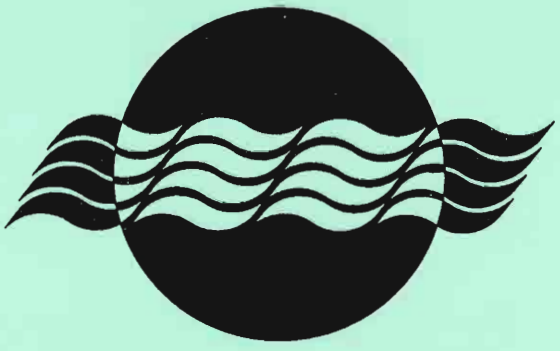
INTERNATIONAL

OIL POLLUTION

COMPENSATION FUND

ANNUAL REPORT

1993



REPORT ON THE ACTIVITIES OF THE

INTERNATIONAL OIL POLLUTION

COMPENSATION FUND

IN THE CALENDAR YEAR 1993

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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 1993 covers the activities of the IOPC Fund during its fifteenth 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, creates a system of additional compensation.

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 900 million (gold) francs which is equivalent to 60 million Special Drawing Rights (approximately £56 million or US$83 million), including the sum actually paid by the shipowner or his insurer under the Civil Liability Convention.

This Annual Report contains a review of the activities of the IOPC Fund during 1993. It summarises the decisions taken by the IOPC Fund Assembly and Executive Committee, and deals with the development of the IOPC Fund's membership and the Fund's contacts with governments, inter-governmental organisations and interested circles. The finances of the IOPC Fund are also presented, in particular the payment of contributions. A major part of the Report contains information on the settlement of claims for compensation against the IOPC Fund.

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 1992, there were 51 Member States.

Six States have become Parties to the Fund Convention during 1993. The Fund Convention entered into force for these States as follows: Ireland on 17 February 1993, Estonia on 1 March 1993, the Republic of Korea on 8 March 1993, Kenya on 15 March 1993, the Kingdom of Morocco on 31 March 1993 and Sierra Leone on 11 November 1993, bringing the number of Member States to 57.

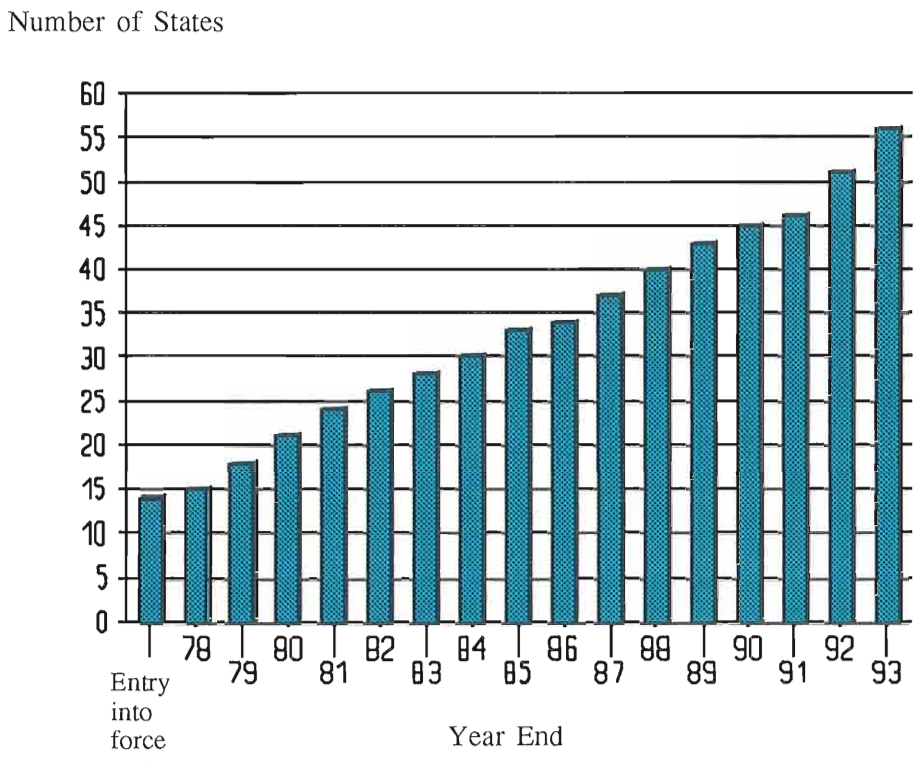
As at 31 December 1993, the following 57 States were Members of the IOPC Fund:

Algeria
Bahamas
Benin
Brunei Darussalam
Cameroon
Canada
Côte d'Ivoire
Croatia
Cyprus
Denmark
Djibouti
Estonia
Federal Republic of Yugoslavia (Serbia and Montenegro)
Fiji
Finland
France
Gabon
Gambia
Germany
Ghana
Greece
Iceland
India
Indonesia
Ireland
Italy
Japan
Kenya
Kuwait
Liberia
Maldives
Malta
Monaco
Morocco
Netherlands
Nigeria
Norway
Oman
Papua New Guinea
Poland
Portugal
Qatar
Republic of Korea
Russian Federation
Seychelles
Sierra Leone
Slovenia
Spain
Sri Lanka
Sweden
Syrian Arab Republic
Tunisia
Tuvalu
United Arab Emirates
United Kingdom
Vanuatu
Venezuela

The development of the IOPC Fund's membership over the years is illustrated in the graph overleaf.

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. Legislation implementing the Fund Convention is in an advanced stage in Albania, Australia, Belgium, Chile, Malaysia, Mexico and Saudi Arabia. Many other States are also examining the question of accession to the Fund Convention.

MEMBERSHIP OF THE IOPC FUND



The Assembly of the IOPC Fund has, over the years, granted observer status to a number of non-Member States. At the end of 1993, the following States had observer status:

Argentina
Australia
Belgium
Brazil
Chile
China
Colombia
Democratic People's Republic of Korea
Ecuador
Egypt
Jamaica
Mexico
Panama
Philippines
Saudi Arabia
Switzerland
United States

3 CONTACTS WITH GOVERNMENTS

A major reason for the smooth functioning of the system of compensation established by the Civil Liability Convention and the Fund Convention is the strong support that Governments of Member States have given the IOPC Fund and its Secretariat over the years. In order to establish and maintain personal contacts between the IOPC Fund's Secretariat and officials within the national administrations dealing with Fund matters, the Director visits some Member States every year. During 1993 the Director visited seven Member States - Canada, Denmark, France, Japan, the Republic of Korea, Spain and Sweden - for discussions with government officials on the Fund Convention and the operations of the IOPC Fund.

The IOPC Fund's Secretariat has continued its efforts to increase the number of Member States. One important way of promoting membership is to convey information on the functioning of the compensation system created by the Civil Liability Convention and the Fund Convention. For this purpose, the Director went to Ecuador and Egypt for discussions on the Conventions and the operations of the IOPC Fund with government officials and interested circles in these States. The Legal Officer held similar discussions in Thailand and the Claims Officer had such discussions in Latvia and Malaysia.

The Director and other members of the IOPC Fund's Secretariat 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 session of the IMO Assembly in October/November 1993, and during sessions of the IMO Council in June and October 1993.

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

BRAER - Aground

TAIKO MARU - Beach clean-up

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 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 Community (EC) and the International Institute for the Unification of Private Law (UNIDROIT), also have observer status.

The IOPC Fund has a particularly close co-operation with IMO and it has observer status with that organisation. The Secretariat represented the IOPC Fund at meetings of the Assembly, 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.

In the majority of incidents involving the IOPC Fund, the monitoring of the clean-up operations and the claims assessment is made in close co-operation between the Fund and the P & I Club concerned. The technical assistance required by the IOPC Fund with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF). 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 Limited. 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 Council (BIMCO)
Baltic Marine Environment Protection Commission (Helsinki Commission)
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)
Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)

5 CONFERENCES AND SEMINARS

During 1993, the Director, the Legal Officer and the Claims Officer gave lectures at a number of seminars, conferences and workshops on liability and compensation for oil pollution damage and on the operations of the IOPC Fund.

The Director made presentations on the IOPC Fund's activities at the 1993 International Oil Spill Conference held in Tampa (United States), organised jointly by the United States Coast Guard, the United States Environment Protection Agency and the American Petroleum Institute. He participated in a seminar on liability in maritime law in Ottawa (Canada), organised by the Government of Canada. He took part in the 2nd International Environment North Seas Conference in Stavanger (Norway), organised by the Environment Northern Seas Foundation. In addition, the Director gave a lecture to students at the World Maritime University in Malmö (Sweden) on liability and compensation for oil pollution damage.

The Legal Officer gave a lecture on the IOPC Fund at a national seminar on MARPOL 73/78 in Bangkok (Thailand). The Claims Officer gave lectures at a Conference on Oil Spill Response in Asian Pacific Waters, held in Kuala Lumpur (Malaysia), at a seminar on the implementation of conventions in Riga (Latvia), organised by the Helsinki Commission, and at a General EEC Course on Combatting Oil Pollution at Sea, organised by the European Institute of Maritime Studies and held in Gijón (Spain).

ILIAD - Oil recovery at sea

6 ASSEMBLY AND EXECUTIVE COMMITTEE

6.1 Assembly

The Assembly, which is composed of representatives of all Member States, held its 16th session from 5 to 8 October 1993. Mr J Bredholt (Denmark) was re-elected Chairman of the Assembly.

The major decisions taken at this session were as follows.

- The Assembly took note of the External Auditor's Report and his Opinion on the Financial Statements of the IOPC Fund and approved the accounts for the financial period 1 January to 31 December 1992.

- The budget appropriations for 1994, with an administrative expenditure totalling £1 172 730, were adopted by the Assembly.

- The Assembly decided to increase the working capital of the IOPC Fund from £6 million to £11 million.

- The Assembly decided to levy 1993 annual contributions, to be paid by 1 February 1994, for a total amount of £78 million (cf Section 9).

- 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	Republic of Korea
Côte d'Ivoire	Spain
France	Sri Lanka
Greece	Sweden
Italy	Tunisia
Netherlands	United Kingdom
Nigeria	Venezuela
Poland	

- The Assembly instructed the Director to commence the preparations necessary for the entry into force of the 1992 Protocol to the Fund Convention, in particular as regards the administration of the organisation (the "1992 Fund") which would be established under that Protocol (cf Section 11).

- In accordance with a Resolution adopted by the International Conference which adopted the 1992 Protocols to the Civil Liability Convention and the Fund Convention, the Assembly instructed the Director to make all possible efforts to encourage the early entry into force of the 1992 Protocol to the Fund Convention.

- The Assembly decided that a Working Group should be set up to study the criteria for admissibility of claims for compensation with the following mandate:

  - to examine the general criteria for the admissibility of claims for compensation for "pollution damage" and "preventive measures" within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and the 1992 Protocols thereto;

  - to study in particular problems relating to claims in respect of so-called "pure economic loss" and "preventive measures" taken to prevent or minimise pure economic loss;

  - to consider problems relating to the admissibility of claims for environmental damage within the scope of the definition of "pollution damage" referred to above;

  - to study the procedures to be applied by the IOPC Fund in the assessment and settlement of claims.

- The Assembly reviewed the IOPC Fund's investment policy as set out in Section 10.

- It was decided that "cohasset-panuke crude oil" should be considered as "non-persistent oil" for the purpose of Article I.5 of the Civil Liability Convention and should be considered as falling outside the definition of "contributing oil" laid down in Article 1.3 of the Fund Convention.

- It was decided by the Assembly that the March 1992 Amendments to MARPOL 73/78 should be included in the list of instruments contained in Article 5.3(a) of the Fund Convention, with effect from 10 April 1994.

- The Assembly discussed the question of whether and, if so, in what circumstances, the IOPC Fund was obliged to pay compensation when the origin of the spill could not be identified (Article 4.1 of the Fund Convention). This issue is dealt with on page 55 of the Annual Report in connection with an oil spill in Portugal where it had not been possible to establish the source of the oil.

- The Assembly considered a request by the Government of the Arab Republic of Egypt that the oil received at a terminal on the Gulf of Suez for transport through the SUMED pipeline to the Mediterranean should not be taken into account for contribution purposes if Egypt were to become Party to the Fund Convention. This issue is dealt with in Section 9.

- Requests for observer status with the IOPC Fund from the Baltic Marine Environment Protection Commission (Helsinki Commission) and the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC) were granted by the Assembly.

6.2 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 four sessions during 1993, the first three sessions under the chairmanship of Dr R Renger (Germany), and the fourth under the chairmanship of Mr C Coppolani (France). The 34th session was held on 11 and 12 March 1993, the 35th session on 7 and 8 June 1993, the 36th session on 4 and 5 October 1993 and the 37th session on 8 October 1993.

The 34th session of the Executive Committee was convened to discuss certain questions relating to the HAVEN incident which occurred off Genoa (Italy) in April 1991, the AEGEAN SEA incident which took place off La Coruña (Spain) in December 1992 and the BRAER incident which happened off Shetland (United Kingdom) in January 1993. The Executive Committee took a number of important decisions of principle, in particular as regards the admissibility of claims relating to pure economic loss.

At its 35th session, the Executive Committee continued its consideration of the claims arising out of the HAVEN, AEGEAN SEA and BRAER incidents. Again at this session the main issue discussed related to pure economic loss. The Committee also examined whether and to what extent costs for measures taken in order to prevent or minimise pure economic loss should be considered as falling within the definition of "preventive measures", eg costs for marketing activities undertaken to counteract the negative effect of an incident on the fishing industry or tourism. The Committee laid down certain criteria for the admissibility of claims of this kind.

Also at its 36th session, the Executive Committee mainly dealt with claims resulting from the HAVEN, AEGEAN SEA and BRAER incidents and took a number of important decisions of principle as regards the admissibility of claims relating to pure economic loss and measures to prevent or minimise loss of this kind. The Executive Committee took note of the situation in respect of the court proceedings in the Court of first instance of La Coruña in relation to the AEGEAN SEA incident. A number of claims arising out of the TAIKO MARU incident which occurred in Japan in May 1993 were also considered. The Committee was informed of the situation in respect of claims arising out of other incidents involving the IOPC Fund and took note of the settlements made by the Director. In particular, the Committee discussed the developments in respect of the PATMOS, RIO ORINOCO, VISTABELLA, AGIP ABRUZZO and SAMBO N°11 incidents.

At its 37th session, the Executive Committee elected Mr C Coppolani (France) as its Chairman. It considered certain claims arising out of the BRAER incident. The Committee also took note of the situation in respect of the KEUMDONG N°5 incident which had occurred in the Republic of Korea the week before the session.

The main decisions taken by the Executive Committee at the four above-mentioned sessions are reflected in Section 12 in the context of the particular incidents.

7 SECRETARIAT

The Secretariat administers the IOPC Fund and, in particular, deals with claims for compensation.

At the end of 1993, the Secretariat of the IOPC Fund was composed of ten staff members: the Director, the Legal Officer, the Finance/Personnel Officer, the Claims Officer, the Director's Secretary/Administrative Officer, four Secretaries and a Messenger.

In view of the small size of the IOPC Fund Secretariat, the Fund makes use of consultants to carry out various tasks. Consultants may thus be employed to perform legal or technical studies relating to the IOPC Fund's activities. The Fund also makes extensive use of outside experts for the monitoring of incidents and for the technical examination of claims for compensation presented to the organisation.

Two recent incidents, the AEGEAN SEA and the BRAER incidents, have given rise to significant claims from a large number of claimants. In order to enable the IOPC Fund to deal efficiently with these claims, local claims offices have been set up jointly with the P & I insurer of the ship concerned in La Coruña (Spain) and on Shetland (United Kingdom). These incidents have also necessitated extensive use of outside experts for the assessment of claims.

BRAER - Shetland salmon farms

8 ACCOUNTS OF THE IOPC FUND

The accounts of the IOPC Fund for the financial period 1 January to 31 December 1992 were approved by the Assembly in October 1993. Statements containing a summary of the information given in the IOPC Fund's audited financial statements for this period are given in Annexes II-VIII to this Report.

As in previous years, the accounts were audited by the Comptroller and Auditor General of the United Kingdom. The Auditor's report and his opinion on the financial statements for 1992 are reproduced in full as Annexes IX and X. There are separate income and expenditure accounts for the General Fund and for each Major Claims Fund. Separate Major Claims Funds are established for each incident in respect of which the total amount payable by the IOPC Fund exceeds one million Special Drawing Rights (SDR), at present approximately £935 000.

Regarding the General Fund (Annex III), the major part of the income in 1992 (£4 861 883 out of a total income of £5 928 855) consisted of annual contributions. Miscellaneous income totalling £499 744, which mainly represented amounts recovered by the IOPC Fund as a result of recourse action, was credited to the General Fund. A considerable amount (£494 383) was derived from interest on the investment of the IOPC Fund's assets. The administrative expenditure was £625 326, about 7% less than the budgetary appropriations. Expenditure on minor claims was £1 835 448. An excess of income over expenditure of £3 503 078 was recorded for the financial year 1992, and this amount was added to the accumulated surplus from previous years, bringing the surplus to £8 743 736. This latter amount includes the working capital which, during 1992, was £6 million.

In respect of the amalgamated BRADY MARIA/THUNTANK 5 Major Claims Fund (Annex IV), there was a balance of £189 266 as at 31 December 1992. Except for the receipt of interest of £11 160 on investments, no transactions were made during 1992 in respect of this Major Claims Fund.

With regard to the KASUGA MARU N°1 Major Claims Fund (Annex V), an amount of £19 024 was derived from interest on the investment of its assets. No expenditure was incurred during 1992. There was a balance on this Major Claims Fund of £321 372 as at 31 December 1992.

Concerning the RIO ORINOCO Major Claims Fund (Annex VI), contributions were received for a total amount of £6 490 768. There was a yield of £44 434 on the investment of its assets. Payment of claims for compensation amounted to £2 956 838. Repayment was made of a loan of £2 591 075 taken in 1991 from the General Fund in order to pay compensation before the contributions to this Major Claims Fund were received. As at 31 December 1992 there was a balance on this Major Claims Fund of £946 943.

As regards the HAVEN Major Claims Fund (Annex VII), contributions were received for a total amount of £14 588 712. There was a yield of £761 238 on the investment of the assets of this Major Claims Fund. Payments of fees and expenses totalled £148 848. There was a balance on this Major Claims Fund of £15 219 098 as at 31 December 1992.

The balance sheet of the IOPC Fund as at 31 December 1992 is reproduced in Annex VIII to this Report, showing net assets of £8 743 736. Details of the IOPC Fund's contingent liabilities are given in a Schedule to the Financial Statements. As at 31 December 1992 there were contingent liabilities estimated at £79 915 820 in respect of claims for compensation arising out of 14 incidents.

As regards the HAVEN incident which occurred in Italy in April 1991, claims had been submitted for a total amount of approximately £700 million as at 31 December 1992. The contingent liabilities were estimated at £40 021 140, based on the assumption that the maximum amount payable by the IOPC Fund under Article 4.4 of the Fund Convention, viz 900 million (gold) francs (including any amount paid by the shipowner under the Civil Liability Convention), should be converted into national currency on the basis of 15 (gold) francs equalling one SDR. In March 1992 a judge of the Court of first instance in Genoa rendered a decision according to which the maximum amount payable by the IOPC Fund should be calculated by the application of the free market value of gold which gives an amount of LIt 771 397 947 400 (£346 million), instead of LIt 102 864 000 000 (£46 million) as maintained by the IOPC Fund, calculated on the basis of the SDR. The IOPC Fund lodged opposition to that decision. It should be noted that the Court of first instance in Genoa confirmed the above-mentioned decision in a judgement dated 26 July 1993. The IOPC Fund has appealed against this judgement. This issue is dealt with in more detail on pages 42-44 of this Annual Report.

The accounts of the IOPC Fund for the financial period 1 January to 31 December 1993 will be submitted in the spring of 1994 to the External Auditor for an audit opinion, and will be presented to the Assembly for approval at its session in October 1994. These accounts will then be reproduced in the Report on the Activities of the IOPC Fund for the calendar year 1994.

9 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 31 December 1993 corresponded to £0.0029175. Annual contributions are levied to meet the anticipated payments of compensation and indemnification by the IOPC Fund and the administrative expenses of the Fund during the coming year.

At the Assembly's session in October 1993, the Director expressed concern in respect of the continued failure of some Member States to submit their reports on contributing oil receipts. The Assembly agreed with the Director that the non-submission of these reports constituted a considerable problem.

At its session in October 1992, the Assembly decided not to levy any 1992 annual contributions to the General Fund. The Assembly decided to make a second levy of £10 million for the HAVEN Major Claims Fund and to raise 1992 annual contributions in the amount of £950 000 for the VOLGONEFT 263 Major Claims Fund. The contributions to these Major Claims Funds were payable by 1 February 1993. The amount payable by each contributor per tonne of contributing oil received was £0.0105380 in respect of the HAVEN Major Claims Fund, based on the quantities received in 1990 (the year before the incident), and £0.0010830 in respect of the VOLGONEFT 263 Major Claims Fund, based on the quantities received in 1989 (the year before the incident). As at 31 December 1993 98.14% of these contributions had been paid.

In October 1993, the Assembly decided to levy 1993 annual contributions to the General Fund and to four Major Claims Funds for a total amount of £78 million, payable by 1 February 1994. The Assembly decided not to levy any further contributions for the time being to the HAVEN Major Claims Fund, in respect of which £25 million had been levied in previous years, since it was unlikely that any significant payments of compensation would be made to claimants during 1994 in respect of this incident. In addition, the Assembly decided to reimburse £200 000 of the surplus on the amalgamated BRADY MARIA/THUNTANK 5 Major Claims Fund to contributors, and to transfer the balance to the General Fund.

The 1993 annual contributions levied and the amount payable per tonne of contributing oil are summarised in the table overleaf.

Fund	Date of Incident	Oil Receipts: Applicable Year	Total Levy £	Levy £ per Tonne
General Fund	-	1992	8 million	0.0076409
Aegean Sea Major Claims Fund	3.12.92	1991	20 million	0.0212314
Braer Major Claims Fund	5.1.93	1992	35 million	0.0357508
Taiko Maru Major Claims Fund	31.5.93	1992	10 million	0.0094251
Keumdong N°5 Major Claims Fund	27.9.93	1992	5 million	0.0047125

An amount of £1 506 010 of the 1993 annual contributions had been received as at 31 December 1993.

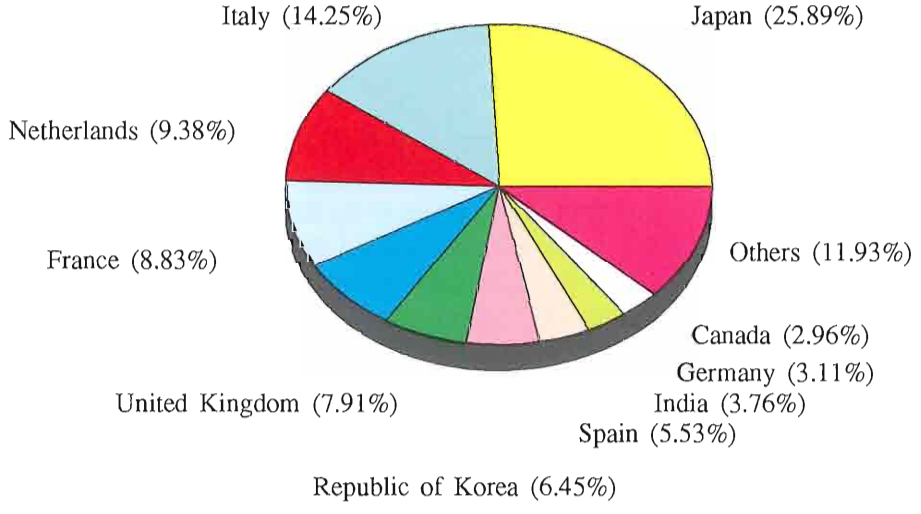
As regards contributions levied in respect of previous years, on 31 December 1993 an amount of £877 800 was outstanding. Of the arrears, 62% is owed by contributors in the former Union of Soviet Socialist Republics and the former Socialist Federal Republic of Yugoslavia.

