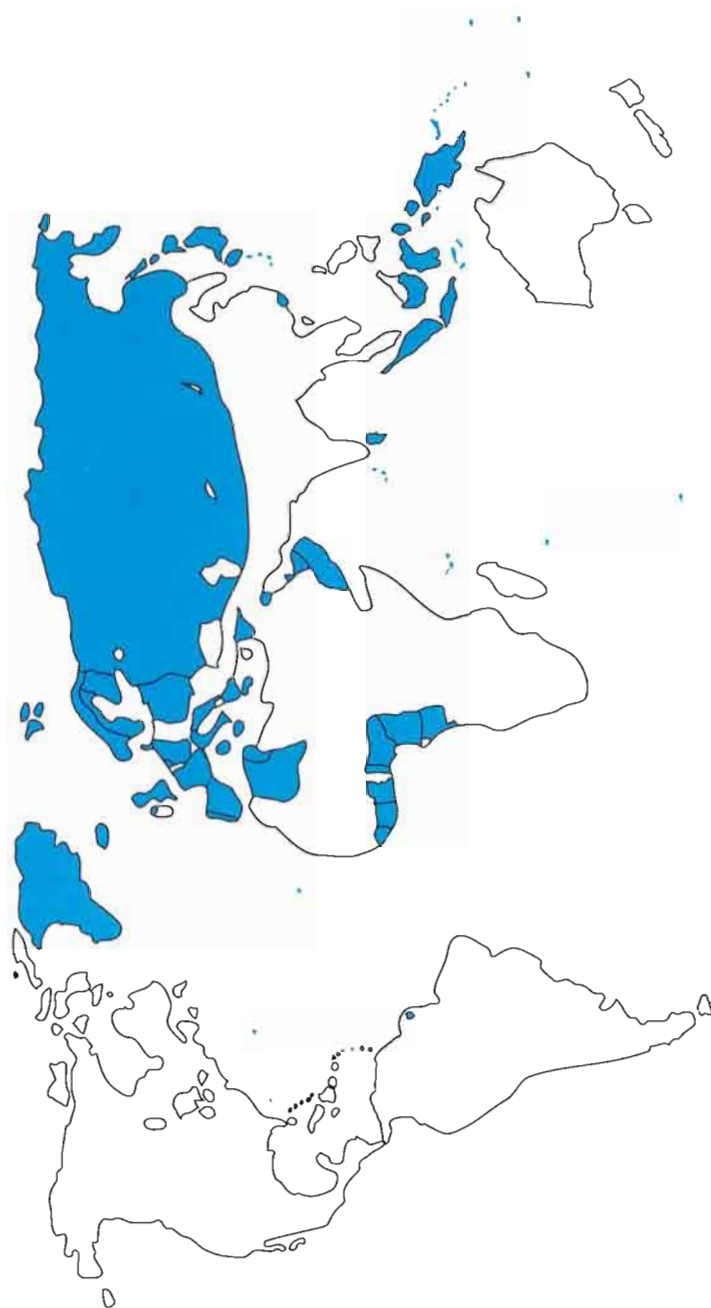
The geographical distribution of Member States is shown on the map reproduced on page 8.

On the basis of the information available to the Fund's Secretariat, it is expected that several States will join the IOPC Fund in the near future. In Canada, Ireland, Morocco and Vanuatu, the Parliaments have approved the Fund Convention and the necessary implementing legislation, and these States will soon deposit their instruments of accession to the Convention. Legislation implementing the Fund Convention is in an advanced stage in Belgium, Cyprus, the German Democratic Republic and Saudi Arabia. Many other States are also considering acceding to the Fund Convention.

The Assembly of the IOPC Fund has over the years granted observer status to a number of non-Contracting States. As at 31 December 1988, the following States have observer status:

Argentina	German Democratic Republic
Belgium	Ireland
Brazil	Mexico
Canada	Switzerland
Chile	United States of America
China	Venezuela
Cyprus	





Members States of the IOPC Fund as at 31 December 1988

### **3 CONTACTS WITH GOVERNMENTS**

The IOPC Fund and its Secretariat have always benefited from strong support from the Governments of Member States. Due to the spirit of co-operation shown by these Governments, it has been possible to resolve rapidly most problems which have arisen.

Over the years, the Director has visited a number of Member States. These visits have contributed to the establishment of valuable personal contacts between the IOPC Fund Secretariat and officials within the national administrations dealing with Fund matters. During 1988, the Director visited seven Member States - Finland, France, Gabon, Greece, Indonesia, Italy and Monaco - for discussions with government officials on the Fund Convention and the operations of the IOPC Fund.

In this context, it is appropriate to note the importance of the special relationship that the IOPC Fund has with the Government of the United Kingdom as the Host Government. The generous financial support given by the United Kingdom Government, in the form of the payment of a major part of the rent and certain other costs for the IOPC Fund's offices, has reduced the cost of administering the IOPC Fund. The United Kingdom Government has also in many other respects given the IOPC Fund valuable assistance and advice, from time to time.

Since the establishment of the IOPC Fund, the Secretariat has made great efforts to increase the number of Member States. The Assembly has emphasised on several occasions the importance of an increased membership. To this end, the Secretariat has tried to convey as much information as possible about the Civil Liability Convention and the Fund Convention to governments and representatives of industry. In 1988 alone, the Director went to Australia, Cyprus, Malaysia, New Zealand, Singapore, Thailand, Trinidad and Tobago and Venezuela for discussions on the Civil Liability Convention and the Fund Convention with government officials in these States. The Legal Officer visited Jamaica in 1988 for the same purpose.

The Director and the Legal Officer usually have discussions with government representatives of both Member and non-Member States in connection with meetings within IMO. In 1988, such discussions were held in particular during the sessions of the IMO Council.

The IOPC Fund Secretariat has, on request, assisted several non-Member States in the elaboration of the national legislation necessary for the implementation of the Civil Liability Convention and the Fund Convention.

## **4 RELATIONS WITH INTERNATIONAL ORGANISATIONS AND INTERESTED CIRCLES**

The operation of the IOPC Fund has been greatly facilitated by close co-operation with many international inter-governmental organisations. The assistance and support given by IMO to the IOPC Fund is of special importance. This support was crucial during the first years, but still after ten years this close link with IMO is of great value to the IOPC Fund. The co-operation between IMO and the IOPC Fund is governed by a special agreement, signed in 1979. Co-operation with other organisations within the United Nations system, as well as with inter-governmental organisations outside that system, has also been of great value to the IOPC Fund.

The United Nations and IMO are always invited to be represented as observers at the sessions of the Assembly and the Executive Committee. The Assembly has granted observer status to the United Nations Environment Programme (UNEP) and to two inter-governmental organisations, the European Economic Community (EEC) and the International Institute for the Unification of Private Law (UNIDROIT).

Over the years the IOPC Fund has maintained close co-operation with a number of international non-governmental organisations and other non-governmental bodies. The following 11 international non-governmental organisations have observer status with the IOPC Fund:

Advisory Committee on Pollution of the Sea (ACOPS)  
Baltic and International Maritime Conference (BIMCO)  
Comité Maritime International (CMI)  
Cristal Ltd  
Friends of the Earth International (FOEI)  
International Association of Independent Tanker Owners (INTERTANKO)  
International Chamber of Shipping (ICS)  
International Group of P & I Clubs  
International Tanker Owners Pollution Federation Ltd (ITOPF)  
International Union for the Conservation of Nature and Natural Resources (IUCN)  
Oil Companies International Marine Forum (OCIMF)

The co-operation between the IOPC Fund and the P & I Clubs is of special importance. This co-operation is based on two Memoranda of Understanding, one signed in 1980 by the International Group of P & I Clubs and the IOPC Fund, the other signed in 1985 by the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) and the Fund. This co-operation is not only in the interest of the IOPC Fund and the Clubs but also in the interest of claimants, since it contributes to the speedy settlement of claims.

The International Tanker Owners Pollution Federation Ltd (ITOPF) is usually called upon by the IOPC Fund to provide technical expertise with regard to oil pollution incidents; ITOPF's assistance is crucial, as the IOPC Fund does not have such expertise within its Secretariat.

Co-operation with shipowners is facilitated by contacts with the International Chamber of Shipping and INTERTANKO.

There is also close co-operation between the IOPC Fund and oil industry interests represented by the Oil Companies International Marine Forum (OCIMF) and by Cristal Ltd, which operates the voluntary compensation scheme set up by the oil industry. The co-operation between the IOPC Fund and Cristal will be even more important in the future, in view of the fact that a link was created in 1987 between the system of compensation governed by the international Conventions and the voluntary industry schemes (TOVALOP and CRISTAL) as a result of the revision of the voluntary schemes in 1987.

During recent years, valuable contacts have been established with non-governmental organisations representing environmental interests.

## **5 CONFERENCES AND SEMINARS**

The Director and the Legal Officer have over the years given lectures at seminars, conferences and workshops on liability and compensation for oil pollution damage and the operations of the IOPC Fund.

During 1988, the Director lectured at a sub-regional seminar for West and Central Africa, held in Libreville (Gabon) with participants from 16 States. In connection with his visits to Greece, Indonesia and Malaysia, the Director gave lectures on the compensation system under the Conventions to representatives of public authorities and interested circles in these countries. The Director also made a presentation of the IOPC Fund to members of the French Maritime Law Association in Paris (France). He gave lectures on liability and compensation for oil pollution damage to the students of the World Maritime University in Malmö (Sweden). The Director lectured at a Pacific Regional Workshop on Oil Spill Response, held in Brisbane (Australia), and at a seminar on the Legal Aspects of a Major Tanker Spill, held in Caracas (Venezuela).

The Legal Officer lectured on oil pollution liability at a training course on oil pollution combating (MEDIPOL 88), which was organised by the Regional Oil Combating Centre for the Mediterranean Sea (ROCC) in Valletta (Malta), and at a workshop in Puerto Rico on Oil Spill Contingency Plans for the Caribbean region, with participants from 15 States. In addition, the Legal Officer gave lectures on liability and compensation for oil pollution damage at a seminar on marine pollution combating systems, held in Tokyo (Japan), with participants from 10 countries in the East and South China Sea region, and at a regional seminar on MARPOL 73/78 for the South East Asian countries, held in Singapore.



Mr J Bredholt  
Chairman of the Assembly



11th Session of the Assembly  
October 1988

## **6 THE 1984 PROTOCOLS TO THE CIVIL LIABILITY CONVENTION AND THE FUND CONVENTION**

In 1984 a Diplomatic Conference held in London adopted two Protocols to amend the Civil Liability Convention and the Fund Convention, respectively. These Protocols provide higher limits of compensation and a wider scope of application than the Conventions in their original versions.

The Protocol to the Civil Liability Convention has been ratified by the Federal Republic of Germany, France, Peru and South Africa. The Federal Republic of Germany and France have become Party also to the Protocol to the Fund Convention. In the United Kingdom, Parliament has approved legislation implementing the Protocols, and it is expected that the United Kingdom will soon ratify both Protocols. In the United States of America, the Protocols and the necessary implementing legislation are being considered by Congress. Several other States, eg Denmark, Finland, the Netherlands, Norway and Sweden, have begun preparing legislation enabling them to ratify the Protocols. It is not possible to make any prediction as to when the 1984 Protocols will come into force.

## **7 ASSEMBLY AND EXECUTIVE COMMITTEE**

The Assembly, the supreme organ of the IOPC Fund, is composed of representatives of all Member States. Sessions of the Assembly are held every year, normally in October.

Mr J Bredholt (Denmark) has held the post of Chairman of the Assembly since the establishment of the IOPC Fund in 1978.

The Executive Committee is composed of one third of the Member States but of not more than 15 States. The main function of the Committee is to approve settlements of claims against the IOPC Fund, to the extent that the Director is not authorised to make such settlements.

The Executive Committee elected in 1979 as its first Chairman Professor H Tanikawa (Japan), who chaired the first four sessions of the Committee from 1979 to 1981. He was succeeded by Mr P Navia (Italy) who held this post from 1981 to 1982. Mr J Perrett (United Kingdom) chaired the Committee from 1982 to 1983, Mr H Mutttilainen (Finland) from 1983 to 1984 and Mr W Sturms (Netherlands) from 1984 to 1985. Professor Tanikawa again held the post of Chairman from 1985 to 1987. Since the Committee's 19th session in October 1987, the post has for the second time been held by Mr Navia.

## 7.1 11th Session of the Assembly

The Assembly held its 11th session from 19 to 21 October 1988. Mr J Bredholt (Denmark) was re-elected Chairman of the Assembly.

The major decisions taken at this session were as follows.

- (a) The Assembly took note of the opinion given in the External Auditor's Report on the Financial Statements of the IOPC Fund and approved the accounts for the financial period 1 January to 31 December 1987.
- (b) The Assembly adopted the budget appropriations for 1989 with an administrative expenditure totalling £446 840.
- (c) The Assembly decided that an amount of £13.9 million of the balance on the TANIO major claims fund should be reimbursed pro rata, on 1 February 1989, to the persons who had made contributions to that major claims fund, and that any amount in excess of £13.9 million should be transferred to the general fund. In addition, the Assembly decided that each contributor should be given the option to choose whether the amount to which he was entitled should be repaid to him, or whether the amount should be credited to his account with the IOPC Fund for set-off against annual contributions that would be levied in subsequent years.
- (d) The working capital of the IOPC Fund was increased by the Assembly from £2 million to £4 million.
- (e) The Assembly decided to levy 1988 annual contributions in the amount of £2 900 000 for the general fund and in the amount of £90 000 for the JAN major claims fund, to be paid by 1 February 1989.
- (f) The following States were elected members of the Executive Committee to hold office until the end of the next regular session of the Assembly:

Bahamas  
France  
Greece  
Indonesia  
Italy  
Japan  
Kuwait

Liberia  
Nigeria  
Sri Lanka  
Sweden  
Tunisia  
Union of Soviet Socialist Republics  
United Kingdom



Professor H Tanikawa  
First Chairman of the Executive Committee



Mr P Novia  
Present Chairman of the Executive Committee





Dr R H Ganten  
Director 1978-1984



Mr M Jacobsson  
Director from 1985

- (g) The Assembly adopted a Resolution in which Member States were urged, *inter alia*, to submit their reports on contributing oil receipts at the time and in the manner prescribed in the IOPC Fund's Internal Regulations. The Assembly drew the attention of Member States to the fact that they should ensure that those persons who receive less than 150 000 tonnes of contributing oil in the calendar year are reported, if they are liable to pay contributions pursuant to the special provisions on associated persons in the Fund Convention.
- (h) A request for observer status from the Republic of Cyprus was approved by the Assembly.

## **7.2 20th Session of the Executive Committee**

The Executive Committee held its 20th session from 17 to 19 October 1988 under the chairmanship of Mr P Novia (Italy).

The Executive Committee was informed of the situation in respect of the settlement of claims arising out of pollution incidents involving the IOPC Fund. In particular, the Committee discussed the developments that had taken place in the TANIO, PATMOS and ANTONIO GRAMSCI cases. The Committee also evaluated the experience gained from the TANIO case, the most important incident in which the IOPC Fund has been involved.

## **7.3 21st Session of the Executive Committee**

At its 21st session, held on 21 October 1988, the Executive Committee re-elected Mr P Novia (Italy) as its Chairman.

# **8 THE SECRETARIAT**

The Secretariat is headed by a Director who is the legal representative of the organisation. The Secretariat administers the IOPC Fund and, in particular, deals with claims for compensation.

At its 1st session, in November 1978, the Assembly appointed Dr Reinhard H Ganten (Federal Republic of Germany) as Director from 16 December 1978. Dr Ganten held this post until 31 December 1984 and thus steered the organisation through its first six years.

In October 1984, the Assembly appointed Mr Måns Jacobsson (Sweden) to the post of Director for the period 1 January 1985 - 31 December 1989.

The Secretariat has at present seven staff members: the Director, the Legal Officer, the Finance/Personnel Officer, three Secretaries and a Messenger. The present structure of the Secretariat was in the main established in 1981. Only one new post has been created since then, that of a Messenger in 1983.

At the time of the establishment of the IOPC Fund, the Assembly decided that the organisation should have a small Secretariat and that it should use outside experts for the fulfilment of tasks which could not be carried out by the permanent staff members. Experience has shown that the solution adopted, ie that of a small Secretariat, was a good one. It has been possible to carry out the operation of the IOPC Fund at a very low cost. Consultants, such as lawyers, surveyors and other technical experts, are used by the IOPC Fund, mainly in connection with incidents in which the Fund has been involved.

## **9 ACCOUNTS OF THE IOPC FUND**

The accounts of the IOPC Fund for the financial period 1 January to 31 December 1987 were approved by the Assembly at its 11th session in October 1988.

The Income and Expenditure Accounts for the period 1 January to 31 December 1987 are shown in Annexes II and III to this Report.

Regarding the general fund (Annex II), the major part of the income in 1987 consisted of annual contributions (£1 799 359 out of a total income of £2 089 313). A considerable amount (£257 553) was derived from interest on the investment of the IOPC Fund's assets. The administrative expenditure was £282 854, about 16% less than the budgetary appropriations. Expenditure on minor claims was £276 511. An excess of income over expenditure of £1 528 419 was recorded for the financial period 1987, and this amount was added to the accumulated surplus from previous years, bringing the surplus to £3 139 227. This latter amount includes the working capital of £2 million.

In respect of the TANIO major claims fund (Annex III), an amount of £9 537 856 was recovered as a result of an out-of-court settlement in a recourse action which the IOPC Fund had taken in France. There were no payments of compensation in 1987 from the TANIO major claims fund.

The balance sheet of the IOPC Fund as at 31 December 1987 is shown in Annex IV to this Report. As at that date, the IOPC Fund's contingent liabilities with respect to pollution incidents were estimated at £16 340 720.

The accounts of the IOPC Fund for the financial period 1 January to 31 December 1988 will be submitted in the spring of 1989 to the External Auditor for an audit opinion,

and will be presented to the Assembly for approval at its 12th session, in October 1989. These accounts will then be reproduced in the Report on the Activities of the IOPC Fund for the calendar year 1989.

Since the establishment of the IOPC Fund in 1978, the accounts have been audited by the Comptroller and Auditor General of the United Kingdom.

## **10 CONTRIBUTIONS**

The IOPC Fund is financed by contributions paid by any person who has received more than 150 000 tonnes of crude oil or heavy fuel oil ("contributing oil") in a Member State after carriage by sea in the relevant calendar year. The levy of contributions is based on reports on oil receipts in respect of individual contributors submitted by Governments of Member States. The contributions are paid by the individual contributors directly to the IOPC Fund. The Governments have no responsibility for these payments, unless they have voluntarily accepted such responsibility.

