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REPORT OF THE DIRECTOR

1 Introduction

1.1 This report covers the operations of the IOPC Fund since the 9th session of the Assembly. It contains a survey of some of the main issues relating to the IOPC Fund's activities during that period. The various aspects of these activities are dealt with in detail in the documents submitted to the 10th session of the Assembly and to the 18th session of the Executive Committee. This report also deals with the finances of the IOPC Fund for the first eight months of 1987.

1.2 The IOPC Fund's Annual Report for the calendar year 1986, which was published in February 1987, contains an extensive presentation of various aspects of the IOPC Fund's activities during that year. In view of the interest shown in the IOPC Fund, it has been considered that such a presentation would be useful for all those dealing with the Fund, ie governments and public authorities, shipowners, P & I Clubs, contributors, inter-governmental and non-governmental organisations, as well as victims of oil pollution damage.

1.3 Pursuant to the decision of the Assembly at its 9th session, the aggregate amount of compensation payable by the IOPC Fund in respect of any one incident was increased from 675 million poincaré francs (45 million SDR) to 787 500 000 poincaré francs (52.5 million SDR) for incidents which occur after 30 November 1986. A further increase to 900 million poincaré francs (60 million SDR), as decided by the Assembly, will come into effect for incidents occurring after 30 November 1987.

1.4 Since the 9th session of the Assembly, there have been five new incidents involving the IOPC Fund. Several incidents which occurred in previous years still require a considerable amount of work by the IOPC Fund's Secretariat. The recourse action in the TANIO case which the IOPC Fund, together with the French Government, has taken against the owner of the TANIO and other parties has entered into a very active phase. The PATMOS incident, which occurred in the Straits of Messina in Italy in

1985, has given rise to large claims against the IOPC Fund, and the IOPC Fund has become involved in complicated court proceedings in Italy.

2 Membership

2.1 Two States have become Members of the IOPC Fund since the 9th session of the Assembly. The Fund Convention entered into force for Greece on 16 March 1987 and for the Union of Soviet Socialist Republics on 15 September 1987. By the time of the 10th session of the Assembly, the IOPC Fund will have 36 Member States. The Federal Republic of Nigeria deposited its instrument of accession to the Fund Convention on 11 September 1987. The Convention will enter into force for Nigeria on 10 December 1987, bringing the number of Member States to 37.

2.2 On the basis of the information available to the IOPC Fund's Secretariat, there are reasons to expect that several States will join the IOPC Fund within a short period of time. In Canada and Morocco, the parliaments have approved the Fund Convention and the necessary implementing legislation, and these States will soon deposit their instruments of accession to the Convention. The Director has been informed that Côte d'Ivoire will become Party to the Fund Convention in the near future. Legislation implementing the Fund Convention is in an advanced stage in Belgium, Cyprus, and Ireland. Several other States, such as Argentina, the People's Republic of China, the German Democratic Republic, Qatar, Saudi Arabia, Senegal, the Seychelles and Vanuatu, are also examining the question of accession to the Fund Convention.

3 Contacts with Governments and Interested Bodies

3.1 As instructed by the Assembly at its 9th session, the IOPC Fund Secretariat has intensified its efforts to increase the number of Member States. To this end, the Secretariat has tried to convey as much information as possible about the Civil Liability Convention and the Fund Convention to governments and representatives of industry, since the compensation system created by these Conventions is very complex. For this purpose, the Director went to Argentina, Brazil, Canada, Chile, Saudi Arabia and the United States of America for discussions on the Civil Liability Convention and the Fund Convention with government officials in these States.

3.2 In addition, the Director visited three Member States - Finland, Kuwait and Poland - for discussions with government officials on the Fund Convention and the operations of the IOPC Fund.

3.3 The Director and the Legal Officer also had discussions with government representatives in connection with meetings within the International Maritime Organization (IMO), in particular during the sessions of the IMO Council in November 1986 and June 1987.

3.4 The Director gave lectures on the Civil Liability Convention and the Fund Convention at a regional seminar for Latin America in Santiago de Chile and at a seminar in Buenos Aires (Argentina). The Director also participated in a Seminar on Marine Pollution Prevention, Control and Response in Jeddah (Saudi Arabia). In addition, he gave lectures on liability and compensation for oil pollution damage to the students of the World Maritime University in Malmö (Sweden). The Legal Officer lectured on oil pollution liability at a training course (MEDIPOL 87) which was organised by the Regional Oil Combating Centre for the Mediterranean Sea (ROCC), in Valetta (Malta) and he will participate in September 1987 in a regional seminar on pollution in Accra (Ghana).

4 The 1984 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. So far, however, only France has become Party to the Protocol to the Fund Convention. The Protocol to the Civil Liability Convention has been ratified by France, Peru and South Africa. In the United States of America, the Protocols and necessary implementing legislation are being considered by Congress. Several other States, eg Denmark, the Federal Republic of Germany, Finland, the Netherlands, Norway, Sweden, and the United Kingdom, have begun preparing legislation enabling them to ratify the Protocols.