In October 1993, the Assembly again expressed its satisfaction with the situation regarding the payment of contributions.

The quantities of contributing oil received in 1992 in Member States are given in Annex XI to this Report.

The shares of the 1993 annual contributions to the General Fund in respect of Member States, based on the quantities of oil received in 1992, are illustrated by the chart shown below.

1993 GENERAL FUND 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 1979-1993.

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
1991	5 000 000	21 700 000	26 700 000
1992	0	10 950 000	10 950 000
1993	8 000 000	70 000 000	78 000 000

If contributions to 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 an out-of-court settlement. As mentioned above, the Assembly decided in October 1993 that an amount of £200 000 remaining in the amalgamated BRADY MARIA/THUNTANK 5 Major Claims Fund should be reimbursed to contributors and this reimbursement will be effected on 1 February 1994.

As mentioned above, contributions are levied on persons who have *received* contributing oil after sea transport. During 1991 two storage companies in the Netherlands argued that the interpretation of the notion of "received" in the Fund Convention applied by the IOPC Fund was incorrect. These companies maintained that they could not be considered as receivers of contributing oil, since they were only storage companies receiving oil on behalf of other companies. One of these companies appealed to the Administrative Court against the decision of the Ministry of Economic Affairs to include the company in its report to the IOPC Fund as having received contributing oil. The company requested that the Court should state that the company was not liable to pay contributions to the IOPC Fund and that the Court should therefore annul the notification made by the Government of the Netherlands which stated that the company had received contributing oil during 1991 and indicated the quantity received.

The appeal by that company was referred by the Court to the Ministry of Economic Affairs under the applicable administrative legislation for a formal decision. The Ministry rejected the appeal in September 1992. The company has lodged an appeal against this decision to the competent Administrative Court. As at 31 December 1993, this appeal is pending.

The interpretation of the notion of "received" was discussed by the IOPC Fund Assembly in October 1992. The Assembly confirmed the position taken in 1980 that Member States should have a certain flexibility to adopt a practical reporting system allowing for an effective and easy checking of the figures and taking into account the particularities of oil movements and the local circumstances of a particular country. It was emphasised by the Assembly that, failing payment by persons reported other than the physical receivers, the physical receivers should ultimately be liable for contributions irrespective of whether the persons reported have their place of business or residence in a Member State or not. The Assembly also maintained that the storage companies in the Netherlands were liable to pay contributions in respect of any quantities actually received by them.

In October 1993, the Assembly considered a request by the Government of the Arab Republic of Egypt that the oil received at the terminal on the Gulf of Suez for transport through the SUMED pipeline to the Mediterranean should not be taken into account for contribution purposes if Egypt were to become Party to the Fund Convention.

ILIAD - Booms protecting fish farms

The Assembly recognised that the notion of "received" was a basic concept in the contribution system under the Fund Convention, and that the position previously adopted by the Assembly, as well as the text of the Convention itself, was based on the idea that contributions were paid by the actual (physical) receiver of the oil after sea transport. It was recalled that the point of departure for this position was that oil had to be taken into account for the purpose of levying contributions each time the oil was physically received after sea transport in a port or terminal installation in a State Party to the Fund Convention. It was also recalled that the Assembly had in 1980 examined the question of the circumstances in which oil should be considered as received and that it had approved the following interpretation of Article 10.1 of the Fund Convention:

> Ship-to-ship transfer shall not be considered as receipt, irrespective of where this transfer takes place (ie within a port area or outside the port but within territorial waters) and whether it is done solely by using the ships' equipment or by means of a pipeline passing over land. This applies for a transfer between two sea-going vessels as well as for a transfer between a sea-going vessel and an internal waterway vessel and irrespective of whether the transfer takes place within or outside a port area. When the oil, after having been transferred in this way from a sea-going vessel to another vessel has been carried by the latter to an on-shore installation situated in the same Contracting State or in another Contracting State, the receipt in that installation shall be considered as a receipt of oil carried by sea. However, in the case where the oil passes through a storage tank before being loaded to the other ship it has to be reported as oil received at that tank in that Contracting State.

The Government of Egypt had invoked the following main argument in support of its request:

> The situation of the SUMED pipeline is unique because it is used for transferring oil from one ship to another, due to the fact that large tankers are unable to transit the Suez Canal. The storage tanks at both ends of the pipeline are an integral part of a closed transit pipeline system. The oil transported through the pipeline is not owned by the company operating the pipeline but by the users. This oil cannot be considered as received in Egypt since it is only in transit and not actually delivered to Egyptian cargo interests. SUMED acts only as a common carrier of the oil against payment of a fee. Transport through the SUMED pipeline should be considered as ship-to-ship transfer and the quantities received for such transport should therefore not be taken into account for the purpose of levying contributions to the IOPC Fund. The transport of oil through the SUMED pipeline is much safer from an environmental point of view than alternative transport routes.

After a thorough discussion of this issue, the Assembly concluded that there was not a majority in favour of the request made by the Government of Egypt. It was noted, however, that several delegations had expressed the opinion that a compromise solution should be sought. The Assembly decided, therefore, that this question should be re-examined if a firm compromise proposal were made or new arguments advanced.

10 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 building societies which fulfil certain requirements as to their financial standing.

During 1993, investments were made with several banks, discount houses and building societies in the United Kingdom. Apart from deposits placed for up to seven days fixed, interest rates on the IOPC Fund's investments have varied throughout the year from 5 3/4% to 10 27/32% per annum, with an average of 6.5%. Interest due in 1993 on the investments amounted to £2 695 000, on an average capital of £29 million.

As at 31 December 1993, the IOPC Fund's portfolio of investments totalled £20 790 000. This amount was made up of the assets of the IOPC Fund, the Staff Provident Fund and a credit balance of £133 000 on the contributors' account.

In view of certain events in the London banking market during the summer of 1991, the Assembly had, in October 1992, made a thorough examination of the IOPC Fund's investment policy. The Assembly discussed this policy again in October 1993. The Assembly reiterated its position that the IOPC Fund was not an investment bank. It agreed with the Director that it would not be in the IOPC Fund's interest to abandon the present approach of a prudent and cautious investment policy. It shared his view that the IOPC Fund's investment in foreign currencies should also in the future be limited to the well defined situations laid down in the Financial Regulations. The Assembly also agreed with the Director that it would not be advisable to invest the IOPC Fund's assets in the European Currency Unit (ECU).

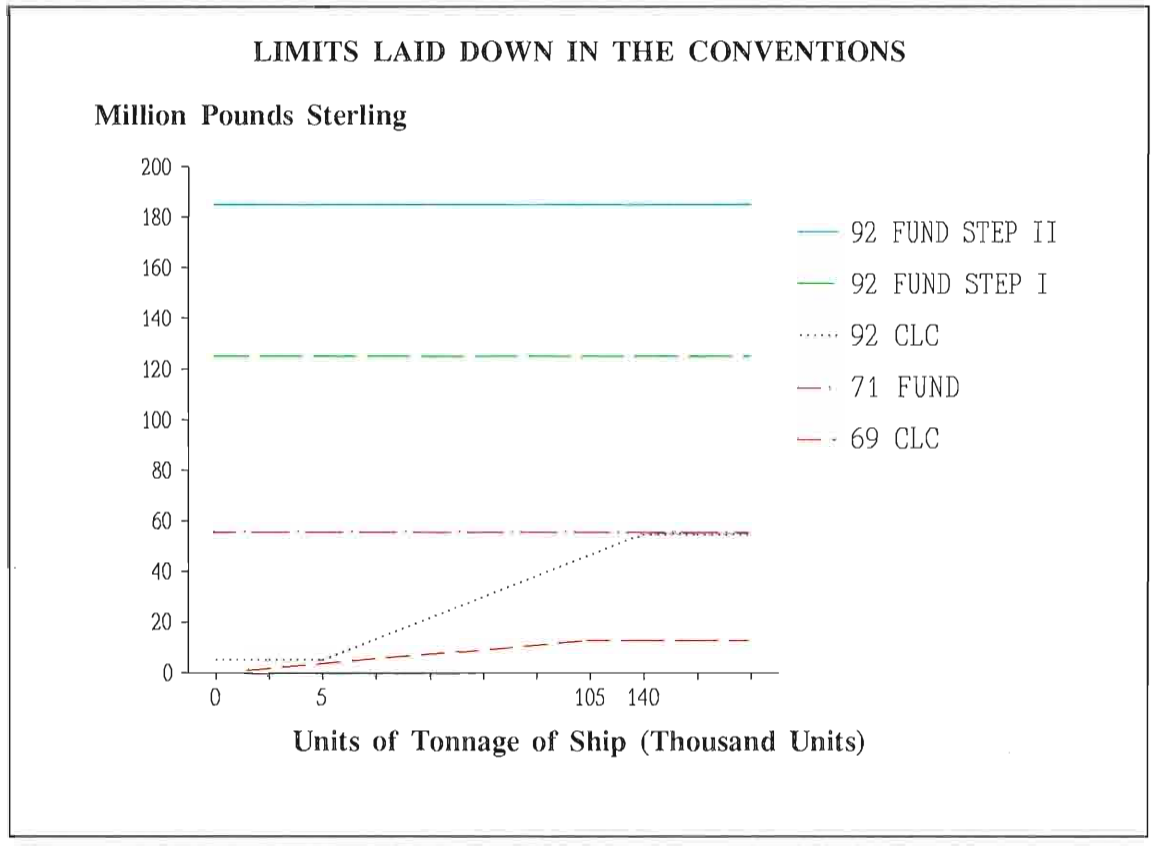
In October 1993, the Assembly considered whether it would be appropriate for the IOPC Fund to set up a special body to advise the Director on investment matters in order to ensure that there were adequate procedures for investing the IOPC Fund's assets and for controlling the management of these assets. The Assembly took the view that it would be appropriate to set up an advisory body, in view of the large amounts which were held by the Fund. Having considered various options, the Assembly concluded that this body should be composed of external experts with special knowledge in investment matters. The Director was instructed to examine the feasibility of establishing an Investment Advisory Body composed of such experts, to assess the cost implications of setting up such a body and to consider the precise mandate of the body, and submit a report to the Assembly for consideration at its session in October 1994.

11 THE 1992 PROTOCOLS TO THE CIVIL LIABILITY CONVENTION AND THE FUND CONVENTION

In 1984, a Diplomatic Conference held in London under the auspices of IMO 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 1984 Protocols have not entered into force, due to the fact that the required number of ratifications has not been obtained.

A Diplomatic Conference held in London in November 1992 under the auspices of IMO adopted two new Protocols amending the Conventions, in order to ensure the viability in the future of the system of compensation established by these Conventions. The Conference based its activities on two draft Protocols elaborated within the IOPC Fund. The new Protocols retain the substantive provisions of the 1984 Protocols but with lower entry into force provisions. The 1992 Protocol to the Fund Convention also introduces provisions which for a certain period of time set a cap on contributions to the IOPC Fund payable by oil receivers in any given State.

The main differences between the Civil Liability Convention and the Fund Convention in their original version and the Conventions as amended by the 1992 Protocols were set out in Section 11.5 of the 1992 Annual Report.



The 1992 Protocol to the Civil Liability Convention requires for its entry into force that it be ratified by ten States, including four States each with not less than one million units of gross tanker tonnage, whereas the 1984 Protocol to that Convention required six such States. The 1992 Protocol to the Fund Convention requires for its entry into force, inter alia, ratification by States representing together 450 million tonnes of contributing oil received, a reduction from the figure of 600 million tonnes laid down in the 1984 Protocol to the Fund Convention.

Despite the uncertainty regarding predictions for the entry into force of the 1992 Protocols to the Civil Liability Convention and the Fund Convention, the Assembly decided, in October 1993, to instruct the Director to commence the preparations necessary for the entry into force of the 1992 Protocols to the Fund Convention, in particular as regards the administration of the organisation (the "1992 Fund") which would be established under that Protocol. The Assembly invited the Director to study certain issues and to report the results of the study to the Assembly at its session in October 1994.

SAMBO N°11 - Aground

12 SETTLEMENT OF CLAIMS

12.1 General Information

Since its establishment in October 1978 the IOPC Fund has, up to 31 December 1993, been involved in the settlement of claims for compensation arising out of 69 incidents. The IOPC Fund has paid compensation in respect of 63 incidents. Thirty-five of these incidents occurred in Japan, whereas 22 incidents, leading in general to much larger claims, took place in European waters, one in Algeria, one in the Caribbean, one in Canada, one in the Persian Gulf and two in the Republic of Korea. The total amount of compensation and indemnification paid by the IOPC Fund to date is £67 million.

The IOPC Fund has over the years been involved in six incidents which did not result in any payments by the Fund, ie one in Indonesia, one in the Persian Gulf, three in Canada and one in Portugal.

During 1993, six incidents occurred that have given or will give rise to claims against the IOPC Fund, namely the BRAER incident (United Kingdom, 5 January 1993), the SAMBO N°11 incident (Republic of Korea, 12 April 1993), the TAIKO MARU incident (Japan, 31 May 1993), the RYOYO MARU incident (Japan, 23 July 1993), the KEUMDONG N°5 incident (Republic of Korea, 27 September 1993) and the ILIAD incident (Greece, 9 October 1993). In February 1993 the IOPC Fund received claims in respect of an oil spill which had occurred in Portugal in December 1992.

On 5 January 1993, the Liberian tanker BRAER, laden with 84 000 tonnes of crude oil, grounded in heavy weather off the southern coast of the Shetland Islands (United Kingdom). The ship broke up, resulting in the entire cargo and bunkers being lost. Due to the heavy seas most of the spilt oil dispersed naturally. The United Kingdom Government imposed a fishery exclusion zone in respect of an area along the west coast of Shetland which was affected by the oil. A large number of claims for compensation have been submitted, eg by salmon farmers, fishermen, persons involved in packing and processing fish, persons in the tourist industry, crofters whose grassland was contaminated and persons whose houses were polluted. So far, claims have been settled and paid for a total amount of nearly £21.5 million.

On 31 May 1993, the Japanese tanker TAIKO MARU collided with a dry cargo vessel some 300 kilometres north of Tokyo. Approximately 520 tonnes of heavy fuel oil were spilled as a result of the incident, necessitating extensive clean-up operations at sea and on shore. The area is of great importance for fishing and a number of fishermen were affected by the oil. Significant claims for compensation have been presented.

The Korean sea-going barge KEUMDONG N°5 was involved in a collision on 27 September 1993 off the southern coast of the Republic of Korea, resulting in a spill of some 1 300 tonnes of heavy fuel oil. The oil spread over a wide area and extensive clean-up operations had to be carried out. The grounding occurred in an area of great importance for fishing and aquaculture. It is expected that the incident will give rise to claims for considerable amounts relating to losses suffered by fishermen and persons involved in aquaculture.

The Greek tanker ILIAD grounded on 9 October 1993 off the Peloponnese peninsula (Greece), laden with 80 000 tonnes of crude oil. It is estimated that 300 tonnes escaped as a result of the grounding. The oil affected some 20 kilometres of coastline. Fishing and tourism are important industries in the affected area, and substantial claims for compensation have been submitted.

The IOPC Fund followed closely the developments in respect of two other incidents which occurred in 1993 namely the MAERSK NAVIGATOR and the SUNETTA incidents. The MAERSK NAVIGATOR, registered in Singapore and carrying 240 000 tonnes of crude oil, collided with an unladen tanker in the Straits of Malacca on 21 January 1993. Both vessels caught fire and a significant quantity of oil escaped from the MAERSK NAVIGATOR. No oil reached the coast of any IOPC Fund Member State, and the Fund will not be called upon to pay compensation. On 25 June 1993, the Liberian tanker SUNETTA, carrying 73 000 tonnes of crude oil, grounded off Mombasa (Kenya). No oil was spilled, however, and there will be no claims against the IOPC Fund.

The incidents occurring during the period 1979-1992 which have led to significant payments to victims by the IOPC Fund are as follows:

Antonio Gramsci (Sweden, 1979)	£9 247 068
Tanio (France, 1980)	£18 340 766
Ondina (Federal Republic of Germany, 1982)	£3 004 900
Fukutoku Maru N°8 (Japan, 1982)	£1 058 460
Thuntank 5 (Sweden, 1986)	£2 364 575
Kasuga Maru N°1 (Japan, 1988)	£1 904 632
Volgoneft 263 (Sweden, 1990)	£1 601 109
Rio Orinoco (Canada, 1990)	£6 151 887

As at 31 December 1993, there were six incidents involving the IOPC Fund which had taken place in previous years and in respect of which not all third party claims had yet been settled, namely the PATMOS, PORTFIELD, VISTABELLA, AGIP ABRUZZO, HAVEN and AEGEAN SEA incidents.

The HAVEN incident which occurred in Italy in April 1991 caused extensive pollution damage in Italy, France and Monaco. Some 1 350 claims for compensation have been submitted for a total amount corresponding to approximately £485 million; however, a number of claims are duplications. The aggregate amount of the claims greatly exceeds the total amount of compensation available under the Civil Liability Convention and the Fund Convention, viz 900 million (gold) francs, which in the IOPC Fund's view corresponds to 60 million Special Drawing Rights or LIt 102 864 000 000 (£41 million). However, the Court of first instance in Genoa has fixed the maximum amount payable by the IOPC Fund at LIt 771 397 947 400 (£308 million), calculated on the basis of the free market value of gold. The IOPC Fund has appealed against this judgement.

The Greek OBO AEGEAN SEA grounded on 3 December 1992 in heavy weather off the port of La Coruña in north-western Spain while carrying 80 000 tonnes of crude oil. The incident resulted in the escape of considerable quantities of crude oil and necessitated extensive clean-up operations at sea and on shore. It also resulted in claims for compensation for economic loss by a large number of fishermen and by persons involved in various forms

of aquaculture. Since a number of claims have not been quantified, it is premature to make any estimate of the total amount of the pollution damage caused by this incident.

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. Over the years the IOPC Fund has developed certain principles as to the admissibility of claims. The Assembly and the Executive Committee have taken a number of important decisions in this regard. These principles have also been developed by the Director in his negotiations with claimants. The settlements made by the Director and the principles upon which these settlements have been based have either been explicitly approved by the Executive Committee, or have been reported to and endorsed by the Committee. 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. As mentioned in Section 6.1, in October 1993 the Assembly established a Working Group which should study the criteria for admissibility of claims for compensation.

Details of incidents with which the IOPC Fund has been involved in 1993 are given in Section 12.2 of this Report. The conversion of foreign currencies into Pounds Sterling is as at 31 December 1993, 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 XII contains a summary of all incidents with which the IOPC Fund has been involved over the years, and in respect of which the Fund has paid compensation or indemnification, or where 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 ultimately was not called upon to make any payments.

12.2 Incidents dealt with by the IOPC Fund during 1993

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 spilt oil drifted on the surface of the sea and dispersed naturally. Only a few tonnes of oil came ashore on the Sicilian coast. The Italian authorities undertook extensive operations in order to contain the spilt 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 (£5.3 million).

The Claims

Claims were lodged against the limitation fund, totalling LIt 76 112 040 216 (£30.4 million). Most of the claims were settled out of court. The aggregate amount of the claims accepted by the courts during the limitation proceedings and in the appeal proceedings is LIt 9 418 318 650 (£3.8 million). These claims have been paid by the UK Club.

Outstanding Claims in Appeal Proceedings

A claim of LIt 20 000 million (£8.0 million), later reduced to LIt 5 000 million (£2.0 million), was submitted by the Italian Government for alleged 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 opposed this claim. The Court of first instance rejected this claim stating that the State had not suffered any economic loss.

The Italian Government appealed against the decision of the Court of first instance. 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.

The Italian Government's claim was dealt with by the Court of Appeal in a non-final judgement, rendered in 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. 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.

In a report submitted in March 1990, the court experts held that, except in respect of fishing activities, 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. The experts quantified the damage to the fishing activities at not less than LIt 1 000 million (£400 000).

In their pleadings to the Court, the IOPC Fund, the owner of the PATMOS and the UK Club pointed out that the Court had instructed the experts to deal with damage which could not be assessed in monetary terms. They argued that the court experts had exceeded their mandate, since the damage allegedly suffered by fishermen and the tourist industry was not damage to the marine resources but economic loss. It was pointed out that, in any event, the experts had admitted that the damage to the tourist industry could not be quantified. The owner, the Club and the IOPC Fund referred to the fact that, as regards the damage to the environment properly speaking, the experts had used expressions such as "non-existent", "negligible", "modest", "of short duration" and "reversible".

As ordered by the Court, the experts produced a second report in April 1992 in which they stated that their conclusions were only hypothetical and not confirmed by factual evidence. The quantity of water affected by the oil was estimated, and the experts then considered how the oil might affect the plankton and the development and growth of fish. A mathematical formula was used to calculate a quantity of fish which allegedly were not born or did not develop, due to lack of nutrition. The experts stated that only a percentage of the quantity of fish not having come into existence would have been caught. The experts gave a nominal value to the quantity which would have been caught. An allowance was also made for the days when fishing was banned following the incident, to take account of loss of earnings. The experts excluded damage to the beaches because neither the authorities nor the tourist operators had submitted claims.

The conclusion of the experts was based on the assumption that 2 000 tonnes of oil were spilled and that 5 000 million m^3 of sea water were polluted, thus causing a concentration of oil exceeding 0,1 mg/litre. The IOPC Fund, the shipowner and the UK Club have argued that there is no evidence that 2 000 tonnes were spilled and that 5 000 million m^3 were affected. They point out that under Italian law the equitable assessment of the damage is permitted only when the existence of the damage is proved, but it is impossible or very difficult to prove the quantum thereof. The IOPC Fund, the owner and the Club have also maintained that a part of the pollution did not concern the Italian territorial waters but the high seas, and that any damage outside the territorial sea falls outside the scope of the Civil Liability Convention and the Fund Convention.

In addition to the Italian Government's claim, there are three claims subject to appeal proceedings, totalling approximately LIt 690 million (£275 000).

It is expected that the Court of Appeal will render its final judgement in early 1994.

Possible Appeal to the Supreme Court

It is possible that, if the Italian Government's claim were to be accepted for the amount claimed or a major part of it, the total amount of the accepted claims would exceed the limitation amount applicable to the PATMOS and would result in the IOPC Fund's being called upon to pay compensation in respect of this incident. The Director has been instructed by the Executive Committee to lodge an appeal against a judgement by the Court of Appeal accepting the Italian Government's claim, if the judgement could lead to the IOPC Fund's being called upon to pay compensation.

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 was carried out by local fishermen in the area.

All claims for compensation presented so far were settled during the period October - December 1989 at a total amount of ¥442 380 207 (£2.7 million). The IOPC Fund paid

¥425 365 167 (£1 887 819), representing the aggregate amount of the agreed claims minus the shipowner's liability of ¥17 015 040 (£75 515). Indemnification of the shipowner, ¥4 253 760 (£16 813), was paid by the IOPC Fund in March 1991.

There is no reliable estimate of the quantity of oil remaining in the sunken vessel. In the settlement agreements concluded with the claimants, they reserved their right to claim further compensation in respect of pollution damage caused by further leakage of oil after the date of the respective agreements. For this reason, further claims against the IOPC Fund cannot be ruled out, although it is very unlikely that such claims will be presented.

Any further claims for compensation in respect of this incident will become time-barred in December 1994.

BONITO

(United Kingdom, 12 October 1990)

The Swedish registered tanker BONITO - previously the THUNTANK 5 - (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.

Claims totalling approximately £260 000 were submitted to the shipowner. In the IOPC Fund's view, however, a considerable part of this amount related to operations which did not fall within the definition of "pollution damage" laid down in the Civil Liability Convention.

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. After the reduction of certain claims, it is estimated that the total amount of the accepted claims will not exceed £140 000. The IOPC Fund will, therefore, not be called upon to pay compensation or indemnification as a result of this incident.