There are initial and annual contributions. Initial contributions are payable when a State becomes a Member of the IOPC Fund on the basis of a fixed amount per tonne of contributing oil received the year preceding that in which the Fund Convention entered into force for that State. This amount was fixed by the Assembly at 0.04718 (gold) francs per tonne (0.003145 SDR, which at 30 December 1988 corresponded to £0.002339). Annual contributions are levied to meet the anticipated payments of compensation and indemnification by the IOPC Fund and the administrative expenses of the Fund during the coming year.

At its 10th session, in October 1987, the Assembly decided to levy 1987 annual contributions in the amount of £800 000 for the general fund and in the amount of £400 000 for the BRADY MARIA major claims fund, to be paid by 1 February 1988. The amount payable by each contributor per tonne of contributing oil received was £0.0010154 in respect of the general fund, based on the quantities of oil received in 1986, and £0.0005193 in respect of the BRADY MARIA major claims fund, based on the quantities received in 1985 (the year before the incident). Only a small amount of these contributions remains unpaid.

The Assembly decided at its 11th session, in October 1988, to raise £2 900 000 for the 1988 annual contributions to the general fund and £90 000 for the 1988 annual contributions to the JAN major claims fund, to be paid by 1 February 1989. Only a small part of these contributions had been received by 31 December 1988.

In respect of contributions levied for previous years, the situation must be considered very satisfactory, since only very small amounts are in arrears. On 31 December 1988, only an amount of £41 500 was outstanding, representing less than 0.1% of the contributions assessed for all previous years. These figures show that contributors fulfil their obligations to pay contributions in a manner which greatly facilitates the operation of the IOPC Fund. The Director has never had to resort to taking legal action against a defaulting contributor. At its 11th session, the Assembly again expressed its satisfaction with the positive response of contributors regarding the payment of contributions.

The payments made by the IOPC Fund in respect of claims for compensation for oil pollution damage vary considerably from year to year. As a result, the level of contributions to the Fund varies from one year to another, as illustrated in the following table which sets out the contributions levied during the period 1979-1988. As can be seen from the table, the level of contributions has been low, except in respect of 1980 and 1983 when considerable amounts were levied for the first ANTONIO GRAMSCI incident and for the TANIO incident, respectively.

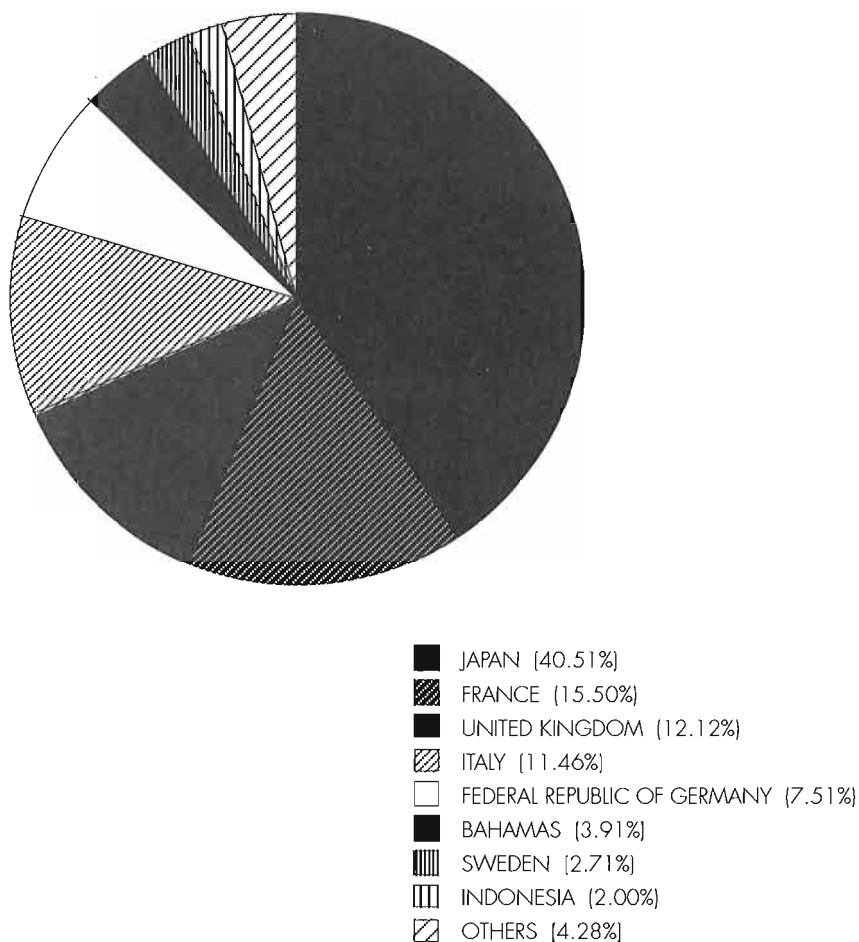
Year	General Fund £	Major Claims Funds £	Total Levy £
1979	750 000	0	750 000
1980	800 000	9 200 000	10 000 000
1981	500 000	0	500 000
1982	600 000	260 000	860 000
1983	1 000 000	23 106 000	24 106 000
1984	0	0	0
1985	1 500 000	0	1 500 000
1986	1 800 000	0	1 800 000
1987	800 000	400 000	1 200 000
1988	2 900 000	90 000	2 990 000

If contributions levied in respect of a major claims fund are not totally used for the payments made by the IOPC Fund in respect of the particular incident for which they were levied, the balance is repaid to the contributors. Thus, reimbursement was made in 1982 of £750 000 remaining in the ANTONIO GRAMSCI major claims fund (levied in 1980) and in 1986 of £700 000 remaining in the ONDINA/FUKUTOKU MARU N°8 major claims fund (levied in 1983). Similarly, an amount of £13.9 million of the balance on the TANIO major claims fund will be reimbursed on 1 February 1989 to the persons who paid 1983 contributions to that major claims fund. In this case, the high balance resulted from the recovery of an important amount in recourse proceedings.

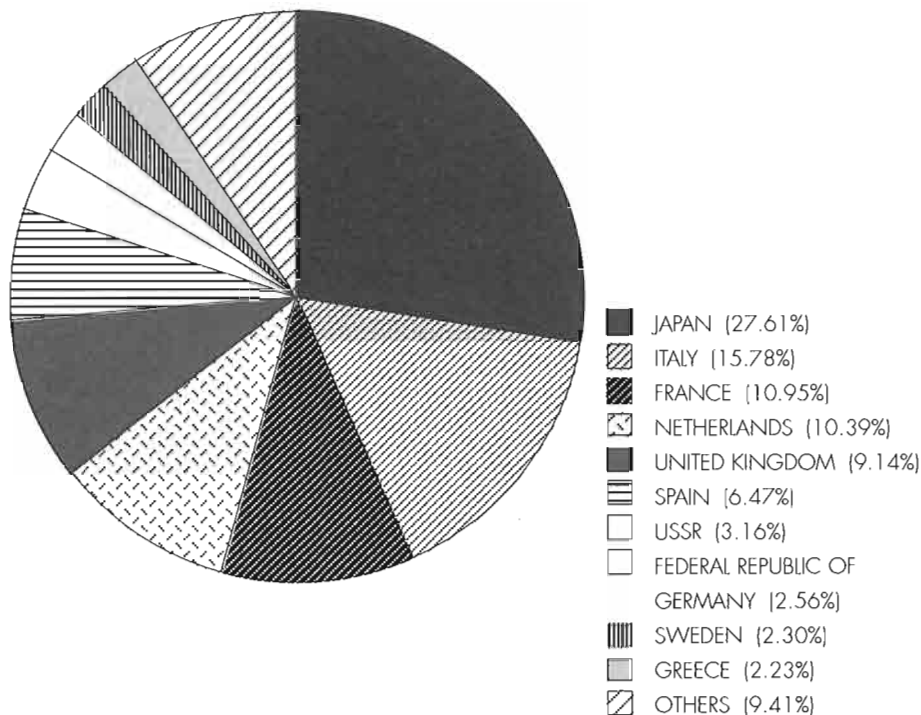
The quantities of contributing oil received in 1987 in Member States are given in Annex V to this report.

The share of the annual contributions to the general fund paid by contributors in each Member State has varied over the years. In particular, the shares paid by contributors in States which were Members when the IOPC Fund was established in 1978 have been reduced, as a result of more States joining the Fund. This development is shown by the following charts.

## 1979 General Fund Contributions



## 1988 General Fund Contributions



## 11 INVESTMENT OF FUNDS

In accordance with the IOPC Fund's Internal Regulations, the Director invests funds which are not required for the short-term operation of the IOPC Fund. The investments are made mainly in Pounds Sterling. The assets are placed on term deposit.

During 1988, investments were made with several leading London banks. Apart from investments placed overnight till the next business day, the investments were made at interest rates varying from 8.75% pa to 13.03125% pa, with an average of 9.5%. Interest due in 1988 on the investments amounted to £1 452 000, on an average capital of £16.4 million.

The yield on the investments has over the years been more than sufficient to cover the IOPC Fund's administrative expenditure.

As at 31 December 1988, the IOPC Fund's portfolio of investments totalled £17 077 158. This amount was made up of the assets of the IOPC Fund and the Staff Provident Fund. Of the IOPC Fund's assets, the TANIO major claims fund alone accounted for £13.8 million.

On 1 February 1989, an amount of £13.9 million of the TANIO major claims fund will be distributed to the contributors. To the extent that the contributors prefer to have their shares of the surplus credited to their respective accounts with the IOPC Fund, the credit balances will be invested on behalf of the contributors, and the amounts invested will not be considered as part of the IOPC Fund's assets.

## **12 SETTLEMENT OF CLAIMS**

### **12.1 General Information**

Every year there are numerous spills of oil from tankers around the world. There are no reliable statistics as to the total number of spills. The IOPC Fund is mainly interested in spills involving the escape or discharge of substantial quantities, since such spills are more likely to result in claims against the Fund.

It should be noted that approximately 85% of all spills occur during routine ship operations, mainly in port, such as loading and discharging; these two latter categories alone account for 72% of all spills. Most of the spills that occur during these routine operations are relatively small; over 92% cause spills of less than 50 barrels (7 tonnes). On the other hand, whilst accidents such as collisions and groundings represent less than 10% of all spill incidents, over 78% of these result in spills of over 50 barrels and 25% in spills of over 5 000 barrels (700 tonnes).

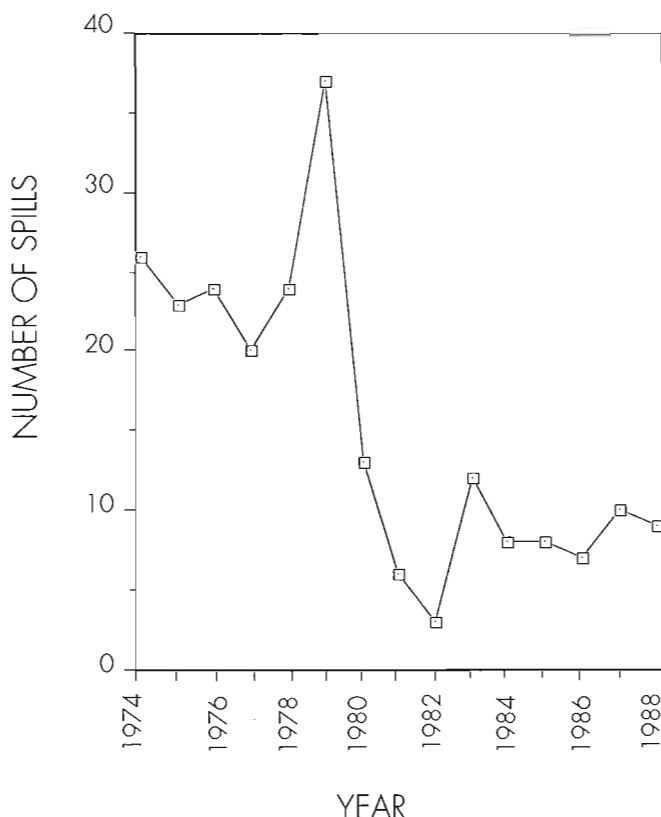
The graph on the following page shows the number of major oil spills from tankers during the 15 year period ending 1988 (source ITOPF).

The graph shows that there has been a marked reduction in the number of major oil spills (ie spills of more than 5 000 barrels) during the period 1974-1988. It appears that the following factors have contributed to this improvement. Firstly, since the oil crisis in the beginning of the 1980s less oil has been transported by tanker than previously. Secondly, oil tankers are today operating under less time pressure both on the high seas and in port. Thirdly, the international conventions elaborated under the auspices of IMO (MARPOL, SOLAS and COLREG 72) have come into force and have contributed to safer shipping. Finally, there is today a much greater awareness of the importance of preventing oil pollution from ships than in the 1970's.

Since its establishment in October 1978 the IOPC Fund has, up to 31 December 1988, been involved in the settlement of claims arising out of 37 incidents. 20 of these incidents occurred in Japan, whereas 13 incidents, leading in general to much larger claims, took place in European waters, one in Indonesia, one in Algeria and two in the Persian Gulf. The total amount of compensation and indemnification paid by the IOPC Fund to date is £37 million.



## SPILLS OF OVER 5000 BARRELS (ABOUT 700 TONNES)



The 37 incidents in which the IOPC Fund has been involved have been distributed over the years as follows:

1979	4	1984	2
1980	5	1985	4
1981	3	1986	4
1982	4	1987	5
1983	3	1988	3

The case involving by far the largest claims against the IOPC Fund was the TANIO incident (FRANCE, 1980), in respect of which the IOPC Fund paid £18.3 million to claimants. Major payments were also made in respect of the following incidents: ANTONIO GRAMSCI (Sweden, 1979) £9.3 million, ONDINA (Federal Republic of Germany, 1982) £3.0 million, FUKUTOKU MARU N°8 (Japan, 1982) £1.1 million, JAN (Denmark, 1985) £800 000, and BRADY MARIA (Federal Republic of Germany, 1986) £1.1 million.

During 1988 three incidents occurred which may give rise to claims for compensation and indemnification against the IOPC Fund, namely the AMAZZONE incident, which occurred off the coast of Brittany (France), and the TAIYO MARU N°13 and the KASUGA MARU N°1 incidents, which took place in Japanese waters. In addition, the IOPC Fund was in 1988 informed of two incidents which occurred in Japan during 1987, viz the SOUTHERN EAGLE and the HINODE MARU N°1 incidents.

In addition to these five new incidents, there are, as at 31 December 1988, six incidents in respect of which final settlements have not yet been reached, namely: the KOSHUN MARU N°1 (in respect of which only a recourse claim is outstanding), the PATMOS, OUED GUETERINI, THUNTANK 5 and AKARI incidents, as well as the second ANTONIO GRAMSCI incident.

This Report gives details relating to incidents which the IOPC Fund has dealt with in 1988. The conversion of foreign currencies into Pound Sterling is as at 31 December 1988, except for those claims in respect of which payments have been made; with regard to the latter, conversion is made at the rate of exchange on the date of payment.

Annex VI contains a summary of all incidents with which the IOPC Fund has dealt over the years, and in respect of which the Fund has paid compensation or indemnification, or in respect of which it is possible that such payments will be made by the Fund. It also includes some other incidents in which the IOPC Fund was involved but in respect of which the Fund in the end was not called upon to make any payments.

## **12.2 Incidents Dealt with by the IOPC Fund during 1988**

### **TANIO**

*(France, 7 March 1980)*

The legal action which the IOPC Fund, together with the French Government, had taken in France against the owner of the TANIO and other third parties was settled out of court in December 1987. Final payments were made to claimants during 1988. There are no outstanding issues arising out of this incident. In view of the importance of this case, it is appropriate to recapitulate its major aspects.

### **The Incident**

The Malagasy tanker TANIO (18 048 GRT), carrying 26 000 tonnes of N°6 fuel oil, broke amidship in heavy weather conditions off the coast of Brittany (France). The master and seven other crew members were killed as a result of the incident. About 13 500 tonnes of cargo oil spilled from the wreck. More than 200 kilometres of the Brittany coast were polluted by the spilt oil; the Channel Islands were also affected. The stern section, with about 7 500 tonnes of cargo aboard, remained afloat and was towed to the port of Le Havre. The bow section, with about 5 000 tonnes of cargo oil on board,

sank to a depth of 90 metres. The oil contained in the sunken bow section had to be pumped out in order to prevent further pollution from the wreck. The pumping operation lasted 16 months.

Booms were deployed at various locations along the coast. However, because of the nature of the coastline, the extremely large tidal range (8 metres) and the severity of the weather at the time of the accident, many of the worst affected areas along the coast could not be boomed effectively. Plastic sheeting was used to cover sea defences, promenades and other man-made structures which might have become oiled during the forthcoming high tides. The local authorities had the benefit of using national resources and relied heavily upon the army to provide the necessary manpower for the clean-up operations. Additional personnel came from the Civil Defence, the fire service, local government, commercial contractors and farmers.

The first phase of the clean-up required the removal of the bulk oil. This was done by using pumps, heavy earth moving equipment (eg bulldozers) and mere shovels. The removal was followed by the cleaning of the rocks in the tourist areas. The basic approach adopted was to wash the oil off the rocks using medium pressure hot-water washing machines or high pressure cold water jets.

### **Claims Settlement**

Claims for compensation were submitted by nearly 100 claimants, totalling FF527 million (£48 million). The claim submitted by the French Government accounted for more than 90% of that amount. This claim related to expenses for pumping the oil from the sunken bow section, costs of clean-up operations and compensation paid by the Government to private persons. Claims from local authorities related to costs of clean-up work, road repairs, beach restoration and the loss of earnings of municipal camping sites. Private persons submitted claims for loss of earnings. The shipowner's P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (the UK Club), claimed for expenses incurred in surveying the sunken fore section and in carrying out a provisional sealing of holes in the wreck.

After long and difficult negotiations, the Director reached agreement on the amount of each of the claims, except one. The total accepted by the IOPC Fund amounted to approximately FF348 million (£32 million).

No agreement was reached in respect of one claim which had been presented in 1980 by an association of French fishermen, in the amount of FF500 000 (£45 000), without any explanation or documentation in support of the claim. After lengthy discussions between the Director and the lawyer representing the claimant, the claim was withdrawn in March 1988.

It should be noted that the amounts claimed against the IOPC Fund by many of the claimants exceeded those at which settlements were made. For example, the French

Government had assessed its total damage at FF489 820 401, whereas in the settlement between the IOPC Fund and the French Government an amount of only FF326 921 937 was accepted by the Fund. However, the agreements on the amounts between the IOPC Fund and the various claimants were reached for the purpose of distributing the money available under the Fund Convention, in the interest of a speedy settlement, without prejudice to each claimant's right to claim beyond the amount accepted by the IOPC Fund against the owner of the TANIO and other third parties.

