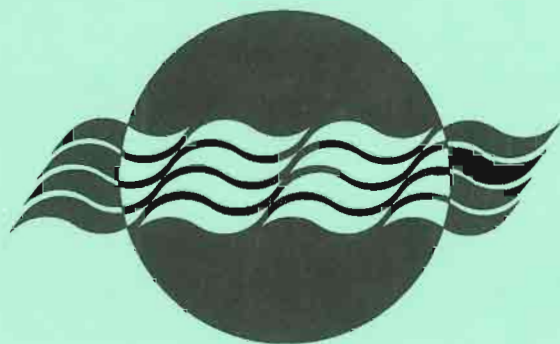


**INTERNATIONAL
OIL POLLUTION
COMPENSATION FUND**

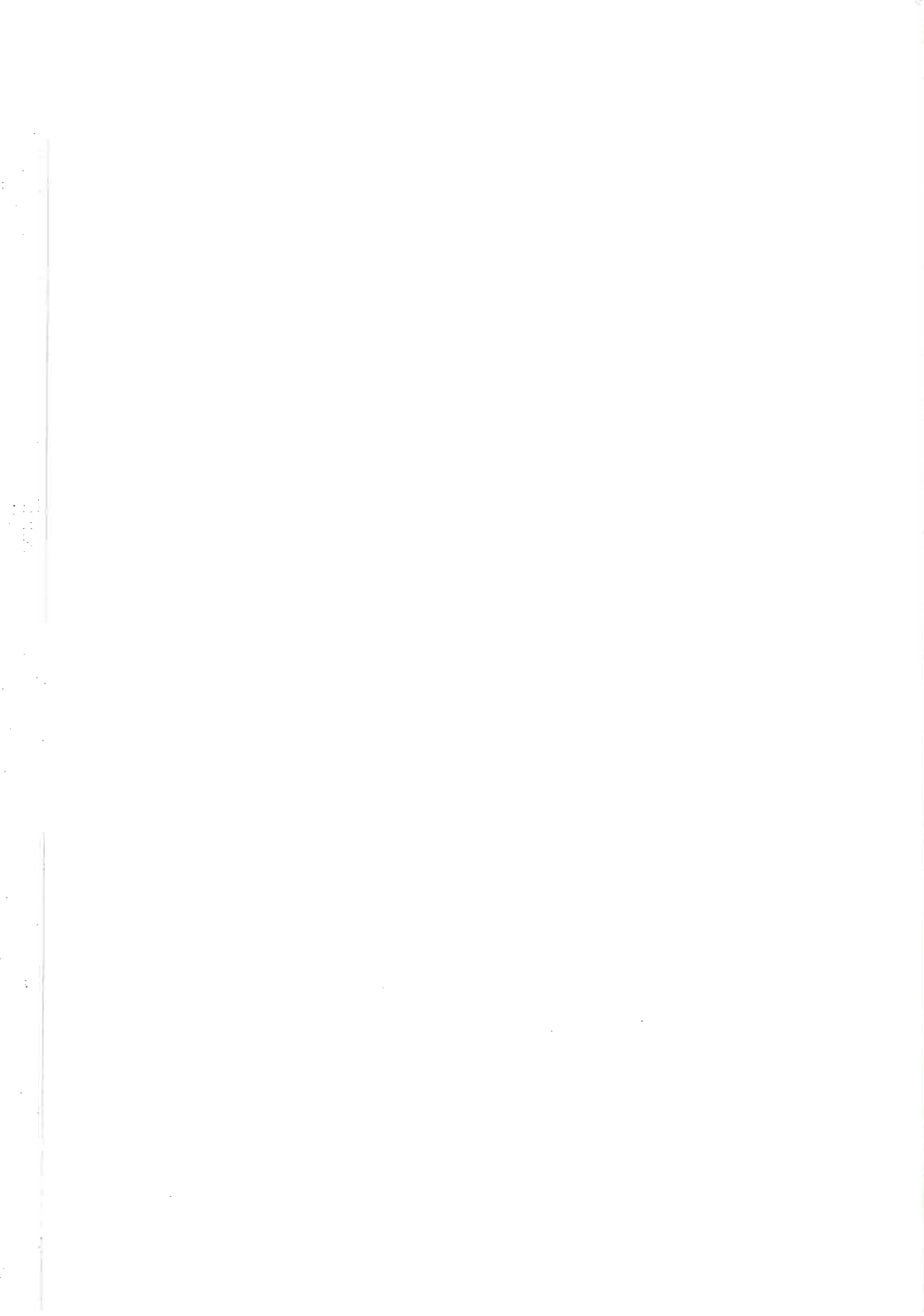
**ANNUAL REPORT
1990**



**REPORT ON THE ACTIVITIES OF THE
INTERNATIONAL OIL POLLUTION
COMPENSATION FUND
IN THE CALENDAR YEAR 1990**

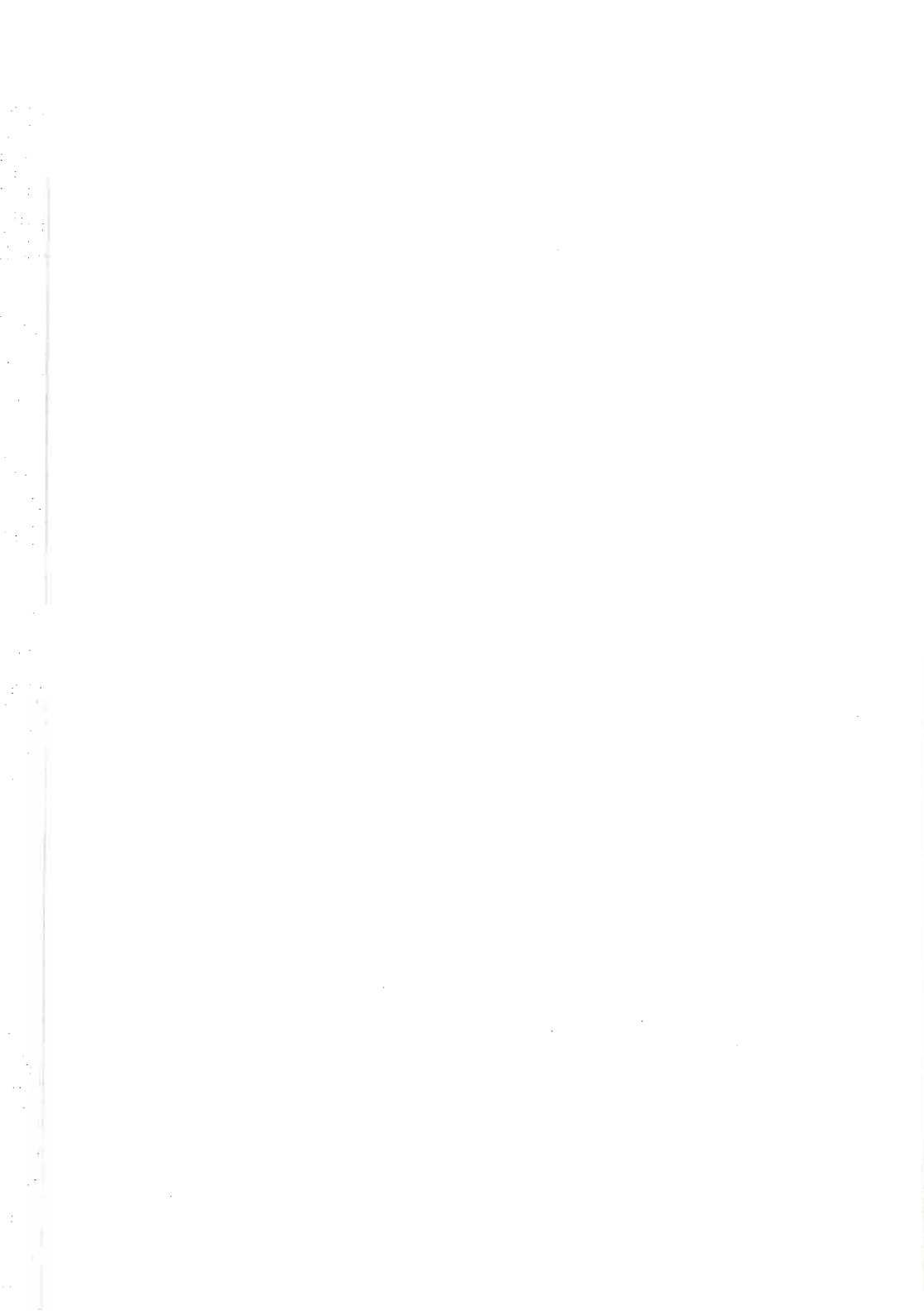
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1 INTRODUCTION

The International Oil Pollution Compensation Fund (IOPC Fund) is a worldwide inter-governmental organisation which 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 1990 covers the activities of the IOPC Fund during its twelfth year of operation.

The IOPC Fund operates within the framework of two international Conventions establishing a legal regime for compensation for damage caused by oil spills from laden tankers, namely 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). The Civil Liability Convention deals with 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 Fund Convention, which is supplementary to the Civil Liability Convention, establishes a system of compensation for victims when the compensation under the Civil Liability Convention is inadequate.

The IOPC Fund was established to administer the regime of compensation created by the Fund Convention. 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 function of the IOPC Fund is to provide supplementary compensation to those suffering oil pollution damage in Fund Member States who cannot obtain full compensation for the damage under the Civil Liability 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\$85 million), including the sum actually paid by the shipowner or his insurer under the Civil Liability Convention.

2 MEMBERSHIP OF THE IOPC FUND

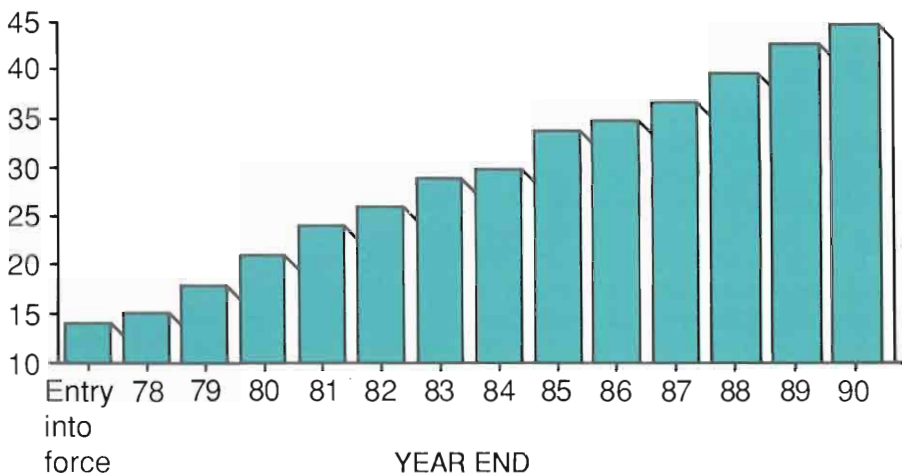
At the time of the entry into force of the Fund Convention in October 1978, 14 States were Parties to the Convention and thus Members of the IOPC Fund. Since then, there has been a constant growth in the number of Member States. At the end of 1989, there were 43 Member States.

Two States became Members of the IOPC Fund during 1990. The Fund Convention entered into force for Djibouti on 30 May 1990 and for the Republic of India on 8 October 1990, bringing the number of Member States to 45.

As a result of the unification on 3 October 1990 of the Federal Republic of Germany (Party to the Fund Convention) and the German Democratic Republic (which was not a Party to the Fund Convention), the Fund Convention applies also to the territory of the former German Democratic Republic as from that date.

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

Membership of the IOPC Fund



As at 31 December 1990, the following 45 States were Members of the IOPC Fund:

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



Member States of the IOPC Fund as at 31 December 1990

The geographical distribution of Member States is shown on the map reproduced on page 9.

On the basis of the information available to the IOPC Fund's Secretariat, it is expected that several States will join the IOPC Fund in the near future. In Ireland and Morocco, Parliament has approved the Fund Convention and the necessary implementing legislation. Bills which would enable the Governments of Brazil and Venezuela to ratify the Fund Convention are being considered by the respective Parliaments. Legislation implementing the Fund Convention is in an advanced stage in Australia, Belgium, Malta, Saudi Arabia and Senegal. 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-Member States. At the end of 1990, the following States had observer status:

Argentina	Mexico
Australia	Morocco
Belgium	Saudi Arabia
Brazil	Switzerland
Chile	United States of America
China	Venezuela
Ireland	

3 CONTACTS WITH GOVERNMENTS

The operation of the IOPC Fund has been greatly facilitated by strong support from the Governments of Member States. As in previous years, the Director's visits to Member States have contributed to the establishment of valuable personal contacts between the IOPC Fund's Secretariat and officials within the national administrations dealing with Fund matters. During 1990, the Director visited five Member States - Canada, France, the Netherlands, the Seychelles and the Union of Soviet Socialist Republics - for discussions with government officials on the Fund Convention and the activities of the IOPC Fund.

As instructed by the Assembly in 1988, the IOPC Fund's Secretariat has continued its efforts to increase the number of Member States, taking into account the emphasis placed by the Assembly on the importance of strengthening the financial basis of the Fund. To this end, the Secretariat has tried to convey as much information as possible about the complex compensation system created by the Civil Liability Convention and the Fund Convention to governments and representatives of industry. In 1990, the Director went to Argentina, Australia, Malaysia, Malta, Singapore, Thailand, the United States of America and Venezuela for discussions on the Civil Liability Convention and the Fund Convention with government officials in these States, and the Legal Officer went to Kenya for the same purpose.

The Director and the Legal Officer also had discussions with government representatives of both Member and non-Member States in connection with meetings within the International Maritime Organization (IMO), in particular during the sessions

of the IMO Council in June and November 1990 and during the Conference on International Co-operation on Oil Pollution Preparedness and Response, held in November 1990.

The IOPC Fund's Secretariat has, on request, assisted some 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

As in previous years, the IOPC Fund has benefited from close co-operation with many international inter-governmental organisations. The assistance and support given by IMO to the IOPC Fund was of special importance also during 1990. The new Secretary-General of IMO, Mr W A O'Neill, has shown great interest in the activities of 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 United Nations Environment Programme (UNEP) and two other inter-governmental organisations, the European Economic Community (EEC) and the International Institute for the Unification of Private Law (UNIDROIT), also have observer status.

The IOPC Fund has observer status with IMO. The Director and the Legal Officer represented the IOPC Fund at two Diplomatic Conferences held under the auspices of IMO, viz the International Conference on the Revision of the 1974 Athens Convention and the Conference on International Co-operation on Oil Pollution Preparedness and Response. The Fund Secretariat also attended meetings of the Council and various Committees of IMO.