RIO ORINOCO

(Canada, 16 October 1990)

The Incident

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 about 9 000 tonnes of heated asphalt cargo and about 300 tonnes of intermediate fuel oil and heavy diesel oil on board. While repairs were being effected in the Gulf of St Lawrence, the ship dragged anchor in bad weather and grounded on the south coast of Anticosti Island on 16 October 1990. An estimated 185 tonnes of the intermediate fuel oil was spilled and came

ashore east of the grounding position. About ten kilometres of the coastline were heavily polluted, and small patches were spread over a further 30 kilometres. No asphalt cargo was spilled. Over subsequent weeks the cargo cooled and a significant part became solid.

The weather deteriorated and the grounded ship moved, finally coming to rest wedged between two rock shelves. The RIO ORINOCO was declared a constructive total loss by the hull insurer on 18 November 1990, and the Canadian Coast Guard then assumed control of the ship. Renewed attempts to refloat the vessel were made by the Canadian Coast Guard in December 1990, but these attempts also failed. After extensive preparations, the ship was finally refloated on 7 August 1991 and taken to a safe haven at Sept Iles.

The RIO ORINOCO was entered with Sveriges Ångfartygs Assurans Förening (the "Swedish Club") in respect of both hull and P & I insurance.

The limitation amount applicable to the RIO ORINOCO was fixed by the Canadian Court at Can$1 182 617 (£595 000). The limitation fund was constituted by the Swedish Club by means of letter of guarantee.

Clean-up Operations

The Canadian Coast Guard made attempts to collect oil at sea but with little success in the difficult sea conditions.

On-shore clean-up operations on Anticosti island were carried out during the period up to 10 November 1990 by contractors on behalf of the shipowner. The operations were terminated for the winter on that date, due to deteriorating weather conditions. By then most of the beaches had been cleaned, and the environmental impact is believed to have been minimal. Some further clean-up was carried out in July 1991.

Removal of the RIO ORINOCO, her Bunkers and Cargo

The Coast Guard decided that the remaining bunkers (some 115 tonnes) should be removed, and this operation was carried out in December 1990. After having discussed the various options for removing the ship with the Swedish Club and the IOPC Fund, the Coast Guard decided to try to refloat the vessel. Due to unusually bad weather, however, it was decided on 21 December 1990 to call off any attempt to remove the vessel until the spring of 1991.

A Canadian contractor (Groupe Desgagnés) was given the task of removing the vessel under the contract concluded with the Canadian Government. Groupe Desgagnés should, against a lump sum, remove the RIO ORINOCO from her grounded position and take her to a place of safety. The method to be used would consist of removing part of the asphalt cargo so as to facilitate the refloating of the vessel. The contract was based on a "no cure, no pay" formula. Between 23 July and 5 August 1991, some 2 300 tonnes of asphalt were removed. The RIO ORINOCO was refloated and pulled free on 7 August. The ship was then towed to Sept Iles without any complications arising. No spill of bunkers or asphalt occurred during the refloating or during the towing operation.

Claims Settlements

Claims totalling Can$12 382 224 (£6.2 million) were submitted by the Canadian Government. They related to the operations carried out by or on behalf of the Canadian Coast Guard as well as the operations carried out by the Ministry of Environment and the Ministry of Fisheries and Oceans. These claims were approved by the IOPC Fund for a total amount of Can$11 791 848 (£5 645 200). The IOPC Fund paid the settlement amount in instalments in November 1991, February 1992 and June 1992.

The Swedish Club submitted subrogated claims in respect of the cost of clean-up and waste disposal. These claims were settled at Can$2 222 661 (£979 150) by the IOPC Fund. After making a reduction to take account of the limitation amount (Can$1 182 617), the IOPC Fund paid a total amount of Can$1 040 044 (£458 635) in respect of these claims.

Indemnification of the shipowner in the amount of Can$295 654 (£148 800) has not yet been paid as the limitation proceedings have not been completed.

Investigation into the Cause of the Incident

The Canadian authorities have carried out an investigation into the cause of the incident. The report of this investigation is not yet available.

Under the applicable Canadian legislation, the authority carrying out the investigation should, before making its report public, on a confidential basis, send a copy of the draft report on its findings to any person who is considered to have a direct interest in the findings. The IOPC Fund requested that the Canadian authorities should give the Fund access to the draft report. The IOPC Fund was not considered to have a direct interest in the findings, however, and its request was therefore rejected.

The report will be examined by the Director as soon as it is made available to the IOPC Fund.

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 favourable winds 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 estuary. After the cargo tanks had been emptied, the ship was refloated and the main clean-up operations were terminated soon thereafter.

The local authorities carried out shoreline cleaning on a small scale at a few key locations. A nearby fish farm was also contaminated by oil, but no fish were being cultivated at the time.

Most of the claims were settled and paid in 1991. These claims related to clean-up operations and preventive measures and to damage to small craft and fishing equipment.

A claim in the amount of £19 063 submitted by the Ministry of Defence for costs incurred in connection with this incident was settled for the full amount. In June 1993, the IOPC Fund paid £12 708 representing two thirds of the settled amount, whereas the shipowner's hull underwriters paid the remaining one third.

A claim presented by the owner of the fish farm for £287 298 is pending.

The IOPC Fund has so far paid £280 585 in compensation and the shipowner's P & I insurer has paid £39 472.

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

VISTABELLA

(Caribbean, 7 March 1991)

The sea-going barge VISTABELLA (1 090 GRT), registered in Trinidad and Tobago and carrying approQMS PS Jet +/800 II/810/JetScriptQMPSJEII.PRSge sank to a depth of over 600 metres, 15 miles south-east of Nevis. An unknown quantity of oil was spilled as a result of the incident, and the quantity remaining in the barge is not known.

Under the influence of the current, the spilt oil spread northwards and some came ashore on St Barthélemy (Department of Guadeloupe, France), where a number of yachts and fishing boats were polluted. Off-shore clean-up operations were carried out by the French Navy, applying dispersants in the sea area between the sinking site and St Barthélemy. This activity was terminated after a few days when it was confirmed that the dispersant treatment was having little effect because of the high viscosity of the spilt oil. Manual clean-up of the oiled shoreline was also carried out by French army personnel on St Barthélemy.

The coasts of Saint Kitts, Nevis, Saba and Sint Maarten were also polluted. The two former islands constitute the independent State of Saint Christopher and Nevis, whilst Saba and Sint Maarten are part of the Netherlands Antilles. Oil also came ashore on the British Virgin Islands, the United States Virgin Islands and Puerto Rico (United States).

In total, five jurisdictions were affected as a result of this incident. However, only the pollution damage in the French Department of Guadeloupe and in the British Virgin Islands qualified for compensation from the IOPC Fund. Neither the independent State of Saint Christopher and Nevis nor Puerto Rico and the United States Virgin Islands are covered by the Fund Convention. Likewise, the Fund Convention does not cover damage in the Netherlands Antilles since the Kingdom of the Netherlands has not extended the application of the Convention to that area.

KEUMDONG N°5 - Beach clean-up at Haeryong, Namhae Island

KEUMDONG N°5 - Laver seaweed farm at Sangmoon, Hadong County

The VISTABELLA was not entered in any P & I Club. It appears that the barge was covered by a third party liability insurance, but the IOPC Fund has so far been unable to establish the extent of this cover. The limitation amount applicable to the ship is not known. Attempts were made to contact the shipowner and his insurer in order to obtain their co-operation in the settlement procedure, but without success. The financial position of the shipowner is being investigated. In the Director's view it is unlikely that the shipowner will be able to meet his obligations under the Civil Liability Convention unless there is any effective insurance.

Claims totalling FFr189 202 (£21 750) were submitted by some 30 owners of yachts and fishing vessels in St Barthélemy. In July and August 1991, the IOPC Fund settled and paid these claims for an aggregate amount of FFr110 010 (£11 040).

A claim for US$6 099 (£3 198) in respect of clean-up operations was submitted by the owner of a hotel on Peter Island, British Virgin Islands. The Authorities of the British Virgin Islands submitted a claim in the amount of US$1 969 (£1 033) in respect of on-shore clean-up operations. Both claims were accepted in full and were paid by the IOPC Fund in April 1992 and June 1992, respectively.

The French Government brought legal action against the owner of the VISTABELLA in the Court in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The IOPC Fund is following the legal proceedings and will intervene if it is in the Fund's interest to do so.

In November 1992, the French Government submitted its claim for compensation in the amount of FFr9 504 240 (£1 092 750). The supporting documents have been examined by the IOPC Fund Secretariat with the assistance of external experts, and negotiations will be held with the French Government in early 1994.

HOKUNAN MARU N°12

(Japan, 5 April 1991)

The Japanese tanker HOKUNAN MARU N°12 (209 GRT), laden with 230 tonnes of heavy fuel oil, ran aground near Okushiri Island in Hokkaido prefecture (Japan). As a result of the incident, a small quantity of the cargo escaped into the sea. The tanker was safely refloated later the same day. Clean-up operations were immediately undertaken and were completed on 6 April.

The area around the grounding site is of great importance for the cultivation of seaweed, abalone and sea urchin.

A claim relating to clean-up operations for ¥4 020 889 (£24 600) was settled at ¥3 336 389 (£20 400). A claim for loss of income suffered by fishermen in the amount of ¥31 714 344 (£194 300) was settled at ¥6 331 960 (£38 800). In April 1992, the IOPC Fund paid ¥6 144 829 (£26 601), representing the aggregate amount of the agreed claims minus the shipowner's limitation amount of ¥3 523 520 (£15 253).

The indemnification of the shipowner, amounting to ¥880 880 (£5 243), was paid by the IOPC Fund in March 1993.

AGIP ABRUZZO

(Italy, 10 April 1991)

The Incident

Whilst lying at anchor two miles off the port of Livorno (Italy), the Italian tanker AGIP ABRUZZO (98 544 GRT) was struck at night by the Italian ro-ro ferry MOBY PRINCE. Both vessels caught fire. All passengers and all crew members but one on board the ferry (143 persons in all) died, and the ferry was burned out. There were no fatalities on board the tanker, although some crew members were injured.

The AGIP ABRUZZO was carrying about 80 000 tonnes of Iranian light crude oil. As a result of the collision, a cargo tank was damaged and about 2 000 tonnes of cargo oil were lost, part of which was consumed by fire. The fire on board the tanker lasted seven days and destroyed the accommodation area and engine room. Explosions in a bunker tank three days after the incident caused extensive structural damage to the ship and a subsequent loss of an unknown quantity of bunkers. As a result of bad weather and the operations on board, further small releases of oil occurred some two weeks after the initial incident.

Clean-up Operations and Salvage

Initially it was envisaged that the water from the flooded engine room and other spaces of the AGIP ABRUZZO would be pumped so as to reduce her draught sufficiently to make it possible to bring her into the port of Livorno to discharge the remainder of her cargo. Due to difficulties that arose in preventing the engine room from flooding again, however, it was decided to conduct a ship-to-ship transfer of the cargo at the anchorage. The cargo transfer was carried out from 12 to 17 May, with several interruptions due to bad weather and operating difficulties. The AGIP ABRUZZO remained at the anchorage until October 1991 when she was towed away, having been sold for scrap.

Attempts to recover the oil at sea were partially successful, but difficulties were experienced due to the high viscosity of the burnt oil residue and because the spilt fuel oil was distributed over a wide area. The spilt oil eventually stranded over some 130 kilometres of shoreline, mostly north of Livorno, although the pollution was intermittent and for the most part consisted of a light scattering of tar balls.

Shoreline cleaning in the Livorno area was undertaken by local contractors. While most of these operations were completed by early June 1991, before the beginning of the main tourist season, two areas required work to be continued through the summer.

Limitation Proceedings

On 28 July 1993, the owner of the AGIP ABRUZZO (SNAM, a company belonging to the state owned ENI group) made an application to the Court of first instance in Livorno to open limitation proceedings. The Court has not yet taken any decision on this application.

It is estimated that the limitation amount applicable to the AGIP ABRUZZO under the Civil Liability Convention is approximately LIt 22 525 million (£9.0 million).

Claims for Compensation

A number of claims for compensation were presented to the shipowner and the IOPC Fund. Negotiations were held concerning these claims and most of them were settled out of court. Claims settled as 31 December 1993 total LIt 17 917 500 000 (£7.2 million). With the exception of a claim presented by the shipowner himself, these claims were paid by the shipowner.

In February 1993, the Italian Government submitted a claim for LIt 1 333 300 000 (£532 500) relating to costs incurred in connection with the use of military aircraft and ships. This claim is being examined by the IOPC Fund with the assistance of external experts. The Government has informed the IOPC Fund that it has not yet been able to decide whether to submit a claim relating to damage to the marine environment, since the investigation into the effects of the spill on the environment has not been completed.

The owner of a number of pleasure boats has submitted a claim for LIt 65 335 000 (£26 100) relating to contamination of his boats.

Enquiry into the Cause of the Incident

An administrative enquiry into the cause of the incident has been carried out by a special Board appointed by the Ministry of Merchant Marine. It is expected that the Board will issue a report on its findings in the near future. A criminal investigation has been carried out by the public prosecutor but this investigation has not been completed.

The IOPC Fund has followed the administrative enquiry and the criminal investigation, through its Italian lawyer.

Limitation of Liability and Recourse Action

At its session in October 1992, the Executive Committee noted the Director's view that there were so far no indications that there was any fault or privity on the part of the owner of the AGIP ABRUZZO and that it would therefore not be possible to deprive the shipowner of the right to limit his liability.

The owner of the MOBY PRINCE is entitled, under Italian law, to limit his liability unless it can be shown that the incident was a result of the wilful misconduct or the recklessness of the owner himself. In view of the jurisprudence of the Italian Constitutional Court relating to the liability of air carriers in accordance with the 1929 Convention for the Unification of Certain Rules relating to International Carriage by Air (Warsaw Convention), however, it is generally considered that a shipowner would not be entitled to limit his liability for loss of life or personal injury. In fact, the owner of the MOBY PRINCE has agreed to settle all claims for loss of life or personal injury without invoking the right of limitation.

At the Executive Committee's session in October 1992, the Director reported that the information available indicated that the collision between the AGIP ABRUZZO and the MOBY PRINCE resulted from the negligence of the crew of the latter vessel. The Committee therefore authorised the Director to take recourse action against the owner of the

MOBY PRINCE to recover any amount paid by the IOPC Fund as a result of the incident, unless the findings of the Board of Enquiry were to show that there were no grounds for such an action. Noting the Director's view that, given the information currently available, it would not be possible for the IOPC Fund to break the limit of liability of the MOBY PRINCE, the Committee instructed him to re-examine this issue in the light of the findings of the Board of Enquiry.

The P & I insurer of the AGIP ABRUZZO (the Skuld Club) has started recourse action against the owner of the MOBY PRINCE. The IOPC Fund has intervened in the proceedings to protect its interests.

So far claims totalling LIt 81 800 million (£33 million) have been presented against the owner of the MOBY PRINCE by the AGIP ABRUZZO's hull underwriters, by the owner of the AGIP ABRUZZO and by the Skuld Club. It is estimated that the limitation amount applicable to the MOBY PRINCE in this case will be between LIt 3 200 million (£1.3 million) and LIt 4 000 million (£1.6 million).

A hearing was held in the Court of Livorno in June 1993 at which the owner of the MOBY PRINCE rejected any liability for the collision and requested the adjournment of the case pending the results of the administrative enquiry and the outcome of the criminal investigation. The case was adjourned until 3 March 1994.

HAVEN

(Italy, 11 April 1991)

The Incident

The Cypriot tanker HAVEN (109 977 GRT) caught fire and suffered a series of explosions on 11 April 1991 whilst at anchor seven miles off Genoa. The tanker, which carried approximately 144 000 tonnes of crude oil at the time, broke into three parts. A large section of deck became separated from the main structure and sank to a depth of about 80 metres. In a position about seven miles south of Arenzano, the bow section became detached and sank to a depth of about 500 metres. The remaining main part of the ship was towed into shallower water where, after a further series of explosions, it sank on 14 April, some 1.5 miles off the coast at Arenzano to a depth of 90 metres.

Clean-up Operations and Related Issues

The quantity of oil consumed by the fire has not been established, but it is estimated that over 10 000 tonnes of fresh and partially burnt oil were spilled into the sea. Oil continued to seep from the wreck at a slow rate and small quantities of oil appeared on the surface. Divers were able to stop the main leakage within about ten days of the incident. Thereafter, there was minor seepage from the wreck until August 1992.

Since most of the oil spilt initially consisted of burnt residue which was highly viscous, collection of this oil at sea proved very difficult. The Italian authorities concentrated on deploying booms to protect sensitive areas along the coast, primarily amenity beaches. A significant quantity of oil came ashore between Genoa and Savona. The clean-up on shore in Italy was initially conducted by local authorities. Oil entered two marinas, resulting in the oiling of moorings, harbour walls and about 330 yachts and fishing boats.

On 22 May 1991, a contract on pollution monitoring and clean-up was concluded between the Italian Government and a consortium of contractors known as ATI. This contract was intended to apply retroactively from 14 April. The beach clean-up activities as outlined in the contract were completed by the end of August. However, increased water temperatures and wave action resulted in droplets of sunken oil rising to the surface causing limited but regular re-contamination of some beaches during the summer of 1991.

Approximately 1 000 tonnes of oily waste and some 10 000 tonnes of oily water were collected and have been disposed of. In addition, some 20 000 metres of contaminated booms had to be destroyed.

Some oil spread as far west as Hyères near Toulon in France affecting the coast in four French departments. The clean-up operations at sea were carried out by the French Government and the on-shore clean-up by the local authorities.

Investigations into the Cause of the Incident

A Summary Enquiry into the cause of the incident was conducted by the Genoa Port Authority pursuant to the Code of Navigation. The conclusion of the Summary Enquiry was that there had been negligence both on the part of the shipowner and on the part of the crew, but that the negligence of the owner had no link of causation with the incident. The report on the Summary Enquiry has no legal value.

The Panel of Enquiry for the Ligurian area carried out a formal enquiry into the cause of the HAVEN incident. The Panel held public hearings from 14 November 1991 to 13 February 1992. Crew members and other persons were heard by the Panel, and extensive documentation was examined.

In its report, the Panel of Enquiry discussed various hypotheses as to the cause of the incident, viz structural failure in central tank N°1, leakage of cargo into central tank N°2 which was a dedicated ballast tank, and explosion in the pump room. The Panel concluded that it could not establish the cause. Nevertheless, the Panel deemed that four persons, namely the master, the chief mate, the chief engineer and the shipowner, had been guilty of negligence or gross negligence in certain regards, although the Panel did not link the incident to such negligence. The Panel also held that the owner had been guilty of gross negligence for not having ensured the efficiency of certain essential equipment before allowing the ship to return to commercial operation, for not having ordered the ship to stop sailing in view of certain technical problems which had arisen and for not having informed the classification society of the fact that one inert gas generator was out of order.

The Public Prosecutor is examining the report of the Panel of Enquiry.

Limitation Proceedings

After legal action had been taken against the shipowner, the Court of first instance in Genoa opened limitation proceedings in May 1991 and fixed the limitation amount at LIt 23 950 220 000 (£9.6 million), which corresponds to 14 million SDR, ie the maximum amount under the Civil Liability Convention. The limitation fund was established by the P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd

(the UK Club), by means of a bank guarantee. The IOPC Fund intervened in the limitation proceedings, pursuant to Article 7.4 of the Fund Convention.

The IOPC Fund lodged opposition to the Court's decision to open the limitation proceedings, challenging the shipowner's right of limitation. Corresponding oppositions were also lodged by the Italian Government and some other claimants.

Claims for Compensation

Italian Claims

Some 1 350 Italian claimants have presented claims to the Court of Genoa within the prescribed time limit. However, many claims do not indicate any figures, and a number of claims state that the amount indicated is provisional. The total amount of those claims which indicate figures is LIt 1 188 678 million (£475 million). It cannot be ruled out that further claims will be submitted.

The largest claim has been presented by the Italian Government, whose claim totals LIt 261 000 million (£104 million). This claim includes items relating to initial clean-up costs incurred by contractors instructed by several government authorities, reimbursement of the value of oil booms lost or destroyed, expenses incurred by various ministries and public bodies, and costs associated with the execution of a contract relating to clean-up operations and monitoring concluded between the Italian Government and a consortium of contractors known as ATI.

The Italian Government's claim also includes an item relating to presumed damage to the marine environment in the amount of LIt 100 000 million (£40 million). The claim documents do not indicate the kind of "environmental damage" which was allegedly sustained, nor do they give any indication as to the method used to calculate the amount claimed. The Italian Government has informed the IOPC Fund that it has not been possible so far to describe the environmental damage because the study of the effects of the incident on the marine environment has not yet been completed. The Government has also stated that the figure given in the claim is only provisional.

The Region of Liguria has requested that the figure in the Italian Government's claim relating to environmental damage, LIt 100 000 million, be increased to LIt 200 000 million (£80 million). The Region has maintained that the amount should be apportioned between the various territorial entities which have directly suffered or are suffering ecological damage. Two provinces and 14 communes have included items relating to environmental damage in their respective claims. None of these claims contain any description of the alleged damage and the claims setting out an amount do not explain how these amounts have been calculated.

The owners of 43 yachts have claimed compensation for contamination of their boats for LIt 126 million (£50 300). Thirty-eight fishermen have claimed LIt 439 million (£175 300) for contamination of their boats and nets. Claims for loss of income have been presented by nearly 700 hotel owners for LIt 80 000 million (£32 million) and by 150 fishermen for LIt 13 500 million (£5.4 million). Ninety-three operators of beach facilities have claimed compensation for reduced income for LIt 3 900 million (£1.6 million).

A number of the claims presented by Italian claimants are duplications. The duplications are mainly due to the fact that the State and a number of contractors and subcontractors have presented claims in respect of the same operations. The IOPC Fund has tried to establish the aggregate amount of the claims after the elimination of the duplications and excluding claims relating to damage to the marine environment. This leaves a balance of LIt 281 080 million (£111 million). It should be emphasised that this assessment should not be taken as in any way representing the position of the IOPC Fund as regards the admissibility of the respective claims, nor as regards the reasonableness of the amounts claimed.

Judge's Examination of the Italian Claims

The judge in charge of the limitation proceedings started hearings in September 1991 to discuss the individual claims. Most of the claims have been given preliminary consideration. As a number of claims are not supported by any documentation, the judge invited the claimants to present supporting documentation. It is expected that the judge will not be able to establish the list of admissible claims ("stato passivo") until late 1994.

In July 1993 the IOPC Fund presented, jointly with the shipowner and the UK Club, lengthy pleadings to the Court in respect of all claims relating to clean-up operations excluding the clean-up operations carried out in France. The total amount of these claims is approximately LIt 160 000 million (£64 million). As mentioned above a number of these claims are duplications.

The State has so far not presented to the Court any documents in support of its claim in respect of the ATI contract.

Italian Claims relating to Environmental Damage

The claims relating to damage to the marine environment, which have not yet been dealt with by the judge, were discussed by the Executive Committee in December 1991 on the basis of a study made by the Director. In the study it was emphasised that if a conflict arose between the Civil Liability Convention and the Fund Convention, which had been implemented into Italian legislation by Statute and any other Italian Statute, the Conventions should prevail. In his study, the Director pointed out that the IOPC Fund had consistently taken the position that claims relating to non-quantifiable elements of damage to the environment could not be admitted. In its interpretation of the Civil Liability Convention and the Fund Convention, the IOPC Fund Assembly had excluded the assessment of compensation for damage to the marine environment on the basis of an abstract quantification of damage calculated in accordance with theoretical models (Resolution N°3 adopted by the Assembly in 1980). The Assembly had also taken the view that compensation could only be granted if a claimant had suffered quantifiable economic loss. Attention was drawn in the study to the fact that the Civil Liability Convention and the Fund Convention had been adopted for the purpose of providing compensation to victims of pollution damage. For this reason, it was maintained that claims which did not relate to compensation did not fall within the scope of the Conventions, for example, damages awarded under an Italian Act of 1986 relating to non-quantifiable elements of damage to the environment which were of a punitive character.

TAIKO MARU - Deployment of booms

BRAER - Contaminated grazing land

The Executive Committee agreed in general with the Director's analysis of the issues involved.