### **Payments to victims**

The limit of the shipowner's liability under the Civil Liability Convention was FF11 833 718 (£1.1 million). The UK Club established the limitation fund under that Convention in April 1980 by paying this amount to the Court in Brest. The Court appointed a liquidator of the limitation fund, who invested the amount deposited by the Club.

In September 1984, the liquidator of the limitation fund made a first distribution of the fund, amounting to FF19 147 973 (£1.7 million). An amount was reserved for the final distribution of the fund, since not all claims had been settled by the time of the first payment. A second distribution of FF98 937 was made in March 1987 to some of the claimants.

The limitation fund was earning interest at market rate until 1 March 1988. The total amount of interest earned was FF10 979 189. After a small amount had been paid from the limitation fund in respect of fees and costs, the aggregate amount available for payment to claimants was FF22 605 357 (£2.1 million).

The final distribution of the limitation fund took place in May 1988, when an amount of FF3 358 446 (£300 000) was paid to claimants.

The exact amount to be paid by the IOPC Fund could not be established until the final distribution of the limitation fund had taken place. Part payments were made by the IOPC Fund in the period 1983-1985, totalling FF221 201 452 (£18.2 million). Of this amount, FF208 million was paid to the French Government, FF5.5 million to local authorities in France, FF4.7 million to the UK Club and FF2.8 million to private claimants in France.

Pursuant to the Fund Convention, the aggregate amount of compensation payable by the IOPC Fund in respect of this incident was 675 million (gold) francs less the sum actually paid under the Civil Liability Convention for pollution damage (FF22 605 357). The Fund Convention does not specify the date on which the conversion into national currency should be made of the amount expressed in (gold) francs. It was decided that the method of conversion laid down in the IOPC Fund's Internal Regulations should be applied (ie that 15 (gold) francs are equal to 1 SDR; cf section 13.1(d) below), and that the relevant date was the day of the constitution of the limitation fund. Applying this method, the amount of 675 million (gold) francs corresponded to FF244 746 000.

The total amount of compensation payable by the IOPC Fund in respect of this incident was, therefore, FFr222 140 643. In view of the part payments which had been made by the IOPC Fund in the period 1983-1985, the remaining amount payable by the IOPC Fund to claimants was FFr939 191. This amount was paid in October 1988.

The claimants received payments from the IOPC Fund corresponding to 63.85% of the amount of their respective claims as accepted by the Fund. In addition, the payments from the shipowner's limitation fund represented 6.46% of the established claims. Consequently, the regime of compensation created by the Civil Liability Convention and the Fund Convention gave each claimant compensation corresponding to approximately 70.3% of his agreed claim.

### **Legal Action Against the Shipowner and Other Parties**

In 1983, the IOPC Fund took legal action in the Court of Brest against the following persons for the purpose of recovering the amounts paid by the Fund to the claimants:

- (a) The registered owner of the TANIO at the time of the incident;
- (b) The Italian shipyard which repaired the TANIO in 1979;
- (c) The charterer of the TANIO at the time of the incident;
- (d) The company having sub-chartered the vessel and being responsible for the management of the TANIO at the time of the incident;
- (e) The company responsible for the control of the repairs carried out by the shipyard and the technical management of the TANIO at the time of the incident;
- (f) The classification society which monitored the repairs to the TANIO in 1979; and
- (g) The UK Club, in its capacity as insurer of the civil liability of certain defendants.

The French Government commenced proceedings against the same defendants for the purpose of obtaining compensation for that part of its total claim which was not compensated by the shipowner's limitation fund and the IOPC Fund.

The IOPC Fund claimed in subrogation an amount of FFr221 201 452, being the aggregate it had paid to all claimants up to 1985. The French Government claimed an amount of FFr261 737 874, being the amount at which the French Government had assessed its damage minus the amounts paid to it from the limitation fund and by the IOPC Fund. The IOPC Fund and the French Government co-operated closely in their respective legal actions and submitted joint pleadings.

In addition, 29 local authorities in France and some 50 private claimants took legal action against the above-mentioned defendants.

Investigations into the cause of the incident were carried out by an Expertise Judiciaire ordered by the Court. The Expertise concluded that the initial fracture which broke the TANIO originated in the vicinity of frame 131 in wing tank n°6. As for the cause of the initial fracture, the Expertise maintained that there were three causes that contributed to the disaster, viz insufficient reduction of speed to allow for bad weather, defective cargo loading at the time of the disaster and on previous voyages, and defects in the replacement carried out by the shipyard of the bottom structure in n°6 wing tank of the TANIO.

The grounds on which the actions taken by the IOPC Fund and the French Government against the various defendants were based can be briefly summarised as follows. The registered owner of the TANIO had failed to put the ship in a seaworthy and navigable state. The failure of the owner to organise a proper mechanism of control of the quality of the extensive repairs carried out by the shipyard constituted a personal fault on the part of the owner, who was therefore not entitled to limit his liability under the Civil Liability Convention. The shipyard had not carried out the repairs to the TANIO in a proper manner. The company responsible for the technical management of the TANIO had not exercised due diligence in the supervision of the repair work at the shipyard and in checking the results thereof. The charterer had failed to supervise the execution of the repair work properly. In addition, the charterer had an obligation to put the ship in a seaworthy condition. The classification society did not fulfil its obligation to check the quality of the repair work at the shipyard properly. The sub-charterer, being responsible for the operations of the TANIO, had an obligation to ensure that the crew was competent and properly trained. The sub-charterer had failed to ensure that the master of the TANIO was properly instructed concerning cargo distribution. The UK Club was sued as insurer of the charterer and the sub-charterer.

The defendants maintained that the actions against them were ill-founded and should, therefore, be rejected.

The oral hearing was scheduled to take place in the Court of Brest in October 1987. It was expected that the Court would then decide the question of liability, whereas the amount of the damages, if any, would be dealt with at a later stage.

### **Out-of-Court Settlement**

After very complex and difficult negotiations, agreement on the main elements of a possible out-of-court settlement was reached at the beginning of October 1987 between the Director of the IOPC Fund and the French Government, on one side, and the defendants, on the other side. The proposed out-of-court settlement was approved by the Executive Committee in October 1987 and by the French authorities in November 1987.

The settlement was signed on 15 December 1987 in Paris. Under the settlement, the owner of the TANIO and the UK Club paid, on behalf of all defendants, a total amount of US \$50 million to the IOPC Fund and the French State, less the shipowner's limitation amount under the Civil Liability Convention, FF11 833 718 (US \$1 931 090), the total amount payable being US \$48 068 910. This payment represented full and final compensation from all the defendants in respect of all claims by the IOPC Fund and the French State arising out of this incident, including interest and costs. The settlement was without prejudice to the positions taken by the parties as to the question of liability.

On 15 December 1987, an amount of US \$17 480 029 (£9 537 856) was paid to the IOPC Fund and an amount of US \$30 588 882 (approximately £16.7 million) to the French Government. The apportionment between the IOPC Fund and the French Government of the amount recovered was made in accordance with an agreement reached between them in 1984.

As already mentioned, the total amount paid by the IOPC Fund to claimants was FF222 140 643, corresponding to approximately £18.3 million at the rate of exchange when the respective payments were made. By this settlement, the IOPC Fund thus recovered more than half the amount paid by it in compensation.

This out-of-court settlement did not cover the local authorities in France and the private claimants who had also instituted legal proceedings against the above-mentioned defendants. However, a separate out-of-court settlement was reached in March 1988 between the local authorities and the private claimants, on one side, and all the defendants, on the other.

### **Reimbursement to Contributors**

In 1983, the Assembly decided to levy annual contributions in the amount of £20 million for the payment of compensation in respect of claims submitted in connection with the TANIO incident. Out of this amount, a total of approximately £18.3 million was paid in compensation. In addition, the IOPC Fund incurred fees and other costs totalling £482 000. The total payments made by the IOPC Fund in respect of this incident were £18.8 million.

The amount recovered as a result of the out-of-court settlement was credited to the TANIO major claims fund, in which there was already a reserve of about £3 million. The assets of this major claims fund were invested and had yielded, over the years, £2.5 million. As a result there was a considerable balance on this fund, all payments to claimants having been made and all expenses paid. It was estimated that the balance would amount to £13 942 213 on 1 February 1989. As already mentioned, the Assembly decided that an amount of £13.9 million of this balance should be reimbursed, on 1 February 1989, to the contributors who paid 1983 contributions to the TANIO major claims fund.

## **EIKO MARU N°1**

*(Japan, 13 August 1983)*

The Japanese tanker EIKO MARU N°1 (999 GRT), loaded with 2 459 tonnes of heavy fuel oil, collided with the Panamanian cargo ship CAVALRY (4 827 GRT) in dense fog off Karakuwazaki, Miyagi, Japan. About 357 tonnes of cargo oil spilled from the fractured starboard tank. Because of the stormy weather due to an approaching typhoon, the spilt oil moved towards the coast and polluted areas with extensive fishery activities.

In 1984 the IOPC Fund paid compensation amounting to ¥24 735 109 (£76 722), representing the amount of agreed claims minus the shipowner's liability under the Civil Liability Convention of ¥39 445 920. Indemnification of the owner of the EIKO MARU N°1, in the amount of ¥9 861 480 (£32 018), was paid in 1985.

The official investigation into the cause of the incident led to the conclusion that the incident was caused by improper navigation on the part of both vessels. The IOPC Fund started negotiations with the owner of the CAVALRY with a view to recovering part of the amount paid by the IOPC Fund. Agreement was reached between the CAVALRY interests and the EIKO MARU N°1 interests, including the IOPC Fund, on an apportionment of liability at 41:59 in favour of the CAVALRY interests. The amount recovered from the owner of the CAVALRY for pollution damage was ¥28 million, of which the IOPC Fund received ¥14 843 746 (£64 820) in February 1988.

## **KOSHUN MARU N°1**

*(Japan, 5 March 1985)*

The Japanese tanker KOSHUN MARU N°1 (68 GRT), carrying 100 tonnes of heavy fuel oil, collided with the coal carrier RYOZAN MARU (2 569 GRT) off Haneda, Tokyo Bay, Japan. The KOSHUN MARU N°1 sank with the exception of her bow section. Approximately 80 tonnes of oil leaked from the sunken tanker and spread rapidly across the bay.

Claims for clean-up costs were agreed in the amount of ¥28 020 909. In September 1985, the IOPC Fund paid ¥26 124 589 (£81 512), representing the total agreed amount of the clean-up costs minus the owner's liability of ¥1 896 320.

According to the findings of the Yokohama Marine Court, part of the blame for the collision fell on the RYOZAN MARU. The IOPC Fund has started negotiations with the owner of that vessel with a view to recovering part of the amount paid in compensation by the IOPC Fund.

Indemnification of the shipowner amounting to ¥474 080 (£3 000) has not yet been paid.



## **PATMOS**

*(Italy, 21 March 1985)*

### **The Incident**

The Greek tanker PATMOS (51 627 GRT), carrying 83 689 tonnes of crude oil, collided with the Spanish tanker CASTILLO DE MONTEARAGON (92 289 GRT), which was in ballast, off the coast of Calabria in the Straits of Messina, Italy. Fire broke out on the main deck of the PATMOS and spread to the accommodation and wheelhouse. Three crew members died, and the crew had to abandon ship. The ship was damaged in the hull. Due to strong winds and currents, the PATMOS drifted onto a beach by a village on the Sicilian coast. The ship was refloated and tugs were used to control it in the Straits of Messina. Tugs were also used to combat the fire, which was extinguished within two days of the collision. The PATMOS was then towed to the port of Messina and moored at the SMEB shipyard, where the oil was discharged.

Approximately 700 tonnes of oil escaped from the PATMOS. Most of the spilt oil drifted on the surface of the sea and dispersed naturally. Only a few tonnes of oil came ashore on the Sicilian coast. The Italian authorities undertook extensive measures in order to contain the spilt oil and to prevent it from polluting the Sicilian and Calabrian coasts. Dispersants were used in large quantities.

The owner of the PATMOS and the owner's insurer, the UK Club, established a limitation fund with the Court of Messina. The Court fixed the limitation amount at Lit13 263 703 650 (£5.6 million). The IOPC Fund was notified of the limitation proceedings in accordance with Article 7.6 of the Fund Convention.

### **Claims and Negotiations with Claimants**

Claims were lodged against the limitation fund, totalling Lit76 112 040 216 (£32 million).

There were 30 claims that clearly related to costs of clean-up operations or to preventive measures as defined in the Civil Liability Convention, totalling approximately Lit14 000 million (£5.9 million). In many cases, the amounts claimed were unreasonable. In February 1986, all but two claims in this category had, after very difficult negotiations, been reduced by the plaintiffs to amounts which were considered reasonable by the Director. In February 1986, these claims were settled at a total of Lit4 140 189 659 (£1.8 million).

Twelve claims totalling about Lit40 000 million (£16.9 million) related to costs of operations which, in the Director's view, would normally be considered as salvage operations and related measures. The Director took the position that these 12 claims did not relate to operations which had the prevention of pollution as their primary purpose. For this reason, he rejected these claims. As a result of the discussions with the claimants, two of the claims were withdrawn.



PATMOS Incident - The tanker aground on the Sicilian coast



First ANTONIO GRAMSCI Incident -  
Clean-up in the Stockholm archipelago

A claim of Lit20 000 million (£8.4 million), later reduced to Lit5 000 million (£2.1 million), was submitted by the Italian Government for damage to the marine environment. The Italian Government did not provide any documentation indicating the kind of damage which had allegedly been caused or the basis on which the amount claimed had been calculated. The IOPC Fund Assembly had in 1980 unanimously adopted a Resolution stating that "the assessment of compensation to be paid by the IOPC Fund is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models" (cf section 13.4(g) below). In view of the position taken by the Assembly, the Director rejected this claim.

At its 16th session, the Executive Committee endorsed the position taken by the Director in respect of the claims relating to salvage operations and damage to the marine environment.

### **First Decision by the Court**

By decision of 18 February 1986, the Court of first instance in Messina included in the list of admissible claims ("stato passivo") the claims in respect of which settlements had been reached, in the amounts thus agreed. With regard to the two claims relating to clean-up operations in respect of which no agreement had been reached on the quantum, the Court admitted them in amounts very much lower than those claimed. The Court rejected the claims which had been opposed by the IOPC Fund and the UK Club. The total amount accepted by the Court was Lit4 267 312 659 (£1.8 million).

### **Opposition Proceedings**

In Italy, oppositions to the decision of a court on the admissibility of claims in limitation proceedings may be lodged with the same court. In the PATMOS case, oppositions were lodged by seven of the ten claimants whose claims had been rejected on the grounds that the measures had not been taken for the purpose of preventing pollution. The Italian Government also lodged an opposition in respect of the claim concerning damage to the environment.

The Court rendered its judgement in respect of the oppositions on 30 July 1986. With regard to the claims relating to salvage operations, the Court made a general statement to the effect that salvage operations could not be considered as preventive measures, since the primary purpose of such operations was that of rescuing ship and cargo; this applied even if the operations had the further effect of preventing pollution. On the basis of this position of principle, the Court rejected some of these claims and accepted some in reduced amounts. The Court rejected the claim by the Italian Government relating to damage to the marine environment.

The aggregate amount of the claims as accepted by the Court of first instance was Lit5 797 263 479 (£2.5 million).

## **Appeal Proceedings**

Appeals against the judgement of 30 July 1986 were lodged with the Court of Appeal in Messina by six claimants, including the Italian Government, whose claims had been wholly or partly rejected in opposition. These claims totalled approximately LIt29 000 million (£12.3 million). The UK Club and the IOPC Fund lodged appeals against the judgement in respect of two claims, one by the SMEB shipyard and one which had been accepted with only a small reduction in amount.

Apart from two out-of-court settlements, there was very little progress in the appeal proceedings during 1988. The main hearing in the Court of Appeal is expected to take place in early 1989, and the judgement would then be rendered in the spring of 1989.

## **Out-of-Court Settlements During Appeal Proceedings**

Esso (the owner of the cargo on board the PATMOS), whose claim had been totally rejected by the Court of first instance, claimed in appeal a total of LIt22 628 039 202 (£9.6 million). One item of this claim, amounting to LIt13 280 million (£5.6 million), related to a salvage reward due by Esso to the salvors in subrogation of the latter.

In January 1988, an out-of-court settlement was reached in respect of Esso's claim between Esso, on one side, and the owner of the PATMOS and the UK Club, on the other side. Under the settlement, Esso's claim was accepted by the shipowner and the UK Club for a total amount of LIt4 939 742 171 (£2.1 million), inclusive of interest, devaluation and costs. Under the settlement, no payment was made in respect of the salvage reward. In the record of the court hearing at which the settlement was approved, it was stated that Esso waived its claim in respect of remuneration for salvage.

The Director was kept informed of the negotiations that led to the settlement. After having considered in particular the fact that the item relating to salvage was not accepted, the Director came to the conclusion that the settlement was reasonable. The Director therefore approved the settlement on behalf of the IOPC Fund. In February 1988, the Court of Appeal in Messina admitted in the list of accepted claims Esso's claim for the amount agreed.

The settlement in respect of Esso's claim also covered SMEB's claim, which had previously been settled between Esso and SMEB at LIt4 050 million (£1.7 million); the amount originally claimed by SMEB was LIt6 347 595 386 (£2.7 million).

In November 1988, a further out-of-court settlement was reached in respect of a claim submitted by the owner of a Libyan vessel who had claimed compensation for loss resulting from that vessel having to be moved from SMEB's shipyard to a shipyard in Palermo in order to leave room for the PATMOS at SMEB's jetty. The total amount claimed was LIt227 964 163 (£96 500). The Court of first instance upheld this claim in principle, but with a small reduction in amount to LIt200 million (£85 000). This claim was settled at LIt165 million (£70 000). The settlement was approved by the Court of Appeal.

## **Outstanding Claims in Appeal Proceedings**

As mentioned above, the Italian Government had appealed against the decision of the Court of first instance rejecting the Government's claim in respect of damage to the marine environment. The Italian Government had maintained that the damage was a violation of the right of sovereignty over the territorial sea of the State of Italy. The Court of first instance stated that this right was not one of ownership and could not be violated by acts committed by private subjects. In addition, the Court declared that the State had not suffered any loss of profit nor incurred any costs as a result of the alleged damage to the territorial waters, or the fauna or flora. The State had, therefore, not suffered any economic loss. The Court also drew attention to the above-mentioned Resolution adopted by the IOPC Fund Assembly. For these reasons the Court rejected this claim.

In the appeal proceedings the Italian Government has taken the position that this claim relates to actual damage to the marine environment and to actual economic loss suffered by the tourist industry and fishermen. For this reason, the Italian Government has maintained that the claim is not in contravention of the interpretation of the definition of "pollution damage" adopted by the Assembly in that Resolution.