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 co-operation with the P & I Clubs in connection with the settlement of claims for compensation is of great importance. This co-operation is not only in the interest of the IOPC Fund and the Clubs, but also in the interest of claimants, as it contributes to the speedy settlement of claims. Discussions on matters of common interest are regularly held between the Director and representatives of the P & I Clubs. In order to strengthen contacts with the Clubs located outside London, the Director visited the Japan Shipowners' Protection & Indemnity Association (JPIA) in Tokyo (Japan) and Assuranceforeningen Skuld in Oslo (Norway) during the autumn of 1989. In 1990 he visited the five other Clubs outside London, namely the Liverpool and London Steamship P & I Association Ltd in Liverpool, the North of England P & I Association Ltd and the Newcastle P & I Association Ltd, both in Newcastle (United Kingdom), Assuranceforeningen Gard in Arendal (Norway) and Sveriges Ångfartygs Assurans Förening (the Swedish Club) in Gothenburg (Sweden).

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, as regards both the monitoring of clean-up operations and the assessment of claims for compensation. ITOPF's assistance is crucial, as the IOPC Fund does not have such expertise within its Secretariat.

There is also close co-operation between the IOPC Fund and oil industry interests represented by the Oil Companies International Marine Forum (OCIMF) and Cristal Ltd. The co-operation between the IOPC Fund and Cristal is very important, in view of the link which exists between the system of compensation governed by the international Conventions and the voluntary industry schemes (TOVALOP and CRISTAL).

The following 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)

5 CONFERENCES AND SEMINARS

During 1990, the Director and the Legal Officer gave lectures at a number of seminars, conferences and workshops on liability and compensation for oil pollution damage and the operations of the IOPC Fund.

The Director took part in the International Oil Spill Conference (SPILLCON 90), held in Sydney (Australia), where he presented a paper entitled "Liability and Compensation for Oil Pollution Damage and the Operations of the IOPC Fund". He gave lectures on the Conventions and the activities of the IOPC Fund at a regional meeting of oil companies in Singapore and to various government departments and interested circles in Kuala Lumpur (Malaysia) and Bangkok (Thailand). The Director lectured to students at the World Maritime University in Malmö (Sweden) on Liability and Compensation for Oil Pollution Damage. He also made presentations on the IOPC Fund's activities at a meeting within the network of Regional Maritime Co-operation amongst South American Countries, Mexico and Panama (ROGRAM) in Mar del Plata (Argentina) and at a Seminar in Valletta (Malta) held under the auspices of the Regional Maritime Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC). Finally, he participated in a Workshop for the Wider Caribbean on Oil Spill Preparedness and Response organised by IMO/UNEP in Caracas (Venezuela).

The Legal Officer gave a lecture on the International Regime for Compensation for Oil Pollution Damage at a seminar on Marine Pollution held in New York (United States of America) and participated in a Regional Seminar on MARPOL 73/78 for the East African Region held in Mombasa (Kenya).

6 ASSEMBLY AND EXECUTIVE COMMITTEE

6.1 13th Session of the Assembly

The Assembly, which is composed of representatives of all Member States, held its 13th session from 25 to 27 September 1990. 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 1989.
- (b) The budget appropriations for 1991, with an administrative expenditure totalling £520 390, were adopted by the Assembly.
- (c) The Assembly decided to levy 1990 annual contributions in the amount of £500 000 for the general fund, to be paid by 1 February 1991. There was no levy for any major claims fund.
- (d) The following States were elected members of the Executive Committee to hold office until the end of the next regular session of the Assembly:

Canada	Italy
Côte d'Ivoire	Netherlands
Cyprus	Poland
Fiji	Spain
Finland	Sri Lanka
France	Tunisia
Greece	United Kingdom
Indonesia	

- (e) The Assembly decided to set up an Intersessional Working Group to consider the future development of the inter-governmental oil pollution liability and compensation system based on the Civil Liability Convention and the Fund Convention (cf Section 7 below).
- (f) It was decided by the Assembly that the November 1988 Amendments to SOLAS 74 should be included in the list of instruments contained in Article 5.3(a) of the Fund Convention, with effect from 1 February 1992.
- (g) The Assembly decided to broaden the IOPC Fund's investment policy by allowing investments of the Fund's assets with building societies.

- (h) Requests for observer status with the IOPC Fund from Australia, Morocco and Saudi Arabia were granted by the Assembly.

6.2 24th Session of the Executive Committee

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

The Executive Committee held its 24th session on 24 and 25 September 1990 under the chairmanship of Mr W W Sturms (Netherlands).

The Executive Committee was informed of the situation in respect of the settlement of claims arising out of pollution incidents involving the IOPC Fund and took note of the settlements made by the Director. In particular, the Committee discussed the developments that had taken place in the PATMOS, ANTONIO GRAMSCI, AKARI, AMAZZONE, KASUGA MARU N°1 and TOLMIROS cases.

In the context of the PATMOS and ANTONIO GRAMSCI incidents, the Executive Committee considered the admissibility of claims relating to environmental damage. Following claims submitted in the CZANTORIA case, the Committee took a decision as regards the interpretation of the Civil Liability Convention and the Fund Convention to the effect that the Conventions did not apply to damage sustained in a given State after the entry into force of the Conventions for that State resulting from an incident which occurred before the entry into force.

6.3 25th Session of the Executive Committee

At its 25th session, held on 27 September 1990, the Executive Committee re-elected Mr W W Sturms (Netherlands) as its Chairman.

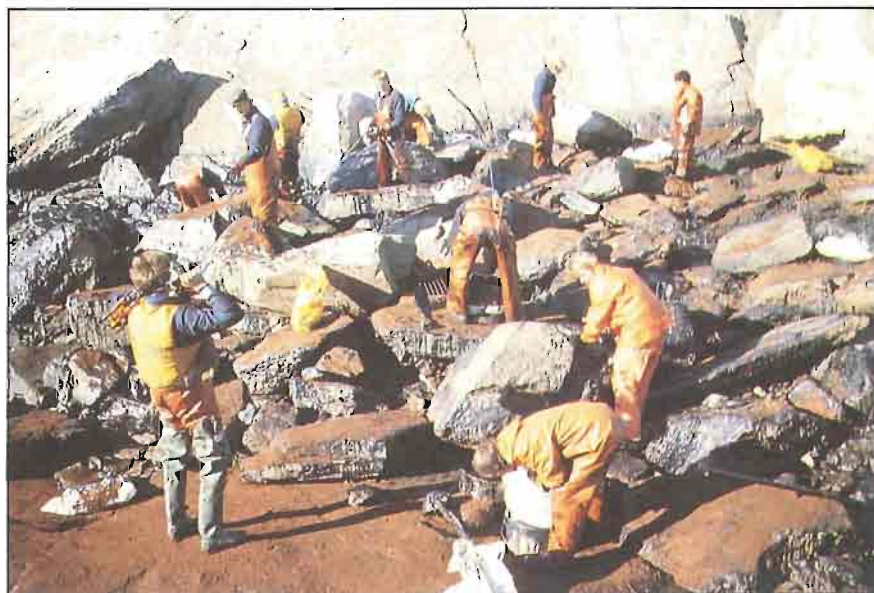
7 FUTURE OF REGIME OF COMPENSATION ESTABLISHED BY THE CIVIL LIABILITY CONVENTION AND THE FUND CONVENTION

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 Australia, France, Germany, Peru, Saint Vincent and the Grenadines and South Africa, whereas only France and Germany have so far become Parties to the Protocol to the Fund Convention. In the United Kingdom, a Bill which would enable the Government to ratify the Protocols has been approved by Parliament. Some States, eg Denmark, Finland, the Netherlands, Norway and Sweden, have begun preparing legislation enabling them to ratify the Protocols.



Mr M Jacobsson, Director (left), Mr W W Sturms, Chairman (centre), and Mr R Sonoda, Legal Officer (right), during the Executive Committee



TOLMIROS Incident - Manual clean-up operations

In the United States of America, Congress had for some time considered proposals for new comprehensive oil spill legislation. The House of Representatives had adopted a Bill which, inter alia, contained provisions implementing the 1984 Protocols. However, the Bill adopted by the Senate did not contain any such provisions and the Senate was opposed to ratification. At the invitation of the Secretary of Transportation, and in accordance with the decision of the Assembly, the Director went to the United States to give information to Senators, Congressmen and members of their staff concerning the system of compensation which would be established by the Civil Liability Convention and the Fund Convention as amended by the 1984 Protocols. In the end, the position of the Senate prevailed and the legislation adopted by Congress in 1990 did not contain provisions implementing the 1984 Protocols. This legislation entered into force on 18 August 1990. This means that the United States will not ratify the Protocols.

In view of this development, and taking into account the requirements for the entry into force of the Protocols, it is unlikely that the 1984 Protocols will come into force in the near future.

On the initiative of the Government of the United Kingdom of Great Britain and Northern Ireland, the IOPC Fund Assembly discussed at its session in September 1990 the future development of the inter-governmental oil pollution liability and compensation system based on the Civil Liability Convention and the Fund Convention. The Assembly decided to set up an Intersessional Working Group with the following mandate

"To consider the future development of the inter-governmental oil pollution liability and compensation system by:

- (a) examining the prospects for the entry into force of the 1984 Protocols to the Civil Liability Convention and the Fund Convention;
- (b) considering whether it would be possible to facilitate the entry into force of the content of the 1984 Protocols possibly by amending their entry into force provisions;
- (c) considering which substantive provisions in the existing Conventions and the 1984 Protocols appear to form the main obstacles to their continued relevance, including an examination of the present contribution scheme."

The Working Group will meet from 13 to 15 March 1991. The Director was instructed to prepare documentation, in consultation with the Secretary-General of IMO, as a basis for the discussions of the Working Group, giving information on the issues set out in the mandate. Member States were invited to provide the Director with information on their position in respect of these issues and to submit any observations which could be of assistance to the Director in preparing such documentation. The report of the Working Group will be considered by the Assembly in October 1991. The Assembly will then decide what further action would be appropriate, bearing in mind that any proposal to amend the Conventions or Protocols would have to be referred to the Secretary-General of IMO for consideration by the Legal Committee.

8 SECRETARIAT

The Secretariat administers the IOPC Fund and, in particular, deals with claims for compensation. It has at present seven staff members: the Director, the Legal Officer, the Finance/Personnel Officer, three Secretaries and a Messenger.

There was one change in the permanent staff of the IOPC Fund's Secretariat during 1990. The Legal Officer, Mr Keiji Wada (Japan), left the IOPC Fund on 31 May 1990, in order to take up a post with the Ministry of Transport in Tokyo. He was succeeded by Mr Ryoichi Sonoda (Japan).

9 ACCOUNTS OF THE IOPC FUND

The accounts of the IOPC Fund for the financial period 1 January to 31 December 1989 were approved by the Assembly in September 1990. As in previous years, the accounts were audited by the Comptroller and Auditor General of the United Kingdom.

The Income and Expenditure Accounts for the period 1 January to 31 December 1989 are shown in Annexes II-V to this Report.

Regarding the general fund (Annex II), the major part of the income in 1989 consisted of initial and annual contributions (£2 992 189 out of a total income of £3 891 988). A considerable amount (£754 648) was derived from interest on the investment of the IOPC Fund's assets. The administrative expenditure was £361 066, about 19% less than the budgetary appropriations. Expenditure on minor claims was £1 911 324. An excess of income over expenditure of £1 623 964 was recorded for the financial year 1989, and this amount was added to the accumulated surplus from previous years, bringing the surplus to £5 065 396. This latter amount includes the working capital of £4 million.

In respect of the TANIO major claims fund (Annex III), an amount of £9 537 856 had been recovered in December 1987 as a result of an out-of-court settlement in a recourse action which the IOPC Fund had taken in France. During January 1989 there was an investment income of £315 028, which was added to a balance of £13 658 916 brought forward from the previous period, resulting in a balance of £13 973 944 as at 1 February 1989. This balance was liquidated by reimbursing £13 899 965 to contributors and transferring £68 692 to the general fund, following the decision taken by the Assembly in 1988.

As for the BRADY MARIA major claims fund (Annex IV), there was a balance of £58 923 as at 31 December 1989.

With regard to the JAN major claims fund (Annex V), annual contributions were received in 1989 for a total amount of £89 820. After repayment of £81 881 borrowed from the general fund in previous years, there was a balance on this major claim fund of £7 830 as at 31 December 1989. The balance was transferred to the general fund, as decided by the Assembly.

The balance sheet of the IOPC Fund as at 31 December 1989 is shown in Annex VI to this Report. As at that date, the IOPC Fund's contingent liabilities with respect to pollution incidents were estimated at £4 076 025.

The accounts of the IOPC Fund for the financial period 1 January to 31 December 1990 will be submitted in the spring of 1991 to the External Auditor for an audit opinion, and will be presented to the Assembly for approval at its session in October 1991. These accounts will then be reproduced in the Report on the Activities of the IOPC Fund for the calendar year 1991.

10 CONTRIBUTIONS

The IOPC Fund is financed by contributions paid by any person who has received in the relevant calendar year more than 150 000 tonnes of crude oil or heavy fuel oil (contributing oil) in a Member State after carriage by sea. The levy of contributions is based on reports on oil receipts in respect of individual contributors which are submitted by Governments of Member States. The contributions are paid by the individual contributors directly to the IOPC Fund. 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 28 December 1990 corresponded to £0.0023400). 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.

In October 1989, the Assembly decided to raise £1.6 million for the 1989 annual contributions to the general fund, £1.7 million for the THUNTANK 5 major claims fund and £1.5 million for the KASUGA MARU N°1 major claims fund, to be paid by 1 February 1990. The amount payable by each contributor per tonne of contributing oil received was £0.0018797 in respect of the general fund, based on the quantities of oil received in 1988, £0.0022037 in respect of the THUNTANK 5 major claims fund, based on the quantities received in 1985 (the year before the incident), and £0.0018788 in respect of the KASUGA MARU N°1 major claims fund, based on the quantities received in 1987 (the year before the incident). Only a small amount of these contributions remains unpaid.

As already mentioned, the Assembly decided, in September 1990, to levy 1990 annual contributions for the general fund in the amount of £500 000, to be paid by 1 February 1991. The amount payable per tonne of contributing oil is £0.0005563, based on the quantities of oil received in 1989. Only a small part of these contributions had been received by 31 December 1990. There was no levy of 1990 annual contributions for any major claims fund.

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 1990, only an amount of £122 218 was outstanding. In October 1990, 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 1979-1990.