During the discussions in the Executive Committee, the Italian delegation stated that it did not agree with the basis of the Director's analysis of the problem nor with his conclusions. The Italian delegation could not agree that only quantifiable elements of damage to the marine environment were admissible. In the view of the Italian delegation, compensation was mainly governed by an Italian Act of 1982 which envisaged the possibility of compensation for damage to the marine environment both for quantifiable and unquantifiable elements. The Italian delegation did not accept that compensation under the 1986 Act should be considered as a sanction.

The IOPC Fund will submit further pleadings concerning the claims relating to environmental damage when the judge resumes his consideration of this issue.

French Claims

The French Government has brought legal action in the Court of Genoa claiming compensation for the cost of operations at sea and beach clean-up in France for a total amount of FFr16 284 592 (£1.9 million). The French Government has reserved its right to claim compensation in respect of costs incurred for restoration of the marine environment, referring to the Resolution concerning damage to the environment adopted by the IOPC Fund Assembly in 1980.

Claims totalling FFr78 410 591 (£9.0 million) have been presented to the Court in Genoa by 32 French communes and one other public body. These claims relate almost exclusively to shoreline clean-up activity and loss of income in the tourist industry. One of the public bodies (Parc National de Port-Cros) has claimed compensation for damage to the marine environment.

The French claims have been examined by the IOPC Fund Secretariat with the assistance of experts. It has been agreed that negotiations should be held for the purpose of arriving at an agreement between the claimants and the shipowner, the UK Club and the IOPC Fund as to the quantum of the claims. Any such agreement will be subject to examination by the Court in Genoa. Discussions are being held with the communes and negotiations with the French Government will commence in early 1994.

Claims relating to "Pure Economic Loss"

During 1993, the Executive Committee took a number of important decisions concerning the position of the IOPC Fund to certain claims arising out of the HAVEN incident. The main question of principle related to the admissibility of claims for so called "pure economic loss", ie economic loss suffered by persons whose property had not been contaminated as a result of the incident. In most jurisdictions there has been a great reluctance to recognise claims of this kind, for fear of the far-reaching consequences of such acceptance. In most legal systems a claim for compensation is generally accepted only if it relates to damage to a defined and recognised legal right (eg a right of ownership or a right of possession).

Claims for pure economic loss have been presented to the IOPC Fund in previous cases. The IOPC Fund has accepted to compensate economic loss suffered by persons who depend directly on earnings from coastal or sea-related activities even if the person concerned had not suffered any damage to property, such as fishermen and hoteliers and restaurateurs at sea-side resorts.

The Executive Committee recalled that the system of compensation established by the Civil Liability Convention and the Fund Convention applied to "loss or damage caused by contamination". It was emphasised that compensation could be granted to a claimant only if and to the extent that his loss or damage could be considered as caused by contamination. The Committee stated that in order to qualify for compensation there must be a link of causation between the damage or loss covered by the claim and the contamination.

The Executive Committee noted that the loss of income suffered by the fishermen in the HAVEN case resulted from contamination of the area of the sea where they normally carried out their fishing. The Committee decided, therefore, that these claims should in principle be accepted, although each claimant would have to show that he had actually been prevented from fishing as a result of the HAVEN incident and prove the quantum of the loss resulting from his inability to fish.

The Executive Committee decided that the loss of income suffered by the operators of beach facilities ("bagni") located along the Italian coast between Genoa and the French border as a result of the reduction in tourism should be considered as "damage caused by contamination" to the extent that such a reduction was caused by the HAVEN incident. The Committee noted that these operators had suffered an infringement of their recognised legal right, viz to operate the facility on the beach.

As regards the claims submitted by the owners of hotels, restaurants and shops located along the Italian coast from Genoa to the French border, the Executive Committee recognised that it might be difficult to lay down strict criteria as to which types of claims should be admissible, since these establishments had not been directly affected by the oil spill. The Committee decided that each claim should be considered on its own merits and that the decisive criteria should be whether there was a link of causation between the loss or damage and the contamination resulting from the HAVEN incident.

The Committee accepted that, if contamination of the beaches resulted in a reduction in the tourist activity in a given town or village, it would probably affect all establishments of the same kind in the locality. For this reason, the Committee took to the view that all hotels, restaurants and shops in the same town or village should be treated equally, independent of their location. As regards shops, the Committee took the view that there should be no distinction made dependent on the types of goods sold, except in respect of shops selling goods which were not normally bought by tourists (such as furniture and cars). Finally, the Committee decided that equal treatment should in principle be given to all claims for loss of income submitted in respect of establishments along this coast, independent of whether the particular town or village where they were located had been directly affected by the oil from the HAVEN.

A yacht owner, who during the summer of 1991 had his boat moored in Arenzano, had presented a claim relating to reimbursement of part of his mooring fees and insurance premiums for 1991. The Executive Committee rejected this claim, since these costs would have been incurred by the claimant whether or not the HAVEN incident had occurred and there was consequently no link of causation between the contamination and these costs.

The City of Cannes and the Municipality of Lavandou (France) claimed compensation relating to losses of tax revenue allegedly resulting from a reduction in tourism. The Executive Committee took the view that these claims should be rejected, since the claimants had not shown that the alleged loss was caused by the HAVEN incident.

A claim presented by the City of Cannes relating to extra costs for publicity to counteract the negative effects on the reputation of the City as a tourist resort was rejected by the Executive Committee, since in the Committee's view it had not been shown that the HAVEN incident had caused any damage to this reputation.

A claim presented by the Region of Liguria relating to damage to the "touristic image" was rejected by the Executive Committee, in view of the position consistently taken by the IOPC Fund that only a claimant who had suffered a quantifiable economic loss was entitled to compensation.

Claims by public bodies in Italy for costs of the promotion of tourism were rejected by the Executive Committee for various reasons. In respect of one claim, the Committee stated that the claimant had not allocated any extra funds but only used funds already allocated in the budget for tourism promotion and had therefore not suffered any actual economic loss. Concerning another claim the Committee took the view that the claimant had not shown that the expenses covered by the claim were linked to the HAVEN incident. A third claim was rejected because in the Committee's view it had not been shown that the activities covered by the claim had contributed to counteracting the negative effects on tourism of the publicity resulting from the HAVEN incident.

As for the general question of admissibility of claims for costs relating to activities carried out for the purpose of counteracting the negative consequences for tourism of media reports on oil spills, reference is made to the analysis made in connection with the BRAER incident (page 62).

The IOPC Fund's position in the limitation proceedings will be based on the decisions taken by the Executive Committee set out above.

Method of the Conversion of (gold) francs

The amounts in the Civil Liability Convention and the Fund Convention in their original versions were expressed in (gold) francs (Poincaré francs). Under the Civil Liability Convention, the amounts expressed in (gold) francs should be converted into the national currency of the State in which the shipowner established the limitation fund on the basis of the *official* value of that currency by reference to the franc on the date of the establishment of the limitation fund. In 1976 Protocols were adopted to both Conventions. Under these

Protocols, the (gold) franc was replaced as the monetary unit by the Special Drawing Right (SDR) of the International Monetary Fund (IMF). The 1976 Protocol to the Civil Liability Convention entered into force in 1981, whereas the 1976 Protocol to the Fund Convention has not yet come into force.

In the limitation proceedings, an important legal question has arisen, viz the method to be applied for converting the maximum amount payable by the IOPC Fund (900 million (gold) francs) into Italian Lire. The IOPC Fund had taken it for granted that the conversion should be made on the basis of the SDR. It was maintained by some claimants, however, that the conversion should be made by using the free market price of gold, since there was no longer any official value of gold and the 1976 Protocol to the Fund Convention which replaced the (gold) franc with the SDR was not in force.

The IOPC Fund's main argument in support of its position is that the inclusion of the word "official" in the definition of the unit of account laid down in the original text of the 1969 Civil Liability Convention was made deliberately in order to ensure stability in the system and that it was clearly meant to rule out the application of the free market price of gold. The IOPC Fund has drawn attention to the fact that the judge had fixed the limit of the shipowner's liability by using the SDR. The unit of account in the Fund Convention is defined by a reference to the Civil Liability Convention, and in the IOPC Fund's view this reference must be considered to refer to the Civil Liability Convention as amended by the 1976 Protocol thereto. The IOPC Fund has pointed out that the application of different units of account in the Civil Liability Convention and the Fund Convention would lead to unacceptable results, in particular as regards the relationship between the portion of liability to be borne by the shipowner and the IOPC Fund, respectively, on the basis of Article 5.1 of the Fund Convention.

A judge of the Court of first instance in Genoa, who is in charge of the limitation proceedings, rendered his decision on this issue on 14 March 1992. He held that the maximum amount payable by the IOPC Fund should be calculated by the application of the free market value of gold which gives an amount of LIt 771 397 947 400 (£308 million) (including the amount paid by the shipowner under the Civil Liability Convention), instead of LIt 102 864 000 000 (£41 million), as maintained by the IOPC Fund, calculated on the basis of the SDR. The IOPC Fund lodged opposition to this decision.

The IOPC Fund's opposition was considered by the Court of first instance which was composed of three judges (including the judge who rendered the decision in 1992). The Court rendered its judgement on 26 July 1993. In the judgement the Court upheld the decision of 14 March 1992 and fixed the maximum amount payable by the IOPC Fund at LIt 771 397 947 400 (£308 million).

In its judgement the Court noted that the adjective "official" was inserted in the text of the Convention at the last session of the 1969 Diplomatic Conference. The Court stated that since the gold no longer had an official value, the reference to gold could not mean anything else than the free market value of gold. The Court rejected the IOPC Fund's argument that Article 1.4 of the Fund Convention, which relates to the unit of account, should be considered as referring to the Civil Liability Convention as amended by the 1976 Protocol. The Court maintained that the calculation of indemnification of the shipowner under Article 5 of the Fund Convention should be made by using a percentage calculation, which would

result in the Fund's indemnification being determined in SDR. The Court admitted that the general opinion of States was that the (gold) franc should be substituted by the SDR, but stated that the opinion of States did not change the law.

The IOPC Fund has appealed against the judgement.

At its session in October 1993 the Executive Committee expressed its concern as regards the consequences of the judgement for the future of the international regime of liability and compensation established by the Civil Liability Convention and the Fund Convention. It emphasised that the universally accepted interpretation of the Fund Convention was that the limit of the IOPC Fund's cover should be determined by using the SDR.

Discussions with the Italian Government

At the session of the Executive Committee in March 1993, the Italian delegation drew attention to the fact that although nearly two years had passed since the HAVEN incident, no payments had been made which was causing considerable financial hardship to victims in Italy. The Italian delegation stated that, in view of the complexity of the on-going court proceedings, it might take many years before these proceedings could be brought to an end. This delegation stated that, for this reason, the Italian Government was ready to enter into discussions with the other parties involved in the incident in order to find acceptable compromise solutions to the various issues, thereby making it possible to settle the whole incident out of court.

Several delegations stated that they shared the concerns of the Italian delegation as regards the delay in payment to victims and the risk of protracted litigation. For this reason, they supported the Italian proposal that discussions should be held for the purpose of exploring the possibilities of out-of-court settlements. These delegations nevertheless drew attention to the fact that this case had given rise to several questions of principle of great importance and that it might be difficult to find acceptable solutions on these points.

The Executive Committee, recognising the great complexity of the issues involved, instructed the Director to enter into discussions with the Italian and French Governments for the purpose of exploring the possibilities of out-of-court settlements in respect of claims arising out of the HAVEN incident.

In accordance with the instructions given to him by the Executive Committee, the Director has entered into discussions with the Italian Government. So far these discussions have focused on establishing the main problems involved. The discussions will continue during 1994.

KAIKO MARU N°86

(Japan, 12 April 1991)

The Japanese tanker KAIKO MARU N°86 (499 GRT), laden with 1 000 tonnes of heavy fuel oil, collided in dense fog with two coastal barges off Nomazaki in Aichi prefecture (Japan). As a result of the collision, approximately 25 tonnes of cargo oil escaped into the sea. The area is of great importance for fishing and the cultivation of seaweed.

Clean-up operations were immediately undertaken. The operations at sea were completed on 14 April. Due to strong winds, part of the oil reached some small islands. The clean-up operations on shore lasted until 19 April.

Claims relating to clean-up operations were submitted for a total amount of ¥77 927 993 (£477 350). These claims were settled at ¥61 915 542 (£379 300). Claims relating to loss of income suffered by fishermen, totalling ¥62 680 286 (£383 950), were settled at ¥45 812 751 (£280 629).

In August 1992, the IOPC Fund paid ¥93 067 813 (£374 368), representing the aggregate amount of the agreed claims minus the shipowner's limitation amount of ¥14 660 480 (£58 970). Indemnification of the shipowner, amounting to ¥3 665 120 (£21 816), was paid in March 1993.

After an investigation into the cause of the incident, the Marine Court concluded that the collision was caused by navigational error both on the part of the KAIKO MARU N°86 and on the part of the barges. According to the Court, there was no actual fault or privity on the part of the owner of the KAIKO MARU N°86.

The IOPC Fund's lawyer was instructed to investigate the possibility of taking recourse action against the owners of the colliding barges. His investigation established that there was no P & I insurance in respect of the barges and that the financial situation of the barge owners was very uncertain. For these reasons, the IOPC Fund decided that it was not worthwhile taking such recourse action.

KUMI MARU N°12

(Japan, 27 December 1991)

The Japanese tanker KUMI MARU N°12 (113 GRT) collided with a container ship in Tokyo Bay (Japan). As a result of the collision, the KUMI MARU N°12 sustained damage to her starboard shell plating and n°4 tank, allowing some five tonnes of her cargo of heavy fuel oil to spill into the sea. In order to prevent further pollution, the remaining cargo was transferred to another vessel. Clean-up operations were begun immediately by the Maritime Disaster Prevention Centre.

The cause of the incident is under investigation.

Claims in respect of clean-up operations were submitted for a total amount of ¥6 211 309 (£38 050). These claims were settled at ¥4 115 079 (£25 200). In November 1992, the IOPC Fund paid ¥1 056 519 (£5 629), representing the settlement amount minus the limitation amount applicable to the KUMI MARU N°12, ¥3 058 560 (£16 290).

The shipowner's P & I insurer (the Japan Ship Owners' Mutual Protection and Indemnity Association, JPIA) requested that the IOPC Fund should waive the requirement to establish the limitation fund. 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 in March 1993 that the IOPC Fund could, as an exception, pay compensation in this case without the limitation fund being established.

Indemnification of the shipowner, ¥764 640 (£4 680), has not yet been paid.

FUKKOL MARU N°12

(Japan, 9 June 1992)

While the Japanese tanker FUKKOL MARU N°12 (94 GRT) was supplying heavy fuel oil to a fishing boat in the port of Ishinomaki (Japan), a bunkering hose was mishandled, resulting in a small quantity of oil escaping into a cargo hold where about 50 tonnes of fish were being stored. Some 20 tonnes of fish were contaminated and had to be destroyed. The remaining part of the cargo was sold but at a lower price than usual.

In this case the question arose as to whether the damage to the fish and 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.

The notion of "pollution damage" covers damage by contamination which occurs outside the ship carrying the oil which caused the damage. The IOPC Fund had, in several 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 these cases the oil had escaped into the sea and necessitated clean-up operations. The FUKKOL MARU N°12 case was different in that no oil escaped into the sea and no clean-up operations took place. However, in two previous cases similar to this incident, the IOPC Fund had taken the position that the damage caused to a fish cargo in nearly identical circumstances should be considered as being covered by the definition of "pollution damage". In view of it's position in these previous cases, the IOPC Fund decided that the damage in the FUKKOL MARU N°12 case should be considered as falling within that definition.

A claim for compensation relating to damage to the fish cargo and costs for cleaning the cargo tank was presented by the owner of the fishing boat in the amount of ¥6 442 397 (£39 500). This claim was settled in full in December 1992.

In April 1993, the IOPC Fund paid ¥4 243 997 (£23 100) representing the amount of the settled claim minus the shipowner's limitation amount of ¥2 198 400 (£11 900), plus indemnification of the shipowner amounting to ¥549 600 (£2 900).

The shipowner's P & I insurer requested that the IOPC Fund should waive the requirement to establish the limitation fund. This request was granted by the Executive Committee in March 1993, for the reasons set out above in respect of the KUMI MARU N°12 incident.

AEGEAN SEA

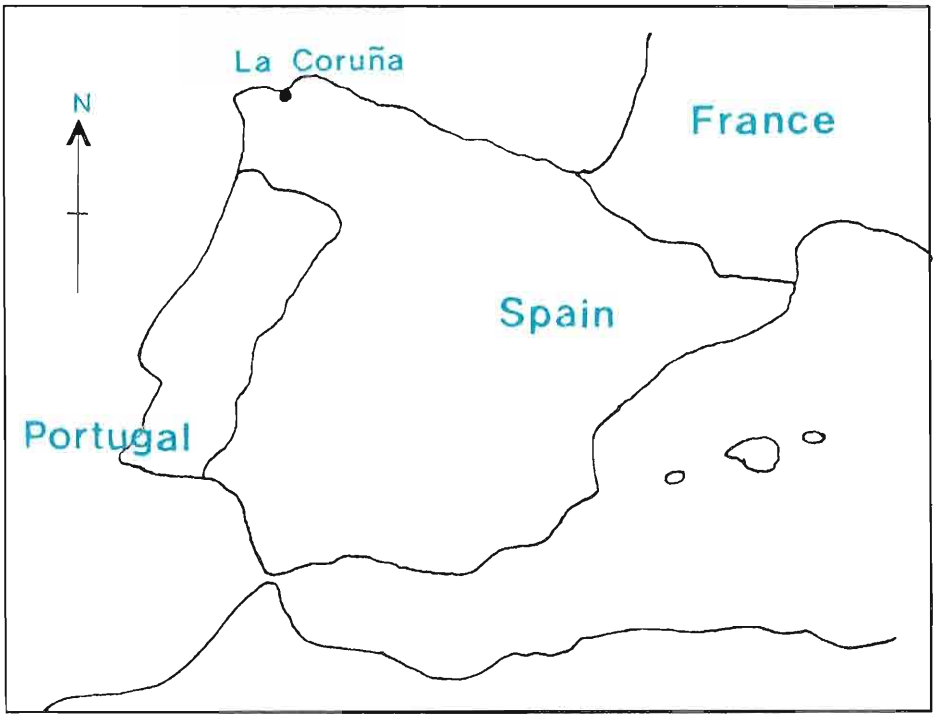
(Spain, 3 December 1992)

The Incident

During a period of heavy weather, the Greek OBO AEGEAN SEA (57 801 GRT) ran aground while approaching La Coruña harbour in north-western Spain. All 32 crew members were rescued by helicopter after the grounding. The ship, which was carrying approximately 80 000 tonnes of crude oil, broke in two and burnt fiercely for about 24 hours, whereafter the forward section sank some 50 metres from the coast. The stern section smouldered for several days but remained largely intact. Approximately 6 500 tonnes of crude oil and 1 700 tonnes of heavy fuel oil were found in the aft section. This oil was removed by salvors working from the shore. No oil remained in the sunken forward section. Whilst the quantity of oil spilled is unknown, it appears that most of the cargo was either consumed by the fire on board the vessel or dispersed in the sea.

Due to the heavy weather, little could be done to recover oil at sea but attempts were made to protect sensitive areas using booms deployed from ships and from the shore. However, as a result of the nature of the oil cargo (Brent Blend Crude) and the vigorous wave action typical of the exposed coast, there was considerable natural dispersion of the oil slicks. The coast is predominantly rocky and heavily indented, with some very large estuaries. Several stretches of shoreline east and north-east of La Coruña were contaminated and Ria de Ferrol was heavily polluted.

In areas where access from the shore was possible, efforts were made to remove floating oil, using vacuum trucks, skimmers and pumps. A total quantity of about 5 000m^3 of oil/water mixture was collected and delivered to local oil reception facilities for processing.



The cleaning of polluted beaches commenced in late December 1992. An estimated quantity of 1 200m^3 of oiled sand and contaminated debris was removed. This material was delivered to a contractor for final disposal. The more sheltered Ria de Ferrol, which contains mudflats and saltmarshes, was also polluted. Given the sensitivity of the environment to physical damage, particular care had to be taken to select appropriate clean-up techniques. Work in the estuary, which was completed in July 1993, involved the manual removal of oily beach material and debris, and the washing of rocks and manmade surfaces. A total quantity of approximately 1 500 tonnes of material was transported to a disposal contractor for treatment.

The Fisheries Council of the Region of Galicia imposed a fishing ban in the area affected by oil from the AEGEAN SEA. The gathering of clams, cockles, sea-urchins and goose barnacles, which are the species of greatest commercial importance, was prohibited. As conditions improved, these restrictions were removed, and fishing was back to normal in August 1993. The restrictions affected some 3 000 fishermen, including shellfish harvesters.

There is extensive raft cultivation of mussels in Ria de Betanzos, and although physical contamination of the rafts by oil was slight, tainting of mussels occurred. There are also other mariculture facilities in the area, namely turbot and salmon farms, and clam and mussel purification plants which were affected.

Claims Handling

On 25 January 1993, an Agreement was concluded between the Spanish Government, the Government of the Region of Galicia, the shipowner, the shipowner's P & I insurer (the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd, "the UK Club") and the IOPC Fund, setting out the procedure for co-operation in the handling of claims.

The Spanish authorities set up a public office in La Coruña to give information to potential claimants concerning the procedure for presenting claims and to distribute to claimants claims forms provided by the UK Club and the IOPC Fund. After consultation with the Spanish Government and the Government of the Region of Galicia, the shipowner, the UK Club and the IOPC Fund established a joint office in La Coruña to receive and handle claims for compensation. This Joint Claims Office has worked closely with the Spanish authorities and the claimants in order to facilitate the handling of the claims.

Claims for Compensation

As at 31 December 1993, 1 033 claims had been received by the Joint Claims Office, totalling Pts 9 477 million (£45 million). 576 claims had been approved for a total amount of Pts 42 311 101 (£196 758). Most of the approved claims had been paid. In addition, partial payments had been made in respect of four claims, totalling Pts 83 791 109 (£389 726). The payments had been made by the UK Club.

Clean-up Costs

The Spanish Government, the Government of the Region of Galicia and some local authorities incurred costs for clean-up operations and preventive measures. The Government of the Region of Galicia has presented claims which totals Pts 731 534 079 (£3.5 million).

Four local authorities have presented claims totalling Pts 595 812 143 (£2.8 million). Preliminary discussions concerning these claims have been held with the respective authorities and further discussions will be held in early 1994.

Part of the clean-up operations at sea and on shore were carried out by contractors engaged by the authorities. It has been agreed that these contractors may submit claims in respect of these operations directly to the shipowner and the IOPC Fund. Claims have been received from 32 contractors, totalling Pts 1 996 173 449 (£9.5 million). Negotiations have been held with these claimants, and these negotiations will continue.

Property Damage

A number of houses were contaminated by smoke generated by the burning oil. 194 claims in respect of costs incurred for cleaning contaminated houses have been approved for a total amount of Pts 30 470 229 (£145 096). A number of claims have been received in respect of costs for cleaning contaminated yachts, motor launches and other boats. 376 such claims have been approved for a total amount of Pts 7 217 984 (£34 371). Further claims of these kinds are being examined.

Fishery Damage

Only individuals who have obtained licences may carry out fishing and shellfish gathering in the area. The licences are granted by the Government of the Region of Galicia to the fishermen's unions, the "Cofradías", which then issue licences to individual fishermen. The fishermen and shellfish gatherers in the area belong to 13 Cofradías. Representatives of the Cofradías have indicated that they intend to submit claims for compensation to the Joint Claims Office in the region of Pts 1 843 million (£8.7 million) in respect of fishermen and Pts 2 805 million (£13.3 million) in respect of the shellfish harvesters. One Cofradía has submitted two formal claims, one relating to fishermen for Pts 166 392 000 (£788 600) and another relating to shellfish harvesters for Pts 2 326 030 000 (£11 million). A provisional payment of Pts 28 million (£130 232) has been made to the Cofradía for distribution to its members.