At its 20th session, the Executive Committee reiterated the IOPC Fund's position that a claimant was entitled to compensation under the Civil Liability Convention and the Fund Convention only if he had suffered quantifiable economic loss. In view of the position of the Italian Government that this claim relates to actual damage to the marine environment, the Committee referred to the interpretation of the definition of "pollution damage" laid down in the Resolution. Concerning the economic loss which had allegedly been suffered by the tourist industry and fishermen, the Committee expressed the opinion that compensation in respect of such damage could only be claimed by the individual person having suffered the damage who, in addition, had to prove the amount of the economic loss sustained.

In addition to the Italian Government's claim, there are three claims subject to appeal proceedings, totalling approximately L1690 million (£290 000).

## **Present Situation Regarding the Claims**

The aggregate amount of the claims accepted by the Courts is L19 618 318 650 (£4.1 million). The rejected claims maintained in the appeal proceedings total L15 688 288 884 (£2.4 million). The total amount of the claims against the limitation fund is thus L115 306 607 534 (£6.4 million). As already mentioned, the limitation amount is L113 263 703 650.

During 1986, the UK Club made payments for the claims in respect of which the decision of the Court had become final. Further payments were made by the UK Club during 1988, following the out-of-court settlements in respect of the claims submitted by Essa and the Libyan shipowner, respectively. The total amount paid to claimants by the UK Club stands at L19 436 318 650 (£4.0 million).

## **Recourse Action**

Legal proceedings concerning liability and compensation for damage arising out of the collision between the PATMOS and the CASTILLO DE MONTEARAGON were initiated in the Court of Genoa. After a settlement had been reached between the two shipowners and related interests, the legal actions were withdrawn.

The question as to whether the IOPC Fund should institute recourse proceedings against the owner of the CASTILLO DE MONTEARAGON will be examined when it is established whether the IOPC Fund will be called upon to pay any compensation under the Fund Convention.

## **JAN**

*(Denmark, 2 August 1985)*

The tanker JAN [1 400 GRT], registered in the Federal Republic of Germany, collided with a fixed navigational light at the entrance to the port of Aalborg on the eastern coast of Jutland in Denmark. The JAN was carrying 3 000 tonnes of heavy fuel oil. Approximately 300 tonnes of oil escaped into the sea as a result of the collision.

More than 100 tonnes of oil came ashore on the south coast of the island of Laesø, which is situated between Jutland and Sweden, and polluted approximately ten kilometres of the coast. The polluted area consisted partly of sandy beaches and partly of salt marshes of great importance to large populations of migrating birds. A small quantity of oil also polluted the coast of Jutland and the island of Hirsholmene.

Operations to clean the polluted areas were carried out by the Danish authorities. The major part of the clean-up operations was completed within a few weeks of the incident, whereas in some sensitive areas these operations continued until October 1985.

The Maritime and Commercial Court of Copenhagen established the limit of the owner's liability at 157 936 SDR (DKr1 576 170, corresponding to £127 000). Under Danish law, an extra amount should be added to cover interest and costs, and the Court fixed the limitation fund at DKr2 million (£161 000). The limitation fund was established by the shipowner's P & I insurer (the Skuld Club) by means of a letter of guarantee.

The Danish Government presented a claim in respect of the clean-up operations totalling DKr11 805 021 (£950 000) in July 1986.

In April 1987, agreement was reached between the Danish Government, on the one side, and the IOPC Fund and the Skuld Club, on the other side, regarding a number of items of this claim. These items totalled DKr3 307 044 (£265 000). At the request of the Danish Government, the IOPC Fund and the Skuld Club agreed to make payments in respect of the accepted items.

The main outstanding items of the Government's claim related to the tariffs applied in respect of oil combating vessels owned by public authorities which took part in the operations at sea and to the rates for personnel of Government agencies used for clean-up operations. These items partly related to "fixed costs", ie costs which would have arisen for the Danish authorities even if the incident had not occurred, as opposed to "additional costs", ie expenses incurred solely as a result of the incident and which would not have arisen had the incident and the operations relating thereto not taken place. The Director based his approach on the position taken by the Assembly in respect of such costs, as set out in section 13.4(d) below. In particular, the Director insisted that only those expenses which corresponded closely to the clean-up period in question and which did not include remote overhead charges should be compensated.

Final negotiations in respect of the outstanding items were held in September 1988. The amounts originally claimed had been calculated on the basis of guidelines issued by the Danish Ministry of Finance. The Director was, nevertheless, unable to accept the amounts claimed in respect of a number of items. In view of the arguments put forward by the Director during the negotiations, the Danish Government agreed to reduce its claim in respect of a number of items to amounts which the Director considered reasonable.

The Danish Government's claims was settled at a total of DKr11 020 462 (£890 000), inclusive of DKr1 014 088 (£82 000) in interest. The IOPC Fund made the final payment to the Danish Government in September 1988.

Claims submitted by five private persons were accepted in full by the IOPC Fund and the Skuld Club. Payments totalling DKr53 007 (£4 300) were made by the Skuld Club in April 1986 and September 1987. A claim presented by the Municipality of Laesø, amounting to DKr24 126 (£1 950), was also approved, and this sum was paid by the Skuld Club in September 1987.

Indemnification of the shipowner, amounting to DKr394 043 (£32 478), was paid to the Skuld Club in October 1988.

The payments made by the IOPC Fund in respect of this incident (including fees) total £838 000.

### **BRADY MARIA**

*(Federal Republic of Germany, 3 January 1986)*

The Panamanian tanker BRADY MARIA [996 GRT] was proceeding up the River Elbe, south of the entrance to the Kiel Canal, with a cargo of 2 000 tonnes of heavy fuel oil. The dry cargo ship WAYLINK (3 453 GRT), registered in Gibraltar, which was proceeding down the river, suddenly turned to port across the river and hit the port forward bow of the BRADY MARIA. Approximately 200 tonnes of cargo oil escaped from the BRADY MARIA into the river as a result of the collision. The spilt oil contaminated a large area on both banks of the River Elbe and the River Oste, as well as near-by islands, necessitating extensive clean-up operations.

A claim for compensation for clean-up costs totalling DM3 637 430 (£1.1 million) was submitted on behalf of the Federal Government, the Länder of Schleswig-Holstein and Niedersachsen and some local authorities. This claim was settled at a total amount of DM3 544 054, including interest. DM3 219 425 (£1 105 926) was paid by the IOPC Fund to the German authorities in 1986 and 1987. The limitation fund established for the BRADY MARIA, amounting to DM324 629 (together with interest of DM1 882), was also paid to the authorities.

Two private claimants had submitted claims relating to the cleaning of polluted vessels, totalling DM1 419. In 1987, these claims were settled at DM1 086 (£340).

The official investigation into the cause of the incident showed that the pilot of the WAYLINK was mainly to blame for the collision, since he gave a wrong order to the helmsman of the WAYLINK, causing the vessel to cross the course of the on-coming BRADY MARIA.

A limitation fund for the WAYLINK was established at the District Court of Hamburg. The limitation amount was fixed at DM440 185 (£140 000).

The IOPC Fund took legal action in the Court in Hamburg against the owner of the WAYLINK, challenging his right to limit his liability. After careful examination of the matter, and in consultation with the IOPC Fund's German lawyer, the Director decided in January 1988 to withdraw this action, since it was considered unlikely that the IOPC Fund would be able to deprive the owner of the WAYLINK of the right of limitation by proving fault or privity on his part.

The IOPC Fund claimed in subrogation against the WAYLINK limitation fund the aggregate amount paid by it to the German authorities and the other claimants, ie DM3 220 511 (£1 006 000) plus interest and costs. The other claims against this limitation fund related to damage caused to the hull of the BRADY MARIA (DM1.6 million) and loss suffered by the owner of the cargo of that vessel (DM329 000).

The liquidator of the WAYLINK limitation fund rendered his decision concerning the claims in August 1988. He approved the IOPC Fund's claim at a total amount of DM3 244 422 (£1.0 million). The other claims were accepted for a total amount of DM1 185 559 (£370 000). The position taken by the liquidator was endorsed by the Court. In November 1988, the IOPC Fund recovered an amount of DM333 027 (£105 355).

After the recovery from the WAYLINK limitation fund, the cost to the IOPC Fund of this incident (including fees) total £1 108 272.





TANIO Incident - Polluted rocks on the coast of Brittany



TANIO Incident - Clean-up operations in Brittany

## **OUED GUETERINI**

*(Algeria, 18 December 1986)*

The Algerian tanker OUED GUETERINI (1 576 GRT) was unloading bitumen in the port of Algiers, when part of the cargo was spilled onto the deck of the vessel. From there, some bitumen escaped into the water in the port area.

There was no pollution damage in the port itself. However, a considerable quantity of bitumen (approximately 15 tonnes) entered the sea-water intake of a power station, necessitating a shut-down of the station for a short period of time. Some equipment at the power station was polluted and had to be cleaned.

The owner of the power station (SONELGAZ) brought legal action in the Court of Algiers against the UK Club (the shipowner's P & I insurer) and the IOPC Fund. The Court fixed the limitation amount of the shipowner's liability at 1 175 064 Algerian Dinars (£100 000). The limitation fund was constituted by the UK Club by means of a bank guarantee.

SONELGAZ has submitted a claim totalling 5 278 525 Algerian Dinars (£460 000) relating to damage to equipment in the power station, costs of cleaning some equipment and loss of profit as a result of the closure of the station. A claim has also been submitted by the owner of the OUED GUETERINI in the amount of 5 650 Algerian Dinars (£490) in respect of costs for clean-up operations.

In the court proceedings, the UK Club has maintained that the shipowner should be exonerated from liability in respect of this incident, in accordance with Article III.2(b) of the Civil Liability Convention. The Club has argued that the damage was wholly caused by an act or omission done with intent to cause damage by a third party, ie the operator of the oil terminal where the unloading took place, since the operator had continued to discharge oil in spite of the grave risk caused by the location of this terminal near the water intake of the power station, evidenced by similar incidents in the past. The IOPC Fund has rejected this defence on the ground that the circumstances in this case could not be considered as being covered by Article III.2(b). The Court proceedings are still in a preliminary stage.

The IOPC Fund and the UK Club are assessing the claims with the assistance of external experts. Negotiations with the claimants are expected to take place in early 1989.

## **THUNTANK 5**

*(Sweden, 21 December 1986)*

The Swedish vessel THUNTANK 5 (2 866 GRT), carrying 5 024 tonnes of heavy fuel oil, ran aground in very bad weather outside Gävle, on the east coast of Sweden, 200 kilometres north of Stockholm. The tanker was severely damaged, and there was a considerable risk that the ship would break up. However, after about half the cargo had been transferred to another vessel, the THUNTANK 5 was refloated. Most of the remaining

cargo was then transferred to the other vessel, and the THUNTANK 5 was towed to a safe port. It was estimated that 150-200 tonnes of oil escaped as a result of the incident.

Due to the difficult weather conditions with ice and snow, clean-up operations were postponed until the beginning of April 1987. By then the oil had affected various areas along a 150 kilometre stretch of coast around Gävle, including a number of small islands. The polluted areas were very difficult to clean, since they consisted mainly of stones and rough rocks, which had to be scraped manually. The oil which remained was then removed by hot water washing or high pressure steam washing. The clean-up operations on the coast were mainly completed in late September 1987.

A small quantity of oil - estimated at 20-40 tonnes - was found on the sea bed at a depth of between 8 and 16 metres, close to where the vessel had grounded. Since it was feared that the sunken oil might resurface and pollute the coast, attempts were made by the Swedish Coast Guard in April and May 1987 to collect this oil, firstly by divers working manually and, later, by hydraulic pumping. In view of the very high costs and the small quantities of oil collected, the Swedish authorities called off these operations a few days later. In August 1987, parts of the sunken oil resurfaced. The Coast Guard had by then developed new equipment for recovery of this oil, and the operations were resumed. These operations, which were more successful than the earlier attempts, were completed at the end of August 1987.

The official investigation into the cause of the incident showed that the grounding was due to an error by the master of the THUNTANK 5 in the navigation of the ship.

The Swedish Government took legal action against the owner of the THUNTANK 5 in the City Court of Stockholm. The aggregate amount of the damage was provisionally indicated at SKr27 million (£2.4 million). The IOPC Fund was notified of the action in accordance with Article 7.6 of the Fund Convention.

The Court established the limit of the shipowner's liability at SKr2 741 746 (£250 000). Under Swedish law, an extra amount should be added to cover interest and costs, and the Court fixed that additional amount at SKr700 000 (£65 000). The limitation fund was constituted by the shipowner's insurer (the Skuld Club) by means of a letter of guarantee.

The Swedish Government submitted its claim in July 1988, at an aggregate amount of SKr24 992 884 (£2.3 million). This claim covers the operations of the Swedish Coast Guard and the on-shore operations undertaken by the municipalities concerned. The IOPC Fund and the Skuld Club are examining the claim, with the assistance of a local surveyor. The Fund has requested further information on a number of items. It is expected that negotiations with the Swedish Government will be held in early spring of 1989.

Claims totalling SKr51 469 (£4 650) were submitted by seven fishermen and two other private claimants. They relate to compensation for destroyed equipment, costs of cleaning polluted equipment and loss of earnings due to polluted catches. All these claims were accepted by the IOPC Fund and the Skuld Club, after some reductions, at an aggregate amount of SKr49 361 (£4 450). The claims were paid by the Skuld Club, seven of them in December 1987, one in February 1988 and one in August 1988.

### **ANTONIO GRAMSCI (Second Incident)**

*(Finland, 6 February 1987)*

While on a voyage from Ventspils in Latvia (USSR), the USSR tanker ANTONIO GRAMSCI (27 706 GRT), loaded with 38 445 tonnes of crude oil, grounded near Borgå on the south coast of Finland. It is estimated that 600-700 tonnes of the cargo escaped as a result of this incident.

Oil combating vessels were sent to the area on 9 February 1987. Under the prevailing icy weather conditions, it was extremely difficult to recover the spilt oil. Operations for this purpose were carried out by the Finnish Authorities during February and March, but they had to be suspended several times, due to weather conditions. At the end of May, on-shore clean-up operations were carried out on the Finnish coast, east of the grounding site.

In May, a USSR oil combating vessel was deployed in Soviet territorial and international waters, off the coast of Estonia, in an attempt to recover films of oil from the water surface. This operation was abandoned after a few days, due to a deterioration in the weather conditions and an assessment that the oil films were too thin for the effective use of this equipment. It was reported that some 40 tonnes of oil were recovered during this period.

According to the results of the official Finnish investigation into the cause of the incident, the grounding was due to a misunderstanding between the master of the ANTONIO GRAMSCI and the pilot.

A limitation fund amounting to Rbls2 431 854 (£2.2 million) was established with the Court in Riga (USSR) on behalf of the owner of the ANTONIO GRAMSCI, for the purpose of limiting his liability under the Civil Liability Convention.

Since the USSR was not a Contracting Party to the Fund Convention on the date of the incident, pollution damage in the USSR, including measures taken to prevent or minimise pollution damage in the USSR, is not covered by the Fund Convention. However, claims in respect of pollution damage in the USSR will be compensated under the Civil Liability Convention and will compete with claims in respect of pollution damage in Finland for the amount available in the limitation fund set up under that Convention. For this reason, the amount of compensation paid under the Civil Liability Convention for pollution damage in the USSR may be of importance in establishing the extent of the IOPC Fund's obligation to pay compensation for pollution damage in Finland.

In April 1988, a claim totalling Rbls2 312 864 (£2.1 million) was submitted to the owner of the ANTONIO GRAMSCI by the USSR authorities, whilst a claim amounting to FM22 124 415 (£2.9 million) was made by the Finnish authorities against the IOPC Fund as well as against the owner of the ANTONIO GRAMSCI. It is possible that the Finnish authorities will submit further claims. Claims from fishermen in Finland are expected.

A preliminary examination of the claims presented so far has been made by the IOPC Fund in co-operation with the shipowner's insurer (the UK Club). The IOPC Fund and the Club have requested more information from the Finnish and USSR authorities, but this information has not yet been received.

The claim submitted by the USSR authorities includes an amount of Rbls712 200 (£650 000) relating to environmental damage. This amount has been arrived at by the application of a certain formula, in accordance with Soviet legislation, under which the assessment of the damage is linked to the quantity of the oil collected in the USSR territorial waters. This part of the claim was discussed by the Executive Committee in October 1988. Referring to the Resolution on this subject adopted by the Assembly in 1980 (cf section 13.4(g) below), the Executive Committee expressed its objection to this claim. In the view of the Committee, claims of this kind were not admissible under the Civil Liability Convention, because the claimant had not suffered any quantifiable economic loss. The Executive Committee considered that it was likely that, since the adoption of that Resolution, some Member States had refrained from submitting claims relating to damage to the marine environment, in view of the interpretation of the notion of "pollution damage" adapted by the Assembly. The Executive Committee instructed the Director to negotiate with the USSR authorities on the basis of this Resolution. It should be noted that a similar claim was made by the USSR authorities in a USSR Court in connection with the first ANTONIO GRAMSCI incident which took place in February 1979 (cf section 13.5 below).

### **SOUTHERN EAGLE**

*(Japan, 15 June 1987)*

The Panamanian tanker SOUTHERN EAGLE (4 461 GRT), carrying 3 000 tonnes of lubricating oil, collided with the Liberian vessel GOOD FAITH (9 187 GRT) off Sada Misaki on the western coast of Shikoku, Japan. As a result of the collision, the SOUTHERN EAGLE sustained damage in one of the fuel tanks and spilled approximately 15 tonnes of bunker oil into the sea.

Claims have been submitted for clean-up costs in the amount of ¥37 189 390 (£165 400) and for fishery damage in the amount of ¥94 800 000 (£420 000).

The limitation amount of the SOUTHERN EAGLE is ¥93 874 528 (£415 000).

The IOPC Fund was notified of this incident by the shipowner's insurer in November 1988. The IOPC Fund has not yet been able to examine the claims, since the claim documents have not been submitted to the Fund.

## **EL HANI**

*(Indonesia, 22 July 1987)*

The Libyan tanker EL HANI (81 412 GRT), bound for the Republic of Korea, ran aground outside Singapore in Indonesian territorial waters. The grounding caused fractures in the hull. Approximately 3 000 tonnes of crude oil escaped as a result of the incident. A large part of the spilt oil spread into Singapore territorial waters, and the Singapore authorities undertook extensive clean-up operations. Considerable quantities of oil drifted out to sea. Some oil may have stayed within Indonesian territorial waters. There was also a risk that some pollution damage would be caused in Malaysia. After the fractures in the hull of the EL HANI had been provisionally repaired, the vessel resumed her voyage to the Republic of Korea, where further leakage of oil occurred.