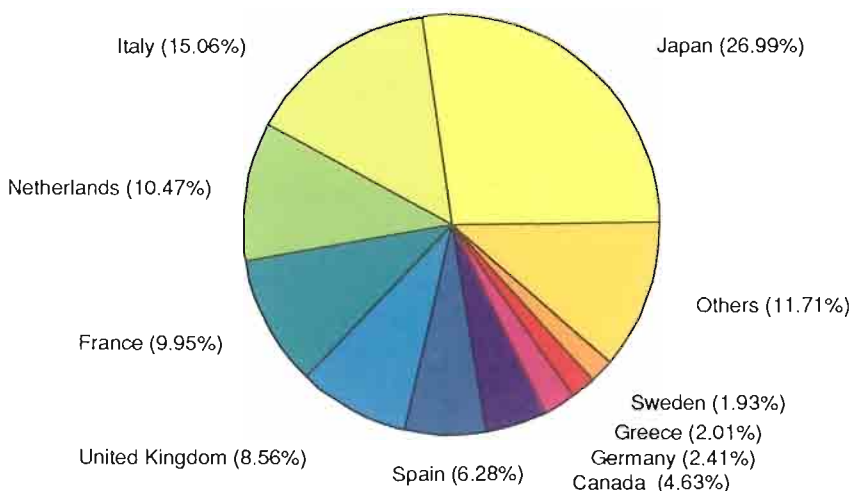
Year	General Fund £	Major Claims Funds £	Total Levy £
1979	750 000	0	750 000
1980	800 000	9 200 000	10 000 000
1981	500 000	0	500 000
1982	600 000	260 000	860 000
1983	1 000 000	23 106 000	24 106 000
1984	0	0	0
1985	1 500 000	0	1 500 000
1986	1 800 000	0	1 800 000
1987	800 000	400 000	1 200 000
1988	2 900 000	90 000	2 990 000
1989	1 600 000	3 200 000	4 800 000
1990	500 000	0	500 000

If contributions for 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. Repayments were thus made in 1981 (£750 000 of the 1980 levy for the ANTONIO GRAMSCI major claims fund), in 1986 (£700 000 of the 1983 levy for the ONDINA/FUKUTOKU MARU N°8 major claims fund) and in 1989 (£13.9 million of the 1983 levy for the TANIO major claims fund). The high balance on the TANIO major claims fund resulted from the recovery of a very substantial amount in recourse proceedings.

The quantities of contributing oil received in 1989 in Member States are given in Annex VII to this Report.

The shares of the 1990 annual contributions to the general fund in respect of Member States are illustrated overleaf.

1990 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. Pursuant to the Financial Regulations, investments may be made with banks, discount houses and (from October 1990) building societies which fulfil certain requirements as to their financial standing.

During 1990, investments were made with several leading London banks. Apart from investments placed overnight till the next business day, or for less than three days fixed, the investments were made at interest rates varying from 12.5625% to 15.5625% per annum, with an average of 14.9%. Interest due in 1990 on the investments amounted to £725 684, on an average capital of £6.5 million.

As at 31 December 1990, the IOPC Fund's portfolio of investments totalled £7 543 464. This amount was made up of the assets of the IOPC Fund, the Staff Provident Fund and a credit balance of £877 255 on the contributors' account.

12 SETTLEMENT OF CLAIMS

12.1 General Information

Since its establishment in October 1978 the IOPC Fund has, up to 31 December 1990, been involved in the settlement of claims for compensation arising out of 52 incidents. 29 of these incidents occurred in Japan, whereas 17 incidents, leading in general to much larger claims, took place in European waters, one in Indonesia, one in Algeria, two in Canada and two in the Gulf. However, some of these incidents did not result in any payments of compensation by the IOPC Fund. The total amount of compensation and indemnification paid by the IOPC Fund to date is £42 million.

During 1990, eight incidents occurred that gave rise to claims against the IOPC Fund, namely the DAITO MARU N°3, KAZUEI MARU N°10, FUJI MARU N°3 and HATO MARU N°2 incidents, which took place in Japan, the VOLGONEFT 263 incident in Sweden, the RIO ORINOCO incident in Canada, and the BONITO and PORTFIELD incidents which happened in the United Kingdom. The VOLGONEFT 263 and RIO ORINOCO incidents will result in large claims against the IOPC Fund. In addition, the IOPC Fund has become involved in one incident which took place in Sweden in 1987, viz the TOLMIROS incident. Claims have also been presented to the IOPC Fund in respect of two incidents which occurred in Canada in 1988, namely the CZANTORIA and NESTUCCA incidents, but the claims were rejected as these incidents took place before the entry into force of the Fund Convention for Canada.

Several other major incidents occurred during the year which affected IOPC Fund Member States but which ultimately did not involve the IOPC Fund. The ARAGON incident, which took place in December 1989 off the coast of Madeira (Portugal) and resulted in the escape of about 25 000 tonnes of oil, could have developed into a major disaster. Fortunately, only part of the oil reached the shore in January 1990 and there was only limited pollution damage. A serious incident occurred off the south coast of England in April 1990, in which the Liberian tanker ROSEBAY spilled about 1 100 tonnes of oil, but only small quantities of oil reached the British coast. In August 1990, the Cypriot tanker SEA SPIRIT was involved in a collision in the Straits of Gibraltar, which resulted in the escape of 10 000 tonnes of oil into the Mediterranean and caused a threat of serious pollution to the coasts of Spain and Morocco, but only small quantities of oil came ashore in these countries. In all these cases, the aggregate amount of the claims will, or is likely to, stay within the limitation amount applicable to the vessel.

As at 31 December 1990, there were three incidents involving the IOPC Fund which had taken place in previous years and in respect of which final settlements had not yet been reached as regards the third party claims, namely the PATMOS, AKARI and AMAZZONE incidents.

The most important developments in 1990 related to the final settlement of all claims arising out of the ANTONIO GRAMSCI incident (Finland, 1987) and the IOPC Fund's involvement in the AKARI (United Arab Emirates, 1987), TOLMIROS (Sweden, 1987), VOLGONEFT 263 (Sweden, 1990) and RIO ORINOCO (Canada, 1990) incidents.

The IOPC Fund is involved in complex legal proceedings in Italy concerning certain claims arising out of the PATMOS incident, which occurred in March 1985 in the Straits of Messina. In these proceedings some important legal issues have arisen. The main outstanding issue relates to a claim submitted by the Italian Government for compensation for damage to the marine environment which was rejected by the Court of first instance. This claim is being considered by the Court of Appeal in Messina.

A claim for compensation 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. The definition of "pollution damage" laid down in the Conventions is not very clear. However, the IOPC Fund has, over the years, 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. In this regard reference is made to the IOPC Fund's Annual Report 1988, pages 58-62, which sets out in general terms the policy of the IOPC Fund in respect of the admissibility of claims as developed over the years. It should be noted that 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 Civil Liability Convention and the Fund Convention.

A revised edition of the IOPC Fund's Claims Manual, in which basic information is given on how to present a claim against the Fund, was published in January 1990.

Details relating to incidents with which the IOPC Fund has dealt in 1990 are given in Section 12.2 of this Report. The conversion of foreign currencies into Pound Sterling is as at 31 December 1990, 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 VIII 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 ultimately was not called upon to make any payments.

12.2 Incidents Dealt with by the IOPC Fund during 1990

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 major part of the KOSHUN MARU N°1 sank. 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 agreed amount of the clean-up costs minus the shipowner's liability of ¥1 896 320. Indemnification of the shipowner amounting to ¥474 080 (£1 872) was paid by the IOPC Fund in August 1990.

According to the findings of the Yokohama Marine Court, part of the blame for the collision fell on the RYOZAN MARU. After difficult negotiations, which also covered personal injury claims, agreement was reached in 1990 between the RYOZAN MARU interests and the KOSHUN MARU N°1 interests, including the IOPC

Fund, on an apportionment of liability of 1:2 in favour of the RYOZAN MARU. An amount of ¥9 340 302 was recovered from the owner of the RYOZAN MARU for pollution damage, of which the IOPC Fund received ¥8 866 222 (£35 001) in September 1990.

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). Approximately 700 tonnes of oil escaped from the PATMOS. Most of the spilled 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 operations in order to contain the spilled oil and to prevent it from polluting the Sicilian and Calabrian coasts.

The owner of the PATMOS and the owner's insurer, the United Kingdom Steamship Assurance Association (Bermuda) Ltd (UK Club), established a limitation fund with the Court of Messina. The Court fixed the limitation amount at Lit 13 263 703 650 (£6.1 million).

Claims and Negotiations with Claimants

Claims were lodged against the limitation fund, totalling Lit 76 112 040 216 (£35.0 million).

There were 30 claims which clearly related to costs for clean-up operations or to preventive measures as defined in the Civil Liability Convention, totalling approximately Lit 14 000 million (£6.4 million). In February 1986, all but two claims in this category were settled at a total of Lit 4 140 189 659 (£1.9 million).

Twelve claims totalling about Lit 40 000 million (£18.4 million) related to costs of operations which, in the IOPC Fund's view, would normally be considered as salvage operations and related measures. The IOPC Fund took the position that these twelve claims did not relate to operations which had the prevention of pollution as their primary purpose and rejected these claims. The shipowner and the UK Club agreed with the IOPC Fund's position.

A claim of Lit 20 000 million (£9.2 million), later reduced to Lit 5 000 million (£2.3 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". In view of this Resolution, the IOPC Fund rejected this claim. The shipowner and the UK Club took the same position as the IOPC Fund.

Position Taken by the Court of First Instance

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. 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 Lit 4 267 312 659 (£2.0 million).

Oppositions to the decision of 18 February 1986 were lodged by eight claimants. The Court of first instance rendered its judgement in respect of the oppositions on 30 July 1986. With regard to the claims relating to salvage operations, 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 was Lit 5 797 263 479 (£2.7 million).

Appeals Proceedings

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 Lit 22 628 039 202 (£10.4 million). One item of this claim, amounting to Lit 13 280 million (£6.1 million), related to a salvage reward due by Esso to the salvors in subrogation of the latter. In its judgement the Court of first instance had 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 of first instance had rejected some of these claims (including that of Esso) and accepted some in reduced amounts. In January 1988, an out-of-court settlement was reached in respect of Esso's claim for a total amount of Lit 4 939 742 171 (£2.3 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. 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 a shipyard in order to leave room for the *PATMOS*.

Outstanding Claims in Appeal Proceedings

The Italian Government appealed against the decision of the Court of first instance, in which the Government's claim in respect of damage to the marine environment had been rejected. The Italian Government 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 of first instance 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.

In October 1988, 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. With regard to 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.

The Italian Government's claim was dealt with by the Court of Appeal in a non-final judgement, rendered on 30 March 1989. In that judgement the Court stated that the owner of the PATMOS, the UK Club and the IOPC Fund were liable for the damage covered by the claim made by the Italian Government. By order of the same date, the Court appointed three experts with the task of ascertaining the existence, if any, of damage to the marine resources off the coasts of Sicily and Calabria consequent on the oil pollution; if such damage existed, they should determine the amount thereof or, in any case, supply any useful element suitable for the equitable assessment of the damage.

The Court experts submitted their report in March 1990. In the report, the experts held that fishing activities had suffered some damage as a result of fishermen being unable to fish for a period of not more than 15 days and that this damage could be quantified at not less than Lit 1 000 million. They stated that there was a lack of data to evaluate the economic impact on other activities and that a precise assessment of the damage to such activities was impossible. In the view of the experts, the evaluation should be carried out by the Court.

In addition to the Italian Government's claim, there are three claims subject to appeal proceedings, totalling approximately Lit 690 million (£315 000).

The Court of Appeal will hold its hearing on 3 June 1991, and its judgement is not expected until the latter half of 1991.

Present Situation Regarding the Claims

The aggregate amount of the claims accepted by the Courts is Lit 9 418 318 650 (£4.3 million). These claims have been paid by the UK Club. The rejected claims maintained in the appeal proceedings total Lit 5 735 268 884 (£2.6 million). The total amount of the claims against the limitation fund is thus Lit 15 153 587 534 (£7.0 million). As already mentioned, the limitation amount is Lit 13 263 703 650 (£6.1 million).

OUED GUETERINI

(Algeria, 18 December 1986)

The Algerian tanker OUED GUETERINI (1 576 GRT) was unloading bitumen in the port of Algiers (Algeria), 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, approximately 15 tonnes of bitumen entered the seawater 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 submitted a claim totalling Din5 278 525 (£409 850) relating to damage to equipment in the power station, costs for cleaning or replacing some equipment and loss of profit as a result of the closure of the station. The main part of the claim (Din4 088 000) related to such loss of profit. The claim was settled in June 1989 at US\$1 133 plus FFr708 824 plus Din2 706 480. In September 1989, the IOPC Fund paid compensation to this claimant for US\$1 133 (£720) plus FFr708 824 (£68 343) plus £126 120, making a total of £195 183, representing the amounts of the agreed claim minus the shipowner's limitation amount, Din1 175 064. A claim by the owner of the OUED GUETERINI in the amount of US\$5 650 (£3 753) in respect of costs for clean-up operations was accepted and paid in its entirety.

Indemnification of the shipowner, Din293 766 (£24 193), was paid by the IOPC Fund in April 1990.

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. It was estimated that 150-200 tonnes of oil escaped as a result of the incident. The oil affected various areas along a 150 kilometre stretch of coast around Gävle, including a number of small islands. The pollution necessitated extensive clean-up operations which were undertaken by the Swedish Coast Guard and the five municipalities affected by the spill.

The Swedish Government claimed compensation at an aggregate amount of SKr25 107 833 (£2.3 million) for the operations of the Coast Guard and the onshore operations by the municipalities concerned. After negotiations the claim was settled at SKr21 931 232 (£2.0 million) plus interest. In November 1989, the IOPC Fund paid SKr23 168 271 (£2 291 257) to the Swedish Government, representing the accepted amount of the claim minus the shipowner's limitation amount (SKr2 741 746) plus interest (SKr3 978 785).

Claims submitted by seven fishermen and two other private claimants were accepted at an aggregate amount of SKr49 361 (£4 925). These claims were paid during the period December 1987 - August 1988.

Indemnification of the shipowner, SKr685 437 (£68 393), was paid by the IOPC Fund in December 1989.

The Swedish authorities feared that oil from the THUNTANK 5 which had sunk to the bottom of the sea might resurface and come ashore, necessitating further clean-up operations in subsequent years. In the Settlement Agreement with the IOPC Fund and the shipowner, the Swedish Government reserved its right to claim supplementary compensation in respect of such operations, subject to the provisions on prescription in the Civil Liability Convention and the Fund Convention. In September 1990, there were reports of further pollution on the coast caused by oil from the THUNTANK 5. However, this pollution was very limited, and no further claims for compensation have been submitted so far.