The IOPC Fund's experts are discussing with these claimants the method to be used for assessing the losses actually suffered. It has been agreed that negotiations should be carried out with the Cofradías rather than with the individual fishermen or shellfish collectors, in order to facilitate settlements. Little documentation in support of claims has been submitted so far.

The Executive Committee considered whether in the AEGEAN SEA case a fisherman or shellfish gatherer would be entitled to compensation only if he held a valid licence. The Committee took the position that - since the question of whether a claimant was entitled to compensation was governed by civil law - the decisive criteria should be whether the claimant had suffered an actual economic loss and that the right of compensation should not depend upon whether or not a licence was held.

The Region of Galicia has presented a claim, totalling Pts 438 383 000 (£2.1 million), in respect of economic assistance given to fishermen and shellfish harvesters.

In the area affected by the AEGEAN SEA incident there are three on-land fish farms cultivating salmon and turbot as well as plants used to depurate shellfish such as mussels, cockles, clams and oysters. The fish farms and depuration plants are supplied with seawater pumped through sub-surface water intakes. The contamination of the water led to an interruption of the activities of these on-land installations, resulting in economic loss. One purification plant remains closed by the authorities, whereas the on-land fish farms and the other purification plants were reopened in the period 12 February - 20 August 1993. So far, no claims for compensation have been received in respect of these installations.

The Executive Committee has taken the view that the losses suffered by the operators of these on-land fish farms and purification plants should be considered as "damage caused by contamination" and that claims in respect of economic loss suffered by these operators are therefore in principle admissible for compensation.

In the area affected by the spill, there is an important aquaculture industry concentrated in the Sada-Lorbé area, cultivating mussels, salmon, oysters and scallops. The cultivation of mussels is the most important activity, representing more than 80% of the total harvest value in the area.

In a Resolution issued on 12 April 1993 by the Fisheries Council of the Region of Galicia, it was stated that all cultivated produce within the Sada-Lorbé area should be destroyed. The experts engaged by the IOPC Fund, the shipowner and the UK Club did not consider that it was justified to carry out a total destruction of these products. However, it was accepted by these experts that, with the optimum time for the first of the 1993 mussel seeding drawing near, it was necessary to take steps to limit the consequences of the incident for future production. On the strength of the test results available at that time, which showed that the mussels were still tainted, the experts acknowledged the justification for a sufficient quantity of the largest commercially harvestable size mussels being destroyed to make space for the first of the 1993 mussel seed intake due by May/June 1993. Such a partial destruction was, however, not carried out. The experts considered it premature to destroy smaller mussels covered by the Resolution, or to destroy salmon, oysters and scallops, in view of the possibility of taint being removed by a process of natural depuration. The Resolution was, nevertheless, put into effect on 9 August 1993, and the destruction was completed by 24 September.

In June 1993, the Executive Committee considered the general question as to the position to be taken by the IOPC Fund in respect of claims for compensation based on the destruction of fish or other marine products in accordance with orders issued by public authorities or in respect of claims relating to economic loss suffered as a result of Government decisions, such as the imposing of fishing bans or exclusion zones. The Committee took the view that in such cases the IOPC Fund would be liable to pay compensation only if and to the extent that the destruction of the produce was reasonable on the basis of scientific and other evidence available, taking into account whether or not the produce in question was contaminated, whether it was likely that the contamination would disappear before the normal harvest time, whether the retention of the produce in the water would prevent further production and whether it was likely that the produce would be marketable at the time of normal harvesting.

AEGEAN SEA - Aground

AEGEAN SEA - The submerged vessel

The experts engaged by the IOPC Fund and the UK Club have endeavoured to obtain sufficient evidence in the form of sample testing in order to enable them to assess whether the destruction of the above-mentioned products was justified. So far, they have not been able to get much evidence. Their opinion remains, therefore, that there was not sufficient justification for the total destruction of the produce in the affected area. A monitoring programme is being carried out to determine the development of taint in the mussels.

The aquaculture operators have informally indicated that their losses have been evaluated in August 1993 by the Fisheries Council at Pts 3 150 029 250 (£14.9 million), comprising losses in relation to sales of mussels, oysters, scallops and salmon from December 1992 to the end of 1995. So far no supporting documents have been presented. A preliminary examination by the IOPC Fund's experts indicate that there is no reason to assume any future losses.

One mussel farmer has presented a claim for Pts 494 517 681 (£2.3 million) for loss of earnings. This claim is being examined. A provisional payment of Pts 23 million (£109 500) has been made to this mussel farmer, based on data provided by the Fisheries Council.

Claims for Pure Economic Loss

The AEGEAN SEA incident has given rise to a number of claims for compensation for what is known as "pure economic loss", ie economic loss suffered by persons whose property had not been contaminated as a result of the incident. The legal problems involved are dealt with in connection with the claims of this kind arising out of the HAVEN incident (page 40).

The Executive Committee approved claims submitted by the operators of a fish shop and of a beach shop, cafe and bar located in La Coruña, for loss of profit resulting from the AEGEAN SEA incident. The Committee also accepted a claim by a car repair firm located in the area close to the grounding site in La Coruña which was closed by the authorities to facilitate clean-up operations and preventive measures.

A time charterer and a shipowner presented claims for loss of hire because their ships were prevented from sailing as the port of La Coruña had been closed. The operator of a passenger ferry submitted a claim for loss of income as a result of two factors: firstly, the ferry service was suspended or irregular for several days while the port was severely oiled and, secondly, when the service was resumed the number of passengers was lower than normal, since the journey was unpleasant due to the contamination. The Executive Committee accepted these claims.

Claims were presented by self-employed fish porters who normally carry boxes of fish ashore in a port in the area affected by the AEGEAN SEA incident for loss of income due to the fact that the quantity of fish landed in the port was reduced as a result of the incident. Claims for loss of income were submitted by self-employed net makers who carry out net repairs for fishermen who were prevented from fishing as a result of the fishing ban. The Executive Committee took the view that the losses allegedly suffered by the two groups of self-employed claimants should be considered as damage caused by contamination, since their

activities were an integral part of the fishing activities in the polluted area. For this reason, the Committee decided that these claims should be accepted in principle.

A number of claims were presented by persons who had been made redundant, some of them employed at purification plants, others employed at offshore mussel farms and one person working as a filleter of fish who were laid off allegedly due to closure of plant or farm or a reduction in work, as a result of the incident. The Executive Committee considered that the losses suffered by the employees were a more indirect result of the contamination than losses suffered by companies or self-employed persons, since the losses of the employees were the result of their employers being affected by the consequences of the spill and therefore having to reduce their workforce. For this reason, the Committee took the view that the losses suffered by these employees could not be considered as damage caused by contamination and therefore did not fall within the definition of "pollution damage". The Committee decided that the claims for losses suffered by these employees should be rejected.

Two oil inspection companies lodged claims for loss of work on six tankers which were diverted to other ports due to the closure of the port of La Coruña. The Executive Committee took the view that it was likely that quantities of oil corresponding to those on board the diverted ships would later be transported to the port of La Coruña on other ships, and the claimants would then inspect these cargoes. The Committee considered, therefore, that these claimants had not shown that they had suffered any economic loss and rejected these claims.

Investigations into the Cause of the Incident

The Court in La Coruña is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The Spanish Government is making an administrative enquiry to establish the cause of the grounding. The IOPC Fund is following these investigations through its Spanish lawyer.

Court Proceedings in La Coruña

By a decision of 30 December 1992, the Court in La Coruña ordered the shipowner to deposit security for an amount of Pts 1 121 219 450 (£5.3 million). That amount corresponds to the estimated limit of liability applicable to the Aegean Sea, but the Court has not taken any decision concerning the shipowner's right to limitation. The security was constituted on 20 January 1993 by means of a bank guarantee provided by the UK Club on behalf of the shipowner for the amount set by the Court.

On 31 August 1993, the Court in La Coruña seized with the criminal proceedings against the master of the AEGEAN SEA and the pilot in charge of its entry into the port of La Coruña rendered a decision which contained the following elements:

(i) The master of the AEGEAN SEA and the pilot were ordered to provide guarantees within seven days of the order, the master for Pts 8 000 million (£38 million) and the pilot for Pts 4 000 million (£19 million).

(ii) The UK Club and the IOPC Fund shall be liable, jointly and severally with the master and the pilot, within their respective legal limits. They were ordered to provide security for Pts 12 000 million (£57 million) within seven days. It was stated that if this security was not provided, the Court will arrest their property in accordance with the applicable provisions of the Code of Criminal Procedure.

(iii) If the UK Club and IOPC Fund do not provide sufficient security, such security should be provided by the owner of the cargo (Repsol Petroleo SA) and the owner of the AEGEAN SEA (AEGEAN SEA Traders Corporation).

The IOPC Fund appealed against this decision. The Fund maintained that it did not have a direct liability under the Fund Convention since the IOPC Fund was liable only when the amounts actually paid under the Civil Liability Convention were insufficient to meet all claims in full. It also argued that criminal proceedings were actions against individuals and that there was no link between the Fund and the accused persons, namely the master and the pilot. This appeal was rejected, since under Spanish law decisions of this type are not subject to appeal but will be reviewed in connection with the final judgement.

In October 1993, the Executive Committee expressed its concern that the position taken by the Court requesting the IOPC Fund to provide security was at variance with the Fund Convention which formed part of Spanish law. The Committee instructed the Director not to put up any security in the Court.

In its pleadings on the merits of the claims for compensation, the IOPC Fund has maintained that the pilot and the Military Commandant of the Port of La Coruña (Comandante Militar de Marina) are liable for the grounding. The Fund has argued that the pilot's liability is based on the fact that he ordered the master to enter the port of La Coruña at 2.00 am, in spite of the heavy weather and being aware that the weather would deteriorate further. In addition, in the Fund's view, the pilot is liable because he did not meet the ship at the designated pilot boarding station, which he should have done under the applicable Pilot Regulations. As regards the Military Commandant of the Port, in the view of the Fund, his liability is based on the fact that he was aware of an order prohibiting ships of the kind of the AEGEAN SEA from entering the port at that time of the night, at the prevailing state of the tide, and in such severe weather conditions.

On 10 December 1993 the Court of Appeal in La Coruña revoked a decision by the Court of first instance dated 10 July 1993, in which the Court of first instance rejected a petition by a trade union that the Military Commandant of the port of La Coruña and the Harbour Master of the Repsol Petroleo oil terminal should be ordered to give evidence. The reason for the rejection given by the Court of first instance was that the petition had been made too late. The Court of Appeal ruled that the evidence requested should be taken and that the preparation for an oral hearing should be recommenced, enabling the parties to present pleadings and submit evidence on the merits of the claims for compensation. It appears that, as a consequence of the Court of Appeal's decision, the decision by the Court of first instance dated 31 August 1993 no longer applies.

So far claims for compensation totalling Pts 21 319 168 755 (£101 million) have been filed with the Court in the criminal proceedings. The IOPC Fund has not yet been able to make a detailed examination of the claims documents. It appears, however, that the claims

presented to the Court to a large extent correspond to the claims presented to the Joint Claims Office in La Coruña.

In view of the aggregate amount of the claims presented to the Court, the Executive Committee took the view that caution had to be exercised when making payments to claimants at this stage in order to ensure that the provisions of Article 4.5 of the Fund Convention relating to equal treatment of victims were respected. The Committee instructed the Director, therefore, that the IOPC Fund should, at this stage, only make partial payments in respect of accepted claims which should not exceed 30-40% of the amount approved.

SPILL FROM UNKNOWN SOURCE IN PORTUGAL

(Portugal, 7 December 1992)

In January 1993, the IOPC Fund was informed by the Government of Portugal that beaches on the west coast of Portugal had been polluted on 7 December 1992 by crude oil coming from the sea. It was stated that the oil originated from a ship which had not yet been identified.

The oil contaminated a stretch of about 20 kilometres of sandy beaches north of Figueira da Foz, some 170 kilometres north of Lisbon. Clean-up operations were carried out by the Portuguese authorities during the period 7 December 1992 - 12 February 1993. It is estimated that about 600 tonnes of oily waste were recovered.

The Portuguese Government submitted a claim to the IOPC Fund for the costs incurred in respect of this incident. The Portuguese Government's claim amounted to Esc16 688 930 (£64 360). It was indicated that an additional claim would be submitted in respect of certain activities.

Samples of oil were taken by the Portuguese authorities from the beaches in question. It is understood that these samples were analyzed by gas-chromatography/mass spectrometry, by ultraviolet fluorescence spectroscopy (UVF) and by UV absorbtion spectro-photometry. The analyses were conducted by the Portuguese Institute of Hydrography in Lisbon. In support of its claim the Portuguese Government stated as follows:

> The results of the analysis of samples taken on the polluted beaches show that the oil is "Maya Crude Oil". This kind of crude oil originates from the Mexican Gulf. The pollution could therefore not have been caused by oil from the Portuguese continental shelf. No other oil pollution incident was reported involving any refinery in the area during the relevant period. The pollution was therefore caused by a ship carrying the above-mentioned oil in bulk as cargo.

In January 1993 samples of the oil were collected from the beaches in question by the IOPC Fund's technical experts. An analysis of these samples was carried out, also using gas-chromatography/mass spectrometry, at Heriot-Watt University in Edinburgh (United Kingdom). The results of the analysis indicated that, although the source of the pollution was crude oil, it was most probably the result of tank washing, since the samples showed the presence of a high proportion of waxes.

Under Article 4.1 of the Fund Convention, the IOPC Fund is obliged to pay compensation for pollution damage where the victim is unable to obtain compensation because "no liability arises under the Civil Liability Convention". One of the situations in which no liability would arise under the Civil Liability Convention is where the identity of the ship which caused the damage is not known, since in that case no shipowner can be held liable under that Convention. In respect of such cases, Article 4.2(b) of the Fund Convention provides, however, that the IOPC Fund is not obliged to pay compensation if "the claimant cannot prove that the damage resulted from an incident involving one or more ships".

In October 1993, the Assembly considered the question of whether the IOPC Fund was obliged to pay compensation when the origin of the spilt oil could not be identified. The Assembly noted the general agreement among the delegations at the 1971 International Conference which had adopted the Fund Convention that the IOPC Fund should be required to pay compensation only for damage which was caused by a ship as defined in the Fund Convention (ie a vessel or other craft actually carrying oil in bulk as cargo). In the view of the Assembly, the claimant had to prove that pollution damage resulted from a particular incident and that this incident involved a ship or ships as defined in the Civil Liability Convention and the Fund Convention. The Assembly stated that the claimant could not discharge the burden of proof imposed upon him by the Fund Convention solely by proving that there was a strong likelihood that the damage was caused by a ship as defined or that the damage could not have been caused other than by such a ship.

During discussions in the Assembly, several delegations expressed the view that the text of the Fund Convention on this point was unsatisfactory since it imposed a very heavy burden of proof on the claimant and that this was particularly onerous for claimants in developing countries.

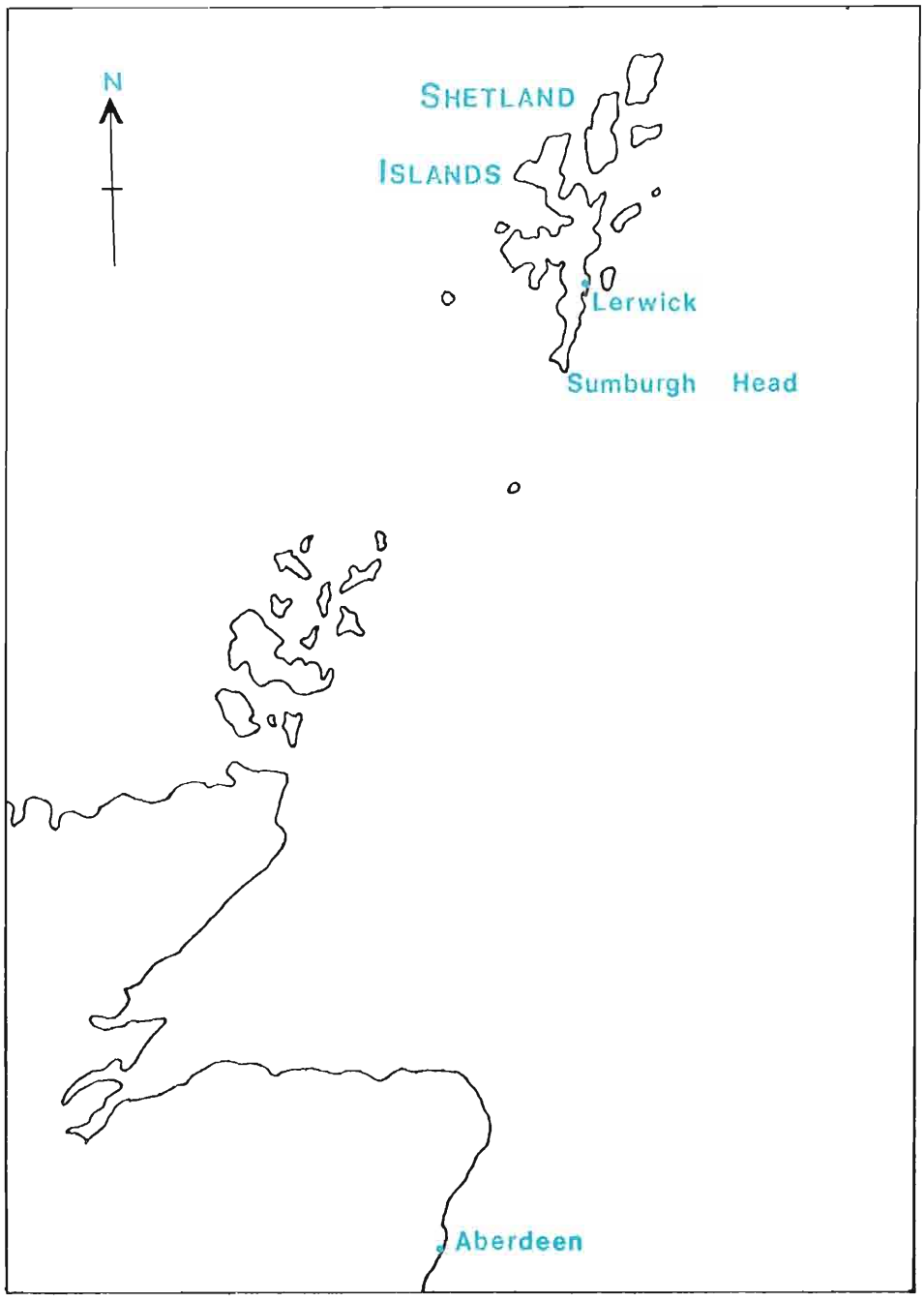
In the light of the analysis of oil samples carried out on behalf of the IOPC Fund, the Assembly took the view that it had not been shown in the case under consideration that the oil had come from a ship as defined in the Civil Liability Convention and the Fund Convention, ie a vessel carrying oil in bulk as cargo. On the basis of the preparatory works relating to Article 4.2(b) of the Fund Convention, the Assembly decided that the IOPC Fund was not obliged to pay compensation in respect of the oil spill to which the Portuguese Government's claim related.

BRAER

(United Kingdom, 5 January 1993)

The Incident

In the morning of 5 January 1993, the Liberian tanker BRAER (44 989 GRT), laden with approximately 84 000 tonnes of North Sea crude oil, suffered a machinery failure south of the Shetland Islands (United Kingdom). The weather conditions were severe at the time, with 40-50 knot winds and heavy seas. The ship went aground at Garths Ness, and oil began to escape almost immediately thereafter. All crew members were rescued by helicopter before the grounding.



The United Kingdom Government, in co-operation with the Shetland Islands Council, immediately activated its contingency plans through the Marine Pollution Control Unit (MPCU) of the Department of Transport. A number of dispersant-spraying aircraft were mobilised, although the heavy weather prevented any large scale spraying of dispersants and made any recovery operations at sea impossible.

The heavy weather conditions lasted almost without interruption until 24 January 1993, resulting in the ship breaking up and the cargo and bunkers escaping into the sea. Most of the oil was released between 5 and 12 January 1993. An inspection of the wreck on 24 January revealed that there was no cargo and virtually no bunkers left on board. A detailed inspection of the wreck was carried out from 27 to 29 April 1993. This inspection showed that the ship had disintegrated and that there was no fuel oil or cargo oil in the remains of the wreck.

Due to the heavy seas, most of the spilt oil dispersed naturally, and the impact on the shoreline was limited. Strong winds blew oil spray ashore and this oil affected farmland and houses close to the coast.

The coastline near the grounding site is rocky and heavily indented with numerous coves, bays and sea lochs. Some oil moved towards the northwest and affected the western coast of Shetland up to some 30 kilometres from the grounding site. Two sheltered sea lochs, one on the east coast and one on the west coast, both important bird habitats, were closed off by booms and sandbags. The heavy weather made further defensive booming impossible, nor was it feasible to take any measures to protect the salmon farms along the west coast, apart from deploying sorbent booms around the salmon cages.

On 8 January 1993, the United Kingdom Government imposed a fishing exclusion zone covering an area along the west coast of Shetland which was affected by the oil, which prevented the capture, harvest and sale of all fish and shellfish species from within the zone. This zone was extended on 27 January. The ban on whitefish was lifted on 23 April 1993, and on 8 December in respect of the salmon which was placed into cages within the zone in the spring of 1993. The ban remained in force for shellfish and the 1992 intake of salmon.

Braer Claims Office

On 8 January 1993 the shipowner's P & I insurer (Assuranceforeingen Skuld, "Skuld Club") and the IOPC Fund established a joint office in Lerwick (Shetland), known as the BRAER Claims Office, to assist claimants in their presentation of claims and to handle claims which are submitted.

Claims for Compensation

As at 31 December 1993, 845 claims for compensation had been presented. Over 700 claims had been approved, wholly or partly, for a total amount of approximately £21.3 million. Further claims for significant amounts will be submitted.

Property Damage

So far, 397 persons have received compensation totalling £2 244 627 for costs incurred for the cleaning or repainting of their houses and other property (such as fences and sheds), and the renewal of mineral felt roofs which were contaminated by wind-blown oil emanating from the BRAER.

Contamination of Grassland

The oil spray from the BRAER contaminated a considerable area (some 40-45 km^2) of grassland on the southern part of Shetland which is used for grazing. As a result, some 23 000 sheep had to be moved from their normal grazing and had to be given special feed. On 11 February 1993, approximately 30-35 km^2 were declared fit for grazing. The remaining areas were declared fit for grazing on 10 September 1993. The IOPC Fund agreed to pay the cost of feed for sheep, cattle and horses which were prevented from grazing. Feed has been supplied to assist over 200 crofters and farmers. So far the IOPC Fund and the Skuld Club have paid £491 027 in respect of such feed and £120 285 for fertilizers to regenerate grass for grazing.

Some crofters have needed additional labour in view of the extra work involved in feeding the sheep. The IOPC Fund has approved 141 claims for compensation in respect of costs for extra labour and farm machinery and for lost cattle and sheep, totalling £1 712 192.

Fishermen and Shell Fishermen

Sixty-one fishermen who normally fish within the exclusion zone have claimed compensation for loss of income as a result of having been prevented from fishing. So far, payments totalling £1 041 506 have been made in respect of such claims.

Salmon Farms: 1991 Salmon Intake

At the time of the incident, salmon that had been stocked in the spring of 1991 were in the process of being harvested. The shipowner, the Skuld Club and the IOPC Fund, upon the advice of their experts, assessed the results of the analysis of hydrocarbons in salmon within the exclusion zone, and took into account the fact that it was unlikely that the salmon would depurate quickly or that the zone would be lifted in the near future. It was also recognised that the retention of these salmon in cages for a period of several months to allow depuration would have severely interrupted normal production and would have led to far-reaching losses for the salmon farmers. On 5 February 1993, the shipowner, the Skuld Club and the IOPC Fund informed the salmon farmers operating within the zone that they considered the reasonable course of action to be to slaughter and dispose of that part of the 1991 salmon intake which had not been harvested before the BRAER incident. The remainder of the 1991 intake was slaughtered and disposed of during the period March - May 1993.