Since Singapore, Malaysia and the Republic of Korea are not Parties to the Fund Convention, pollution damage in these countries, including measures taken to prevent or minimise pollution damage there, is not compensated under that Convention.

In August 1987, the Indonesian authorities informed the IOPC Fund that the incident had caused pollution damage in Indonesia and that they would claim compensation from the IOPC Fund. No information was given as to the nature and extent of the damage. The Indonesian authorities requested urgent advance payment from the IOPC Fund of US \$242 800 (£135 000) to enable them to carry out an assessment of the damage. The Director informed the authorities that the IOPC Fund would pay compensation only if the aggregate amount of the damage in the States involved in the incident were to exceed the limitation amount of the shipowners' liability. Since the extent of the pollution damage caused in Indonesia could not be established at that stage, the Director informed the Indonesian authorities that the IOPC Fund could not make any payment in response to their request.

Claims have been made against the shipowner in respect of pollution damage in Indonesia, Singapore and the Republic of Korea. The limitation amount of the shipowner's liability under the Civil Liability Convention is estimated at approximately £7.9 million. In view of this high figure, the IOPC Fund will not be called upon to pay any compensation as a result of this incident.

## **AKARI**

*(United Arab Emirates, 25 August 1987)*

While outside Dubai (United Arab Emirates), the Panamanian coastal tanker AKARI (1 345 GRT) had a switchboard fire resulting in a loss of electrical power and of the use of the main engines. The ship took in water and was towed towards the port of Jebel Ali, where she was refused entry. The AKARI was then towed along the coast. Since the vessel was listing badly, she was beached to the east of the port of Jebel Ali with tug assistance. Approximately 1 000 tonnes of her cargo of heavy fuel oil escaped before the AKARI was refloated. The remaining cargo was then transferred to another vessel, and the AKARI was towed back to the port of Jebel Ali.

It was estimated that 25-30 kilometres of the coast were polluted as a result of the incident. Clean-up operations at sea were undertaken by the Dubai Petroleum Company and the Coast Guard. Booms were deployed to protect the water intakes of a power station and an aluminium plant. Both plants provide desalinated water for Dubai, and some contamination which required clean-up inside the plants was reported. However, no contamination of desalinated water occurred and the plants remained operational. On-shore clean-up was undertaken by the local authorities and continued over a period of some five weeks. Certain anti-pollution measures were undertaken by the company which salvaged the AKARI.

Claims for clean-up costs, totalling approximately US \$394 000 (£215 000), have been submitted to the shipowner's P & I insurer by several private claimants and local authorities. It is expected that further claims will be presented. No claims have yet been submitted to the competent court.

No limitation fund has been established, so far. The limitation amount of the shipowner's liability under the Civil Liability Convention is estimated at approximately £115 000.

The IOPC Fund has held several meetings with representatives of the P & I Club and the shipowner to discuss the legal problems involved. These discussions have not resulted in any agreement on the issues raised by the incident.

### **HINODE MARU N°1**

*(Japan, 18 December 1987)*

The Japanese coastal tanker HINODE MARU N°1 (19 GRT), carrying a cargo of heavy fuel oil, spilled approximately 25 tonnes of cargo oil into the sea in the port of Yawatahama on the western coast of Shikoku (Japan). The cause of the incident appears to be a mishandling of a cargo hose by the crew.

Clean-up operations were carried out in the port by private contractors. As a result of this incident several fishing vessels were polluted and had to be cleaned. Claims for these operations totalling ¥3 301 225 (£14 000) were submitted to the shipowner and paid in full by him. It is unlikely that further claims will be submitted.

The limitation amount of the HINODE MARU N°1 is estimated at approximately ¥480 000 (£2 100).

The IOPC Fund was notified of this incident in November 1988. The IOPC Fund has not yet been able to examine the claims, since the claim documents have not been submitted to the Fund.

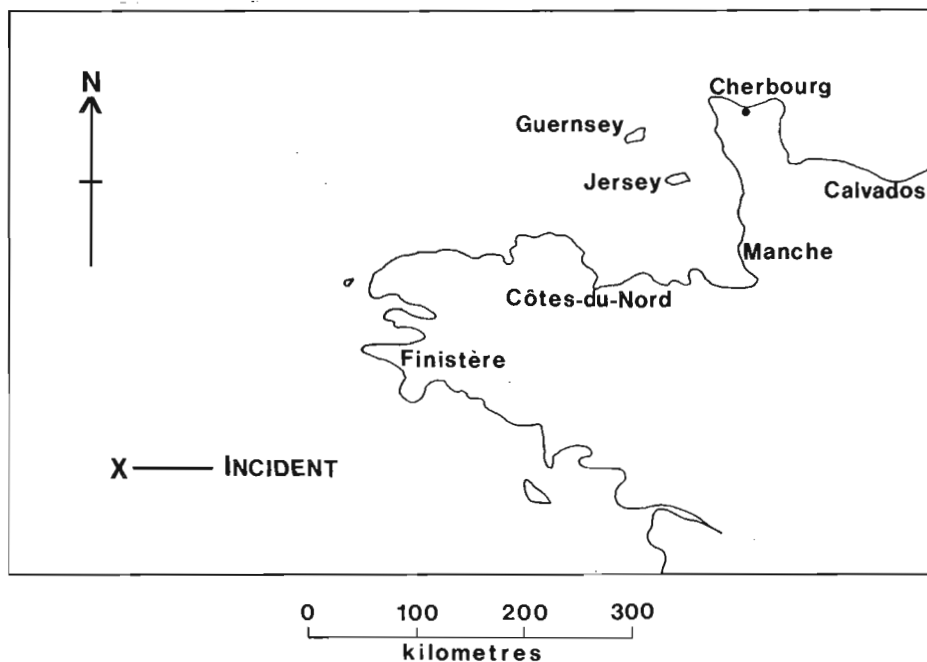
## AMAZZONE

(France, 31 January 1988)

During the night of 30 to 31 January 1988, the Italian tanker **AMAZZONE** [18 325 GRT] was damaged in a severe storm off the west coast of Brittany (France). The vessel was on a voyage from Libya to Antwerp (Belgium), carrying about 30 000 tonnes of heavy fuel oil. Several covers were lost from the butlerworth holes (access points for tank washing) of two cargo tanks and, as a result, approximately 2 000 tonnes of the cargo escaped, displaced by sea-water entering the open holes. Over the following three to four weeks, oil came ashore in patches along 450-500 kilometres of coastline, affecting four Departments in France (Finistère, Côtes-du-Nord, Manche and Calvados) and the Channel Islands (Jersey and Guernsey).

It was not possible to combat the oil at sea due to severe weather conditions and the nature of the oil, which was not amenable to dispersants. After the weather had moderated, the Navy attempted to recover oil off the coast of Finistère, but these attempts were later abandoned as they proved to be ineffective.

In order to cope with the widespread pollution onshore, the French national oil spill contingency plan, "PLAN POLMAR", was activated in Finistère, in Côtes-du-Nord and on the Cherbourg Peninsula. In the Calvados area of Normandy, the level of pollution was not considered sufficiently severe to merit activating PLAN POLMAR, and the clean-up was handled on a local basis. The clean-up operations were carried out by personnel drawn from the local fire brigades, the Army, the Civil Defence and the Ministry of Public Works supported by the local authorities.







AMAZZONE Incident - Beach clean-up operations



AMAZZONE Incident - Collection of oily debris

In Finistère booms were deployed to protect the mouths of the three main rivers. For the most part, the shore was cleaned manually. In some areas specialised equipment was used to clean oiled cobbles. Most of the clean-up was completed by the end of February, but the cobble cleaning continued into March. In Côtes-du-Nord, the major river estuaries were boomed. The north and east coasts were affected by the oil, the length of patchily oiled coast totalling about 120 kilometres. The coast was cleaned over a period of approximately two weeks. As for the Cherbourg Peninsula, it is estimated that 200-300 tonnes of balls of oiled weed came ashore along approximately 60 kilometres of coast. Clean-up operations started on 12 February and continued until the beginning of March 1988. More than 3 000m<sup>3</sup> of oil mixed with sand, stones and weed were collected, using a combination of manual and mechanical techniques. On the Calvados coast of Normandy, the oil was scattered along about 45 kilometres of the coast. Clean-up operations were finalised by 5 March 1988.

Throughout the affected area, mariculture, commercial fisheries, important recreational beaches and holiday resorts are widespread. Despite this and the length of coast affected, it is the opinion of the IOPC Fund's experts that the impact on these commercial resources and the marine environment in general was minimal.

As for the island of Guernsey, five to ten kilometres of coast were contaminated. About 500m<sup>3</sup> of oily debris were collected. In Jersey approximately 15 kilometres of coast were contaminated with weed mixed with oil. A total of some 65m<sup>3</sup> of oily waste was collected.

At a very early stage, it was considered likely that the IOPC Fund would be involved in the settlement of the claims arising out of this incident. For this reason, the Director and the legal Officer visited Brittany on 8 and 9 February 1988, at the invitation of the French Minister of the Sea. Discussions were held on this occasion between the IOPC Fund and the French authorities with respect to the organisation of the clean-up operations, the problems arising in connection with combating the oil, and the procedure for presenting claims.

The Commercial Court of Antwerp (Belgium) appointed a legal expert with the task of establishing the cause of the incident. An investigating judge ("juge d'instruction") in Paris appointed two technical experts, for the same purpose.

The limitation amount was provisionally fixed by the Court in Brest at FF13 612 749 (£1 242 000). The limitation fund was constituted on 12 February 1988 in the Court by the shipowner's insurer (the Standard Club) by payment of the above-mentioned amount into the Court. After the instruments on the tonnage measurement had been examined, it was established that the limitation amount should be increased to FF13 860 396 (£1 265 000), but the Court has not yet taken any decision in this regard.

A claim has been submitted by the Department of Côtes-du-Nord for an amount of FF978 853 (£90 000). No claims have so far been received from the French Government or the other local authorities in France involved in this incident.

Claims for clean-up costs were submitted by the authorities in Jersey and in Guernsey in the amounts of £11 380 and £10 013, respectively. These claims were accepted by the IOPC Fund and the Standard Club in the amounts claimed.

Claims submitted by two French fishermen, totalling FF59 393 (£5 400), were accepted by the IOPC Fund and the Standard Club. The claims were paid by the Club in the autumn of 1988. Further claims have been submitted by two French fishermen, totalling FF49 598 (£4 500), and by a private organisation for the cost of cleaning oiled sea-birds in the amount of FF50 327 (£4 600). These claims are being examined by the IOPC Fund and the Standard Club.

### **TAIYO MARU N°13**

*(Japan, 12 March 1988)*

While heavy fuel oil was being transferred from one cargo tank of the Japanese tanker TAIYO MARU N°13 (86 GRT) to another in the Port of Yokohama, part of the cargo escaped into the sea, due to a mistake by the crew in handling the valves. It is estimated that about six tonnes of heavy fuel oil escaped as a result of this incident. Clean-up operations were immediately undertaken by the shipowner who deployed several oil combating vessels supplied by contractors. The clean-up operations were completed within four days of the incident.

Claims for clean-up costs, totalling ¥10 212 210 (£45 000), were submitted to the shipowner and the IOPC Fund by three private claimants. In August 1988, the Director agreed to settle these claims at ¥8 611 685 (£38 000). It is unlikely that any further claims will be submitted.

The limitation proceedings have not yet started. The shipowner's limitation amount under the Civil Liability Convention is estimated at ¥2 476 800 (£11 000). The indemnification of the shipowner will amount to approximately ¥619 200 (£2 750).

### **KASUGA MARU N°1**

*(Japan, 10 December 1988)*

While carrying approximately 1 100 tonnes of heavy fuel oil along the west coast of Japan, the Japanese coastal tanker KASUGA MARU N°1 (480 GRT) capsized and sank in stormy weather off Kyoga Misaki of the Kyoto Prefecture.

The sunken tanker, lying at a depth of approximately 250 metres, has since been leaking continually. Several vessels and helicopters were deployed by the Japanese Maritime Safety Agency and private contractors for surveillance and clean-up operations at sea. The operations were frequently suspended due to the difficult weather conditions. The oil, which had spread north-eastwards, appears to have come ashore in some places.

The shipowner has been investigating possible methods of stopping the leakage of oil from the sunken vessel. However, it was difficult to carry out any operations for this purpose under the weather conditions prevailing in December.

Extensive fishing activities are carried out by local fishermen in the area around the site of the incident. Therefore, there is a considerable risk of serious damage to fisheries.

The limitation amount of the KASUGA MARU :Nº1 is estimated at approximately ¥12.8 million (£56 600). The total costs of the clean-up operations will greatly exceed the limitation amount.

## **13 MAJOR DEVELOPMENTS DURING THE PERIOD 1978 - 1988**

### **13.1 Decisions Taken by the Assembly and the Executive Committee**

#### **(a) INCREASE OF THE MAXIMUM LIABILITY OF THE IOPC FUND**

Under the Fund Convention, the aggregate amount of compensation payable by the IOPC Fund in respect of any one incident was originally limited to 450 million (gold) francs (equivalent to 30 million SDR). However, in the Convention the Assembly was given the authority to increase the maximum amount of the IOPC Fund's liability, provided that this maximum should not exceed 900 million francs (60 million SDR). Any decision to increase the maximum amount required a three-fourths majority of the Member States present at the meeting at the time of the vote.

In April 1979, the Assembly considered a proposal to increase the maximum amount of the IOPC Fund's liability to 900 million francs. This proposal did not receive the required majority and was thus rejected. Instead, however, the Assembly decided to increase the maximum amount to 675 million francs (45 million SDR).

In October 1986, the Assembly unanimously decided to increase the aggregate amount of compensation payable by the IOPC Fund to 787 500 000 (gold) francs (corresponding to 52.5 million SDR) for incidents which occurred after 30 November 1986, and further to 900 million (gold) francs (corresponding to 60 million SDR) for incidents occurring after 30 November 1987. The maximum amount of compensation payable by the IOPC Fund in respect of any one incident is consequently 60 million SDR, which corresponds to approximately £45 million (on the basis of the value of the SDR on 30 December 1988), including any amount actually paid by the shipowner or his insurer under the Civil Liability Convention.

**(b) REPLACEMENT OF INSTRUMENTS ENUMERATED IN ARTICLE 5.3 OF THE FUND CONVENTION**

The IOPC Fund indemnifies the shipowner, under certain conditions, for part of his liability under the Civil Liability Convention. However, according to Article 5.3 of the Fund Convention, the IOPC Fund may be exonerated, wholly or partially, from its obligation to pay indemnification to the shipowner (or his insurer) if the IOPC Fund proves that, as a result of the actual fault or privity of the owner, the ship in question did not comply with the requirements laid down in the four instruments listed in that Article and that the incident or the damage was caused wholly or partially by such non-compliance. The purpose of this provision is to encourage shipowners, by means of indirect financial inducement, to make their ships conform to the requirements of these four instruments, thereby reducing the risk of oil pollution incidents.

Under the Fund Convention, the above-mentioned instruments may be replaced by new instruments if so decided by the Assembly. The Assembly has applied this replacement procedure a number of times, and the present list enumerates the following instruments:

- (i) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), and as amended by Resolution MEPC.14(20) adopted by the Marine Environment Protection Committee of the International Maritime Organization on 7 September 1984;
- (ii) the International Convention for the Safety of Life at Sea, 1974, as modified by the Protocol of 1978 relating thereto (SOLAS 74/78) and as amended by Resolutions MSC.1(XIV) and MSC.6(48) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981 and 17 June 1983, respectively;
- (iii) the International Convention on Load Lines, 1966; and
- (iv) the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72).

**(c) INTERPRETATION OF THE NOTION OF "POLLUTION DAMAGE"**

The Assembly and the Executive Committee have taken decisions relating to the interpretation of the definition of "pollution damage" laid down in the Civil Liability Convention.

In 1980, the Assembly adopted an important resolution dealing with the admissibility of claims for non-economic environmental damage.

The Executive Committee has over the years taken a number of important decisions on the admissibility of claims for compensation. These decisions have related, inter alia, to

claims for environmental damage, salaries for personnel permanently employed by public authorities, tariffs for ships owned by public bodies which have been used for clean-up operations, loss of earnings suffered by fishermen and hoteliers, and the relationship between salvage and preventive measures.

The decisions relating to the notion of "pollution damage" are dealt with in detail in section 13.4 below.

#### **(d) CONVERSION OF (GOLD) FRANCS INTO NATIONAL CURRENCIES**

The amounts in the Civil Liability Convention, as well as those in the Fund Convention, are expressed in [gold] francs (Poincaré francs). In 1976, Protocols were adopted to amend the Conventions. Under the Protocols, the (gold) franc was replaced as the monetary unit by the Special Drawing Right (SDR) of the International Monetary Fund. One SDR was then considered equal to 15 [gold] francs. The value in SDR is converted into national currency by referring to its market exchange value.

The 1976 Protocol to the Civil Liability Convention entered into force in 1981 but has been ratified by only a limited number of States. The 1976 Protocol to the Fund Convention has not yet come into force.

In 1979, the Assembly adopted an interpretation of the provisions in the Fund Convention dealing with [gold] francs under which the amount determined in francs shall be converted into SDRs on the basis that 15 francs are equal to one SDR. The number of SDRs thus found shall be converted into national currency in accordance with the method of evaluation applied by the International Monetary Fund.

In 1980, the Assembly discussed the problems caused by the lack of uniformity in Member States regarding the methods of converting the [gold] franc into national currencies. The Assembly adopted a Resolution in which it urged Governments of Member States to ensure that their national laws were brought into line with the method of conversion adopted by the Assembly in 1979.

#### **(e) INTERPRETATION OF THE NOTION OF "RECEIVED" IN ARTICLE 10 OF THE FUND CONVENTION**

Contributions to the IOPC Fund are levied on any person who has received crude or heavy fuel oil ("contributing oil") in a Contracting State after carriage by sea. In 1980, the Assembly examined the circumstances under which contributing oil should be considered as having been "received", in accordance with the relevant article of the Fund Convention, and it approved an interpretation of the notion of "received".

#### **(f) NOTION OF "PERSISTENT OIL"**

The Civil Liability Convention and the Fund Convention only apply to spills of persistent oil. However, the Conventions do not contain any definition of "persistent oil". In 1981, the IOPC Fund elaborated "A Non-technical Guide to the Nature and Definition of

Persistent Oil". It was decided by the Assembly that this non-technical guide should serve as a guideline for the Director when dealing with claims against the IOPC Fund.

### **(g) SHIPOWNER'S RIGHT TO LIMITATION OF LIABILITY**

Under the Civil Liability Convention, the shipowner is not entitled to limit his liability if the incident occurred as a result of the personal fault ("the actual fault or privity") of the owner.