ANTONIO GRAMSCI

(Finland, 6 February 1987)

The Incident

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 the 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 spilled 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, onshore 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.

Finnish Claims

A claim amounting to FM21 327 893 (£3.0 million) was made by the Finnish Government against the IOPC Fund as well as against the owner of the ANTONIO GRAMSCI. This claim raised several questions of principle, viz the reasonableness of certain operations, the cost of equipment and material purchased for this incident but not actually used, the tariffs applied in respect of oil combating vessels owned by public authorities and the rates of personnel of Government agencies used for clean-up operations. After negotiations agreement was reached between the Finnish Government, on the one side, and the IOPC Fund and the P & I insurer, on the other, to settle this claim at a total amount of FM9 758 250 (£1 394 140).

Discussions were also held concerning losses suffered by 19 Finnish fishermen, totalling FM91 554 (£13 080). These losses related mainly to costs incurred for cleaning polluted salmon traps. The IOPC Fund requested more information so as to

enable it to establish whether the salmon traps were actually polluted by oil from the ANTONIO GRAMSCI. However, the IOPC Fund was later informed that no claims would be pursued in respect of these losses.

USSR Claims

Since the USSR was not 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, was not covered by the Fund Convention. However, claims in respect of pollution damage in the USSR would be compensated under the Civil Liability Convention and would 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 was of importance in establishing the extent of the IOPC Fund's obligation to pay compensation for pollution damage in Finland.

Two claims in respect of clean-up operations in the USSR gave rise to questions of the reasonableness of certain operations and the tariffs applied in respect of vessels and personnel. A claim for Rbls1 176 817 (£1 097 270) related to the operating costs for a vessel used to collect oil in Soviet territorial waters. The P & I insurer and the IOPC Fund considered that the amounts claimed in respect of certain elements of the claim were not reasonable. In October 1989, this claim was settled at Rbls500 000 (£466 200). A claim in the amount of Rbls587 469 (£547 760) covered the use of two vessels for clean-up operations. This claim was settled in February 1990 at Rbls481 000 (£448 480).

A claim relating to environmental damage was submitted by the Estonian State Committee for Environmental Protection and Forestry. The amount claimed (Rbls712 200, corresponding to £664 060) had been arrived at by the application of a formula, the so-called "metodika", 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.

A similar claim was made by the USSR authorities in connection with the first ANTONIO GRAMSCI incident which took place in February 1979 and caused pollution damage in Sweden, Finland and the USSR. After having examined the question of the admissibility of claims for damage to the marine environment, the IOPC Fund Assembly 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". Following the adoption of this Resolution, a special Working Group set up by the Assembly to consider the admissibility of claims came to the conclusion that compensation could be granted only if a claimant had suffered quantifiable economic loss. The position taken by the Working Group was endorsed by the Assembly.

The Estonian State Committee's claim in the second ANTONIO GRAMSCI case was discussed by the Executive Committee in October 1988. Referring to the above-mentioned Resolution, the Executive Committee expressed its objection to this claim. In the view of the Executive 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" adopted by the Assembly. The Executive Committee instructed the Director to negotiate with the USSR authorities on the basis of this Resolution.

This claim was also questioned by the IOPC Fund and the P & I insurer with regard to the application of the "metodika". The calculation of the amount of damage claimed was based on the quantity of oil allegedly collected in USSR territorial waters. The experts used by the IOPC Fund and the insurer maintained, however, that the quantity of oil actually collected in USSR territorial waters was less than the quantity used for the purpose of these calculations. In addition, it was argued that the quantity collected consisted partly of water.

During the negotiations that took place in 1989, the Estonian State Committee maintained its claim, on the ground that the claim was based on the "metodika" which formed part of Soviet law and which therefore had to be applied by the USSR courts. However, the Estonian State Committee re-examined the documentation and found that the observations of the IOPC Fund and the insurer as to the calculations were justified. The Estonian State Committee therefore revised the calculations and reduced the amount claimed from Rbls712 200 to Rbls436 448 (£406 950). This amount was not challenged by the IOPC Fund, and the claim so revised was accepted by the shipowner and the P & I insurer.

In October 1989, the Executive Committee reiterated its objection to the claim submitted by the Estonian State Committee. On the basis of legal advice obtained by the Director, the Executive Committee expressed the opinion that it would be possible for the IOPC Fund to intervene in the proceedings in the competent USSR Court (the Court in Riga) in order to challenge the claim submitted by the Estonian State Committee on the ground that the claim was at variance with the definition of "pollution damage" in the Civil Liability Convention, as interpreted by the IOPC Fund Assembly. However, the Executive Committee recognised that such an intervention would raise a number of complex legal issues and would be very costly. It also took into account the fact that the USSR was not Party to the Fund Convention at the time of the incident. In addition, the Executive Committee recognised that, in view of the reductions in the Finnish Government's claim and in the Estonian State Committee's claim, the financial consequences for the IOPC Fund of an acceptance by the Court of the Estonian State Committee's claim would be rather limited. For these reasons, the Executive Committee decided that the IOPC Fund should not intervene in the proceedings in the Court of Riga to challenge the latter claim. The Executive Committee instructed the Director to inform the Court, in an appropriate way, of the position of the IOPC Fund in respect of this claim and, in particular, of the principles embodied in the 1980 Resolution. In accordance with these instructions, the Director informed the Court in February 1990 of the Fund's position.

Distribution of Limitation Fund

A limitation fund amounting to Rbls2 431 854 (£2.3 million) had been established with the Court in Riga on behalf of the owner of the ANTONIO GRAMSCI, for the purpose of limiting his liability under the Civil Liability Convention.

In February 1990, the parties reached agreement on the distribution of the limitation fund. It was agreed between the parties that, for the purpose of that distribution, the amount at which the Finnish Government's claim had been settled should be converted into Roubles at the official rate of exchange prevailing at the date of the establishment of the limitation fund.

The Court rendered its decision on the distribution of the limitation fund in May 1990, in accordance with the agreement reached between the parties. Under that decision, the Finnish Government received Rbls1 202 066, which, converted into Finnish currency at the rate of the date of payment, corresponded to FM7 908 326 (£1 157 575).

Payment by the IOPC Fund

After having been informed of the distribution of the limitation fund, the IOPC Fund paid in July 1990 the remaining part of the Finnish Government's claim, viz FM9 758 250 - FM7 908 326 = FM1 849 924 (£268 982).

Since the ANTONIO GRAMSCI was flying the flag of a State not Party to the Fund Convention, the shipowner was not entitled to indemnification under Article 5 of the Fund Convention.

AKARI

(United Arab Emirates, 25 August 1987)

The Incident

While outside Dubai (United Arab Emirates), the Panamanian coastal tanker AKARI (1 345 GRT) had a switchboard fire on 24 August 1987 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 on 25 and 26 August 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 is estimated that 30-40 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. Onshore clean-up was carried out 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.

The limitation amount applicable to the AKARI under the Civil Liability Convention is estimated at 121 500 Special Drawing Rights (£90 400).

The Claims

At the time of the incident the AKARI was entered with the Shipowners' Mutual Protection and Indemnity Association Ltd (Shipowners' Club). Claims for clean-up costs, totalling approximately £435 000, were submitted at an early stage to the Club by several private claimants and public bodies.

According to information given to the IOPC Fund Secretariat in the spring of 1989 by the lawyer acting for the shipowner, the claims for compensation would not be pursued. However, further investigations carried out by the Director indicated that it could not in fact be ruled out that claims would be actively pursued against the shipowner and the insurer, and consequently also against the IOPC Fund.

Any claims would become time-barred after the expiry of a period of three years from the date when the damage occurred (ie on or shortly after 25 August 1990), in accordance with Article VIII of the Civil Liability Convention and Article 6.1 of the Fund Convention. For this reason, in June 1990 the IOPC Fund, through its lawyers in Dubai, made contact with the persons whom the Fund had reason to believe had suffered damage as a result of the incident and drew their attention to their right to obtain compensation from the IOPC Fund and the necessity of bringing legal action against the shipowner before 25 August 1990, so as to prevent the claims from being time-barred. Although the Director considered that the shipowner was financially incapable of meeting his obligations, the Director nevertheless requested the claimants to bring legal action against the shipowner, in order to avoid the claims being time-barred. The claimants were informed that as soon as such actions had been brought, the Fund would enter into negotiations with them for the purpose of arriving at an out-of-court settlement.

As a result of these contacts, the following claimants brought legal actions against the owner of the AKARI in the Court of Dubai and notified the IOPC Fund of the actions under Article 7.6 of the Fund Convention:

	Amount Claimed	£ (estimate)
Coast Guard of the United Arab Emirates	Dhs204 050	29 010
Dubai Petroleum Company	US\$148 740	77 070
Dubai Aluminium Company	Dhs401 455	57 080
Dubai Municipality	Dhs256 006	36 400
Dubai Electricity Company	Dhs50 514	7 180
Smit Tak International	US\$176 941	<u>91 680</u>
		<u>298 420</u>

The claims have been examined by the IOPC Fund Secretariat, which has requested further documentation in support of the claims. In view of the replies received, the claim by Dubai Electricity Company has been accepted by the Fund for the amount claimed, ie Dhs50 514 (£7 180). Discussions are being held with the other claimants.

Negotiations with the Shipowner and the P & I Insurer

Under Article 4.1(b) of the Fund Convention, the IOPC Fund is liable to pay compensation if the owner liable for the damage under the Civil Liability Convention is financially incapable of meeting his obligations in full and if any insurance provided under Article VII of the Civil Liability Convention does not cover or is insufficient to satisfy the claims for compensation for the damage. Under the Fund Convention, the shipowner is treated as financially incapable of meeting his obligations if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the Civil Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him.

The owner of the AKARI is a company incorporated in Liberia. After extensive enquiries by the IOPC Fund Secretariat, the Director became convinced that the shipowner was financially incapable of meeting his obligations under the Civil Liability Convention; the only asset appears to have been the AKARI, which was sold as scrap after the incident. Although there were reasons to believe that the AKARI was not seaworthy at the time of the incident and that the shipowner would not be entitled to limit his liability, the Director did not consider it meaningful to take any action against the shipowner in an attempt to recover the amounts which would be paid by the IOPC Fund to claimants.

Under Article VII.1 of the Civil Liability Convention, the owner is required to maintain insurance in respect of any ship registered in a Contracting State and carrying more than 2 000 tonnes of oil in bulk as cargo. At the time of the incident the AKARI was carrying only 1 899 tonnes and was therefore not under any obligation to maintain insurance in accordance with the Convention.

The Director held several meetings with those representing the Shipowners' Club and the shipowner to discuss the legal problems involved. It was apparent that the shipowner had no assets and would not, without the Club's support, establish a limitation fund. The Club made it clear that it would not constitute any such fund. The Club consistently refused to confirm that the AKARI was insured with it in respect of matters flowing from this incident and subsequently stated that the vessel was not insured for such matters. The Club argued that the right of direct action against the insurer under Article VII.8 of the Civil Liability Convention did not apply in this case, since the ship was carrying less than 2 000 tonnes of oil. This argument was not accepted by the Director who maintained that a right of direct action against the Club as the shipowner's liability insurer did exist. Finally, after protracted discussions, the Club offered to make an ex gratia payment of US\$160 000 to the IOPC Fund, recognising its potential liabilities to third parties but without any admission on this issue.

In view of the financial situation of the shipowner, the uncertainty surrounding the outcome of any direct action against the Club and the likely high costs of litigation, the Director considered that the best course of action was to accept the Club's offer of an ex gratia payment of US\$160 000 (£82 900), without in any way conceding the validity of the Club's contention that no right of direct action existed. In consideration of this payment, he gave an undertaking, on behalf of the IOPC Fund, not to pursue



AKARI Incident - Boom deployment



TOLMIROS Incident - Clean-up operations on polluted coast

any claims against the owner of the AKARI or against the Club and to hold the owner and the Club harmless for any claim for compensation for pollution damage arising out of this incident. An agreement to this effect was signed by the IOPC Fund and the Club on 20 August 1990.

In October 1990, the Executive Committee noted with satisfaction the Director's initiative to make the persons who had suffered pollution damage aware of their right to obtain compensation from the IOPC Fund. It agreed with the position taken by the Director in respect of what steps the claimants should be requested to take in order to establish that the shipowner should be treated as financially incapable of meeting his obligations.

TOLMIROS

(Sweden, 11 September 1987)

The Incident

On 11 September 1987 a Swedish passenger ferry sighted an oil slick which was two nautical miles long and one mile wide off the Skaw, the northern point of Jutland (Denmark), and reported its observations to the Swedish authorities which immediately commenced air reconnaissance flights. The prevailing winds and currents caused the oil to drift rapidly towards the west coast of Sweden. As the slick spread over a large area of the sea, no effective measures could be taken to prevent the oil from reaching the coast.

The oil started reaching the Swedish coast in the evening of 11 September 1987. It is estimated that 200 tonnes of oil came ashore. Extensive pollution was caused to a long stretch of coast, north of Gothenburg. The affected region consists of numerous small islands and a rocky mainland coast. The area is of great importance to tourism and some fishing activities are carried out there.

The clean-up operations at sea were carried out by the Swedish Coast Guard, whereas the onshore clean-up was the responsibility of the municipalities concerned. Extensive operations to clean the shoreline were carried out during the period September 1987 - December 1988 and also during the summer of 1989. The Swedish Government has reimbursed the municipalities for the costs incurred by them as a result of the incident.

The Legal Action

In August 1990, the Swedish Government took legal action in the Court of Gothenburg against the owner of the Greek vessel TOLMIROS (48 914 GRT) and his P & I insurer, Assuranceforeningen Gard (the Gard Club), claiming compensation for pollution damage. The Swedish Government's claim totals SKr100 639 999 (£9.3 million). The IOPC Fund was notified of the action, in accordance with Article 7.6 of the Fund Convention. The Fund availed itself of its right to intervene as a party to the legal proceedings, pursuant to Article 7.4. It should be noted that the claims arising out of this incident would have been time-barred on or shortly after 11 September 1990, ie on the expiry of the three-year periods laid down in the Civil Liability Convention and the Fund Convention.



The limitation amount applicable to the TOLMIROS under the Civil Liability Convention is approximately SKr55 million (£5.1 million).