Final settlement has been made relating to the slaughter and disposal of the 1991 salmon intake, resulting in payments totalling £7 175 470.

Salmon Farms: 1992 Salmon Intake

The Executive Committee had, in June, considered the general question as to the position to be taken by the IOPC Fund in respect of claims for compensation based on the destruction of fish or other marine produce in accordance with orders issued by public authorities or in respect of claims relating to economic loss suffered as a result of government decisions, such as the imposing of fishing bans or exclusion zones. The Committee had taken the view that in such cases the IOPC Fund would be liable to pay compensation only if and to the extent that the destruction of the produce was reasonable on the basis of scientific and other evidence available, taking into account whether or not the produce in question was contaminated, whether it was likely that the contamination would disappear before the normal harvest time, whether retention of the produce in the water would prevent further production and whether it was likely that the produce would be marketable at the time of normal harvesting.

During spring and summer 1993, the IOPC Fund had taken the position that a total destruction of the 1992 intake within the exclusion zone was not justified, in the light of the improvement of the levels of hydrocarbon and taint found in the fish. The IOPC Fund had recognised that a number of farmers within the exclusion zone would, in normal

circumstances, have started harvesting the 1992 salmon intake in August 1993 and that the inability to harvest as normal had caused serious financial difficulties to many of the farmers within the exclusion zone. The Fund had therefore accepted as a reasonable course of action the slaughter and disposal of the proportion of the 1992 intake which would normally be harvested on a month-by-month basis from each individual site, subject to review of the Fund's position in the light of further scientific data as it became available. In addition, the total destruction was accepted in respect of one salmon farm where the fish had experienced serious health problems and showed a much higher degree of taint than other farms in the area. Compensation totalling £5 229 483 has been paid relating to such destruction of the 1992 intake.

At its session in October 1993, the Executive Committee took note of the results of the tests carried out by the Scottish Office on samples taken from sites inside and outside the exclusion zone at intervals from January up to late July 1993. It was noted that the results of the July tests showed a significant improvement as regards hydrocarbon levels and taint in comparison with previous test results, showing that hydrocarbon levels were within normal background levels for samples at all farms and that only three out of 13 farm sites had some fish classed as tainted or suspect; however, one farm which was clear in May had shown one suspect fish in July. It also took note of the position of the United Kingdom Government that there were sufficient doubts as to the present state of contamination to require the retention of the exclusion zone.

At the October session of the Executive Committee, the Director expressed the view that any destruction of produce should be based on a thorough examination of all aspects of the case. It was, in his opinion, important that in any such case an exhaustive sampling programme, using internationally accepted techniques, was carried out at regular intervals. The Director stated that he had considered the main factors involved - scientific and technical aspects, the timing of a possible sale and the marketing consequences of such a sale - against the criteria laid down by the Executive Committee. He mentioned that, although he would have preferred to have had the results of a more exhaustive sampling programme, he recognised that there existed a serious time constraint, in view of the fact that the main marketing season for salmon was before Christmas. He took the view that, at this stage, it would not be an unreasonable course of action for the salmon farmers concerned to slaughter the 1992 intake and that, if this was done, the IOPC Fund should pay compensation for the destroyed fish. The Executive Committee agreed with the Director's analysis as well as with his conclusion.

Negotiations have been held between the IOPC Fund and the salmon farmers concerning the conditions for slaughter of the remaining 1992 intake. It has so far not been possible to reach agreement on these conditions, except in respect of one salmon farm whose 1992 intake was destroyed in December 1993.

Fish Processors' Claims for Loss of Supply of Fish

Claims were submitted by fish processors relating to economic loss as a result of their having been deprived of a supply of fish from the exclusion zone. The Executive Committee recognised that it could be argued that the losses suffered by the fish processors, although caused only indirectly by the contamination, were a foreseeable consequence of a major oil

BRAER - Aground

BRAER - Grazing land and salmon farms

spill in the area. The Committee took the view that the losses suffered by these fish processors as a result of their having been deprived of a supply of fish from the exclusion zone should be considered as damage caused by contamination.

Compensation has been paid to 14 fish processors for claims of the type referred to above for a total amount of £1 784 904.

Claims Relating to Activities Outside the Exclusion Zone

Claims were submitted by salmon farms located outside the exclusion zone for alleged losses as a result of a reduction in the sales value of their fish. Claims were also submitted by fish processors in respect of losses allegedly suffered as a result of a reduction in sales due to the reduced demand for fish from Shetland caused by the BRAER incident.

The Executive Committee took the view that these losses were a more indirect result of contamination than the losses suffered by salmon farms located within the exclusion zone and by fish processors who were deprived of a supply of fish from the zone, since the alleged losses covered by the claims under consideration resulted from the perception of third parties as to the consequences of the BRAER incident. After having considered all the aspects of these claims, the Executive Committee took the view that the decisive criterion for the admissibility of a claim should be whether the loss could be considered as "damage caused by contamination". The Committee considered that it would be necessary to assess in respect of each claim whether the oil escaping from the BRAER actually caused an economic loss to the claimant. It was agreed that it would not necessarily be required that the contamination had affected the fish of an individual claimant. The Committee stated that a claimant would have to show that the contamination had affected the area where he carried out his activities and that as a result of this contamination he could not sell his produce or could sell it only at a lower price than if the incident had not taken place. It was also noted that the further away from the exclusion zone the activities in question were carried out, the greater the burden of proof would be for the claimant to demonstrate the link of causation between the oil spill and the alleged loss. Claims of this kind are being examined by the IOPC Fund.

An interim payment of £38 499 was made to a salmon farm in December 1993 in respect of losses suffered in the period February - April 1993 due to reduced prices.

Other Claims for Pure Economic Loss

As a result of the BRAER incident, a number of claims have been received which relate to what is known as "pure economic loss". As regards the question of principle arising from such claims, reference is made to what is stated in connection with the HAVEN incident (page 40).

Claims were presented by a company repairing fishing equipment whose activity was reduced due to the suspension of fishing activities within the exclusion zone, a diver who was unable to carry out his normal net maintenance work, as the cages had not been cleared of salmon at the usual times, and a collector of offal from a fish processing plant which processes fish from farms within the exclusion zone and which had therefore not operated since the exclusion zone was imposed. There were also claims by an ice factory whose product was no longer required by the salmon farmers who were not harvesting their fish, and by a manufacturer of the boxes in which processed fish was transported from Shetland in

respect of losses resulting from a reduction in the sale of such boxes following the destruction of the 1991 salmon intake. The Executive Committee considered that the losses suffered by these claimants should be considered as damage by contamination, since their activities were an integral part of the fishing activities in the area.

In the BRAER case claims for loss of income have been submitted by employees on Shetland who had suffered a reduction in working hours or who had been made redundant from fish processing plants which received most of their supply from salmon farms located within the exclusion zone. These claims were rejected by the Executive Committee for the reasons set out in respect of similar claims arising out of the AEGEAN SEA incident (page 52).

Activities to Counteract the Negative Effect of the BRAER Incident

In October 1993, the Executive Committee considered a joint claim submitted by the Shetland Salmon Farmers' Association, the Shetland Fish Processors' Association and the Shetland Fish Producers' Organisation for costs relating to activities to be undertaken in order to counteract the negative effect of the BRAER incident on the reputation of Shetland fish products.

The Committee took the view that costs for activities of the kind covered by this claim could not be considered as falling within the definition of "pollution damage", unless they were to be considered as costs of "preventive measures". In the Committee's view it was likely that the drafters of the Civil Liability Convention did not foresee that activities of the kind envisaged by these three organisations should fall within the definition of "preventive measures". After discussing the issue, the Executive Committee decided that measures to prevent or minimise pure economic loss should be considered as preventive measures, provided that they fulfilled the following requirements:

(a) the costs of the proposed measures were reasonable;

(b) the costs of the measures were not disproportionate to the further damage or loss which they were intended to mitigate;

(c) the measures were appropriate and offered a reasonable prospect of being successful; and

(d) in the case of a marketing campaign, the measures related to actual targeted markets.

The Executive Committee also discussed whether the IOPC Fund should accept claims of this type only after the activities had been carried out and the results could be assessed, or whether the Fund should accept to pay for a proposed programme of such activities. It was decided that the IOPC Fund should, in principle, only consider such claims once the activities had been carried out, and cautioned that the Fund should not take the role of the claimant's banker. The Committee noted, however, that the claimant in many cases did not have sufficient economic resources to carry out such activities unless the IOPC Fund made funds available. For this reason, the Committee authorised the Director to make advance

payments up to a specific amount in respect of activities to be undertaken by the Associations, provided that he was satisfied that the planned activities fulfilled the requirements set out above.

In the light of the above-mentioned criteria, the IOPC Fund has accepted part of a claim relating to measures taken by the Shetland Salmon Farmers' Association during the months immediately following the incident to limit the damage to the reputation of Shetland salmon caused by the incident, for an amount of £218 301. The IOPC Fund has accepted certain further claims for marketing activities by the three associations for a total amount of £60 016.

A claim has also been submitted by Shetland Island Tourism, an organisation of tourism related businesses, for the costs of a marketing campaign to counteract the negative effect of the BRAER incident on tourism. The claimant has estimated that the loss suffered by the Shetland tourist industry during 1993 will be £3.8 million. Shetland Island Tourism has maintained that the tourist industry on Shetland would suffer losses totalling £24.6 million as a result of the BRAER incident during the next five years in the event no marketing campaign is carried out, and has proposed to carry out a marketing campaign for a total cost of £3 395 800 which in the claimant's view would reduce the loss by £20 million. This claim is being examined by the IOPC Fund in the light of the above-mentioned criteria.

So far, the IOPC Fund has made payments to Shetland Island Tourism totalling £66 295 for certain activities carried out shortly after the incident to limit the damage to the Shetland tourist industry.

Public Authorities

The United Kingdom Government will submit a claim for compensation in respect of costs incurred for clean-up operations at sea and on shore, for monitoring the operations carried out for the purpose of salving the ship and the cargo, and for the cost of carrying out tests on water and fish to establish the extent of hydrocarbon content. It is estimated that this claim will be in the region of £2.6 million. The Government has stated that it would not compete with other claimants for the purpose of obtaining compensation.

The Shetland Islands Council will in early 1994 present a claim for compensation in respect of the costs incurred by the Council following the BRAER incident.

A claim has been submitted by the Shetland Islands Council in the amount of £23 320 in respect of cleaning a number of houses owned by the Council. This claim was accepted for £18 920.

Claims have been received for a total amount of £52 443 from the Civil Aviation Authority relating to the cleaning of the terminal buildings at Sumburgh airport, which had been contaminated by wind-blown oil. These claims, which were accepted in full, were paid by the IOPC Fund in May and June 1993.

Scottish Office Bridging Fund

The United Kingdom Government has, through the Scottish Office, set up a Bridging Fund to facilitate payments. This Bridging Fund may, if liquid funds available to the Skuld

Club and the IOPC Fund are insufficient to ensure prompt payments, make advance payments to claimants whose claims are considered by the Skuld Club and the IOPC Fund to be admissible in principle under the Civil Liability Convention and the Fund Convention. So far, payments have been made from the Bridging Fund for a total amount of £2 651 090 relating to claims in respect of salmon farms. This amount will be repaid by the IOPC Fund to the Bridging Fund in early 1994.

Investigations into the Cause of the Incident

The United Kingdom Government has carried out an investigation into the cause of the incident. A similar investigation has been carried out by the Liberian authorities. It is expected that these results of these investigations will be published in early 1994.

SAMBO N°11

(Republic of Korea, 12 April 1993)

The Korean tanker SAMBO N°11 (520 GRT), laden with 680 tonnes of heavy fuel oil and 24 tonnes of marine diesel, ran aground some 400 kilometres southeast of Seoul (Republic of Korea). Some four tonnes of bunker oil and engine room bilges escaped into the sea. On 15 April the vessel was towed to the port of Pusan, after the remaining oil had been transferred to another ship.

Clean-up operations were carried out by the Regional Marine Police and by private contractors engaged by the shipowner on the orders of the Marine Police. The clean-up at sea consisted of the deployment of booms and the spraying of dispersants. The spill affected some six kilometres of shoreline which was cleaned manually. Extensive fishing and aquaculture activities take place in the affected area.

The limitation amount applicable to the SAMBO N°11 is estimated at Won 77 786 224 (£64 300).

Since the SAMBO N°11 was carrying less than 2 000 tonnes of oil in bulk as cargo, the shipowner was not obliged to maintain insurance pursuant to the Civil Liability Convention. The SAMBO N°11 was not entered in any P & I Club but the ship was insured for protection and indemnity, up to a limit of US$1 million (£669 000) per incident, with a deductible of US$50 000 (£33 400). The insurer maintained that as the insurance was strictly one of indemnity, no legal liability arose under the policy until claims were paid by the insured. For this reason, the insurer made it clear that he would not constitute the limitation fund.

After investigations into the financial position of the owner, the Director concluded that the shipowner was incapable of constituting a limitation fund and was also incapable of paying the deductible of US$50 000.

Two clean-up contractors submitted claims for Won 47 432 325 (£39 700) and Won 9 110 875 (£7 630). These claims were settled in the amounts of Won 41 245 500 (£34 027) and Won 7 922 500 (£6 536), respectively.

Two other contractors claimed compensation for Won 54 365 000 (£45 500) and Won 64 860 000 (£54 300), respectively, relating to operations to refloat the grounded vessel in order to make it possible to remove the remaining oil. These operations were accepted as preventive measures. The claims were settled at Won 25 378 000 (£21 198) and Won 35 080 500 (£29 302).

The contractor engaged in the transhipment of the remaining oil submitted a claim for Won 29 663 990 (£24 800). The IOPC Fund took the view that the primary purpose of the transhipment was to prevent pollution and that the operation therefore should be considered as preventive measures. This claim was settled at Won 17 370 138 (£24 500).

The Marine Police submitted a claim for Won 55 144 630 (£46 200) in respect of the clean-up operations. Under the applicable Korean legislation, the shipowner is obliged to pay the amount claimed by the Marine Police within a short period of time and can only challenge the amount afterwards in court. If the shipowner fails to pay within the prescribed period, he is obliged to pay a penalty of 5% of the claimed amount and an additional 2% penalty for each further month of delay. The IOPC Fund took the position that this obligation did not apply to the Fund which is only obliged to pay compensation in respect of reasonable measures and reasonable costs. In addition, the IOPC Fund considered that it was not liable to pay any penalty in the event of delay. After negotiations, this claim was settled at Won 49 868 994 (£41 800). The settlement amount did not include any penalty.

Fishermen in the affected area submitted claims relating to loss of earnings totalling Won 506 203 852 (£424 000). These claims were settled at Won 42 848 123 (£35 411).

The accepted claims total Won 219 713 755 (£181 580). The claims were paid by the IOPC Fund during the period September - December 1993, except the claim in respect of the transhipment operation which will be paid in early 1994.

The shipowner submitted a claim to the IOPC Fund for his expenses for clean-up operations in the amount of Won 4 880 000 (£4 100). This claim was not accepted by the IOPC Fund, since the shipowner has not constituted any limitation fund.

It is unlikely that there will be any further claims as a result of this incident.

TAIKO MARU

(Japan, 31 May 1993)

The Incident

The Japanese coastal tanker TAIKO MARU (699 GRT), carrying 2 062 tonnes of heavy fuel oil as cargo, collided with the Japanese cargo ship KENSHO MARU N°3 (499 GRT) some five kilometres off Shioyazaki, Fukushima (Japan). As a result, two cargo tanks of the TAIKO MARU were ruptured and some 520 tonnes of oil escaped into the sea. The oil remaining on board the TAIKO MARU was transferred to another vessel.

The IOPC Fund is following the investigations into the cause of the incident. Proceedings in the Marine Court are expected to take place in 1994.

TAIKO MARU - Lifting of oil-stained nets

TAIKO MARU - Oil on Toyoma Beach

Clean-up Operations

The shipowner and his P & I insurer, the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA), engaged the services of the Japan Maritime Disaster Prevention Centre (JMDPC) to carry out clean-up operations in accordance with the directives given by the Maritime Safety Agency. JMDPC engaged a number of contractors to carry out these operations. The shipowner set up a response centre and engaged some contractors to respond to the spill. The operations were monitored by a surveyor employed jointly by JPIA and the IOPC Fund.

A number of boats were involved in the clean-up operations, but these operations were not effective since the visibility was restricted due to dense fog. The oil from the TAIKO MARU spread over a large area and affected some 70 kilometres of coast. The popular tourist beaches along this part of the coast were closed for swimming during the period of 20-30 July 1993. Some 5 000m^3 of oily sand had to be removed from these beaches. The fishing ports of Ena and Nakanosaku and their piers and breakwaters were heavily contaminated. The cleaning of the piers and breakwaters was carried out mainly by the use of chemicals. The sea off these two ports is used for collecting abalone and sea-urchins, and this area was severely affected by the spill.

On-shore clean-up operations were carried out by local contractors and fishermen under contract with the JMDPC. The operations consisted of the manual and mechanical removal of stranded oil and contaminated beach sediments. Collected oil and oily wastes were transported to a disposal factory for incineration. Most shore clean-up was completed by mid June 1993.

Considerable quantities of oil sank to the bottom of the sea. Removal of the submerged oil was carried out by a vessel specially equipped for this purpose. On 27 August, a typhoon caused some of the sunken oil to resurface at various places, and this oil threatened to cause further contamination of the coast. Since clean-up operations were undertaken immediately, the pollution damage caused by this oil was minimal.

Impact on Fishing Activities

The fishermen in the area are members of fishery cooperative associations which represent their members. There are also Federations of Fishery Cooperative Associations for the two Prefectures affected by the spill, which represent all the member associations. Fishing activities in certain areas, including the farming and gathering of sea-bed products, may be carried out only on the basis of fishing rights registered by the individual fishermen at the competent office in the Prefecture. Under Japanese law, fishing rights are deemed to be a property right and the law relating to land is to be applied to such rights. The fishermen who hold fishing rights are entitled to carry out specific types of fishing activities within a certain area, as specified in the registry.

A number of fishermen carry out boat fishing in the affected area. The oil caused damage to fishing nets and led to the disruption of fishing activities. Four fixed fishing nets, varying between 200 and 800 metres in length, were contaminated, and the fishermen using these nets were prevented from fishing until 25 June by which time the nets had been cleaned.

Most of the fishermen affected by the spill collect abalone, sea-urchins and hokkigai shellfish. These species are cultivated under controlled conditions before being placed on the sea bed by the fishery associations. Abalone and sea-urchins are harvested by divers, whereas the hokkigai shellfish are harvested from small boats using metal rakes.

Soon after the incident a committee composed of representatives of the fishery associations, the local authorities and the health authorities decided to suspend the catching of young sardines and abalone and the gathering of sea-urchins and shellfish in the affected area. These fishing activities were partly resumed by the end of June or early in July. The lifting of the suspension in respect of hokkigai shellfish was not approved by the respective local health authorities until 6 and 12 August 1993, after analysis of samples showed that there was no remaining contamination of shellfish which previously had been tainted.

Claims for Compensation

Two contractors which had carried out clean-up operations under contract with the Marine Pollution Prevention Centre received provisional payments from JPIA and the IOPC Fund in July and August 1993 for ¥95 494 000 (£585 000) and ¥25 014 634 (£153 200), respectively. An advance payment of ¥100 million (£612 600) was made by the IOPC Fund to some fishery associations in respect of participation by over 7 000 of their members in the clean-up operations.

A claim in respect of clean-up operations was presented by the Maritime Safety Agency for ¥4 552 431 (£27 900). This claim was accepted in full.

Claims relating to clean-up operations and preventive measures have been presented by 25 entities, totalling ¥860 million (£5.2 million). The operator of a power station has submitted a claim for ¥3 706 329 (£23 000) in respect of the cost of cleaning water intakes, which had been contaminated. Claims in respect of clean-up costs have been presented by Fukushima Prefecture for ¥50 557 550 (£309 700) and by Iwaki Municipality for ¥6 476 912 (£39 700). Claims have also been received in respect of cleaning of oil stained yachts, totalling ¥2 311 860 (£14 160). These claims are being examined by the IOPC Fund.

Claims for loss of income have been presented by ten fishery co-operative associations on behalf of their members for a total amount of ¥1 000 million (£6.7 million). These claims relate mainly to loss of income allegedly resulting from the suspension of fishing and to future loss of income due to the fact that the oil spill allegedly destroyed a proportion of the abalone, sea-urchins and hokkigai shellfish. The claims are being examined by the IOPC Fund's surveyors. Negotiations with the associations will commence in early 1994.

It is unlikely that there will be any further claims for compensation for clean-up operations and loss of income.

The limitation amount applicable to the TAIKO MARU is estimated at ¥29 205 120 (£178 900).

RYOYO MARU

(Japan, 23 July 1993)

The Japanese coastal tanker RYOYO MARU (699 GRT), laden with 2 081 tonnes of heavy gas oil, collided with a car carrier off Shimoda, Izu peninsula, Shizuoka (Japan). Two tanks of the RYOYO MARU were fractured, and approximately 500 tonnes of oil leaked out. The RYOYO MARU was towed to a shipyard after the remaining oil was transferred to another ship.

Most of the spilt oil appeared to have drifted out to sea as a result of the bad weather. On 24 July, however, oil came ashore on the southern part of the Izu Peninsula. The clean-up operations were carried out by the Maritime Safety Agency and the Marine Disaster Prevention Centre.

The IOPC Fund is investigating whether the heavy gas oil carried by the RYOYO MARU is a "persistent oil" for the purpose of the Civil Liability Convention.

The IOPC Fund has not yet received any claims in respect of this incident. The cost of clean-up operations is estimated at ¥70 million (£428 800).

The limitation amount applicable to the RYOYO MARU is estimated to ¥28 105 920 (£178 200).

The IOPC Fund is following the investigations into the cause of the incident.