In one case involving the IOPC Fund, the SHINKAI MARU N°3 case (Japan, 1983), the incident had occurred entirely as a result of the negligence of the master. Since the master was also the owner of the vessel, the question arose as to whether the owner/master was entitled to limit his liability under the Civil Liability Convention. The Executive Committee decided that the owner/master was entitled to limit his liability since the negligent act was committed in his capacity as a master.

### **(h) ESTABLISHMENT OF LIMITATION FUND**

In order to be entitled to limit his liability, the shipowner must establish a limitation fund by depositing the limitation amount with a court or by furnishing the court with a guarantee for that amount.

In the SHINKAI MARU N°3 case mentioned above, where the limitation amount of the shipowner's liability was very low (¥1.9 million or £8 000), the shipowner's P & I insurer requested that the requirement to establish the limitation fund should be waived. The Executive Committee agreed that, in view of the disproportionately high legal costs that would be incurred in establishing the limitation fund compared with the limitation amount under the Civil Liability Convention, the IOPC Fund could in this case, as an exception, pay compensation without the limitation fund being established. The Executive Committee emphasised, however, that the IOPC Fund normally required the establishment of a limitation fund and that this requirement could be waived only in exceptional cases like the SHINKAI MARU N°3 case. It would, in any case, be for the Executive Committee to decide if the exceptional circumstances of a case allowed the IOPC Fund to pay compensation without the prior establishment of the limitation fund.

### **(i) PROCEDURES FOR DEALING WITH CLAIMS AGAINST THE IOPC FUND**

The Executive Committee has developed procedures for dealing with claims against the IOPC Fund. These procedures are described in section 13.3 below.

In 1982, the Executive Committee adopted a Claims Manual in which basic information was given on how to present a claim against the Fund.

### **(ii) NOTIFICATION OF INCIDENTS TO THE IOPC FUND**

In 1986, the Assembly discussed the difficulties resulting from the IOPC Fund's not being informed immediately of new incidents in which it may become involved. The

Assembly expressed the opinion that it would be in the interests of all parties concerned that the IOPC Fund should be informed promptly of all such incidents. For this reason, the Assembly drew the attention of Governments of Member States and other parties concerned (such as the authorities responsible for clean-up operations, shipowners and P & I Clubs) to the importance of the IOPC Fund's being informed as soon as possible of any new incident in respect of which it would have to pay compensation or indemnification, or in respect of which there was a real possibility that the IOPC Fund might have to make such payments.

#### **(k) REVISION OF THE CIVIL LIABILITY CONVENTION AND THE FUND CONVENTION**

In 1979, the Assembly adopted a Resolution in which it requested IMO to consider the desirability of revising the Civil Liability Convention and the Fund Convention, examining in particular the adequacy of the limits laid down by the two Conventions. In the Resolution, reference was made to the problem caused by the very low limits applicable to small tankers.

Extensive preparatory work for a revision of the Conventions was carried out within IMO during the period 1981-1983.

The IOPC Fund, through its Director, participated actively in the preparatory work which led up to the adoption of the Protocols, as well as in the discussions at the 1984 Diplomatic Conference. In particular, the deliberations of the Diplomatic Conference concerning the notion of "pollution damage" were based on the experience of the IOPC Fund in the settlement of claims.

The Diplomatic Conference adopted a Resolution in which, *inter alia*, it requested the Assembly of the IOPC Fund to authorise and instruct the Director to perform duties under the Fund Convention as revised by the 1984 Protocol, in addition to his duties under the 1971 Fund Convention, and to make certain preparations for the entry into force of the Protocol.

In 1985, the Director informed the Assembly that he did not consider it necessary for the Assembly to take any decision at that time in respect of the parts of the Resolution dealing with the preparations for the entry into force of the Protocol to the Fund Convention, since the entry into force was not expected to take place in the near future. The Assembly agreed that the Director should provide information to States which so desire on the system that would be established by the Civil Liability Convention and the Fund Convention as amended by the 1984 Protocols. Furthermore, it was agreed that the Director should assist States, on request, in their procedures for ratification of the Protocols, provided that such activities would not hamper the IOPC Fund's Secretariat in carrying out its duties under the 1971 Fund Convention.



## **13.2 The IOPC Fund's Monitoring of Oil Combating Operations**

It is important that the IOPC Fund follows closely any operations in connection with oil spills which may lead to claims against the Fund, and the Fund has developed certain procedures for this purpose.

The IOPC Fund is normally informed promptly of any oil pollution incident in a Fund Member State which will or may lead to the Fund's being called upon to pay compensation. If, on the basis of the information available, the Director considers that the Fund may become involved in the settlement of claims, he will follow the developments as closely as possible and make contacts at an early stage with the competent authorities in the State concerned. The Director normally appoints a surveyor who is given the task of monitoring the response operations and of advising him at a later stage as to the reasonableness of the claims for compensation submitted to the Fund.

In dealing with oil pollution incidents, the IOPC Fund co-operates closely with the shipowner's liability insurer, which in practically all cases is a P & I Club (cf section 4 above). Experts are normally employed jointly by the P & I Club and the IOPC Fund to survey incidents and the clean-up operations. In most cases, the staff of ITOPI are used for surveying purposes.

The surveyors appointed by the IOPC Fund endeavour to attend the site of a spill as early as possible. They will monitor the clean-up operations and report to the Director and to the P & I Club concerned on the manner in which the operations are carried out. They will also advise authorities dealing with the spill response on the best methods of preventive measures or clean-up operations, to the extent that such advice is requested or welcomed. The surveyors will discuss with the competent authorities the procedures that have to be observed in order to facilitate the presentation of claims against the P & I Club and the IOPC Fund. Finally, the surveyors will be able to advise the authorities whether certain measures taken or to be taken may later be regarded by the IOPC Fund as not being reasonable. This provides an opportunity to discuss the merits of certain measures before they are actually taken. Such discussions may make it possible to avoid later disputes on the question of the recovery of expenses incurred as a result of these measures.

## **13.3 Claims Settlement Procedures**

Over the years, the IOPC Fund has developed procedures for dealing with claims for compensation and indemnification.

In order to obtain compensation, a claimant must show that his claim is justified and meets the criteria laid down in the Civil Liability Convention and the Fund Convention. To this end, the claimant is required to prove his claim by producing supporting

documentation, such as explanatory notes, invoices and receipts. The Claims Manual issued by the IOPC Fund gives guidance in respect of the presentation of claims. Bearing in mind that the IOPC Fund's function is to provide compensation to victims of pollution damage as quickly as possible, the Director is always ready to discuss with individual claimants which is the best way to present their claims.

As soon as the claim documents have been submitted, the claims are examined by the IOPC Fund, in close co-operation with the P & I Club involved. For the examination of the documents and assessment of the damage sustained, the IOPC Fund normally employs the services of surveyors and other experts. In respect of legal issues, the Fund seeks the advice of lawyers in the country where the damage was caused; in most cases lawyers are employed jointly by the IOPC Fund and the P & I Club.

The Director is authorised to settle the claims and pay compensation if the aggregate amount to be paid by the IOPC Fund in respect of the claims arising out of a given incident does not exceed 1.67 million SDR (£1.25 million or US \$2.25 million). In addition, the Director has authority to settle claims for indemnification of the shipowner up to the same amount. For incidents leading to larger claims, the Director needs the approval of the Executive Committee for any settlement.

If agreement has been reached between the IOPC Fund and a claimant as to the majority of the items of a claim, but further investigation is considered necessary with respect to the remaining items, the Director may make payment as regards the agreed items. The Director is also authorised, in certain circumstances and within certain limits, to make provisional payments of compensation before a claim is settled, if this is necessary to mitigate undue financial hardship to the victim.

These factors - the use of experienced surveyors and lawyers, the co-operation with the P & I Clubs and the Director's authority to make relatively high payments without the prior approval of the Executive Committee - enable the IOPC Fund to settle claims and pay compensation in a relatively short period of time. However, the time needed for the settlement of claims is almost entirely dependent on the quality of the documentation submitted. In cases where the claims are well documented, it is often possible to reach a settlement within a few months of the presentation of the documentation. If, however, the documentation is insufficient, it takes a considerable time before a settlement can be reached, since protracted correspondence between the IOPC Fund and the claimants will be necessary.

Except in respect of one incident, it has so far always been possible to reach agreement between the IOPC Fund and the claimants on the amount of their claims, thereby avoiding protracted and costly court proceedings. Sometimes such agreements have been reached only after lengthy and difficult negotiations, but the claimants have generally understood that the IOPC Fund accepts reasonable claims and is not merely trying to reduce the amounts claimed.

## 13.4 Admissibility of Claims

### (a) NOTION OF "POLLUTION DAMAGE"

A claim can be accepted by the IOPC Fund only to the extent that the claim meets the criteria laid down in the Civil Liability Convention and the Fund Convention. In the Conventions, "pollution damage" is defined as loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship. The notion of "pollution damage" includes the costs of preventive measures and further loss or damage caused by preventive measures. "Preventive measures" are defined as any reasonable measures taken after an incident has occurred to prevent or minimise pollution damage.

The definition of "pollution damage" in the Conventions is not very clear. However, the IOPC Fund has developed certain principles as to the admissibility of claims. The Assembly and the Executive Committee have taken a number of important decisions in this regard. These principles have also been developed by the Director in his negotiations with claimants. The settlements made by the Director and the principles upon which these settlements have been based have either been explicitly approved by the Executive Committee, or have been reported to and endorsed by the Committee.

The Assembly has expressed the opinion that a uniform interpretation of the definition of "pollution damage" is essential for the functioning of the regime of compensation established by the Conventions. It is believed that such a uniform interpretation by Fund Member States is promoted if the positions taken by the Fund in this respect are made widely known. For this reason it has been considered appropriate to set out in this Annual Report in general terms the policy of the IOPC Fund as regards the admissibility of claims, as developed over ten years. In view of the complexity of this issue, it has not been possible to include a detailed analysis of the position taken by the Fund on various kinds of claims. The presentation is thus limited to questions of principle. It must be emphasised that, taking into account these principles, each individual claim has to be assessed on the basis of all the elements of the particular case.

### (b) COSTS FOR CLEAN-UP OPERATIONS AND PREVENTIVE MEASURES

The IOPC Fund compensates costs incurred for clean-up operations at sea and on the beach. As for operations at sea, the costs may relate to the deployment of vessels, the salaries of crew, the use of booms and the spraying of dispersants. In respect of on-shore clean-up, the operations may result in major costs for personnel, equipment, absorbents etc.

The notion of pollution damage includes costs of "preventive measures", ie measures taken to prevent or minimise pollution damage. Such measures may result in expenses for the sealing of fractures in a grounded vessel to prevent oil from escaping. Measures may have to be taken to prevent oil which has escaped from a ship from reaching the coast, eg by placing booms along the coast which is threatened. Dispersants may be used at sea to combat the oil. Costs for such operations are in principle considered as costs of preventive

measures. It must be emphasised, however, that the definition only covers costs of "reasonable" measures.

Claims relating to the costs of material and equipment used in connection with clean-up operations and preventive measures are accepted by the IOPC Fund as admissible under the Conventions. In respect of material purchased specifically for the incident in question, deductions are made for any remaining value that the material or equipment may have after the termination of the operations. If material or equipment used in connection with a specific incident had been purchased and stored for contingency purposes before the incident occurred, compensation is granted for a reasonable part of their purchase price. The cost of cleaning, repairing and replacing material and equipment used for the operations is accepted by the IOPC Fund.

The clean-up after an oil spill often results in considerable quantities of oil and oily debris being collected. Reasonable costs for disposing of the collected material are compensated by the IOPC Fund.

#### **(c) DAMAGE TO PROPERTY**

Pollution incidents often result in damage to property: the oil may contaminate fishing boats, fishing gear, yachts, beaches, piers and embankments. The IOPC Fund accepts costs for cleaning polluted property. If the polluted property (eg fishing gear) cannot be cleaned, the IOPC Fund compensates the cost of replacement, subject to deductions for wear and tear.

Measures taken to combat an oil spill may cause damage to roads, piers and embankments necessitating repairs, and reasonable costs for such repairs are accepted by the IOPC Fund.

#### **(d) ADDITIONAL COSTS AND FIXED COSTS**

In several cases involving the IOPC Fund, the question has arisen as to the admissibility of claims from a Government or from other public bodies relating to certain costs which would have arisen for the public authorities even if the incident had not occurred ("fixed costs"), as opposed to "additional costs", ie expenses incurred by the public authorities as a result of the incident and which would not have arisen had the incident and the operations relating thereto not taken place. This question has been discussed in respect of personnel permanently employed by public authorities; costs for overtime allowances, extra allowances for heavy duties and travel costs would be additional costs, whereas the normal salaries of such personnel would be fixed costs. This question has also arisen in respect of certain costs for operating vessels owned by public authorities and used for clean-up operations.

The admissibility of claims for fixed and additional costs was discussed within the IOPC Fund in 1981 by an Inter-sessional Working Group set up by the Assembly. The Working Group agreed that additional costs were always recoverable under the Civil

Liability Convention and the Fund Convention, but the Group could not reach unanimity on the question of the admissibility of fixed costs. Most delegations agreed that a reasonable proportion of fixed costs should be recoverable, since it was in the interests not only of the particular State but also of the IOPC Fund that a State maintained a response force in order to be able to respond quickly and cheaply in the event of a spill. If the clean-up operations were left entirely to private firms, this would exclude fixed costs from the bill to the IOPC Fund but it would mean, in the Working Group's view, that the additional costs would be much higher, possibly even higher than if the clean-up operations had been carried out by State employees with fixed costs included in the bill. The Working Group agreed that in the calculation of the relevant fixed costs only those expenses which correspond closely to the clean-up period in question and which do not include remote overhead charges should be included. The Assembly took note of the report of the Working Group and generally endorsed the results of the Working Group's discussions.

Since 1981 there have been many claims against the IOPC Fund including items which fall within the concept of "fixed costs" as defined above. In his negotiations with claimants, the Director has based his approach on the position taken by the Working Group. The Director's decisions in respect of individual claims have been endorsed by the Executive Committee. In particular, the Committee has reiterated the view that only those expenses which relate closely to the clean-up period in question and which do not include remote overhead charges should be compensated. In October 1988, the Assembly stressed the necessity of a restrictive approach to fixed costs.

#### **(e) SALVAGE OPERATIONS**

In the PATMOS case (Italy, 1985), the IOPC Fund examined the question as to whether and to what extent salvage operations fall within the definition pollution damage laid down in the Civil Liability Convention, ie whether such operations could be considered as preventive measures as defined in that Convention. The Executive Committee took the position that operations could be considered as falling within the definition of "preventive measures" only if the primary purpose was to prevent pollution damage; if the operations primarily had another purpose, such as salvaging hull or cargo, the operations would not be covered by this definition.

The position taken by the Executive Committee was endorsed by the Italian Court of first instance. The Court stated that salvage operations could not be considered as preventive measures, since the primary purpose of such operations was that of rescuing ship and cargo; this applied even if the operations had the further effect of preventing pollution. The claimants whose claims had been rejected lodged appeals against this judgement, but the appeals were later withdrawn.

#### **(f) LOSS OF EARNINGS**

Owners or users of property which has been contaminated as a result of an oil spill may suffer losses. For instance, a fisherman whose fishing gear has been polluted may lose earnings during the period when he is prevented from fishing, pending the cleaning of the

polluted gear or the purchase of new equipment. Most legal systems recognise in principle claims for compensation of this kind. The IOPC Fund also accepts claims for loss of earnings in such cases.

Persons whose property has not been polluted may nevertheless suffer economic loss as a result of oil pollution incidents. If a certain area of the sea is heavily polluted, fishing may be altogether impossible in that area for a certain period of time, which may cause economic loss to fishermen for whom there is no possibility of fishing elsewhere. Hoteliers and restaurateurs may lose income if tourists do not come to the area because the beaches have become polluted. In most jurisdictions there has been a great reluctance to recognise claims in such cases, for fear of the far-reaching consequences that the acceptance of such claims would have. In most countries, a claim for compensation is generally accepted only if it relates to damage to a defined and recognised right (eg a right of property or a right of possession). Damage suffered by someone as a result of loss of use of the environment due to pollution is normally not considered as damage to an individual's recognised right in this sense. However, in recent years there has been a development in many countries towards a less restrictive approach.

Claims in this latter category have often been submitted to the IOPC Fund. The Executive Committee has agreed to compensate economic loss suffered by persons who depend directly on earnings from coastal or sea related activities, eg loss of earnings suffered by fishermen or by hoteliers and restaurateurs at sea-side resorts.

The IOPC Fund's experience shows that it is often difficult to establish the amount of the loss sustained in such cases. The loss suffered by the claimant may, for instance, have to be established through comparisons with the claimant's income during a comparable period in the years preceding the incident.

## **(g) DAMAGE TO THE MARINE ENVIRONMENT**

The question of admissibility of claims for compensation for damage to the marine environment was dealt with by the IOPC Fund for the first time in connection with the first ANTONIO GRAMSCI incident which occurred in the USSR in 1979 (cf section 13.5 below). In that case, a claim of an abstract nature for compensation for ecological damage was made by the Government of the USSR to the Soviet Courts. The amount claimed had been calculated according to a mathematical formula laid down in the USSR legislation. In view of this claim, the Assembly unanimously adopted in 1980 a Resolution stating that "the assessment of compensation to be paid by the International Oil Pollution Compensation Fund is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models".

Following the adoption of this Resolution, a Working Group set up by the Assembly examined the question as to whether and, if so, to what extent a claim for environmental damage was admissible under the Civil Liability Convention and the Fund Convention. The Working Group agreed that compensation could be granted only if a claimant who has a

legal right to claim under national law had suffered quantifiable economic loss. The position taken by the Working Group was endorsed by the Assembly in 1981.

In the second ANTONIO GRAMSCI case (USSR, 1987), the USSR authorities submitted a claim relating to environmental damage, similar to the claim submitted in the previous case. Referring to the 1980 Resolution, the Executive Committee in 1988 expressed its objection to this claim (cf section 12.2 above).

The same question arose in the PATMOS case (Italy, 1985), in which the Italian Government made a claim for compensation for damage to the marine environment without specifying the kind of damage which had allegedly been caused, nor giving any explanation of the basis on which the amount claimed had been calculated. The Executive Committee took the view that this claim should be opposed by the IOPC Fund, in accordance with the above-mentioned Resolution. The claim was rejected by the Italian Court of first instance. The Italian Government has appealed against this judgement, and the case is pending in the Court of Appeal (cf section 12.2 above).