Position of the Swedish Government

The Swedish Government has alleged that the oil causing the pollution emanated from the TOLMIROS and that the TOLMIROS at the time of the incident was carrying oil in bulk as cargo. The Swedish Government's pleadings to the Court in support of its claim can be summarised as follows:

The oil which polluted the coast was a Venezuelan crude oil with high asphalt content and special characteristics. The Swedish authorities investigated which ships, during the relevant period, had transported oil of the type in question in northern European waters. This investigation showed that only two vessels could have been involved, viz the French tanker CHRISTINA and the above-mentioned Greek tanker TOLMIROS. With regard to the CHRISTINA, an investigation was made of her journey, the quantities of oil in her tanks on departure from the previous port and the quantities remaining on arrival at the next port. The results of this investigation showed that the CHRISTINA could not have been the source of the spill. Samples of the oil taken from the cargo discharged by the TOLMIROS in Gothenburg were compared with samples of the oil which had polluted the coast, and this comparison showed that the samples corresponded very closely. When the TOLMIROS was discharging its cargo in Gothenburg, certain problems arose as the storage tank in the port became over-full. For this reason, it was not possible to discharge the entire cargo. In addition, it was not

possible to dispose of the cargo oil remaining in the vessel's pump and pipe system and in the lines ashore by the method normally used (so-called "blowing"). The exact quantity of the cargo oil remaining in the TOLMIROS on leaving Gothenburg cannot be indicated, but the quantity which had not been discharged was substantial.

As a subsidiary ground for its action, the Swedish Government has based its claim on the Swedish legislation relating to oil pollution damage caused by ships not covered by the Civil Liability Convention, should it be considered that the TOLMIROS was not carrying oil in bulk as cargo.

The Swedish Government has not yet submitted any documents relating to the quantum of its claim.

Position of the Shipowner and the Gard Club

In their pleadings to the Court, the owner of the TOLMIROS and the Gard Club have rejected any liability for the damage caused by this oil spill, and have taken the position that the oil which polluted the coast did not come from the TOLMIROS. They have pointed out that a thorough investigation undertaken by the Greek authorities at the request of the Swedish Government acquitted the TOLMIROS of the allegation of having caused the spill. The owner and the Gard Club have not taken any position as to whether the vessel was carrying oil in bulk as cargo during its voyage from Gothenburg.

IOPC Fund's Position

Under Article 4.2(b) of the Fund Convention, the IOPC Fund shall incur no obligation to pay compensation for pollution damage if the claimant cannot prove that the damage resulted from an incident involving one or more ships. A "ship" is defined in the Civil Liability Convention and the Fund Convention as "any sea-going vessel and any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo".

The IOPC Fund has not had access to any documents setting out the results of the tests carried out on the oil samples collected by the Swedish authorities. For this reason, the Director is not yet in a position to express any opinion as to whether the oil which polluted the coast was released from the TOLMIROS. As for the question of whether the TOLMIROS was actually carrying oil in bulk as cargo during her voyage from Gothenburg, the Swedish Government has not presented any details in support of its position. On the basis of the facts known so far, the Director's initial view is that the TOLMIROS could not be considered as having been carrying oil in bulk as cargo during that voyage. According to a "dry certificate after discharging" issued by an independent inspector in Gothenburg, all the tanks of the TOLMIROS were empty and dry on completion of the discharge. Consequently, the Director believes that the Civil Liability Convention and the Fund Convention would not apply, even if it were proved that the oil which polluted the coast came from the TOLMIROS.

In a written submission to the Court, the IOPC Fund has supported the position of the shipowner and the Gard Club, ie that the oil which polluted the coast did not come from the TOLMIROS.

AMAZZONE

(France, 31 January 1988)

The Incident

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 butterworth holes (access points for tank washing) of two cargo tanks and, as a result, approximately 2 000 tonnes of the cargo escaped, displaced by seawater entering the open holes. Over the following three to four weeks, oil came ashore in patches along 450-500 kilometres of coastline, affecting four different 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 on shore, 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.

As for the island of Guernsey, five to ten kilometres of coast were contaminated. About 500m³ of oily debris were collected. In Jersey approximately 15 kilometres of coast were contaminated with weed mixed with oil. A total of 65m³ of oily waste was collected.

In Antwerp (Belgium), where the vessel called after the incident, the Commercial Court appointed a legal expert with the task of establishing the cause of the incident. This expert issued a preliminary report stating that the excessive diameter of the butterworth holes was the main cause of the incident. In the context of a criminal investigation, an investigating judge (juge d'instruction) in Paris appointed two technical experts for the same purpose. The findings of the judge have not yet been published.

Constitution of Limitation Fund

The limitation amount of the shipowner's liability was provisionally fixed by the Court in Brest at FF13 612 749 (£1 386 230). The limitation fund was constituted in February 1988 in the Court by the shipowner's insurer (the Standard Steamship Owners' Protection and Indemnity Association Ltd) 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 860 369 (£1 411 440). A request by the Standard Club for an adjustment of

the limitation amount was rejected by the Court on formal grounds. The French Government appealed against this decision. In July 1990, the Court adjusted the limitation amount as requested by the Government.

In the Italian registration document the vessel was registered in the name of two persons, indicated as "proprietary" and "armatore". The limitation fund was therefore constituted on behalf of these two persons. The IOPC Fund objected to this procedure, and after discussions with the Standard Club and the French lawyer representing the Club and the shipowner, it was agreed that the limitation fund should be established on behalf of only the person indicated in the registration document as "proprietary". A request by the Standard Club to the Court that the decision relating to the setting up of the limitation fund should be amended to this effect was rejected by the Court on formal grounds. The French Government appealed also against this decision. The appeal was allowed in July 1990.

In October 1990, the Executive Committee took the position that only one person, ie the registered owner, could benefit from the right of limitation under the Civil Liability Convention.

The Claims

In 1990, the French Government submitted a claim at an aggregate amount of FFr22 255 375 (£2.3 million), covering the operations carried out by the Ministries concerned. Discussions are being held concerning this claim.

A claim was submitted by the Department of Côtes-du-Nord for an amount of FFr141 326 (£14 390) plus interest. This claim was accepted in full. In addition, 25 communes in Côtes-du-Nord have claimed a total amount of FFr914 464 (£93 120) plus interest. These claims were settled in December 1990 at an aggregate amount of FFr814 964 (£82 990) plus interest.

It is possible that the Department of Calvados will claim compensation for the cost of the disposal of collected oily waste.

15 communes in Calvados have claimed compensation for clean-up costs, totalling FFr146 138 (£14 880). After an examination of the claims documents, the IOPC Fund has requested further information on a number of points.

Claims for clean-up costs were submitted by the authorities in Jersey and in Guernsey in the amounts of £11 380 and £13 396, respectively. These claims were accepted in full and were paid by the IOPC Fund in July and November 1990, when a preliminary examination of the French Government's claim had shown that the IOPC Fund would be called upon to pay compensation as a result of this incident.

Claims submitted by five French fishermen for a total amount of FFr249 102 (£25 370) were settled at an aggregate amount of FFr145 850 (£14 870). The claims were paid by the Standard Club during the period October 1988 - September 1990. A private organisation submitted a claim relating to the cost of cleaning oiled sea-birds in the amount of FFr50 949 (£5 190). This claim, which was accepted in full, was paid by the Club in May 1990.

CZANTORIA

(Canada, 8 May 1988)

The Canadian tanker CZANTORIA (81 197 GRT) struck a berth in St Romuald, Quebec (Canada). As a result of the incident, some of the oil cargo was spilled into the St Lawrence River. It has been alleged that the spilt oil caused some pollution damage.

The owners of the cargo of the CZANTORIA and the charterers of the vessel brought legal action in the Federal Court of Canada against the owner of the CZANTORIA claiming compensation for any loss they had suffered as a result of the incident, estimated at Can\$1.8 million (£800 000), including costs for pollution damage. The IOPC Fund was notified of the legal action in May 1990.

The Director informed the plaintiffs that as the Fund Convention only entered into force for Canada on 24 April 1989, ie after the incident, the IOPC Fund was not liable to pay any compensation in respect of this incident. In response, the plaintiffs stated that the transitional provisions of the 1989 amendments to the Canada Shipping Act provided that the new legislation applied in respect of damage incurred after the coming into force of the amendments, regardless of the time of the occurrence that gave rise to the damage. The plaintiffs alleged that in the CZANTORIA case some damage was caused after 24 April 1989 and maintained that the new legislation applied to such damage.

As regards the interpretation of the Conventions on this point, the Executive Committee took the position that the Civil Liability Convention and the Fund Convention did not apply to damage sustained in a given State after the entry into force of the respective Conventions for that State resulting from an incident which occurred before the entry into force; consequently, there was no right of compensation from the IOPC Fund in this case. The plaintiffs were informed of the position taken by the Committee, but they have not submitted any response.

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 in the Kyoto prefecture (Japan). The sunken tanker, lying at a depth of approximately 270 metres, was leaking oil. Extensive fishing is carried out by local fishermen in the area around the site of the incident.

The clean-up operations were organised by the Japan Maritime Disaster Prevention Centre in accordance with the directives given by the Maritime Safety Agency. At the height of the activities there were some 13 vessels and four helicopters involved. The purpose of the operations was to prevent surfacing oil from coming ashore by applying dispersants, mainly from helicopters. It is estimated that about 200 tonnes of dispersants were applied during the spraying operation. A reduction in

the quantities of oil surfacing over the wreck was observed by the end of December 1988 and the operations were then scaled down. In March 1989 the response activities were reduced further to an occasional monitoring of the oil quantities surfacing over the site of the wreck.

All claims for compensation presented so far were settled and paid during the period October - December 1989. The settlements can be summarised as follows:

	Claimed ¥	Agreed ¥
Maritime Safety Agency	9 615 650	9 615 650
JMDPC and 13 sub-contractors	138 491 977	116 142 701
Shipowner and 7 sub-contractors	291 657 092	263 121 856
Four Fisheries co-operative associations	<u>129 842 781</u>	<u>53 500 000</u>
	569 607 500	442 380 207
	(¥2.2 million)	(£1.7 million)

The payments made by the IOPC Fund total ¥425 365 167 (£1 887 819), representing the aggregate amount of the agreed claims minus the shipowner's liability of ¥17 015 040.

There is no reliable estimate of the quantity of oil remaining in the sunken vessel. Some oil is still leaking from the wreck. For this reason, further claims against the IOPC Fund cannot be ruled out, although it is unlikely that such claims will be submitted.

Indemnification of the shipowner, ¥4 253 760 (£16 250), has not yet been paid, as the limitation proceedings have not been completed.

NESTUCCA

(Canada, 23 December 1988)

While manoeuvring to reconnect a broken line, the tug OCEAN SERVICE struck the barge NESTUCCA (1 612 GRT) off Grays Harbour on the Pacific coast of the State of Washington (United States of America). The barge was fully laden with heavy fuel oil, and a tank containing about 800 tonnes was holed as a result of the impact. In order to minimise the pollution, the barge was towed out to sea until a temporary patch could be fitted. Initially, the shoreline immediately north of Grays Harbour was oiled. Early in 1989 shoreline impacts further north were reported, as isolated and scattered patches went ashore along the Pacific coast of Vancouver Island in British Columbia (Canada).

In 1990, claims totalling Can\$10 475 (£4 675) were submitted to the IOPC Fund by 12 voluntary workers who participated in the clean-up of the shore of Vancouver Island. As this incident took place before the entry into force of the Fund Convention in respect of Canada, the IOPC Fund rejected these claims, in accordance with the position taken by the Executive Committee in the CZANTORIA case.

FUKKOL MARU N°12

(Japan, 15 May 1989)

The Japanese tanker FUKKOL MARU N°12 (94 GRT) was supplying heavy fuel oil to a fishing boat at Shiogama (Japan) through a hose connected to a tank on board the fishing boat, when some oil overflowed and spread on the deck of that boat and partly flowed over into the sea and onto a pier. Some fishing nets on the pier as well as cars parked there became contaminated by the oil.

Claims were submitted relating to expenses for clean-up operations at sea, for washing polluted cars and for replacing polluted fishing nets, totalling ¥2 691 035 (£10 280). These claims were accepted in full.

In January 1990, the IOPC Fund paid ¥492 635 (£2 041) in compensation, representing the total amount of the agreed claims minus the shipowner's liability amount under the Civil Liability Convention (¥2 198 400), as well as indemnification of the shipowner, ¥549 600 (£2 277).

TSUBAME MARU N°58

(Japan, 18 May 1989)

During a transfer of heavy fuel oil from the Japanese tanker TSUBAME MARU N°58 (74 GRT) to a fishing boat at Shiogama (Japan), a crew member erroneously put the nozzle of the supply line into a cargo hole instead of into the inlet to the bunker tank. As a result of this mistake about seven tonnes of oil entered into the cargo tank and polluted about 140 tonnes of fish which had been loaded as cargo in that tank. No oil escaped into the sea as a result of the incident.

In this case, the question arose as to whether the damage resulting from the incident fell within the definition of "pollution damage" laid down in the Civil Liability Convention. The notion of "pollution damage" covers damage by contamination caused outside the ship carrying the oil which caused the damage. The IOPC Fund had, in previous cases in Japan, paid compensation for damage caused by an overflow of oil during the transfer of oil from a tanker to another vessel, but in those cases the oil had escaped into the sea and necessitated clean-up operations. The TSUBAME MARU N°58 case was different in that no oil escaped into the sea and no clean-up operations took place. However, the Executive Committee decided in 1989 that the damage in this case should also be considered as being covered by the definition of "pollution damage".

Claims were submitted totalling ¥33 349 310 (£127 409) for damage to the fish cargo and for the cost of cleaning the tanks of the fishing vessel. The claims were settled in November 1989 at ¥22 131 425 (£84 550). In May 1990, the IOPC Fund paid ¥19 159 905 (£74 134), representing the amount of the agreed claims minus the shipowner's limitation amount, ¥2 971 520.

Indemnification of the shipowner, ¥742 880 (£2 840), has not yet been paid as the limitation proceedings have not been completed.

TSUBAME MARU N°16

(Japan, 15 June 1989)

Heavy fuel oil was being supplied by the Japanese tanker TSUBAME MARU N°16 (56 GRT) to the fuel tanks of a fishing boat at Kushiro (Japan), when the fuel oil spouted and spilled through a gap in the nozzle of the oil hose of the TSUBAME MARU N°16. The spilt oil polluted some fish which had already been unloaded from the fishing vessel onto the pier. No oil escaped into the water.

Also in this case the question arose as to whether the damage resulting from the incident was covered by the definition of "pollution damage" in the Civil Liability Convention. The Executive Committee decided in 1989 that the damage fell within that definition.

A claim was submitted in respect of the damage to the unloaded fish in the amount of ¥1 886 700 (£7 210). This claim was accepted in full.

In May 1990, the IOPC Fund paid ¥273 580 (£1 043) in compensation, representing the amount of the agreed claim minus the amount of the shipowner's liability (¥1 613 120), as well as the indemnification of the shipowner, ¥403 280 (£1 538).