KEUMDONG N°5

(Republic of Korea, 27 September 1993)

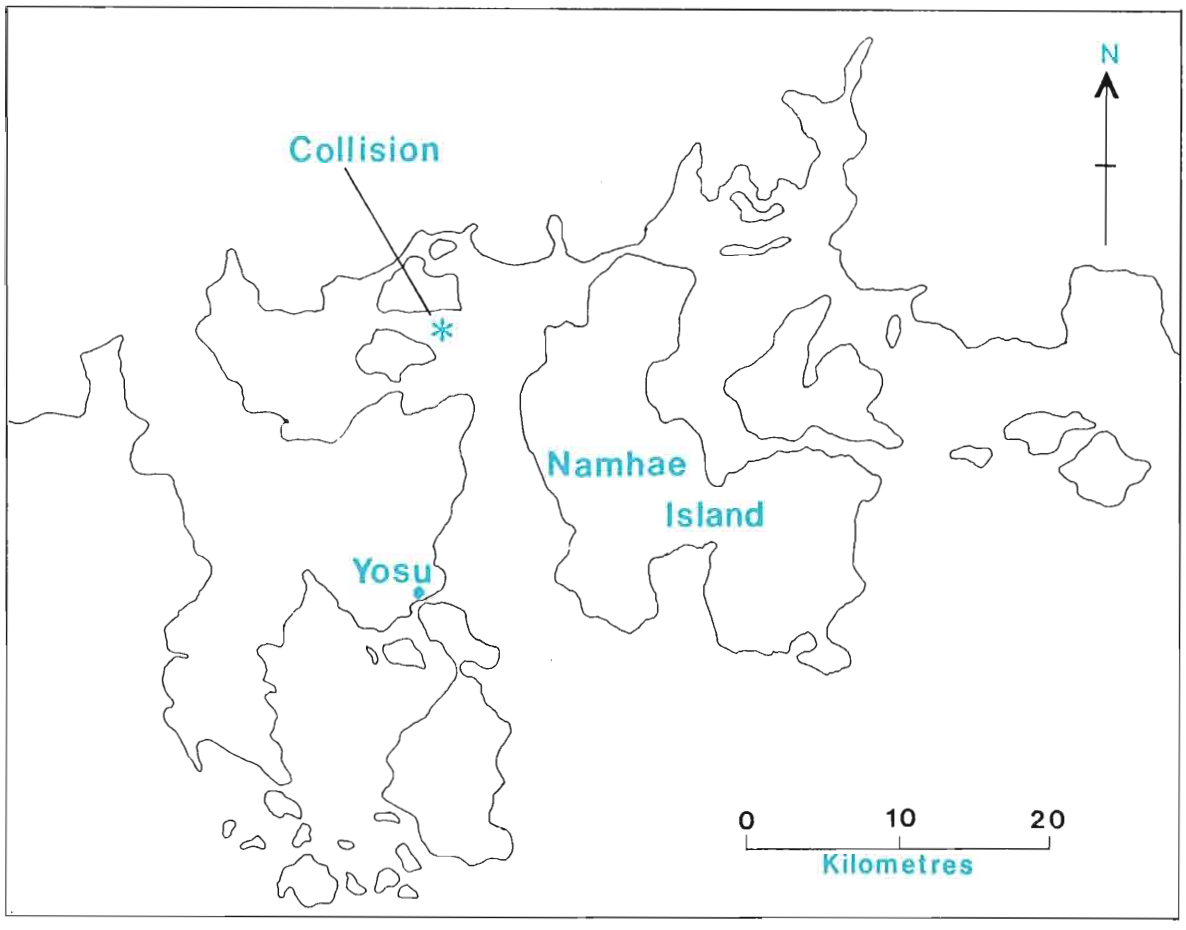
The Incident

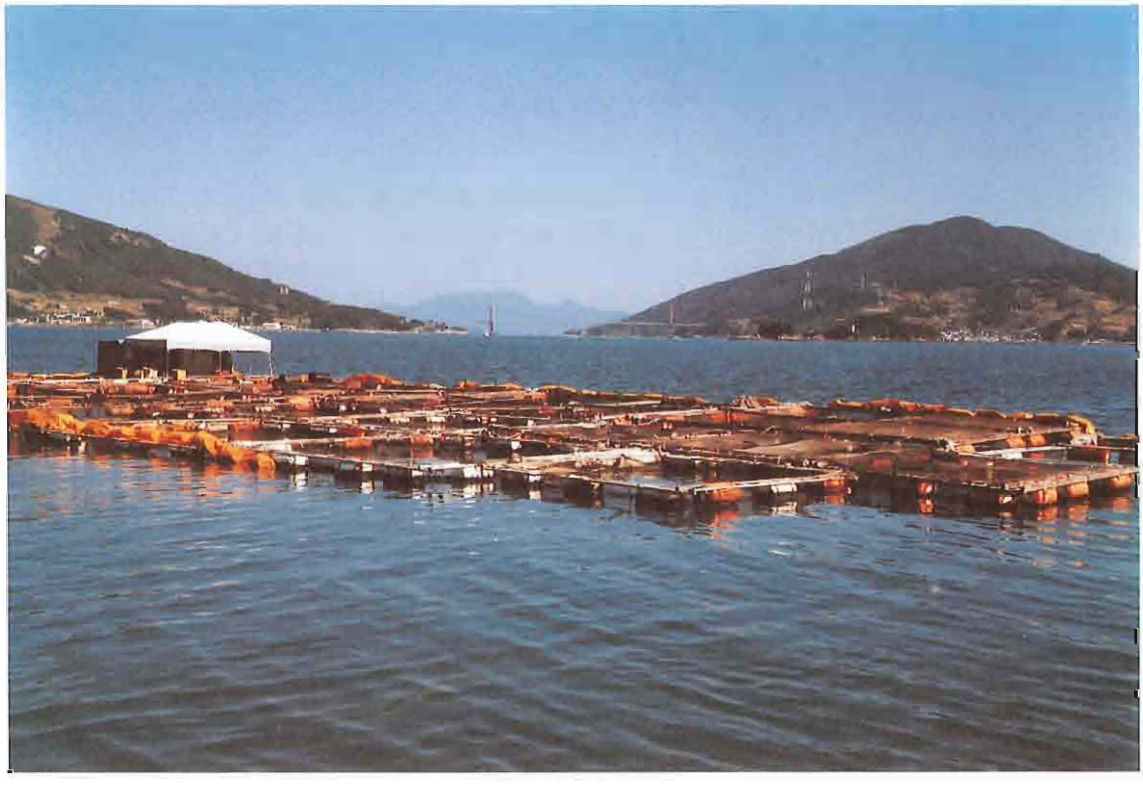
The Korean barge KEUMDONG N°5 collided with the Chinese freighter BI JIA SHAN near Yosu on the southern coast of the Republic of Korea. As a result an estimated 1 280 tonnes of heavy fuel oil were spilled from the KEUMDONG N°5. This oil quickly spread over a wide area due to strong tidal currents. The oil affected mainly the north-west coast of Namhae Island, where there are many fisheries and important mariculture resources.

The balance of the cargo was transhipped, and the KEUMDONG N°5 was towed to a nearby repair yard. During slipping at the shipyard a further quantity of approximately 50 tonnes of heavy fuel oil escaped from the ruptured tanks. Most of this oil was contained by a boom, but some escaped and caused light pollution to shores in the vicinity.

Clean-up Operations

The Korean Marine Police carried out clean-up operations at sea with the application of dispersants and sorbents using its own vessels, as well as ships belonging to the Yosu Port Authority and fishing boats.





KEUMDONG N°5 - Fish farms, Hadong County

For the shoreline clean-up operations four main contractors were engaged and a large labour force of over 4 000 villagers, policemen and army personnel were employed. The clean-up involved the use of dispersants and manual cleaning of contaminated rock surfaces. The clean-up operations are expected be completed by early January 1994.

The disposal of oily waste proved difficult because of the quantities involved and the limited access to many of the clean-up sites. After collection, the waste was transported by barge to Inchon for incineration and landfill.

Claims for Compensation

Claims relating to the cost of clean-up operations have been presented by the Korean Marine Police and Navy, the local marine police force, Yosu Port Authority, Namhae County and some private contractors. The claims were settled at an aggregate amount of Won 4 954 043 411 (£4.1 million). The claims were paid by the shipowner's P & I insurer (the Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Ltd, "Standard Club") during November and December 1993.

It is likely that there will be some further claims relating to clean-up operations.

The incident affected fishing activities and the aquaculture industry in the area. No claims for compensation have so far been received in respect of these activities, but the associations representing the persons involved have indicated that the total claims will be in the region of Won 100 000 million (£84 million).

The limitation amount applicable to the KEUMDONG N°5 is estimated at Won 72 million (£60 300). The shipowner has not yet started limitation proceedings.

ILIAD

(Greece, 9 October 1993)

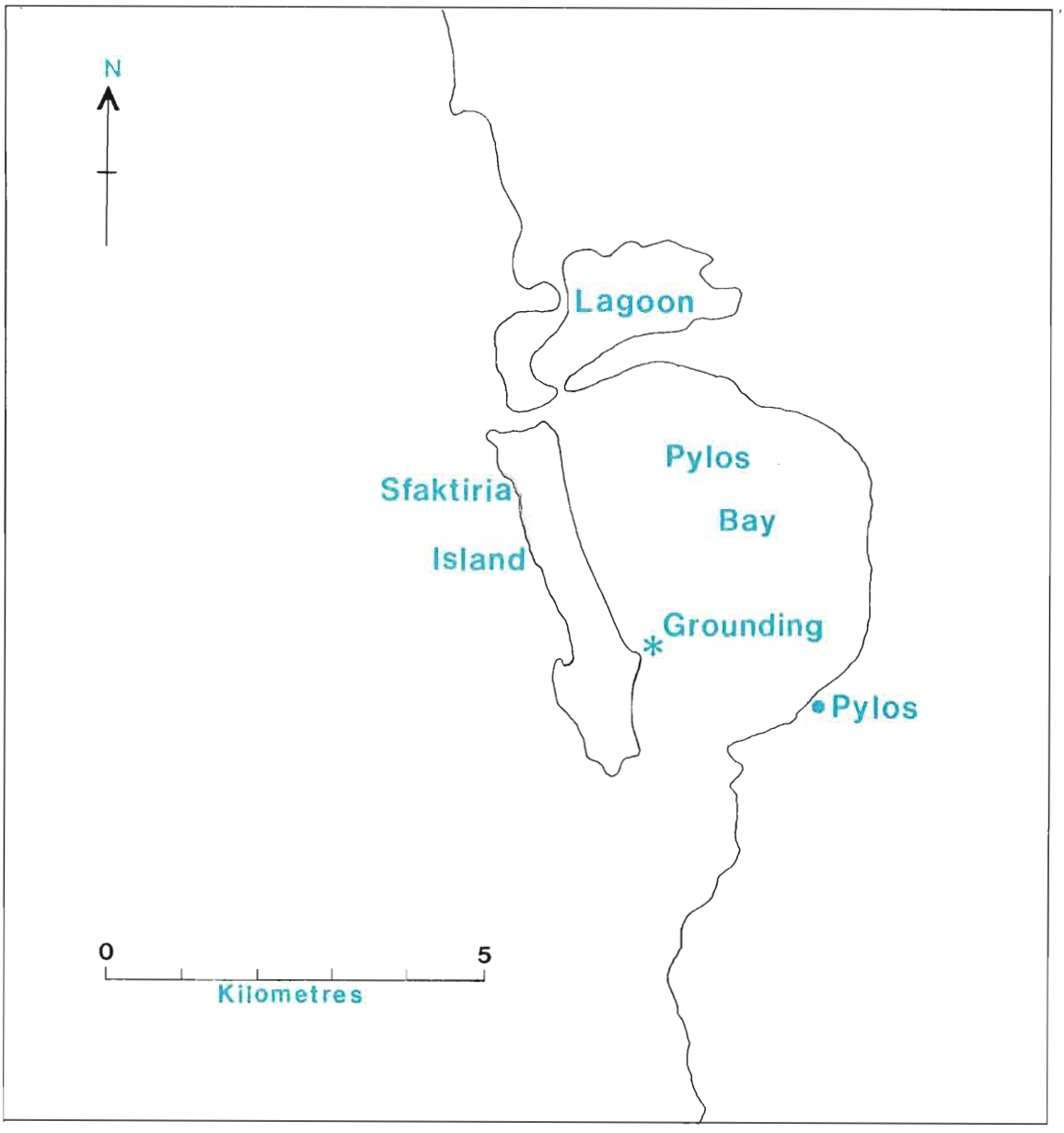
The Incident

The Greek tanker ILIAD (33 837 GRT) grounded on rocks close to Sfaktiria Island whilst leaving the port of Pylos. The ILIAD was carrying a cargo of about 80 000 tonnes of Syrian crude, and some 300 tonnes were spilled. The spill was soon brought under control and the vessel left the port, anchoring offshore to await inspection and temporary repairs.

Clean-up Operations

Calm seas and light winds resulted in much of the spilled oil remaining within Pylos Bay, although some patches drifted out through the northern and southern approaches to the bay and then southwards along the coast and then to the open sea.

Shoreline oiling around Pylos Bay was widespread, but most of the sandy beaches were soon cleaned by local labour. Temporary stockpiles of bagged oily wastes accumulated around the bay. A specialist contractor was mobilised from Piraeus for the clean-up of floating oil in the bay, using two skimmers assisted by a number of fishing boats. The recovered oil was stored in a barge at Pylos.



A fish farm, rearing sea bass and sea bream in floating cages in the north-western corner of Pylos Bay, was contaminated by oil before defensive booms could be deployed, but the oiling was relatively light and only a few fish died as a result. The farm, which was subsequently protected by booms, was cleaned manually. A shallow lagoon, also used for mariculture, was lightly oiled as tidal streams carried small slicks in through a narrow entrance. The mouth of the lagoon was protected by booms and oil residues already inside were cleaned manually.

Outside the bay, relatively minor oiling of shorelines was observed. Most of the oil broke up, evaporated and dispersed naturally over a period of approximately ten days. The sandy beaches north of the entrance to Pylos Bay on the outer coast became oiled and were

cleaned manually. Patches of oil drifted some ten kilometres to the south of Pylos, but caused only very minor coastal contamination.

By 22 October only minor sheens and traces of oil residues remained on the water surface, and the recovery at sea was terminated. The removal of oil from sandy beaches was also completed. A month later the cleaning of sea-walls and selected areas of rocky shoreline in Pylos Bay had been completed.

Although floating oil caused interruption of the fishing activities in Pylos Bay and along the outer coast for about two weeks, it is unlikely that there will be any long lasting effects to wild fish stocks. The fish farm at Pylos lost a small part of its stock and it appears that the farm's normal selling pattern was interrupted. The stock is being tested to assess whether there is any residual contamination.

Claims for Compensation

A number of lawyers have submitted documents in support of claims from individuals and a large range of small businesses, such as hoteliers, restaurateurs and fishermen, as well as taxi drivers, shopkeepers, estate agents and hairdressers. The total amount of the claims presented is approximately Drs 3 690 million (£10 million).

The supporting documents are being examined by lawyers and technical experts appointed by the shipowner, the P & I insurer (the Newcastle Protection & Indemnity Association, the "Newcastle Club") and the IOPC Fund.

A number of these claims include an element for the loss of future income. Article 298 of the Greek Civil Code provides that compensation includes "loss of profit expected to be probably made, according to the ordinary course of events or according to the particular circumstances and the preparatory measures taken". Some claimants have indicated that they believe that their businesses will be adversely affected for the next three years.

The shipowner has submitted claims amounting to Drs 710 million (£1.9 million) for costs incurred during for the clean-up operations.

The Newcastle Club has provided security to a number of claimants in the form of a Club letter of undertaking in the amount of US$5.8 million (£3.9 million). Under the terms of the guarantee, the Club undertook to establish the limitation fund within 60 days from the date of the incident. The time period has been extended by agreement between the parties and the limitation fund has not yet been established.

The limitation amount is estimated at US$5.8 million (£3.9 million).

13 CONCLUDING REMARKS

During 1993, three serious oil pollution incidents have occurred in IOPC Fund Member States, namely the BRAER, TAIKO MARU and KEUMDONG N°5 incidents. This is the worst record for any 12 month period since the establishment of the IOPC Fund in 1978.

The worldwide public debate concerning problems relating to oil pollution from ships which resulted from recent major incidents focused on the need to enhance the safety of navigation, to study tanker design and construction, to improve contingency plans and to develop better equipment and materials for oil spill clean-up. This debate has also increased the awareness in all States, including States which are not Members of the IOPC Fund, of the importance of an effective system for compensating victims of oil pollution damage.

During the last five years, the number of IOPC Fund Member States has grown from 40 to 57, 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 prompt compensation to victims of oil pollution damage.

As a result of the work carried out within the IOPC Fund, an International Conference held in November 1992 under the auspices of IMO adopted Protocols to modify the 1969 Civil Liability Convention and the 1971 Fund Convention. These Protocols contain the same substantive and administrative provisions as the 1984 Protocols but differing entry into force provisions. On the basis of information available to the IOPC Fund Secretariat concerning the position of a number of States to the 1992 Protocols, there are prospects that these Protocols will enter into force in 1995 or 1996, thereby ensuring the viability of the system of compensation established by the Civil Liability Convention and the Fund Convention in the future.

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

34th to 36th sessions

Chairman:	Dr R Renger (Germany)
Vice-Chairman:	Mr G B Cooper (Liberia)
Algeria	Netherlands
Canada	Nigeria
Germany	Norway
Ghana	Poland
India	Russian Federation
Japan	Spain
Kuwait	Venezuela
Liberia	

37th session

Chairman:	Mr C Coppolani (France)
Vice-Chairman:	Ms A Ogo (Nigeria)
Canada	Republic of Korea
Côte d'Ivoire	Spain
France	Sri Lanka
Greece	Sweden
Italy	Tunisia
Netherlands	United Kingdom
Nigeria	Venezuela
Poland	

IOPC FUND SECRETARIAT

Officers

Mr M Jacobsson	Director
Mr H Osuga	Legal Officer
Mr S O Nte	Finance/Personnel Officer
Mrs S Broadley	Claims Officer
Mrs H Rubin	Administrative Officer

AUDITORS

Comptroller and Auditor General
United Kingdom

ANNEX II

Note on Published Financial Statements

The financial statements reproduced in Annexes III to VIII are a summary of information contained in the audited financial statements of the International Oil Pollution Compensation Fund for the year ended 31 December 1992, approved by the Assembly at its 16th session.

EXTERNAL AUDITOR'S STATEMENT

The summary financial statements set out in Annexes III to VIII are consistent with the audited financial statements of the International Oil Pollution Compensation Fund for the year ended 31 December 1992.

National Audit Office
for the Comptroller and Auditor General
United Kingdom

January 1994

ANNEX III

General Fund

INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1992

	1992		*1991*	
INCOME	£	£	*£*	*£*
Contributions				
Initial Contributions		-		-
Annual Contributions		4 862 904		*488 125*
Adjustment to Prior Years' Assessments		(1 021)		*(17 534)*
		4 861 883		*470 591*
Miscellaneous				
Miscellaneous Income	499 744		*3 720*	
Interest on loan to MCF Volgoneft 263	43 457		-	
Interest on loan to MCF Rio Orinoco	20 165		*30 102*	
Interest on Overdue Contributions	9 223		*11 457*	
Interest on Investments	494 383		*1 087 778*	
	1 066 972	1 066 972	*1 133 057*	*1 133 057*
		5 928 855		*1 603 648*
EXPENDITURE				
Secretariat Expenses				
Obligations incurred		625 326		*517 583*
Claims				
Compensation		1 674 728		*1 534 929*
Claims Related Expenses				
Fees	155 108		*426 072*	
Travel	4 853		*68 462*	
Miscellaneous	759		*39 391*	
	160 720	160 720	*533 925*	*533 925*
		3 468 081		*(982 789)*
Exchange Adjustment		34 997		*3 475*
Excess/(Shortfall) of Income over Expenditure		3 503 078		*(979 314)*

ANNEX IV

Major Claims Fund - Brady Maria/Thuntank 5[1]

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1992

	1992		*1991*	
INCOME	£	£	*£*	*£*
Interest on Overdue Contributions	-		*4 272*	
Interest on Investments	11 160		*29 975*	
	11 160	11 160	*34 247*	*34 247*
EXPENDITURE				
Fees	-		*513*	
Miscellaneous	-		*20*	
	-	-	*533*	*533*
Excess of Income over Expenditure		11 160		*33 714*
Balance b/f: 1 January		178 106		*144 392*
Balance as at 31 December		189 266		*178 106*

[1] The BRADY MARIA and THUNTANK 5 Major Claims Funds have been amalgamated in accordance with the decision of the Assembly at its 15th session.

ANNEX V

Major Claims Fund - Kasuga Maru N°1

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1992

	1992		*1991*	
INCOME	£	£	*£*	*£*
Interest on Overdue Contributions	812		*6 383*	
Interest on Investments	19 024		*53 330*	
	19 836	19 836	*59 713*	*59 713*
		19 836		*59 713*
EXPENDITURE				
Compensation	-		*16 813*	
Fees	-		*17 112*	
Interest on Loans	-		-	
Miscellaneous	-		*7*	
	-	-	*33 932*	*33 932*
Excess of Income over Expenditure		19 836		*25 781*
Balance b/f: 1 January		301 536		*275 755*
Balance as at 31 December		321 372		*301 536*

ANNEX VI

Major Claims Fund - Rio Orinoco

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1992

	1992	
INCOME	£	£
Contributions		
Annual Contributions		6 490 768
Miscellaneous		
Interest on Overdue Contributions	9 274	
Interest on Investments	44 434	
	53 708	53 708
		6 544 476
EXPENDITURE		
Compensation	2 956 838	
Fees	18 711	
Travel	10 608	
Interest on Loans	20 165	
Miscellaneous	136	
	3 006 458	3 006 458
		3 538 018
Less Amount due to General Fund		2 591 075
Balance as at 31 December		946 943

ANNEX VII

Major Claims Fund - Haven

INCOME AND EXPENDITURE ACCOUNT FOR THE PERIOD ENDED 31 DECEMBER 1992

	1992	
INCOME	£	£
Contributions		
Annual Contributions (First levy)		14 588 712
Miscellaneous		
Interest on Overdue Contributions	17 996	
Interest on Investments	761 238	
	779 234	779 234
		15 367 946
EXPENDITURE		
Fees	110 384	
Travel	13 639	
Miscellaneous	24 825	
	148 848	148 848
Balance as at 31 December		15 219 098

ANNEX VIII

Balance Sheet of the IOPC Fund as at 31 December 1992

	1992		*1991*	
	£	£	*£*	*£*
ASSETS				
Cash at Banks and in Hand		24 740 802		*4 728 513*
Contributions Outstanding		727 192		*23 628*
Due from MCF Rio Orinoco		-		*2 591 075*
Due from MCF Volgoneft 263		875 481		-
VAT Recoverable		2 559		*5 278*
Miscellaneous Receivable		10 287		*8 867*
Interest on Overdue Contributions		7 980		*3 119*
		26 364 301		*7 360 480*
LESS				
LIABILITIES				
Staff Provident Fund	450 746		*343 368*	
Accounts Payable	3 574		*10 283*	
Unliquidated Obligations	28 140		*55 583*	
Prepaid Contributions	287 422		*512 161*	
Contributors' Account	174 004		*718 785*	
Due to MCF Brady Maria & Thuntank 5	189 266		*178 106*	
Due to MCF Kasuga Maru N°1	321 372		*301 536*	
Due to MCF Rio Orinoco	946 943		-	
Due to MCF Haven	15 219 098		-	
	17 620 565	17 620 565	*2 119 822*	*2 119 822*
NET ASSETS		8 743 736		*5 240 658*
REPRESENTED BY				
Accumulated Surplus		2 743 736		*1 240 658*
Working Capital		6 000 000		*4 000 000*
		8 743 736		*5 240 658*

ANNEX IX

REPORT OF THE EXTERNAL AUDITOR ON THE FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 1992

GENERAL

Introduction

1 I have audited the financial statements of the International Oil Pollution Compensation Fund ("the Fund") for the fourteenth financial period ended 31 December 1992. My examination was carried out with due regard to the provisions of the Fund Convention and the Financial Regulations. The scope of my examination of claims and contributions has been restricted for the reasons explained in paragraphs 8 and 10 below.

2 My audit included a general review of the accounting procedures and an examination of the accounting records and supporting evidence sufficient to enable me to form an opinion on the financial statements.

Reporting

3 During the audit my staff sought such explanations from the Fund as they considered necessary on matters arising from their examination of the internal controls, accounting records and financial statements. My observations on those matters arising from the audit which I consider should be brought to the attention of the Assembly are set out in the paragraphs below.

Audit Objectives

4 The main purpose of the audit was to enable me to form an opinion as to whether the income and expenditure recorded against both the General and Major Claims Funds in 1992 had been received and incurred for the purposes approved by the Assembly; whether income and expenditure were properly classified and recorded in accordance with the Financial Regulations; and whether the financial statements presented fairly the financial position as at 31 December 1992.

Scope of the Audit

General

5 My examination was based on a test audit, in which all areas of the financial statements were subject to verification and validation procedures. The audit included:

- a broad assessment of the internal controls for income and expenditure; cash management; accounts receivable and payable; and supplies and equipment;

- substantive testing of transactions across all funds;

- substantive testing of year end balances; and

- a review of the claims and contributions procedures to the extent set out in paragraphs 6 to 10 below.

Claims

6 The Fund make compensation payments to meet claims for oil pollution damage arising from incidents involving laden tankers and also meet claims for associated expenses arising from these incidents. They pay compensation to a claimant only where they, or in some circumstances an adjudicating court, consider that the claim is justified, having regard to the criteria laid down in the Fund Convention. Accordingly, the Fund require all claimants to substantiate their claims by producing explanatory notes, invoices, receipts and other supporting documents.

7 In the case of claims for compensation for damage, the Fund and the tanker owners' insurers jointly commission surveys by marine surveyors to report on the reasonableness of the claims presented. On the basis of these reports the Fund then negotiate settlements with the claimants.