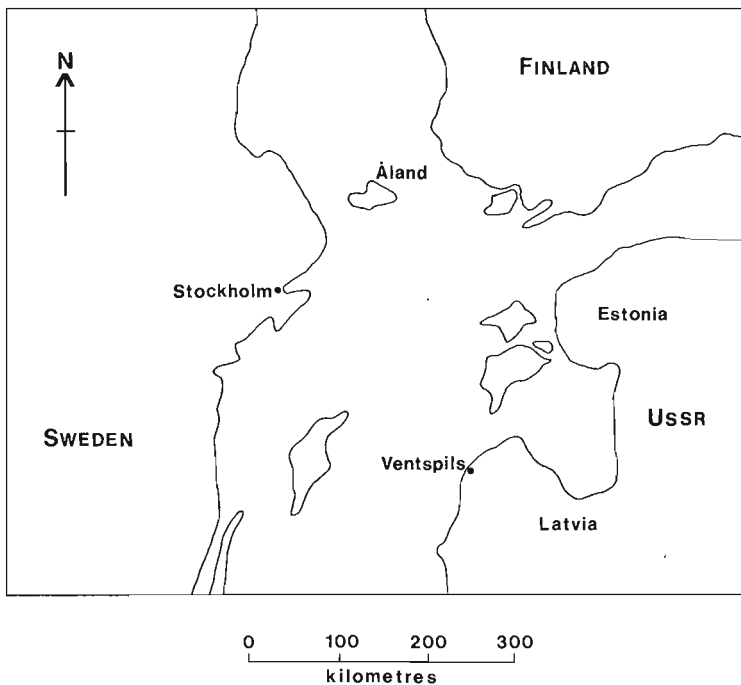
It should be noted in this context that the 1984 Protocol to the Civil Liability Convention contains an amended wording of the definition of "pollution damage". A proviso was added to the effect that compensation for impairment of the environment (other than loss of profit from such impairment) should be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken. The new wording of the definition was not in any way intended to widen the concept. The Diplomatic Conference based its deliberations on the policy of the IOPC Fund and the principles developed by the IOPC Fund Assembly and Executive Committee as regards the admissibility of claims and the interpretation of the definition of "pollution damage" as worded in the original text of the Convention. The Diplomatic Conference adopted the modified wording of this definition in order to codify the interpretation of the definition as developed by the IOPC Fund.

## **13.5 Some Incidents Dealt with by the IOPC Fund in Previous Years**

### **ANTONIO GRAMSCI (First Incident)**

*(Sweden, 27 February 1979)*

The USSR tanker ANTONIO GRAMSCI (27 694 GRT) grounded in the Baltic Sea off Ventspils (USSR), causing a spill of about 5 500 tonnes of crude oil. Six weeks later, a slick of oil mixed with ice reached the Swedish archipelago near Stockholm. The oil polluted 4 000 islands in the archipelago which represents an important natural resource in terms of amenities, fisheries and wildlife as well as a popular tourist area. The Swedish authorities carried out extensive clean-up operations. Pollution damage was also caused to the Åland islands in Finland and to the coasts of Estonia and Latvia in the USSR.



At the time of this incident, Sweden was Party both to the Civil Liability Convention and to the Fund Convention, the USSR was Party to only the Civil Liability Convention and Finland was not Party to either of these Conventions. Compensation from the IOPC Fund was, therefore, only available in respect of pollution damage in Sweden.

The Swedish Government claimed compensation from the shipowner and the IOPC Fund in the City Court of Stockholm for expenses resulting from the clean-up operations, totalling SKr112 million (£10 million). The USSR authorities submitted claims totalling Rbls48 million (£44 million) to the Court in Riga (USSR). Out of this amount, Rbls47 million related to ecological damage. The owner of the ANTONIO GRAMSCI established a limitation fund under the Civil Liability Convention in the Court of Riga for an amount of Rbls2 431 854 (£2.2 million).

The settlement negotiations between the Swedish Government and the IOPC Fund brought to light several questions of principle. The Director considered that not all expenses incurred for the clean-up operations were necessary. In addition, he considered that certain items should be deducted since they, in his view, did not relate to extra costs incurred only because of this incident. Agreement was reached on a compromise, whereby the claim submitted by the Swedish Government was settled at SKr93 million (£8.4 million). In appreciation of the rapid settlement of its claim, the Government of Sweden waived part of its claim for interest to which it was entitled under Swedish law.



As a result of this incident, the Assembly set up an Inter-sessional Working Group to consider the IOPC Fund's general policy in respect of the admissibility of claims (cf section 13.4[d] above).

Although the IOPC Fund would not pay compensation for damage in the USSR, the claim submitted by the USSR authorities was of great interest to the IOPC Fund since it competed with the claim submitted by the Swedish Government for the amount available in the limitation fund. For this reason the Executive Committee was concerned in respect of the claim made by the USSR authorities relating to environmental damage. The amount of damage was calculated, in accordance with a USSR statute, at a rate of 2 Roubles per cubic metre of polluted water (estimated according to the quantity of oil spill). The Executive Committee considered that such a claim was not covered by the notion of "pollution damage" as defined in the Civil Liability Convention and the Fund Convention. In the view of the Committee, claims should be based on quantifiable losses which can be attributed to a particular incident. The position of the IOPC Fund in respect of this claim was made clear to the USSR authorities. However, the Executive Committee did not see any possibility of raising objections in court proceedings against the owner or the claimant. The deliberations in the Executive Committee concerning this claim led to the adoption of the IOPC Fund Resolution referred to in section 13.4(g) above.

An agreement was reached between the Swedish Government and the owner of the ANTONIO GRAMSCI regarding the distribution of the limitation fund established in the Court in Riga. Under this agreement, the Swedish Government received an amount of SKr3 992 283 (equalling Rbls607 900). The remaining part of the limitation amount was paid to the authorities in the USSR. The distribution was made in proportion to the amount of the claims submitted by the Swedish Government and the USSR authorities, respectively. This Agreement was approved by the Executive Committee of the IOPC Fund and by the Court.

### **MIYA MARU N°8**

*(Japan, 22 March 1979)*

The first incident involving the IOPC Fund in Japan occurred when the Japanese tanker MIYA MARU N°8 collided with a motor vessel in the Inland Sea, causing pollution to important fishing areas. Compensation was paid for clean-up operations, as well as for fishermen's loss of earnings resulting from the suspension of fishery activities during the clean-up operations. The total amount paid by the IOPC Fund as a result of this incident was ¥150 million (£325 000).

The claims settlement procedure developed in this case, in close co-operation with the Japanese P & I Club, served as a model for the IOPC Fund's handling of other incidents occurring not only in Japanese waters but also elsewhere.

## **TARPENBEK**

*(United Kingdom, 21 June 1979)*

Having collided with a British Royal Fleet auxiliary ship in the English channel, the tanker TARPENBEK loaded with about 1 600 tonnes of lubricating oil capsized. The damaged tanker was towed to a sheltered bay where the cargo oil was pumped out of the ship by the shipowner. The United Kingdom Government and local authorities carried out various measures to prevent a possible spill of oil which could have caused damage to beaches or the marine environment.

The United Kingdom Government, the local authorities and the owner of the TARPENBEK instituted legal proceedings, seeking a total of £1.7 million in compensation from the IOPC Fund. The limitation amount of the shipowner's liability under the Civil Liability Convention was £64 356.

The settlement of the claims in this case became complicated due to a dispute as to whether there was any spill of persistent oil as a result of the incident. There were also different opinions on the interpretation of the relevant United Kingdom legislation and the Civil Liability and Fund Conventions. The Director maintained that the IOPC Fund was liable to pay compensation only if there had been a spill of persistent oil as a result of the incident.

Based on investigations by the IOPC Fund's surveyors, the Director was of the opinion that there was not sufficient evidence that any persistent oil had been spilled. Consequently, he rejected any liability on the part of the IOPC Fund.

The amount of compensation to be paid by the IOPC Fund, if any, depended largely on the apportionment of liability between the TARPENBEK and the other ship involved in the collision. The investigation which was carried out showed that the other vessel was more to blame for the collision. A distribution of liability of 75:25 was agreed between the hull insurers.

In the negotiations with the claimants, the Director took into account the uncertainty that existed as to the legal situation. All claims against the IOPC Fund were settled at a total amount of £363 550 (inclusive of interest).

## **MEBARUZAKI MARU N°5**

*(Japan, 8 December 1979)*

The MEBARUZAKI MARU N°5 case involved a Japanese tanker of only 19 GRT, carrying just 30 tonnes of heavy fuel oil when she sank in the Inland Sea (Japan). The claims for clean-up operations and fishery damage were settled at ¥11 million (£50 000). The major part of this amount was paid by the IOPC Fund, as the limit of the shipowner's liability was only ¥845 480 (£3 740).

This incident illustrates the consequences of the Civil Liability Convention not providing a minimum limitation amount for small tankers. In fact, the IOPC Fund has paid compensation to third parties in respect of 12 incidents in Japan involving vessels of less than 200 GRT. In five of these cases, the payments made by the IOPC Fund were below ¥10 million (£40 000).

During its discussion of this incident, the Executive Committee expressed concern about the absence of a minimum liability for small vessels and the consequential low level of their liability. The Director was therefore requested to investigate the possibility of concluding an agreement with shipowners under which they would not claim indemnification under Article 5 of the Fund Convention and would accept a minimum liability for small ships. However, the Director's approach to shipowners and insurers received a negative response. In their replies, reference was made to the revision of the Civil Liability Convention and the Fund Convention which was then taking place. Indeed, when the 1984 Protocol to the Civil Liability Convention was adopted, it introduced a minimum liability of 3 million SDR for ships not exceeding 5 000 units of tonnage.

### **SHOWA MARU**

*(Japan, 9 January 1980)*

The Japanese tanker SHOWA MARU (199 GRT), carrying 500 tonnes of heavy fuel oil, collided with a chemical tanker in the Naruto Straits (Japan). About 100 tonnes of the cargo escaped.

The costs of clean-up operations amounted to only ¥11 million (£25 000). However, over 3 000 nets in an important seaweed farming area were polluted, requiring cleaning or replacement, and fishermen lost earnings because polluted seaweed could not be sold. The fishery claims of ¥184 million were eventually agreed at ¥100 million (£225 000). The loss of income was assessed on the basis of a comparison of the harvests of polluted farms with those of unaffected adjacent farms; records of previous years were also examined. Despite difficult negotiations of these complex claims, compensation was paid by the IOPC Fund within four months of the incident.

### **JOSE MARTI**

*(Sweden, 7 January 1981)*

The grounding of the USSR tanker JOSE MARTI in a narrow channel on the Swedish east coast brought about lengthy legal actions in the Swedish courts between the claimants and the shipowner.

The Swedish Government, which had paid the costs of the clean-up operations in the Stockholm archipelago, took action in the Stockholm City Court against the owner of the JOSE MARTI, who constituted a limitation fund of SKr23.8 million (£2.2 million) under the Civil Liability Convention. In this action, the owner of the JOSE MARTI maintained that he had no liability for the pollution damage because the incident was wholly caused by the negligence of the Swedish Government in the maintenance of navigational aids

(cf Article III.2(c) of the Civil Liability Convention). Secondly, the owner argued that if the Court were not to accept that the damage was wholly caused by such negligence, he should nevertheless be wholly exonerated from liability to the Swedish Government on the grounds of contributory negligence, due to lack of maintenance of navigational aids, or that the compensation should be substantially reduced (Article III.3).

In its judgement in May 1985, the City Court held that the incident was caused by negligence attributable to the shipowner. It was recognised by the Court that there was a certain negligence on the part of the Swedish authorities in the maintenance of navigational aids and that this negligence had contributed to the incident. However, since this negligence was considered relatively minor, the Court awarded the Government full compensation for the pollution damage.

The case was taken to the Court of Appeal in Stockholm. The Court of Appeal confirmed the position taken by the City Court that the incident was caused by negligence attributable to the shipowner, ie an error committed by the pilot of the vessel. The Court of Appeal rejected the argument advanced by the owner of the JOSE MARTI that he should be exonerated from liability because the pilot should be considered as being covered by the notion of navigational aids. Contrary to the City Court, the Court of Appeal held that the shipowner had not proved any negligence on the part of the Swedish Government in the maintenance of navigational aids or any negligence by any public official. The Court of Appeal upheld the judgement of the City Court, obliging the shipowner to pay full compensation to the Swedish Government for the pollution damage arising out of the incident.

The judgement of the Court of Appeal became final, after the Supreme Court rejected an application by the shipowner for a review of the case.

Since the limitation amount exceeded the aggregate amount of the principal of the claims, the IOPC Fund was not called upon to pay any compensation as a result of this incident.

### **GLOBE ASIMI**

*(USSR, 22 November 1981)*

The tanker GLOBE ASIMI ran aground and broke up near the port of Klaipeda (USSR). Several thousand tonnes of heavy fuel oil spilled into the port and later drifted out to sea. Claims for compensation for pollution damage in the USSR totalling Rbls813 million (£745 million) were made against the shipowner. The major part of this amount related to environmental damage.

At the time of the incident, the USSR was not Party to the Fund Convention but only to the Civil Liability Convention. There was consequently no pollution damage in any Fund Member State and the IOPC Fund was, therefore, not called upon to pay any compensation as a result of this incident. However, since the GLOBE ASIMI was registered

in Gibraltar, ie in a State Party to the Fund Convention (the United Kingdom), and the damage was caused in a State Party to the Civil Liability Convention, the IOPC Fund paid indemnification to the shipowner in the amount of Rbls337 581 (£326 509) (cf Article 3.2 of the Fund Convention).

### **FUKUTOKU MARU N°8**

*(Japan, 3 April 1982)*

Of the incidents in Japan in which the IOPC Fund has been involved, the FUKUTOKU MARU N°8 incident caused the most extensive pollution damage. As a result of a navigational error on the part of the Japanese tanker FUKUTOKU MARU N°8, this tanker collided with a gravel carrier in Tachibana Bay, Tokushima. 85 tonnes of heavy fuel oil spilled from a damaged port tank and spread over an area used for intensive fishing. The major part of the extensive clean-up operations were completed within ten days, but some operations continued for a month. The cost of these operations was settled at ¥212 million (£940 000).

The spilt oil caused extensive fishery damage. The pollution forced fishermen to suspend operations for a week, as the areas in which their fishing activities normally were carried out had been polluted or because oiled nets and equipment needed cleaning or replacement. In many cases, catches had to be abandoned since they had become oiled. Some fish farmers lost income because the pollution prevented or delayed their activities during a particularly important period of the year. A number of seaweed farms became heavily polluted resulting in loss of earnings for the fishermen concerned.

The claims for fishery damage totalled ¥657 million (£2.9 million). Although the negotiations with claimants were very complicated, the claims were finally settled at a total of ¥172 million (£760 000), and compensation was paid within ten months of the incident.

### **SHINKAI MARU N°3**

*(Japan, 21 June 1983)*

The SHINKAI MARU N°3 incident, which occurred in the port of Ichikawa (Japan), highlighted some of the problems which may arise as a result of a relatively small incident.

The limit of the owner's liability under the Civil Liability Convention was only ¥1.9 million (£8 000). In view of the disproportionately high legal costs which would have been incurred in establishing the limitation fund, in comparison with the limitation amount, the Executive Committee decided that, in this case, the IOPC Fund should exceptionally pay compensation without the prior establishment of the limitation fund (cf section 13.1(h) above).

This incident occurred as a result of the negligence of the master of the tanker who was also the owner of the vessel. The question arose as to whether the owner/master was entitled to limit his liability under the Civil Liability Convention. The Executive Committee

decided that the owner/master was entitled to limit his liability since the negligent act was committed in his capacity as master of the vessel.

Under Article 4.3 of the Fund Convention, the IOPC Fund may be wholly or partially exonerated from its obligation to pay compensation to a person who suffered pollution damage, if the damage was caused by the negligence of that person. The question arose as to whether the owner/master could, in this case, recover his expenses for voluntary measures to minimize pollution damage. The Committee decided that the claim for expenses voluntarily incurred by the owner/master for the taking of preventive measures should be accepted by the IOPC Fund.

### **ROSE GARDEN MARU**

*(United Arab Emirates, 26 December 1985)*

The ROSE GARDEN MARU incident occurred on 26 December 1985 in the Umm Al Qaiwain Municipality, in the United Arab Emirates, when a leak of oil from a sea valve of this vessel allegedly polluted the coast, lagoon and island of the Emirates. It was not until 18 February 1986 that the IOPC Fund was informed of the incident.

During the period before the IOPC Fund was notified, the Umm Al Qaiwain Municipality had sued the operator of the ROSE GARDEN MARU for compensation for any damage already sustained and for any damage which might arise in the future. In its judgement rendered in January 1986, the Court ordered the operator to pay Dh2 million (£300 000) to the Municipality, this amount to be increased if the damage were aggravated. The judgement contained no reference to the Civil Liability Convention or to the question of limitation of liability, and no indication was given of how the damages were calculated. The operator was also ordered to deposit Dh1 million (£150 000) as a precaution, to be paid to the Municipality subject to the consent of the Court. The operator appealed against the judgement, but the right of appeal was denied.

The operator negotiated an agreement with the authorities of the Emirates, under which the amount of compensation was reduced from Dh3 million to Dh1.5 million (£225 000). These negotiations were carried out without the involvement of the IOPC Fund.

The IOPC Fund became involved when the shipowner's P & I insurer presented a claim against the IOPC Fund for the amount paid to victims minus the estimated limitation amount applicable to the ship. As the IOPC Fund had not been notified of the court proceedings in accordance with Article 7.6 of the Fund Convention, the Director informed the P & I Club that the judgement was not binding on the IOPC Fund. There were also many points where the IOPC Fund requested more information, such as the factual basis of the claim and the reasonableness of the assessment of the damages.

Following discussions between the IOPC Fund and the P & I Club, the latter decided not to pursue its claim against the IOPC Fund since, in its view, the small amount of the

claim did not make the investigation and discussion of so many aspects of the case an economic proposition.

## **14 CONCLUDING REMARKS**

The system of compensation created by the Civil Liability Convention and the Fund Convention represented an innovation in international law. It was, therefore, impossible to foresee how this system would function. In October 1988, the Assembly discussed the experience gained from ten years of operating this system. The Assembly considered that the system had proved to be a viable one. The Assembly noted that under the regime of compensation administered by the IOPC Fund, it was possible to compensate victims of oil pollution damage rapidly and at low cost.

The IOPC Fund has also been able to play an important role in the development of international law in the field of liability and compensation for oil pollution damage. Of particular importance are the decisions taken by the Assembly and the Executive Committee concerning the interpretation of the definition of "pollution damage". As stated by the Assembly, a uniform interpretation of that definition is essential for the functioning of the regime of compensation established by the Conventions. This is so, since receivers of oil in one IOPC Fund Member State contribute to the payment of compensation for oil pollution damage suffered in other Member States.