KIFUKU MARU N°103

(Japan, 28 June 1989)

The Japanese tanker KIFUKU MARU N°103 (59 GRT) was supplying heavy fuel oil to a fishing boat in the port of Otsuji, Iwate prefecture (Japan). Towards the end of the operation, the fuel oil was by mistake supplied into a fresh water tank instead of a fuel tank, and oil overflowed onto the deck of the fishing boat. A small quantity of oil escaped into the sea. Some fishing nets on board the fishing boat were polluted and had to be cleaned. A small scale clean-up operation at sea was undertaken.

Claims totalling ¥12 100 640 (£46 230) were submitted. The claims related to costs for cleaning the polluted nets (¥11 516 440) and costs for clean-up operations at sea (¥584 200). The claims were settled in November 1989 at an aggregate amount of ¥10 013 000 (£38 250).

In January 1990, the IOPC Fund paid ¥8 285 960 (£34 325) in compensation representing the amount of the agreed claims minus the shipowner's liability under the Civil Liability Convention (¥1 727 040), as well as indemnification of the shipowner, ¥431 760 (£1 789).

NANCY ORR GAUCHER

(Canada, 25 July and 10 August 1989)

The Liberian tanker NANCY ORR GAUCHER (2 829 GRT) spilled about 250 tonnes of her cargo of asphalt during a violent tank overflow whilst discharging at an asphalt plant in Hamilton Harbour, Ontario (Canada) on 25 July 1989. The asphalt

contaminated much of the vessel's deck, and a significant quantity of the asphalt sank to the harbour bed as a strip immediately around the vessel. The Canadian authorities insisted on the sunken asphalt being retrieved. Between 250m³ and 300m³ of asphalt and sediments were recovered by dredging operations. The deck and hull of the vessel were cleaned.

The claims resulting from this incident totalled Can\$648 743 (£289 620). More than half of the amount claimed (Can\$356 000) related to the costs incurred by the shipowner for cleaning the deck and hull of the **NANCY ORR GAUCHER**. The IOPC Fund took the position that the operations for cleaning the hull and deck of the vessel did not fall within the definitions of "pollution damage" and "preventive measures" laid down in the Civil Liability Convention and the Fund Convention. The Fund pointed out that the notion of pollution damage covered damage by contamination outside the ship carrying the oil, and costs of preventive measures, ie measures to prevent or minimise pollution damage. The IOPC Fund also drew attention to the physical properties of the substances in this case. Although the asphalt was fluid when released, it would have cooled and turned solid so that only a small portion could have flowed overboard into the water. For this reason, the Fund was of the opinion that, except during a short period after the incident, the asphalt on the deck and the hull of the vessel did not present any danger of pollution. With the exception of the measures taken during the first few hours, those taken to clean the deck and hull could not, in the Fund's view, be considered as having been taken for the purpose of preventing or minimising pollution damage. The IOPC Fund rejected therefore the parts of the claim relating to the costs for cleaning the deck and hull but accepted 5% of these costs as the estimated expenses for the measures taken during the initial hours after the spill, ie Can\$18 058. The Fund's position was accepted by the shipowner.

The total amount of the accepted claims relating to this spill was Can\$292 110 (£130 410). As this amount fell well below the limitation amount of the shipowner (Can\$473 766), the IOPC Fund was not called upon to make any payments of compensation or indemnification as a result of the spill in Hamilton.

From Hamilton, the **NANCY ORR GAUCHER** proceeded to Montreal, Quebec (Canada) with the rest of her cargo. On 10 August 1989, there was a new eruption of asphalt which spilled onto the deck and over the ship's side into the St Lawrence River. The vessel had to be cleaned, and certain operations were carried out to collect the asphalt that had escaped into the water.

The claims in respect of the spill in Montreal totalled Can\$289 123 (£129 070). As the limitation amount of the **NANCY ORR GAUCHER** in respect of this latter spill was Can\$470 587, the IOPC Fund was not called upon to make any payment as a result of that spill. In addition, the IOPC Fund informed the claimants that the major part of the claims which related to the cleaning of the hull and deck (approximately Can\$251 000) did not fall within the definition of pollution damage, for the reasons given above in respect of the spill in Hamilton.

DAINICHI MARU N°5

(Japan, 28 October 1989)

During the transfer of heavy fuel oil from the Japanese tanker DAINICHI MARU N°5 (174 GRT) to a fishing boat in the port of Yaizu (Japan), a cargo hose was mishandled, resulting in a small quantity of oil flowing into a cargo hold. No oil spilled into the sea.

In this case the question arose of whether the cost of cleaning the cargo hold should be considered as being covered by the definition of "pollution damage" laid down in the Civil Liability Convention. In view of the position taken in respect of the TSUBAME MARU N°58 incident, the IOPC Fund accepted that also the damage caused to the cargo in the DAINICHI MARU N°5 case should be considered as falling within that definition.

This incident resulted in claims totalling ¥7 444 722 (£28 440). In March 1990, the IOPC Fund approved the claims for a total of ¥6 360 290 (£24 300), out of which ¥5 255 028 related to loss of earnings for the owner of the fishing boat and ¥1 105 262 related to compensation for damage to that boat. In June 1990, the IOPC Fund paid ¥2 160 610 (£8 123), representing the total amount of the accepted claim minus the shipowner's limitation amount, ¥4 199 680 (£15 790).

Indemnification of the shipowner, ¥1 049 920 (£4 010), has not yet been paid, as the limitation proceedings have not been completed.

DAITO MARU N°3

(Japan, 5 April 1990)

The Japanese tanker DAITO MARU N°3 (93 GRT) was transferring heavy fuel oil to a barge in the port of Yokohama (Japan). Due to mishandling of a hose, about three tonnes of the oil leaked into the sea and polluted other vessels and barges in the port. The clean-up operations were completed within two days.

Claims relating to the cost of the clean-up operations were submitted for a total amount of ¥10 021 996 (£38 290). The claims were approved for ¥7 985 930 (£30 510).

In view of the disproportionately high legal costs that would be incurred in establishing the limitation fund compared with the low limitation amount under the Civil Liability Convention, the Executive Committee decided that the IOPC Fund could, as an exception, pay compensation in this case without the limitation fund being established.

In December 1990, the IOPC Fund paid ¥5 490 570 (£21 414), representing the total amount of the agreed claim minus the shipowner's liability (¥2 495 360), as well as indemnification of the shipowner, ¥623 840 (£2 433).

KAZUEI MARU N°10

(Japan, 11 April 1990)

While the Japanese tanker KAZUEI MARU N°10 (121 GRT) was supplying heavy fuel oil to a ferry in the port of Osaka (Japan), it collided with a cargo vessel. As a result of the collision, a cargo tank of the KAZUEI MARU N°10 was damaged, and some 30 tonnes of the cargo oil escaped into the sea. The spilt oil spread over the port area, and some oil drifted outside the port. The clean-up operations lasted five days.

Claims totalling ¥61 181 038 (£233 740) were submitted in December 1990 in respect of the clean-up operations. In addition, a fishery association presented a claim for ¥691 364 (£2 640) relating to contamination of fishing nets and loss of earnings. These claims are being examined by the IOPC Fund's Secretariat. Further claims may be presented.

The limitation amount applicable to the KAZUEI MARU N°10 is ¥3 474 880 (£13 280).

FUJI MARU N°3

(Japan, 12 April 1990)

Heavy fuel oil was being supplied by the Japanese tanker FUJI MARU N°3 (199 GRT) to an unladen tanker (the KAIEI MARU N°3) in the port of Yokohama (Japan), when a small quantity of oil escaped into the sea due to oversupply. The spilt oil spread rapidly in the port area. The clean-up operations lasted three days.

Claims for clean-up costs, totalling ¥6 567 037 (£25 090), were submitted by private contractors. The claims were settled in December 1990 at ¥6 567 037 (£25 090) but have not yet been paid.

The limitation amount applicable to the FUJI MARU N°3 is estimated at ¥5 094 400 (£19 460).

An investigation into the cause of the incident showed that both vessels were to blame but that the main responsibility for the spill fell on the FUJI MARU N°3. An agreement was reached between the KAIEI MARU N°3 interests and the FUJI MARU N°3 interests, including the IOPC Fund, on an apportionment of liability of 30:70 in favour of the KAIEI MARU N°3. The FUJI MARU N°3 interests will therefore recover ¥1 634 524 from the owner of the KAIEI MARU N°3, of which the IOPC Fund will receive ¥430 329 (£1 640).

VOLGONEFT 263

(Sweden, 14 May 1990)

The USSR tanker VOLGONEFT 263 (3 566 GRT) collided in thick fog with the general cargo vessel BETTY (499 GRT), registered in the Federal Republic of Germany, 22 kilometres off the Swedish east coast, south of Karlskrona. The VOLGONEFT 263, which was carrying 4 546 tonnes of waste oil, suffered damage to two cargo tanks and it is estimated that 800 tonnes of oil escaped into the sea.

The coastal region north of where the collision occurred is an archipelago consisting of numerous small islands, inlets and very shallow water. Extensive fishing activities are carried out in the region. The spilled oil spread rapidly over a large area of the sea. The Swedish Coast Guard took extensive measures to combat the oil at sea. As the conditions for offshore recovery were ideal, the Swedish authorities decided to request assistance from the neighbouring countries in accordance with the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention). In response Denmark, Finland, the Federal Republic of Germany and the USSR each sent a combating vessel, and these units arrived at the site of the spill during the second and third day after the collision. Nine recovery vessels and fifteen support craft participated in the operations. Aircraft and helicopters were used for locating floating oil. As the threat of extensive shore pollution subsided the operations were gradually reduced and were terminated on 27 May 1990. The impact on the coast and islands was very limited, as only small quantities of oil reached the shore.

The Swedish Government has not yet submitted its claim for compensation. It is estimated that the cost of the clean-up operations at sea is at least SKr15 million (£1.4 million). In addition, there will be claims in respect of certain clean-up operations on shore.

A local fisherman suffered considerable damage, as 400 of his salmon nets became polluted and the deck of his fishing boat was damaged by the oil. As the Director considered it necessary in order to mitigate undue financial hardship to the fisherman, the IOPC Fund made provisional payments during the period June - August, totalling SKr442 890 (£41 047). The fisherman's final claim amounted to SKr530 239 (£49 157) and was accepted in full. The balance of the claim was paid in September 1990.

In October 1990, the IOPC Fund approved and paid a claim for SKr6 250 (£573) relating to the cleaning of a polluted pier in a local fishing port.

The VOLGONEFT 263 is owned by a USSR company. The vessel did not have any P & I insurance but was covered by a State guarantee, in accordance with Article VII.12 of the Civil Liability Convention.

The Swedish Government has taken legal action against the owner of the VOLGONEFT 263 in the Court of Kalmar, claiming compensation for oil pollution damage. The shipowner has made a request to the Court for the constitution of a limitation fund in the amount of SKr3 123 585 (£287 490). The IOPC Fund has been notified of the court action pursuant to Article 7.6 of the Fund Convention. The Court has been informed that the IOPC Fund intends to intervene in the proceedings pursuant to Article 7.4 of the Convention.

It was alleged by the owner of the VOLGONEFT 263 that the collision was wholly caused by the BETTY, the main reason being that there was no proper watch-keeping on board and that the master of the BETTY was under the influence of alcohol at the time of the collision. However, the master of the BETTY maintained that the blame for the collision fell entirely on the VOLGONEFT 263, which had taken the wrong route, and during the police investigations he claimed that he had not drunk any



VOLGONEFT Incident - German oil recovery vessel in action



RIO ORINOCO Incident - The grounded tanker

alcohol before the collision but that, as a result of the shock caused by the collision, he had drunk alcohol after the event. The Swedish police investigation did not give any conclusive evidence on this point. The limitation amount of the BETTY was estimated at SKr2 million (£184 080). After careful consideration of the matter the IOPC Fund came to the conclusion that it would not be worthwhile to take recourse action against the owner of the BETTY for the purpose of recovering the amount of compensation that the Fund will have to pay as a result of this incident.

HATO MARU N°2

(Japan, 27 July 1990)

The Japanese tanker HATO MARU N°2 (31 GRT) was supplying heavy fuel oil to a dry cargo vessel in the port of Kobe (Japan) when, due to the mishandling of the valve of the hose, the oil spread over the deck and onto the cargo of acrylic fibre in the hold of the cargo vessel. The cargo was contaminated. However, no oil escaped into the sea as a result of the incident.

In this case the question arose of whether the damage caused to the cargo should be considered as being covered by the definition of "pollution damage" laid down in the Civil Liability Convention. In view of the position taken by the IOPC Fund in respect of the TSUBAME MARU N°58 incident, also the damage caused to the cargo of the HATO MARU N°2 will be considered as falling within that definition.

It is estimated that claims for compensation for pollution damage will amount to around ¥2 million (£7 640). The limitation amount applicable to the HATO MARU N°2 is ¥803 200 (£3 070).

For the reason indicated above in respect of the DAITO MARU N°3 case, the Executive Committee decided, as an exception, to waive the requirement to establish the limitation fund in the HATO MARU N°2 case.

BONITO

(United Kingdom, 12 October 1990)

The Swedish registered tanker BONITO (2 866 GRT) spilled about 20 tonnes of heavy fuel oil into the River Thames whilst loading at the Mobil terminal at Coryton (United Kingdom). Most of the oil was confined within the Coryton industrial area where it adhered to the sea walls. Some sheens and scattered tar balls extended into the Thames Estuary. Bulk oil held against the sea walls was collected using vacuum tankers where access was possible. Clean-up of the sea walls themselves was undertaken manually. It was not necessary to achieve a high level of clean-up of these walls, as they were already treated with bitumen, a product which looks and behaves rather like heavy fuel oil, to protect them from sea erosion.