8 As in previous years, my examination of the settlements negotiated in 1992 was limited to seeing that the Fund followed satisfactory procedures in reviewing the claims received, and that properly stated accounts were drawn up for each incident.

Contributions

9 Under Article 15.2 of the Fund Convention, Contracting States are responsible for submitting annually to the Fund reports on the quantities of contributing oil received in their respective countries during the preceding calendar year. The Director estimates the contributions he believes will be required over the next twelve months to finance the General Fund and any Major Claims Funds. He submits these estimates to the Assembly, which considers and decides upon the level of contributions payable to the General Fund and any Major Claims Funds. The Fund then use the Contracting States' reports to determine the levy of contributions payable by the individual oil receivers.

10 As in previous years, I have accepted these reports for the purpose of my audit. Accordingly, my examination was restricted to establishing that the Fund made appropriate checks to verify all reports received; and to ensuring that the financial statements state fairly the contributions received.

Overall Results

11 My examination revealed no weaknesses or errors considered material to the accuracy, completeness and validity of the financial statements as a whole. Subject to the restrictions on

the scope of my examination referred to in paragraphs 8 and 10 above and to the continuing uncertainty surrounding the outcome of the court action on the Haven incident (paragraphs 15 and 23 to 29 below), I confirm that, in my opinion, the financial statements present fairly the financial position as at 31 December 1992.

12 The detailed findings of my audit are set out in paragraphs 13 to 33 below.

SUMMARY OF MAIN FINDINGS

On Budgetary Outturn

13 Obligations incurred in 1992 were within the approved budget (paragraphs 16 and 17).

On Cash Management

14 During the year the Director examined the Fund's investment policy in consultation with my staff. After considering the Director's report, the Assembly confirmed a number of existing investment practices; set out a requirement for the Fund to obtain, at an early stage, prior approval for significant investments in particular currencies needed to meet claims; and established limits for investing in any one institution. My staff confirmed that the Fund had complied with these revised policies for investments held as at 31 December 1992, except in one case relating to an investment made before the Assembly established the revised Financial Regulations. The Director will report the circumstances of this case to the Assembly (paragraphs 18 to 21).

On Contingent Liabilities

15 The Fund's financial statements show contingent liabilities of £79 915 820 as at 31 December 1992. Some £40 million of this relates to oil spillage off the coast of Genoa, caused by the tanker Haven in April 1991. However, the Italian Court in Genoa ruled in March 1992 that the Fund's potential liability could reach some £346 million for this incident. In October 1992 the Assembly endorsed the Fund's legal opposition to the Court's decision and a further decision is expected from the Italian Court in July 1993. Because of the uncertainty of the outcome of these legal proceedings, I have qualified my opinion in respect of this contingent liability (paragraphs 22 to 29).

DETAILED FINDINGS

FINANCIAL MATTERS

Budgetary Outturn and Transfers

16 Statement I to the financial statements shows that obligations incurred for the period ended 31 December 1992 totalled £625 326, this being £49 522 within the budget of £674 848.

17 During 1992, the Director made transfers of appropriations within and between Chapters of the budget in accordance with Financial Regulation 4.3. The Director has reported on these transfers in his comments which accompany the audited financial statements.

Cash Management

18 In 1991, at its 14th session, the Fund Assembly instructed the Director to examine the Fund's investment policy, in consultation with the External Auditor, and to report on his findings at the Assembly's next session. I am pleased to say that the Director liaised fully with my staff in carrying out this examination and in preparing his report, which he presented to the Assembly's 15th session in October 1992 (document FUND/A.15/12).

19 The Assembly considered the Director's report and decided as follows:

- the Fund should not, at least for the time being, broaden their investment policy beyond deposits and bank bills;

- for the time being the Fund should maintain their policy of investing only with banks, building societies and discount houses;

- the Director should retain the possibility of keeping assets in any currency required to meet claims which have been, or are likely to be, settled in that currency in the near future. He should also retain the possibility of buying currencies other than pounds sterling to cover such claims;

- for incidents which have given rise to substantial claims, the Fund should, at an early stage, seek the Assembly's prior approval for any significant investments in a particular currency needed to meet such claims.

- the normal limit for investment in any one institution should be 25 percent of the Fund's total assets; in addition, investments with any one institution should not normally exceed £4 million; and

- the maximum period for investments should be maintained at one year.

20 To implement the necessary changes to the Fund's investment policy, the Assembly decided to amend Financial Regulation 7.1, which sets out the Fund's investment criteria. Although the financial year beginning 1 January 1993 is the first complete year in which the revised Financial Regulation is operative, my staff examined the Fund's investment holdings as at 31 December 1992 to confirm that the Fund had applied the revised investment policy, as approved by the Assembly in October 1992.

21 As at 31 December 1992, the Fund held a total of £24 740 802 in cash and on deposit, including £24 014 000 held on bank or building society deposit spread across 13 institutions. Based on their review of the Fund's investments, my staff concluded that the new Financial Regulation 7.1 had been properly applied. In particular, my staff confirmed that in no case had the maximum period of investment exceeded the one year limit set out in the Financial Regulation 7.1(b). Further, they confirmed that with one exception, the maximum investment in any one institution was within the normal limits set out in Financial Regulation 7.1(c). This one exception was for a total investment of £5 million for a period of 62 days from 2 September 1992. The Fund told me that, in accordance with Financial Regulation 7.1(d), the Director will bring this matter to the Assembly's attention in his report on the Fund's investments.

CONTINGENT LIABILITIES

General

22 The Fund's contingent liabilities are disclosed in Schedule III to the financial statements and mostly relate to compensation claims for oil pollution damage. Under the Fund Convention, those liabilities which mature will be met by contributions assessed by the Fund Assembly.

Haven Incident

23 In April 1991, an oil pollution incident occurred when the tanker Haven caught fire and sustained a series of explosions whilst at anchor off Genoa. Claims submitted to the Fund for compensation for oil pollution damage from this incident were approximately £720 million. As at 31 December 1991, the Italian Court in Genoa dealing with the claims had made no ruling on the extent of the Fund's liability under the Fund Convention.

24 On 14 March 1992, the Court rendered a decision which, if implemented, indicated that the Fund would face a potential maximum liability of £359 million as at 31 December 1991. This contrasted with the Fund's assessment of £48 million, prepared in accordance with the Fund Convention, and noted in the 1991 financial statements. After reviewing the Genoa Court's judgement at its 31st session on 28 May 1992, the Executive Committee endorsed the Fund's assessment of £48 million and instructed the Director to pursue the Fund's opposition to the Court's decision.

25 Because of the uncertainty surrounding the outcome of these legal proceedings, I qualified my audit opinion on the 1991 financial statements in respect of the contingent liability for the Haven incident.

26 My staff have reviewed subsequent progress of the legal proceedings on the Haven incident. They noted that the Fund had lodged opposition to the Italian Court's initial decision of 14 March 1992 and that, at its 15th session in October 1992, the Assembly had supported the concerns expressed by the Executive Committee at its 31st session in May 1992. The Assembly endorsed the Fund's legal opposition to the Court's decision of 14 March 1992.

27 On 29 January 1993, the Italian Court in Genoa was scheduled to hear, for a second time, the Fund's opposition to the Court's decision of 14 March 1992. However, for procedural reasons, this hearing was postponed. The Fund told me that they now expect the Court to render its decision on their lodged opposition in July 1993.

28 In Schedule III to the Financial Statements the Fund show £79 915 820 as their assessment of contingent liabilities as at 31 December 1992, compared with £55 191 900 in 1991. Within this total, £40 021 140 relates to the Haven incident, representing the Fund's view of the net compensation payable under the Fund Convention. However, based on the Court's decision of 14 March 1992, the Fund could face a potential maximum liability equivalent to £346 million, at 31 December 1992.

29 I have noted the Fund's estimate of the contingent liability in the Haven case; the Court's initial decision; and the Assembly's full support of the position taken by the Director in the legal proceedings. Because of the uncertainty of the outcome of the current legal action, I have

qualified my opinion on the Fund's financial statements for 1992 in respect of this contingent liability.

FINANCIAL CONTROL MATTERS

The Accounting Systems

30 During the 1992 audit my staff carried out a review of the accounting systems to the extent considered necessary for the purpose of forming an opinion on the financial statements. As a result of their examination, my staff concluded that the Fund had maintained proper books of account and that the accounting records were, in all significant respects, sufficient to form the basis of the 1992 financial statements.

Control of Supplies and Equipment

31 In accordance with the Fund's stated accounting policies, purchases of equipment, furniture, office machines, supplies and library books are not included in the Fund's Balance Sheet. Note 13(b) to the financial statements shows that the value of these assets held by the Fund as at 31 December 1992 amounted to £102 644.

32 My staff carried out a test examination of the Fund's records of supplies and equipment assets under Financial Regulation 10.12. As a result of this examination, I am satisfied that the supplies and equipment records as at 31 December 1992 properly reflect the assets held by the Fund. No losses were reported by the Fund during the year.

OTHER MATTERS

Amounts Written Off and Fraud

33 The Fund told me that there were no amounts written off or cases of fraud or presumptive fraud during the financial period.

ACKNOWLEDGEMENT

34 I wish to record my appreciation of the willing co-operation and assistance extended by the Director and his staff during the audit.

SIR JOHN BOURN KCB

Comptroller and Auditor General, United Kingdom

External Auditor 30 June 1993

ANNEX X

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND FOR THE YEAR ENDED 31 DECEMBER 1992

OPINION OF THE EXTERNAL AUDITOR

To the Assembly of the International Oil Pollution Compensation Fund

I have examined the appended financial statements, comprising Statements I to VIII, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund for the year ended 31 December 1992 in accordance with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency. My examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as I considered necessary in the circumstances.

Subject to the scope restrictions referred to in paragraphs 8 and 10 and to the uncertainty relating to a contingent liability referred to in paragraph 29 of my Report, as a result of my examination, I am of the opinion that the financial statements present fairly the financial position as at 31 December 1992 and the results for the year then ended; that they were prepared in accordance with the Fund's stated accounting policies which were applied on a basis consistent with that of the preceding financial year; and that the transactions were in accordance with the Financial Regulations and legislative authority.

SIR JOHN BOURN KCB

Comptroller and Auditor General, United Kingdom

External Auditor

30 June 1993

ANNEX XI

Contributing Oil Received in the Territories of Member States in the Calendar Year 1992

As reported by 31 December 1993

Member State	Contributing Oil (tonnes)	% of Total
Japan	269 932 430	25.53
Italy	148 507 529	14.04
Netherlands	97 735 913	9.24
France	92 028 206	8.70
United Kingdom	82 477 057	7.80
Republic of Korea	82 076 982	7.76
Spain	57 686 894	5.46
India	39 169 000	3.70
Germany	32 457 327	3.07
Canada	30 595 967	2.89
Norway	23 990 310	2.27
Greece	19 237 258	1.82
Sweden	19 008 159	1.80
Portugal	10 739 302	1.02
Indonesia	9 972 439	0.94
Finland	8 762 427	0.83
Poland	7 590 206	0.72
Denmark	7 129 245	0.67
Bahamas	5 586 812	0.53
Côte d'Ivoire	3 243 086	0.31
Ireland	2 710 953	0.26
Tunisia	2 589 972	0.25
Cyprus	1 410 207	0.13
Sri Lanka	1 303 553	0.12
Ghana	943 410	0.09
Algeria	555 583	0.05
Estonia	0	0.00
Iceland	0	0.00
Kuwait	0	0.00
Monaco	0	0.00
Papua New Guinea	0	0.00
Slovenia	0	0.00
Tuvalu	0	0.00
Vanuatu	0	0.00
	1 057 440 227	100.00

<Note> No report from Benin, Brunei Darussalam, Cameroon, Croatia, Djibouti, Federal Republic of Yugoslavia (Serbia and Montenegro), Fiji, Gabon, Gambia, Kenya, Liberia, Maldives, Malta, Morocco, Nigeria, Oman, Qatar, Russian Federation, Seychelles, Sierra Leone, Syrian Arab Republic, United Arab Emirates and Venezuela.

ANNEX XII

Summary of Incidents

(31 December 1993)

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 Interest Total	SKr89 057 717 6 649 440 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 Fishery damage Indemnification Total	¥108 589 104 31 521 478 9 427 585 ¥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 Nature Conservancy Council Local authorities Owner's clean-up costs Total	£175 000 1 400 7 150 180 000 £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 Fishery damage Indemnification Total	¥7 477 481 2 710 854 211 370 ¥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 Fishery damage Indemnification Total	¥10 408 369 92 696 505 2 030 785 ¥105 135 659	paid paid paid	¥9 893 196 recovered by way of recourse

Vessel (Flag State)	Gross Tonnage (CLC Liability)	Date & Place of Incident	Cause of Incident & Quantity of Oil Spilled (tonnes)	Claims: Compensation & Indemnification			Remarks
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	FFr208 736 142	paid	US$17 480 028 recovered by way of recourse; total payment equalled limit of compensation available under Fund Convention
				French local authorities	5 689 025	paid	
				Private claimants	2 961 290	paid	
				Port Autonome du Havre	74 444	paid	
				UK P & I Club	4 679 742	paid	
				Total	FFr222 140 643		
FURENAS (Sweden)	999 GRT SKr612 443	3.6.80 Oresund, Sweden	Collision (200)	Clean-up costs:			SKr449 961 recovered by way of recourse
				- Swedish authorities	SKr2 911 637	paid	
				- Swedish private claimants	276 050	paid	
				Sub-total	SKr3 187 687		
				Clean-up costs:			
				- Danish authorities	DKr408 633	paid	
				- Danish private claimants	9 956	paid	
				Sub-total	DKr418 589		
				Indemnification	SKr153 111	paid	
HOSEI MARU (Japan)	983 GRT ¥35 765 920	21.8.80 off Miyagi, Japan	Collision (270)	Clean-up costs	¥163 051 598	paid	¥18 221 905 recovered by way of recourse
				Fishery damage	50 271 267	paid	
				Indemnification	8 941 480	paid	
				Total	¥222 264 345		

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.
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

Vessel (Flag State)	Gross Tonnage (CLC Liability)	Date & Place of Incident	Cause of Incident & Quantity of Oil Spilled (tonnes)	Claims: Compensation & Indemnification			Remarks
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 Total	¥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 Total	¥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 Total	¥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 Total	¥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 Total	¥26 124 589 474 080 ¥26 598 669	paid paid	¥8 866 222 recovered by way of recourse

PATMOS (Greece)	51 627 GRT LIt 13 263 703 650	21.3.85 Straits of Messina, Italy	Collision (700)	Preventive measures} and clean-up costs } (including salvage)} Damage to marine environment Total	LIt 9 418 318 650 735 268 884 5 000 000 000 LIt 15 153 587 534	agreed claimed claimed	Most claims settled; LIt 9 418 318 650 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 Total	DKr9 378 528 24 126 53 007 394 043 DKr9 849 704	paid paid paid paid	
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 Owners clean-up costs Indemnification	US$1 133 FFr708 824 126 120 Din5 650 Din293 766	paid 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
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 49 361 685 437 SKr23 903 069	paid paid paid	
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. Indemnification 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 £92 800 (estimate)	25.8.87 Dubai, UAE	Fire (1 000)	Clean-up costs Clean-up costs	Dhs864 293 US$187 165	paid paid	US$160 000 refunded by P & I insurer
TOLMIROS (Greece)	48 914 GRT SKr50 000 000 (estimate)	11.9.87 West coast of Sweden	Unknown (200)	Swedish Government	SKr100 639 999	claimed	Legal action against shipowner and IOPC Fund withdrawn.

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 860 369	31.1.88 Brittany, France	Storm damage to tanks (2 000)	Compensation	FF1 286 977	paid	FFr1 000 000 recovered from P & I Club
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	claimed	Fund Convention not applicable, as incident occurred before entry into force of Fund Convention for Canada; claim not pursued.
KASUGA MARU N°1 (Japan)	480 GRT 17 015 040	10.12.88 Kyoga Misaki, Japan	Sinking (1 100)	Clean-up costs Fishery damage Indemnification Total	¥371 865 167 53 500 000 4 253 760 ¥429 618 927	paid paid paid	Further claims may be submitted
NESTUCCA (United States of America	1 612 GRT (unknown)	23.12.88 Vancouver Island, Canada	Collision (unknown)	Private claimants	Can$10 475	claimed	Fund Convention not applicable, as incident occurred before entry into force of Fund Convention
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	

Vessel (Flag State)	Gross Tonnage (CLC Liability)	Date & Place of Incident	Cause of Incident & Quantity of Oil Spilled (tonnes)	Claims: Compensation & Indemnification			Remarks
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 Total	¥19 159 905 742 880 ¥19 902 785	paid 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	¥8 285 960 431 761 ¥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)	174 GRT ¥4 199 680	28.10.89 Yaizu, Japan	Mishandling of cargo (0.2)	Loss of earnings Clean-up costs Indemnification Total	¥1 792 100 368 510 1 049 920 ¥3 210 530	paid paid paid	
DAITO MARU N°3 (Japan)	93 GRT ¥2 495 360	5.4.90 Yokohama, Japan	Mishandling of cargo (3)	Clean-up costs Indemnification Total	¥5 490 570 623 840 ¥6 114 410	paid paid	

KAZUEI MARU N°10 (Japan)	121 GRT ¥3 476 160	11.4.90 Osaka, Japan	Collision (30)	Clean-up costs Fishery damage Indemnification Total	¥48 883 038 560 588 869 040 ¥50 312 666	paid paid paid	¥45 038 833 recovered by way of recourse
FUJI MARU N°3 (Japan)	199 GRT ¥5 352 000	12.4.90 Yokohama, Japan	Overflow during supply operation (unknown)	Clean-up costs Indemnification Total	¥96 431 1 338 000 ¥1 434 431	paid paid	¥430 329 recovered by way of recourse
VOLGONEFT 263 (USSR)	3 566 GRT SKr3 123 585 (estimate)	14.5.90 Karlskrona, Sweden	Collision (800)	Swedish Government Fishery damage Pollution damage Indemnification Total	SKr15 517 563 530 239 6 250 795 276 Skr16 849 328	paid paid paid paid	
HATO MARU N°2 (Japan)	31 GRT ¥803 200	27.7.90 Kobe, Japan	Mishandling of cargo (unknown)	Damage to cargo Indemnification Total	¥1 087 700 200 800 ¥1 288 500	paid paid	
BONITO (Sweden)	2 866 GRT £241 000 (estimate)	12.10.90 River Thames, United Kingdom	Mishandling of cargo (20)	Clean-up costs	£130 000	agreed	Total damage less than owner's liability
RIO ORINOCO (Cayman Islands)	5 999 GRT Can$1 182 167	16.10.90 Anticosti Island, Canada	Grounding (185)	Compensation Indemnification	Can$12 831 891 Can$295 654	paid not yet paid	
PORTFIELD (United Kingdom)	481 GRT £39 970 (estimate)	5.11.90 Pembroke Dock, Wales, United Kingdom	Sinking (110 tonnes)	Clean-up costs Fishery damage Total Indemnification	£320 057 287 298 £607 355 £9 993	paid claimed not yet paid	£39 472 paid by P & I insurer

Vessel (Flag State)	Gross Tonnage (CLC Liability)	Date & Place of Incident	Cause of Incident & Quantity of Oil Spilled (tonnes)	Claims: Compensation & Indemnification			Remarks
VISTABELLA (Trinidad & Tobago)	1 090 GRT US$100 000 (estimate)	7.3.91 (Caribbean)	Sinking (unknown)	Private claimants	FFr110 010	paid	
				French Government	9 504 240	claimed	
				Total	FFr9 614 250		
				Clean-up costs	US$8 068	paid	
HOKUNAN MARU N°12 (Japan)	209 GRT ¥3 523 520	5.4.91 Okushiri Island, Japan	Grounding (small quantity)	Clean-up costs & fishery damage	¥6 144 829	paid	
				Indemnification	880 880	paid	
				Total	¥7 025 709		
AGIP ABRUZZO (Italy)	98 544 GRT Llt 15 400 million (estimate)	10.4.91 Livorno, Italy	Collision (2 000)	Clean-up costs	Llt 17 893 000 000	paid	Lit 16 568 500 000 paid by P & I Club; limitation proceedings not yet commenced.
				Private claimants	24 500 000	paid	
				Private claimant	65 335 000	claimed	
				Italian Government	1 333 300 000	claimed	
				Total	Llt 19 316 135 000		
HAVEN (Cyprus)	109 977 GRT Llt 23 950 220 000	11.4.91 Genoa, Italy	Fire and explosion (unknown)	Italian Government	Llt 261 028 552 187	claimed	No amounts yet indicated for some claims; further claims may be submitted.
				Italian local authorities & private claimants	927 649 025 300	claimed	
				Total	Llt 1 188 677 577 487		
				French Government	FFr16 284 592	claimed	
				French local authorities	78 410 591	claimed	
				Total	FFr94 695 183		

KAIKO MARU N°86 (Japan)	499 GRT ¥14 660 480	12.4.91 Nomazaki, Japan	Collision (25)	Clean-up costs & fishery damage Indemnification Total	 ¥93 067 813 3 665 120 ¥96 732 933	 paid paid	
KUMI MARU N°12 (Japan)	113 GRT ¥3 058 560	27.12.91 Tokyo Bay, Japan	Collision (5)	Clean-up costs Indemnification	¥1 056 519 ¥764 640	paid not yet paid	
FUKKOL MARU N°12 (Japan)	94 GRT ¥2 198 400	9.6.92 Ishinomaki, Japan	Mishandling of oil supply (unknown)	Damage to fish cargo Indemnification Total	¥4 243 997 549 600 ¥4 793 597	paid paid	
AEGEAN SEA (Greece)	57 801 GRT Pts 1 121 219 450	3.12.92 La Coruña,	Grounding (73 500)	Property damage } Clean-up costs } Fishery damage } Other claims }	Pts 191 303 514	paid	Claims for significant amounts pending
BRAER (Liberia)	44 989 GRT £5 500 000 (estimate)	5.1.93 Shetland, United Kingdom	Grounding (84 000)	Damage to property } Clean-up costs } Fishery damage } Other claims }	£21 167 215	agreed	Further claims for significant amounts pending
SAMBO N°11 (Republic of Korea)	520 GRT Won 77 786 224 (estimate)	12.4.93 Seoul, Republic of Korea	Grounding (4)	Clean-up costs & preventive measures Fishery damage Total	Won 176 866 632 42 848 123 Won 219 714 755	paid paid	
TAIKO MARU (Japan)	699 GRT ¥29 205 120 (estimate)	31.5.93 Shioyazaki, Japan	Collision (520)	Clean-up costs Fishery damage Total	¥225 061 065 1 086 019 949 ¥1 311 081 014	paid claimed	Claims for significant amounts pending

Vessel (Flag State)	Gross Tonnage (CLC Liability)	Date & Place of Incident	Cause of Incident & Quantity of Oil Spilled (tonnes)	Claims: Compensation & Indemnification		Remarks
RYOYO MARU (Japan)	699 GRT ¥28 105 920 (estimate)	23.7.93 Izu peninsula, Japan	Collision (500)			Claims not yet submitted
KEUMDONG N°5 (Republic of Korea)	481 GRT Won 72 000 000 (estimate)	27.9.93 Yeousu Bay, Republic of Korea	Collision (1 280)	Clean-up costs	Won 4 954 043 411 paid	Further claims for significant amounts will be submitted
ILIAD (Greece)	33 837 GRT US$5.8 million (estimate)	9.10.93 Pylos, Greece	Grounding (300)	Clean-up costs } Fishery damage } Other claims }	Drs 3 690 000 000 claimed	Further claims may be submitted

Notes

1 Amounts are given in national currencies; the relevant conversion rates as at 31 December 1993 are as follows:

£ = Din 35.2365	£ = FFr 8.7357	£ = ¥ 165.120	£ = SKr 12.3320
Can$ 1.9588	DM 2.5692	Won 1194.18	Dhs 5.4245
DKr 10.0531	Drs 368.914	Rbls 0.86580	US$ 1.4795
FM 8.5681	LIt 2532.90	Pts 211.458	

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 shipowners liability).