As already mentioned, the 1984 Protocols to the Civil Liability Convention and the Fund Convention are not in force. The regime of compensation established by the present Conventions nevertheless provides a cover for oil pollution damage which is adequate, except in very rare cases. The two Conventions together make available a cover which corresponds to £45 million (US \$81 million) per incident. In fact, on a global basis, there have been only a couple of cases where the aggregate amount of pollution damage approached or exceeded this amount. For this reason, it is likely that practically all incidents in IOPC Fund Member States involving laden tankers will be adequately dealt with under the Conventions for a number of years to come.

# ANNEX I

## Structure of the IOPC Fund

### ASSEMBLY

Composed of all Member States

Chairman:	Mr J Bredholt	[Denmark]
Vice-Chairmen:	Professor H Tanikawa	[Japan]
	Mr A Al-Yagout	[Kuwait]

### EXECUTIVE COMMITTEE

#### 20th Session

Chairman:	Mr P Novia (Italy)
Vice-Chairman:	Mr H Muttillainen (Finland)

Finland	Italy
France	Kuwait
Germany, Federal	Netherlands
Republic of	Poland
Ghana	Tunisia
Greece	United Kingdom
Indonesia	

#### 21st Session

Chairman:	Mr P Novia (Italy)
Vice-Chairman:	Mr G Candappa (Sri Lanka)

Bahamas	Nigeria
France	Sri Lanka
Greece	Sweden
Indonesia	Tunisia
Italy	Union of Soviet
Japan	Socialist Republics
Kuwait	United Kingdom
Liberia	

### IOPC FUND SECRETARIAT

#### Officers

Mr M Jacobsson	Director
Mr K Wada	Legal Officer
Mr S O Nte	Finance/Personnel Officer

### AUDITORS

Comptroller and Auditor General  
United Kingdom



## ANNEX II

### General Fund

#### INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1987

	£	£
<b>INCOME</b>		
<b>Contributions</b>		
Annual Contributions 1986		1 799 359
Add adjustment to Prior Year's Assessments		<u>558</u>
		1 799 917
<b>Miscellaneous</b>		
Miscellaneous Income	23 163	
Interest on Overdue Contributions	8 680	
Interest on Investments	<u>257 553</u>	289 396
		2 089 313
<b>EXPENDITURE</b>		
<b>Secretariat Expenses</b>		
Unliquidated Obligations	25 719	
Liquidated Obligations	<u>257 135</u>	
	282 854	
<b>Claims</b>		
General Claims	<u>276 511</u>	559 365
		1 529 948
Exchange Adjustment		<u>1 529</u>
Excess of Income over Expenditure		<u>1 528 419</u>

## ANNEX III

### Major Claims Fund - Tanio

#### INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1987

	£	£
<b>INCOME</b>		
Miscellaneous	9 537 856	
Interest on Investments	<u>280 221</u>	9 818 077
<b>EXPENDITURE</b>		
Fees & Travel Costs		<u>77 241</u>
Excess of Income over Expenditure		9 740 836
Balance brought forward from 1986		<u>2 995 485</u>
Balance as at 31 December 1987		12 736 321

# **ANNEX IV** **Balance Sheet of the IOPC Fund as at 31 December 1987**

<b>LIABILITIES</b>	£	£	<b>ASSETS</b>	£	£
Accumulated Surplus from General Fund			Cash at Banks and in Hand		15 691 771
Prior Years	1 610 808				
Add Surplus 1987	1 528 419	3 139 227	Contributions Outstanding:		
			Annual Contributions 1982	418	
Due to Staff Provident Fund		89 206	Annual Contributions 1983	1 483	
			Annual Contributions 1985	5 515	
Accounts Payable		33 137	Annual Contributions 1986	19 148	
			Major Claims Fund		
			Ondino/Fukutoku Maru	4 592	31 156
Unliquidated Obligations					
1986	2 426		Due from Major Claims Fund Brady/Morio		434 374
1987	25 719	28 145			
			VAT Recoverable		8 942
Prepaid Contributions					
General Fund	93 379		Miscellaneous Receivable		4 593
Major Claims Fund					
Brady/Morio	49 408	142 787	Interest on Overdue Contributions:		
			General Fund	1 445	
Contributors' Account		4 665	Major Claims Funds:		
			Ondino/Fukutoku Maru	77	
			Tanio	1 130	2 652
Due to Major Claims Fund Tanio		12 736 321			
					<u>16 173 488</u>

Note 1 There are contingent liabilities in respect of incidents which are estimated to amount to £16 340 720. Those liabilities which mature will, under the Fund Convention, be met from contributions assessed by the Assembly.

Note 2 In addition to the assets shown in this statement, investment in equipment, furniture, office machines, supplies and library books as at 31 December 1987 amounted at cost price to £41 778 net of VAT.

# ANNEX V

## Contributing Oil Recieved in the Territories of Contracting States in the Calendar Year 1987

As reported at 31 December 1988

Contracting State	Contributing Oil (tonnes)	% of Total
Japan	219 037 779	27.54
Italy	125 151 591	15.74
France	86 868 000	10.92
Netherlands	82 415 960	10.36
United Kingdom	72 525 611	9.12
Spain	51 351 010	6.46
Union of Soviet Socialist Republics	25 060 281	3.15
Germany, Federal Republic of	20 341 562	2.56
Sweden	18 233 789	2.29
Greece	17 657 003	2.22
Finland	12 489 653	1.57
Portugal	10 083 821	1.27
Yugoslavia	9 889 898	1.24
Norway	9 441 607	1.19
Bahamas	8 355 963	1.05
Indonesia	8 176 046	1.03
Denmark	6 331 607	0.80
Syrian Arab Republic	2 784 616	0.36
Tunisia	2 363 108	0.30
Sri Lanka	1 778 852	0.22
Cameroon	1 496 964	0.19
Nigeria	1 284 634	0.16
Ghana	903 047	0.11
Poland	580 021	0.07
Gabon	420 099	0.05
Papua New Guinea	231 639	0.03
Iceland	0	0
Kuwait	0	0
Maldives	0	0
Monaco	0	0
Oman	0	0
Seychelles	0	0
Tuvalu	0	0
Algeria <1>	-	-
Benin <1>	-	-
Côte d'Ivoire	-	-
Fiji <1>	-	-
Liberia <1>	-	-
Qatar <1>	-	-
United Arab Emirates <1>	-	-
	<u>795 254 161</u>	<u>100.00</u>

<1> No report

# ANNEX VI

## Summary of Incidents

(31 December 1988)

Vessel (Flag State)	Gross Tonnage (CIC liability)	Date & Place of Incident	Cause of Incident & Quantity of Oil Spilled (tonnes)	Claims		Remarks
				Compensation & Indemnification		
ANTONIO GRAMSCI (USSR)	27 694 GRT Rbls2 431 584	27.2.79 off Ventspils, USSR	Grounding (5 500)	Clean-up costs of Swedish authorities	SKr89 057 717	paid
				Interest	6 649 440	paid
				Total	SKr95 707 157	
MIYA MARU N°8 (Japan)	997 GRT ¥37 710 340	22.3.79 Bisan Seto, Japan	Collision (540)	Clean-up costs	¥108 589 104	paid
				Fishery damage	31 521 478	paid
				Indemnification	9 427 585	paid
				Total	¥149 538 167	¥5 438 909 recovered by way of recourse
TARPENBEK (FRG)	999 GRT £64 356	21.6.79 off Selsey Bill, UK	Collision (not known)	UK Government	£175 000	paid
				Nature Conservancy Council	1 400	paid
				local authorities	7 150	paid
				Owner's clean-up costs	180 000	paid
Total	£363 550					
MEBARUZAKI MARU N°5 (Japan)	19 GRT ¥845 480	8.12.79 Mebaru Port, Japan	Sinking (10)	Clean-up costs	¥7 477 481	paid
				Fishery damage	2 710 854	paid
				Indemnification	211 370	paid
				Total	¥10 399 705	
SHOWA MARU (Japan)	199 GRT ¥8 123 140	9.1.80 Nanbu Strait, Japan	Collision (100)	Clean-up costs	¥10 408 369	paid
				Fishery damage	92 696 505	paid
				Indemnification	2 030 785	paid
				Total	¥105 135 659	¥9 893 196 recovered by way of recourse
UNSEI MARU (Japan)	99 GRT ¥3 143 180	9.1.80 off Akune Port, Japan	Collision (no information but less than 140 tonnes)	Owner's clean-up costs	¥6 903 461	estimated
						Because of recourse against some insurer no compensation paid by IOPC Fund

<b>TANIO</b> (Madagascar)	18 048 GRT Fr11 833 718	7.3.80 off Brittany, France	Breaking (13 500)	French Government French local authorities Private claimants Port Autonome du Havre UK P & I Club Total	Fr208 736 142 5 689 025 2 961 290 74 444 4 679 742 Fr222 140 643	paid paid paid paid paid paid	US \$17 480 028 recovered by way of recourse; total payment equalled limit of compensation available under Fund Convention
<b>FURENAS</b> (Sweden)	999 GRT SK612 443	3.6.80 Oresund, Sweden	Collision (200)	Clean-up costs: - Swedish authorities - Swedish private claimants Subtotal Clean-up costs: - Danish authorities - Danish private claimants Subtotal Indemnification	SKr2 911 637 276 050 SKr3 187 687 DKr408 633 9 956 DKr418 589 SKr153 111	paid paid paid paid paid paid	SKr449 961 recovered by way of recourse
<b>HOSEI MARU</b> (Japan)	983 GRT ¥35 765 920	21.8.80 off Miyagi, Japan	Collision (270)	Clean-up costs Fishery damage Indemnification Total	¥163 051 598 50 271 267 8 941 480 ¥222 264 345	paid paid paid paid	¥18 221 905 recovered by way of recourse
<b>JOSE MARTI</b> (USSR)	27 706 GRT SKr23 844 593	7.1.81 off Dalavä Sweden	Grounding (1 000)	Clean-up costs of Swedish authorities 4 Private claimants Total	SKr19 296 000 1 065 000 SKr20 361 000	claimed claimed claimed	Total damage less than owner's liability. Owner's defence that he should be exonerated from liability rejected by final judgement in Sweden.
<b>SUMA MARU N°11</b> (Japan)	199 GRT ¥7 396 340	21.11.81 off Karatsu, Japan	Grounding (10)	Owner's clean-up costs Indemnification Total	¥6 426 857 1 849 085 ¥8 275 942	paid paid paid	No third party claims made
<b>GLOBE ASIMI</b> (Gibraltar)	12 404 GRT Rds1 350 324	22.11.81 Kloipeda, USSR	Grounding (estimated at more than 16 000 tonnes)	Indemnification Total	US \$467 953 US \$467 953	paid paid	No damage in Member State
<b>ONDINA</b> (Netherlands)	31 030 GRT DM10 080 383 (including interest)	3.3.82 Hamburg, FRG	Discharge of cargo oil (estimated 200-300 tonnes)	Clean-up costs: Owner Authorities Total	DM11 303 011 42 163 DM11 345 174	paid paid paid	

Vessel (Flag State)	Gross Tonnage (CLC liability)	Date & Place of Incident	Cause of Incident & Quantity of Oil Spilled (tonnes)	Claims Compensation & Indemnification		Remarks
<b>SHIOTA MARU N°2</b> (Japan)	161 GRT ¥6 304 300	31.3.82 Takashima Island, Japan	Grounding (20)	Clean-up costs Fishery damage Indemnification Total	¥46 524 524 24 571 190 1 576 075 ¥72 671 789	paid paid paid
<b>FUKUTOKU MARU N°8</b> (Japan)	499 GRT ¥20 844 440	3.4.82 Tachibana Bay, Japan	Collision (85)	Clean-up costs Fishery damage Indemnification Total	¥200 476 274 163 255 481 5 211 110 ¥368 942 865	paid paid paid
<b>KIFUKU MARU N°35</b> (Japan)	107 GRT ¥4 271 560	1.12.82 Ishinomaki, Japan	Sinking (33)	Indemnification	¥598 181	paid Total damage less than owner's liability
<b>SHINKAI MARU N°3</b> (Japan)	48 GRT ¥1 880 940	21.6.83 Ichikawa, Japan	Discharge of cargo oil (3.5)	Clean-up costs Indemnification Total	¥1 005 160 470 235 ¥1 475 395	paid paid
<b>EIKO MARU N°1</b> (Japan)	999 GRT ¥39 445 920	13.8.83 Karukawazaki, Japan	Collision (357)	Clean-up costs Fishery damage Indemnification Total	¥23 193 525 1 541 584 9 861 480 ¥34 596 589	paid paid paid ¥14 843 746 recovered by way of recourse
<b>KOEI MARU N°3</b> (Japan)	82 GRT ¥3 091 660	22.12.83 Nagaya, Japan	Collision (49)	Clean-up costs Fishery damage Indemnification Total	¥18 010 269 8 971 979 772 915 ¥27 755 163	paid paid paid ¥8 994 083 recovered by way of recourse
<b>TSUNEHISA MARU N°8</b> (Japan)	38 GRT ¥964 800	26.8.84 Osaka, Japan	Sinking (30)	Clean-up costs Indemnification Total	¥16 610 200 241 200 ¥16 851 400	paid paid
<b>KOHO MARU N°3</b> (Japan)	199 GRT ¥5 385 920	5.11.84 Hiroshima Japan	Grounding (20)	Clean-up costs Fishery damage Indemnification Total	¥68 609 674 25 502 144 1 346 480 ¥95 458 298	paid paid paid

<b>KOSHUN MARU N°1</b> (Japan)	68 GRT ¥1 896 320	5.3.85 Tokyo Bay, Japan	Collision (80)	Clean-up costs Indemnification	¥26 124 589 ¥474 080	paid not yet paid	Recurse claim by IOPC Fund pending
<b>PATMOS</b> (Greece)	51 627 GRT 113 263 703 650	21.3.85 Straits of Messina, Italy	Collision (700)	Preventive measures and clean-up costs (including salvage) Damage to marine environment Total	1156 049 076 053 5 000 000 000 1161 049 076 053	claimed claimed	Most claims settled; 119 436 318 650 paid by P & I insurer; court proceedings in progress against IOPC Fund.
<b>JAN</b> (FRG)	1 400 GRT DKr1 576 170	2.8.85 Aalboig, Denmark	Grounding (300)	Danish authorities Municipality Private claimants Indemnification Total	DKr9 378 528 24 126 53 007 394 043 DKr9 849 704	paid paid paid paid	
<b>ROSE GARDEN MARU</b> (Panama)	2 621 GRT US \$364 182 (estimate)	26.12.85 Umm Al Qaiwain, UAE	Discharge of oil (unknown)	P & I Club in subrogation	US \$44 204	claimed	Claim against IOPC Fund withdrawn
<b>BRADY MARIA</b> (Panama)	996 GRT DM324 629	3.1.86 Elbe Estuary, FRG	Collision (200)	German authorities Private claimants Total	DM3 219 425 1 086 DM3 220 511	paid paid	DM333 027 recovered by way of recourse
<b>TAKE MARU N°6</b> (Japan)	83 GRT ¥3 876 800	9.1.86 Sakai-Senboku Port, Japan	Discharge of oil (0.1)	Indemnification	¥104 987	paid	Total damage less than owner's liability
<b>OUED GUETERINI</b> (Algeria)	1 576 GRT Din1 175 064	18.12.86 Algiers, Algeria	Discharge of oil (estimated 1.5)	Power station Owner's clean-up costs Total	Din5 278 525 5 650 Din5 284 175	claimed claimed	
<b>THUNTANK 5</b> (Sweden)	2 866 GRT SKr2 741 746	21.12.86 Gävle, Sweden	Grounding (1.50-200)	Indemnification	Din293 766	not yet paid	
<b>ANTONIO GRAMSCI</b> (USSR)	27 706 GRT Rbls2 431 854	6.2.87 Borgo, Finland	Grounding (600-700)	Swedish authorities Private claimants Total Indemnification Finnish authorities USSR authorities	SKr24 992 884 49 361 SKr25 042 245 SKr685 437 FW22 124 415 Rbls2 312 864	claimed paid not yet paid claimed claimed	SKr49 361 paid by P & I insurer Further claims may be submitted



Vessel (Flag State)	Gross Tonnage (CIC Liability)	Date & Place of Incident	Cause of Incident & Quantity of Oil Spilled (tonnes)	Claims Compensation & Indemnification		Remarks
<b>SOUTHERN EAGLE</b> (Japan)	4 461 GRT ¥93 874 528	15.6.87 Soda Misaki, Japan	Collision (15)	Clean-up costs Fishery damage Total	¥37 189 390 94 800 000 ¥131 989 390	claimed claimed not yet paid
<b>EL HANI</b> (Libya)	81 412 GRT £7 900 000 (estimate)	22.7.87 Indonesia	Grounding (3 000)	Indemnification Indonesia authorities: request for advance payment	¥23 468 632 US \$242 800	claim not pursued
<b>AKARI</b> (Panama)	1 345 GRT £115 000 (estimate)	25.8.87 Dubai, UAE	Fire (1 000)	Clean-up costs	US \$394 000	claimed Further claims may be submitted
<b>HINODE MARU N°1</b> (Japan)	19 GRT ¥480 000 (estimate)	18.12.87 Yokohama, Japan	Mishandling of cargo (25)	Clean-up costs Fishery damage Total Indemnification	¥3 271 225 30 000 ¥3 301 225 ¥120 000	claimed claimed not yet paid
<b>AMAZZONE</b> (Italy)	18 325 GRT FFr13 860 396	31.1.88 Britanny, France	Storm damage to tanks (2 000)	French local authorities French private claimants French private claimants Total Channel Islands authorities	FFr978 853 99 925 59 392 FFr1 138 170 £21 393	claimed claimed paid agreed
<b>TAIYO MARU N°13</b> (Japan)	86 GRT ¥2 476 800	12.3.88 Port of Yokohama, Japan	Discharge (6)	Private claimants Indemnification	¥8 611 685 ¥619 200	agreed not yet paid
<b>KASUGA MARU N°1</b> (Japan)	480 GRT ¥12 800 000 (estimate)	10.12.88 Kyoga Misaki, Japan	Sinking (1 100)			Claims not yet submitted

Notes

1 Amounts are given in national currencies; the relevant conversion rates as at 30 December 1988 are as follows:

£	£	£
Dm	11,471.3	£
Dkr	12.4100	¥
Fmk	7.5168	Skr
Ffr	10.9575	US \$
Dwa	3.2075	US \$
		Rbts
		1.0911

2 Claims: Except where claims are indicated as 'paid', the amounts shown are as claimed against the IOPC Fund. The inclusion of an amount for a claim is not to be understood as indicating that either the claim or the amount is accepted by the