The cost of the clean-up operations carried out so far is estimated at £150 000. However, it is possible that further clean-up operations will have to be carried out, and other third party claims may also be submitted. The limitation amount applicable to the BONITO is approximately £241 000. After allowing for indemnification of the

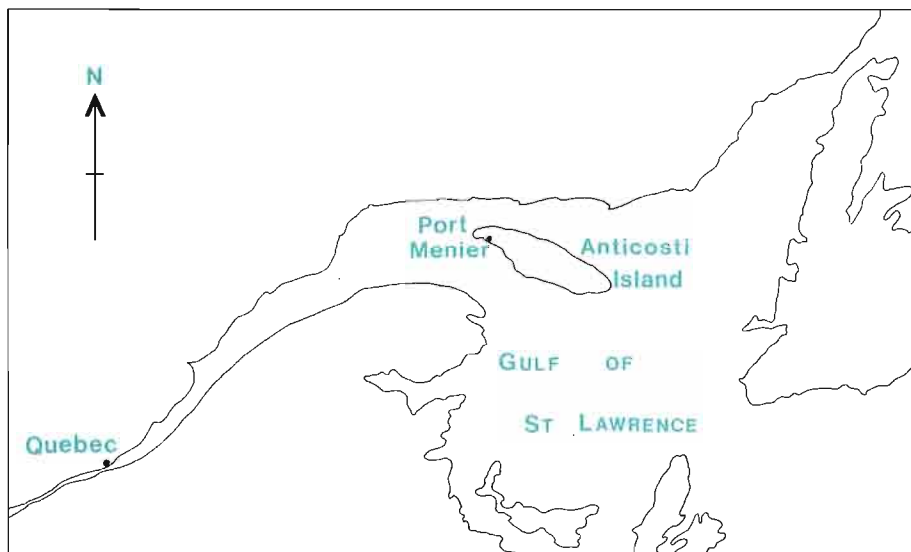
shipowner (£60 250), the IOPC Fund would be called upon to make payments if the aggregate amount of the accepted claims were to exceed around £181 000. It cannot therefore be ruled out that the IOPC Fund will be called upon to pay compensation or indemnification as a result of this incident.

RIO ORINOCO

(Canada, 16 October 1990)

The asphalt carrier RIO ORINOCO (5 999 GRT), registered in the Cayman Islands, experienced problems with her main engine whilst en route from Curacao to Montreal with 9 000 tonnes of heated asphalt cargo and about 300 tonnes of heavy fuel oil and heavy diesel oil on board. When effecting repairs in the Gulf of St Lawrence, the ship dragged anchor in bad weather and grounded on the south coast of Anticosti Island. An estimated 30 - 40 tonnes of the heavy fuel oil was spilled, which came ashore along 10 kilometres of the coast east of the grounding position. No cargo was spilled, and over subsequent weeks the cargo cooled and solidified. Changing weather conditions redistributed some of the beached oil westwards, small amounts reaching Port Menier, eight kilometres west of the grounding position.

The Canadian Coast Guard made attempts to collect oil at sea but with little success in the difficult sea conditions. The operations on shore focused on the cobble and bedrock shorelines typical of this coast. Access to the beaches was difficult as



there are no coastal roads, but a team of about 80 contracted personnel, supported by vessels, helicopters and a hovercraft, were able to clean the most heavily oiled areas manually, reaching the beaches from the sea. Intermittent periods of bad weather and ice formation made clean-up difficult, and the operations were terminated for the winter on 10 November, due to deteriorating conditions. By that time most of the beaches had been cleaned, and the environmental impact is believed to have been minimal. It was agreed with the Canadian authorities that the state of the beaches and the need for additional cleaning would be assessed in the spring of 1991 once weather conditions permitted.

About 220 tonnes of collected oily waste (mainly oiled stones and seaweeds) were transported to Port Menier and stored in containers. Arrangements have been made to dispose of the waste locally by a combination of landfill and biodegradation.

Both the shore cleaning and the disposal operations were carried out by contractors on behalf of the shipowner. The cost of the clean-up operations undertaken so far is estimated at about Can\$2 million (£890 000).

A salvage team arrived at the site of the incident on 17 October. Tugs and equipment were mobilised and a salvage contract (Lloyds Open Form) was signed on 18 October. The weather then deteriorated and the grounded ship moved again, finishing wedged between two rock shelves. The salvage contract was cancelled on 22 October. Members of the salvage team remained on site and preparations to conduct a tow-off using tugs continued. Three attempts to pull the ship free took place between 1 and 5 November but with no success.

The RIO ORINOCO was declared a Constructive Total Loss by the hull insurer (the Swedish Club) on 18 November. The Canadian Coast Guard then assumed control of the ship. Under Canadian law, the Government may take the necessary measures to minimise or prevent pollution from a ship, including the removal and destruction of the ship, when it has reasonable cause to believe that the ship is likely to cause pollution.

The Coast Guard maintained that the ship and the asphalt cargo represented a threat of pollution, as there was a serious risk that the ship would break if left over the winter. Once in the water, the solid but brittle asphalt would break into small pieces which would cause damage by contamination to the shore-line the following summer. In view of the approaching winter, the Coast Guard considered that all options to prevent the ship from losing its cargo should be explored and carried out. The various options available were discussed between the Coast Guard, the shipowner and the IOPC Fund.

It was decided that the remaining bunker oil should be removed to the extent possible. During December 1990 most of the remaining fuel oil and diesel oil was transferred to another vessel. The cost of these operations, which were carried out by contractors on behalf of the shipowner, is estimated at Can\$180 000 (£80 360).

Preparations were made for further attempts to tow the ship off the ground, should the tide and the lighting operations give the ship sufficient buoyancy. In addition, preparations were made for an operation which would aim at lifting the RIO



PORTFIELD Incident - Skimmer operating alongside the partially sunken vessel



PORTFIELD Incident - Polluted Fish Farm

ORINOCO by using barges alongside the grounded vessel. However, due to unusually bad weather it was decided on 21 December to call off any attempt to remove the vessel before winter. The cost of the operations carried out so far by various contractors is estimated at over Can\$4 million (£1.8 million). Renewed attempts to remove the threat of pollution from the cargo will have to be made in the spring of 1991.

The oily waste collected on the beaches and the bunker oil removed from the vessel will have to be disposed of. The cost of the disposal is estimated at about Can\$400 000 (£270 000).

The Coast Guard has informed the IOPC Fund that it has incurred considerable costs as a result of the incident.

So far, the IOPC Fund has not received any formal claims.

The limitation amount applicable to the RIO ORINOCO is estimated at Can\$1 161 485 (£520 000).

PORTFIELD

(United Kingdom, 5 November 1990)

The British tanker PORTFIELD (481 GRT) sank at her berth in Pembroke Dock, Wales (United Kingdom) with a cargo of 80 tonnes of diesel oil and 220 tonnes of medium fuel oil. It is estimated that approximately 110 tonnes of the medium fuel oil was spilled as a result of the sinking.

Due to a favourable wind most of the spilt oil could be contained in the berth by booms deployed by the port authority. This oil was recovered with skimmers and vacuum suction trucks over a period of a week and disposed of at a local refinery. A relatively small proportion of the spilt oil escaped from the confines of the berth on the first day and affected numerous pleasure craft moored in the Milford Haven estuary. The local authorities carried out shore-line cleaning on a small scale at a few key locations. A nearby fish farming facility was also contaminated by oil, but fortunately no fish were being cultivated at the time. After the cargo tanks had been emptied, the ship was refloated on 11 November and the main clean-up operations were terminated soon thereafter.

No claims have so far been submitted in respect of the clean-up operations.

Some 50 owners of pleasure craft have claimed compensation for the cost of cleaning these boats, and the claims total £27 000. These claims are being examined by the IOPC Fund.

The limitation amount applicable to the PORTFIELD is estimated at £39 970.

13 CONCLUDING REMARKS

The worldwide public debate concerning problems relating to oil pollution from ships which resulted from the EXXON VALDEZ incident in Alaska in March 1989 has continued during 1990. Although much of this debate focused on the necessity of enhancing the safety of navigation, of studying tanker design and construction, of improving contingency plans and of developing better equipment and materials for oil spill clean-up, questions of liability and compensation have also been addressed. As a result of this debate, there is an increased awareness in non-Member States of the importance of an effective system for compensating victims of oil pollution damage.

At the International Conference, held in London in November 1990, which adopted the Convention on Oil Pollution Preparedness, Response and Co-operation, a number of delegations stated that an efficient system of compensation was of great importance for ensuring rapid response and assistance between States, since such a system would make it easier for the States involved to recover costs incurred for the assistance given. In the preamble to that Convention the Conference inserted a reference to the importance of the Civil Liability Convention and the Fund Convention.

During the last five years, the number of IOPC Fund Member States has grown from 34 to 45, and there are reasons to believe that a number of States will join the IOPC Fund in the near future. This continuing expansion of membership demonstrates that the international community has found the system of compensation created by the Civil Liability Convention and the Fund Convention a viable one, providing rapid compensation to victims of oil pollution damage. As previously mentioned, the assumption of an early entry into force of the 1984 Protocols to the Conventions will not be fulfilled. Therefore, although the system of compensation established by the Conventions is functioning well, the IOPC Fund Assembly has decided to consider, during 1991, the future development of this system.

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

24th session

25th session

Chairman:	Mr W W Sturms (Netherlands)	Chairman:	Mr W W Sturms (Netherlands)
Bahamas	Monaco	Canada	Italy
Canada	Netherlands	Côte d'Ivoire	Netherlands
Côte d'Ivoire	Poland	Cyprus	Poland
Cyprus	Spain	Fiji	Spain
Finland	Sweden	Finland	Sri Lanka
Germany, Federal Republic of	Syrian Arab Republic	France	Tunisia
Japan	Union of Soviet Socialist Republics	Greece	United Kingdom
Liberia		Indonesia	

IOPC FUND SECRETARIAT

Officers

Mr M Jacobsson	Director
Mr K Wada (to 31 May 1990)	Legal Officer
Mr R Sonoda (from 1 June 1990)	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 1989

INCOME

£

Contributions

Initial Contributions	78 683
Annual Contributions 1988	2 912 783
Add adjustment to Prior Years' Assessments	<u>723</u>
	2 992 189

Miscellaneous

Transfer from Major Claims Fund TANIO	68 692
Transfer from Major Claims Fund JAN	7 830
Miscellaneous Income	63 728
Interest on Overdue Contributions	4 901
Interest on Investments	<u>754 648</u>
	899 799
	<u>899 799</u>
	3 891 988

EXPENDITURE

Secretariat Expenses

Unliquidated obligations	32 707
Liquidated obligations	<u>328 359</u>
	361 066

Claims

General Claims	<u>1 911 324</u>	
	2 272 390	<u>2 272 390</u>
		1 619 598
Exchange Adjustment		<u>4 366</u>
Excess of Income over Expenditure		<u>1 623 964</u>

ANNEX III

Major Claims Fund - Tanio

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1989

INCOME		£
Interest on Investments		315 028
EXPENDITURE		<u>NIL</u>
Excess of Income over Expenditure		315 028
Balance brought forward from 1988		<u>13 658 916</u>
		13 973 944
<i>Less</i>		
Refund to Contributors	12 838 991	
Credit to Contributors' account	<u>1 060 974</u>	
	13 899 965	
Bank charges on refunds	5 287	
Transfer to General Fund	<u>68 692</u>	
	73 979	<u>73 979</u>
	13 973 944	<u>13 973 944</u>
		<u>NIL</u>

ANNEX IV

Major Claims Fund - Brady Maria

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1989

INCOME

£

Interest on Overdue Contributions	376	
Interest on Investments	<u>6 865</u>	
	7 241	7 241

EXPENDITURE

Fees	<u>2 358</u>
Excess of Income over Expenditure	4 883
Balance brought forward from 1988	<u>54 040</u>
Balance as at 31 December 1989	<u>58 923</u>

ANNEX V

Major Claims Fund - Jan

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1989

INCOME

£

Contributions

Annual Contributions 1988 89 820

Miscellaneous

Interest on Overdue Contributions	33	
Interest on Investments	<u>649</u>	
	682	<u>682</u>
		90 502

EXPENDITURE

Interest on loans	<u>791</u>
	89 711

Less

Loan from General Fund	81 881	
Transfer to General Fund	<u>7 830</u>	
	89 711	<u>89 711</u>
		<u>NIL</u>

ANNEX VI

Balance Sheet of the IOPC Fund as at 31 December 1989

LIABILITIES	£	ASSETS	£
Accumulated Surplus from General Fund		Cash at Banks and in Hand	3 743 463
Prior Years	3 441 432	Contributions Outstanding	
Add Surplus 1989	<u>1 623 964</u>	Annual Contributions 1982	675
	5 065 396	Annual Contributions 1983	4 556
		Annual Contributions 1985	2 718
Due to Staff Provident Fund	197 958	Annual Contributions 1986	3 347
Accounts Payable	11 004	Annual Contributions 1987	2 445
Unliquidated Obligations		Annual Contributions 1988	41 590
1988	2 908	Initial Contributions	11 135
1989	<u>32 707</u>	Major Claims Fund Brady Maria	744
	35 615	Major Claims Fund Jan	<u>163</u>
			67 373
Prepaid Contributions		Due from Major Claims Fund Kasuga Maru N°1	1 177 484
General Fund	15 941	Due from Major Claims Fund Thuntank 5	1 610 370
Major Claims Fund Kasuga Maru N°1	15 195	VAT Recoverable	8 749
Major Claims Fund Thuntank 5	<u>20 311</u>	Miscellaneous Receivable	8 148
	51 447	Interest on Overdue Contributions (General Fund)	1 137
Contributors' Account	1 196 381		<u>6 616 724</u>
Due to Major Claims Fund Brady Maria	<u>58 923</u>		
	<u>6 616 724</u>		

Note 1 There are contingent liabilities in respect of incidents which are estimated to amount to £4 076 025. 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 1989 amounted at cost price to £56 537 net of VAT.

ANNEX VII

Contributing Oil Received in the Territories of Member States in the Calendar Year 1989

As reported by 31 December 1990

Member State	Contributing Oil (tonnes)	% of Total
Japan	239 906 814	27.00
Italy	133 830 783	15.06
Netherlands	93 105 212	10.47
France	88 436 520	9.95
United Kingdom	76 066 736	8.56
Spain	55 809 278	6.28
Canada	41 183 629	4.63
Federal Republic of Germany	21 456 732	2.41
Greece	17 893 714	2.01
Sweden	17 164 594	1.93
Norway	15 328 133	1.72
Portugal	14 750 051	1.66
Bahamas	11 587 630	1.30
Union of Soviet Socialist Republics	11 556 600	1.30
Finland	10 868 482	1.22
Denmark	9 721 976	1.10
Indonesia	8 913 895	1.00
Yugoslavia	8 862 134	1.00
Côte d'Ivoire	3 114 038	0.35
Tunisia	2 611 875	0.30
Poland	1 800 073	0.20
Sri Lanka	1 283 468	0.14
Cameroon	1 226 762	0.14
Cyprus	1 094 384	0.12
Ghana	875 384	0.10
Syrian Arab Republic	421 078	0.05
Fiji	0	0
Iceland	0	0
Kuwait	0	0
Liberia	0	0
Maldives	0	0
Monaco	0	0
Oman	0	0
Papua New Guinea	0	0
Qatar	0	0
Seychelles	0	0
Tuvalu	0	0
	<u>888 869 975</u>	<u>100.00</u>

<Note> No report from Algeria, Benin, Djibouti, Gabon, India, Nigeria, United Arab Emirates and Vanuatu.

ANNEX VIII

Summary of Incidents

(31 December 1990)

Vessel (Flag State)	Gross Tonnage (CLC Liability)	Date & Place of Incident	Cause of Incident & Quantity of Oil Spilled (tonnes)	Claims: Compensation & Indemnification	Remarks
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 Interest 6 649 440 Total SKr95 707 157	paid paid
MIYA MARU N°8 (Japan)	997 GRT ¥37 710 340	22.3.79 Bisan Seto, Japan	Collision (540)	Clean-up costs ¥108 589 104 Fishery damage 31 521 478 Indemnification 9 427 585 Total ¥149 538 167	paid paid paid ¥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 Nature Conservancy Council 1 400 Local authorities 7 150 Owner's clean-up costs 180 000 Total £363 550	paid paid paid paid
MEBARUZAKI MARU N°5 (Japan)	19 GRT ¥845 480	8.12.79 Mebaru Port, Japan	Sinking (10)	Clean-up costs ¥7 477 481 Fishery damage 2 710 854 Indemnification 211 370 Total ¥10 399 705	paid paid paid
SHOWA MARU (Japan)	199 GRT ¥8 123 140	9.1.80 Naruto Strait, Japan	Collision (100)	Clean-up costs ¥10 408 369 Fishery damage 92 696 505 Indemnification 2 030 785 Total ¥105 135 659	paid paid paid ¥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	esti- mated	Because of recourse against same insurer, no compensation paid by IOPC Fund
TANIO (Madagascar)	18 048 GRT FFr11 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	FFr208 736 142 5 689 025 2 961 290 74 444 4 679 742 FFr222 140 643	paid paid paid paid paid	US \$17 480 028 recovered by way of recourse; total payment equalled limit of compen- sation available under Fund Convention
FURENAS (Sweden)	999 GRT SKr612 443	3.6.80 Oresund, Sweden	Collision (200)	Clean-up costs: - Swedish authorities - Swedish private claimants Sub-total	SKr2 911 637 276 050 SKr3 187 687	paid paid	SKr449 961 recovered by way of recourse
				Clean-up costs: - Danish authorities - Danish private claimants Sub-total	DKr408 633 9 956 DKr418 589	paid paid	
				Indemnification	SKr153 111	paid	
HOSEI MARU (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	¥18 221 905 recovered by way of recourse
JOSE MARTI (USSR)	27 706 GRT SKr23 844 593	7.1.81 off Dalarö, 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	Total damage less than owner's liability. Owner's defence that he should be exonerated from liability rejected by final judgement.

Vessel (Flag State)	Gross Tonnage (CLC Liability)	Date & Place of Incident	Cause of Incident & Quantity of Oil Spilled (tonnes)	Claims: Compensation & Indemnification			Remarks
SUMA MARU N°11 (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	
GLOBE ASIMI (Gibraltar)	12 404 GRT Rbls1 350 324	22.11.81 Klaipeda, USSR	Grounding (estimated at more than 16 000 tonnes)	Indemnification	US \$467 953	paid	No damage in Member State
ONDINA (Netherlands)	31 030 GRT DM10 080 383 (including interest)	3.3.82 Hamburg, FRG	Discharge (estimated 200-300 tonnes)	Clean-up costs: - Owner - Authorities Total	DM11 303 011 42 163 DM11 345 174	paid paid	
SHIOTA MARU N°2 (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	
FUKUTOKU MARU N°8 (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	
KIFUKU MARU N°35 (Japan)	107 GRT ¥4 271 560	1.12.82 Ishinomaki, Japan	Sinking (33)	Indemnification	¥598 181	paid	Total damage less than owner's liability
SHINKAI MARU N°3 (Japan)	48 GRT ¥1 880 940	21.6.83 Ichikawa, Japan	Discharge (3.5)	Clean-up costs Indemnification Total	¥1 005 160 470 235 ¥1 475 395	paid paid	

EIKO MARU N°1 (Japan)	999 GRT ¥39 445 920	13.8.83 Karakuwazaki, Japan	Collision (357)	Clean-up costs Fishery damage Indemnification <u>Total</u>	¥23 193 525 1 541 584 9 861 480 ¥34 596 589	paid paid paid	¥14 843 746 recovered by way of recourse
KOEI MARU N°3 (Japan)	82 GRT ¥3 091 660	22.12.83 Nagoya, Japan	Collision (49)	Clean-up costs Fishery damage Indemnification <u>Total</u>	¥18 010 269 8 971 979 772 915 ¥27 755 163	paid paid paid	¥8 994 083 recovered by way of recourse
TSUNEHISA MARU N°8 (Japan)	38 GRT ¥964 800	26.8.84 Osaka, Japan	Sinking (30)	Clean-up costs Indemnification <u>Total</u>	¥16 610 200 241 200 ¥16 851 400	paid paid	
KOHO MARU N°3 (Japan)	199 GRT ¥5 385 920	5.11.84 Hiroshima, Japan	Grounding (20)	Clean-up costs Fishery damage Indemnification <u>Total</u>	¥68 609 674 25 502 144 1 346 480 ¥95 458 298	paid paid paid	
KOSHUN MARU N°1 (Japan)	68 GRT ¥1 896 320	5.3.85 Tokyo Bay, Japan	Collision (80)	Clean-up costs Indemnification <u>Total</u>	¥26 124 589 474 080 ¥26 598 669	paid paid	¥8 866 222 recovered by way of recourse
PATMOS (Greece)	51 627 GRT Lit13 263 703 650	21.3.85 Straits of Messina, Italy	Collision (700)	Preventive measures} and clean-up costs } Lit9 418 318 650 (including salvage)} 735 268 884 Damage to marine environment 5 000 000 000 <u>Total</u> Lit15 153 587 534	agreed claimed claimed	Most claims settled; Lit9 418 318 650 paid by P & I insurer; court proceedings in progress against IOPC Fund.	
JAN (FRG)	1 400 GRT DKr1 576 170	2.8.85 Aalborg, Denmark	Grounding (300)	Danish authorities Municipality Private claimants Indemnification <u>Total</u>	DKr9 378 528 24 126 53 007 394 043 DKr9 849 704	paid 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
ROSE GARDEN MARU (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
BRADY MARIA (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
TAKE MARU N°6 (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
OUED GUETERINI (Algeria)	1 576 GRT Din1 175 064	18.12.86 Algiers, Algeria	Discharge (estimated 15)	Power station Power station Power station Owner's clean-up costs Indemnification US \$1 133 FFr708 824 £126 120 Din5 650 Din293 766	paid paid paid paid paid
THUNTANK 5 (Sweden)	2 866 GRT SKr2 741 746	21.12.86 Gävle, Sweden	Grounding (150-200)	Swedish authorities Private claimants Indemnification Total SKr23 168 271 49 369 685 437 SKr23 903 077	paid paid paid Further claims possible if sunken oil resurfaces
ANTONIO GRAMSCI (USSR)	27 706 GRT Rbls2 431 854	6.2.87 Borgå, Finland	Grounding (600-700)	Finnish authorities USSR claimants FM1 849 924 Rbls1 417 448	paid agreed USSR not Member of IOPC Fund at time of incident; USSR claims paid by shipowner

SOUTHERN EAGLE (Panama)	4 461 GRT ¥93 874 528	15.6.87 Sada Misaki, Japan	Collision (15)	Clean-up costs Fishery damage Total	¥35 346 679 51 521 183 ¥86 867 862	agreed agreed	Total damage less than owner's liability. Indemnifi- cation not payable
EL HANI (Libya)	81 412 GRT £7 900 000 (estimate)	22.7.87 Indonesia	Grounding (3 000)	Indonesian authorities: request for advance payment	US \$242 800	claimed	Claim not pursued
AKARI (Panama)	1 345 GRT £92 080 (estimate)	25.8.87 Dubai, UAE	Fire (1 000)	Clean-up costs Clean-up costs Clean-up costs	Dhs50 514 Dhs861 511 US \$325 681	agreed claimed claimed	
TOLMIROS (Greece)	48 914 GRT SKr55 000 000 (estimate)	11.9.87 West coast of Sweden	Unknown (200)	Swedish authorities	SKr100 639 999	claimed	Court proceedings in progress
HINODE MARU N°1 (Japan)	19 GRT ¥608 000	18.12.87 Yawatahama, Japan	Mishandling of cargo (25)	Clean-up costs Indemnification Total	¥1 847 225 152 000 ¥1 999 225	paid paid	
AMAZZONE (Italy)	18 325 GRT FFr13 860 380	31.1.88 Brittany, France	Storm damage to tanks (2 000)	French Government French local authorities French local authorities French private claimants Sub-total Channel Islands authorities	FFr22 255 375 141 326 1 352 402 196 799 FFr23 804 576 £24 776	claimed agreed claimed paid paid	FFr196 799 paid by P & I insurer to French private claimants
TAIYO MARU N°13 (Japan)	86 GRT ¥2 476 800	12.3.88 Port of Yokohama, Japan	Discharge (6)	Clean-up costs Indemnification Total	¥6 134 885 619 200 ¥6 754 085	paid paid	
CZANTORIA (Canada)	81 197 GRT (unknown)	8.5.88 St Romuald, Canada	Collision with berth (unknown)	Clean-up costs	Can\$1 787 771		Fund Convention not applicable, as incident occurred before entry into force of Fund Convention for Canada

Vessel (Flag State)	Gross Tonnage (CLC Liability)	Date & Place of Incident	Cause of Incident & Quantity of Oil Spilled (tonnes)	Claims: Compensation & Indemnification			Remarks
KASUGA MARU N°1 (Japan)	480 GRT ¥17 015 040	10.12.88 Kyoga Misaki, Japan	Sinking (1 100)	Clean-up costs Fishery damage Total	¥371 865 167 53 500 000 ¥425 365 167	paid paid	Further claims may be submitted
				Indemnification	¥4 253 760	not yet paid	
NESTUCCA (United States of America)	1 612 GRT (unknown)	23.12.88 Vancouver Island, Canada	Collision (unknown)		Can\$10 475		Fund Convention not applicable, as incident occurred before entry into force of Fund Convention for Canada
FUKKOL MARU N°12 (Japan)	94 GRT ¥2 198 400	15.5.89 Shiogama, Japan	Overflow from supply pipe (0.5)	Clean-up costs Indemnification Total	¥492 635 549 600 ¥1 042 235	paid paid	
TSUBAME MARU N°58 (Japan)	74 GRT ¥2 971 520	18.5.89 Shiogama, Japan	Mishandling of oil transfer (7)	Damage to fish cargo Indemnification	¥19 159 905 ¥742 880	paid not yet paid	
TSUBAME MARU N°16 (Japan)	56 GRT ¥1 613 120	15.6.89 Kushiro, Japan	Discharge (unknown)	Damage to fish cargo Indemnification Total	¥273 580 403 280 ¥676 860	paid paid	
KIFUKU MARU N°103 (Japan)	59 GRT ¥1 727 040	28.6.89 Port of Otsuji, Japan	Mishandling of cargo (unknown)	Clean-up costs Indemnification Total	¥8 285 960 431 760 ¥8 717 720	paid paid	
NANCY ORR GAUCHER (Liberia)	2 829 GRT Can\$473 766	25.7.89 Hamilton, Canada	Overflow during discharge (250)	Clean-up costs	Can\$292 110	agreed	Total damage less than owner's liability. Original claim Can\$648 743.

DAINICHI MARU N°5 (Japan)	173 GRT ¥4 199 680	28.10.89 Yaizu, Japan	Mishandling of cargo (0.2)	Loss of earnings	¥1 792 100	paid	
				Clean-up costs	368 510	paid	
				Total	¥2 160 610		
				Indemnification	¥1 049 920	not yet paid	
DAITO MARU N°3 (Japan)	93 GRT ¥2 495 360	5.4.90 Yokohama, Japan	Mishandling of cargo (3)	Clean-up costs	¥5 490 570	paid	
				Indemnification	623 840	paid	
				Total	¥6 114 410		
KAZUEI MARU N°10 (Japan)	121 GRT ¥3 474 880	11.4.90 Osaka, Japan	Collision (30)	Clean-up costs	¥61 181 038	claimed	Further claims may be submitted
				Fishery damage	691 364	claimed	
				Total	¥61 872 402		
				Indemnification	¥868 720	not yet paid	
FUJI MARU N°3 (Japan)	199 GRT ¥5 352 000	12.4.90 Yokohama, Japan	Overflow during supply operation (unknown)	Clean-up costs	¥5 448 431	agreed	
				Indemnification	¥1 273 600	not yet paid	
VOLGONEFT 263 (USSR)	3 566 GRT SKr3 123 585 (estimate)	14.5.90 Karlskrona, Sweden	Collision (800)	Fishery damage	SKr530 239	paid	Further claims will be submitted
				Clean-up costs	6 250	paid	
				Total	SKr536 489		
				Indemnification	SKr780 896	not yet paid	
HATO MARU N°2 (Japan)	31 GRT ¥803 200	27.7.90 Kobe, Japan	Mishandling of cargo (unknown)	Damage to property			Claims not yet submitted
BONITO (Sweden)	2 866 GRT £181 160 (estimate)	12.10.90 River Thames, UK	Mishandling of cargo (20)	Clean-up costs			Claims not yet submitted

Vessel (Flag State)	Gross Tonnage (CLC Liability)	Date & Place of Incident	Cause of Incident & Quantity of Oil Spilled (tonnes)	Claims: Compensation & Indemnification	Remarks
RIO ORINOCO (Cayman Islands)	5 999 GRT Can\$1 161 485 (estimate)	16.10.90 Anticosti Island, Canada	Grounding (40)	Clean-up costs Preventive measures	Claims not yet submitted
PORTFIELD (United Kingdom)	481 GRT £39 970 (estimate)	5.11.90 Pembroke Dock, UK	Sinking (110 tonnes)	Clean-up costs Damage to property Loss of earnings	Claims not yet submitted

Notes

1 Amounts are given in national currencies; the relevant conversion rates as at 31 December 1990 are as follows:

£ = Din	23.1780	£ = FM	6.9995	£ = Lit	2177.00	£ = Dhs	7.0338
Can\$	2.2400	FFr	9.8200	¥	261.75	US \$	1.9200
DKr	11.1500	DM	2.8850	SKr	10.8650	Rbls	1.0725

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 IOPC Fund. Where claims are indicated as paid, the figure given shows the actual amount paid by the IOPC Fund (ie excluding the shipowner's liability).