5 Contributions

5.1 The Assembly decided at its 9th session to levy 1986 annual contributions in the amount of £1.8 million to the general fund. No contributions were levied for any major claims fund. The date of payment was 1 February 1987. Only a small amount remains unpaid.

5.2 In general, the situation regarding the payment of contributions for previous years must be considered very satisfactory, as only small amounts are in arrears. For details reference is made to document FUND/A.10/6.

5.3 The Director has not yet received the reports on contributing oil receipts in 1986 from some Member States. By 31 March 1987, the last date for Member States to submit their reports in accordance with the IOPC Fund's Internal Regulations, only 12 reports had been received by the Director; by 15 September 1987 altogether 25 reports had been received. In addition, a few States have still not submitted their reports in respect of 1985 contributing oil receipts (cf Annex I to document FUND/A.10/7). This situation is not satisfactory. If the reports on contributing oil receipts are not received by the IOPC Fund, the Director is unable to issue invoices to the contributors in the

States concerned. It is, therefore, of decisive importance for the functioning of the IOPC Fund that these reports are actually submitted by the respective Governments.

6 Investment of Funds

6.1 During 1986 and 1987, funds which were not required for the short-term operation of the IOPC Fund were invested with several leading London banks. The average rate of interest on the investments in 1986 was 11%. Due to the fall in interest rates during 1987, the rates obtained on investments made in 1987 have generally been lower than in 1986.

6.2 It is expected that the average interest rate on the IOPC Fund's investments in 1987 will be approximately 10%. Interest earned during the first eight months of the year is £204 359 with about £316 000 due during the remaining four months, on an estimated average capital of £5 million.

6.3 Details of the investments are given in document FUND/A.10/4.

7 Accounts of the IOPC Fund

7.1 The expenditure for the administration of the IOPC Fund in 1986 was £313 086, compared with the budgetary appropriation of £347 850. Details of the accounts of the IOPC Fund for the financial year 1986 are given in the Financial Statements (document FUND/A.10/5, Annex IV).

7.2 The expenditure for the administration during the first eight months of 1987 will amount to approximately £172 000. The budget appropriation for the whole of 1987 is £337 450. It is expected that there will be a budgetary surplus at the end of the year.

7.3 As in previous years, excellent co-operation with the External Auditor, the Comptroller and Auditor General of the United Kingdom, has facilitated the administration of the IOPC Fund.

8 Settlement of Claims

8.1 As at 15 September 1987, there have been 32 incidents in respect of which the IOPC Fund, since its inception, has been or may be liable for compensation or indemnification. The total amount of compensation and indemnification paid as at this date is £36 million. For details reference is made to the 1986 Annual Report and Table M of the updated Statistics (1987) distributed during this session of the Assembly.

8.2 Since the 9th session of the Assembly, five incidents have occurred which have given or may give rise to claims for

compensation and indemnification against the IOPC Fund, namely the OUED GUETERINI, THUNTANK 5, ANTONIO GRAMSCI, ELHANI and AKARI incidents.

8.3 The OUED GUETERINI incident happened in December 1986 in the port of ALGER (Algeria), when part of a cargo of bitumen escaped into the port during unloading. Some bitumen entered the sea-water intake of a power station, necessitating a shut-down of the station for a short period of time. A claim has been submitted to the IOPC Fund by the owner of the power station and discussions concerning the claim are being held.

8.4 In December 1986 the Swedish tanker THUNTANK 5 grounded off the east coast of Sweden, 200 kilometres north of Stockholm. This incident led to extensive clean-up operations, in spite of the fact that only a relatively small quantity of oil escaped. Only a few claims from fishermen have so far been submitted.

8.5 In February 1987, the USSR tanker ANTONIO GRAMSCI grounded on the south coast of Finland, causing an escape of 600-700 tonnes of crude oil. Extensive operations to combat the spilt oil were carried out in Finland and the USSR. No claims have been submitted so far, and it is not yet possible to assess whether the IOPC Fund will have to pay any compensation as a result of this incident.

8.6 The ELHANI incident occurred in July 1987 in Indonesian territorial waters near Singapore. The extent of the pollution damage is not yet known. Although a claim has been submitted against the IOPC Fund by the Indonesian authorities, it is unlikely that the IOPC Fund will be called upon to pay compensation, since the limitation amount of the shipowner's liability is very high.

8.7 The AKARI incident took place in August 1987 off the coast of the United Arab Emirates. So far, due to the paucity of information available, it is not possible to predict whether any compensation will be paid by the IOPC Fund.

8.8 In addition to the five new incidents mentioned above, there are, as at 15 September 1987, six incidents in respect of which final settlements have not yet been reached: the TANIO, EIKO MARU N°1 (in respect of which only a recourse claim remains unsettled), KOSHUN MARU N°1, PATMOS, JAN and BRADY MARIA incidents.

8.9 As for the JOSE MARTI incident, which occurred in Sweden in 1981, it has now been established that the IOPC Fund will not be called upon to pay any compensation or indemnification. A judgement by the Court of Appeal in Stockholm has become final. In this judgement, the Court rejected the shipowner's defence that the incident was wholly caused by the negligence of the Swedish Government in the maintenance of navigational aids.

8.10 As regards the TANIO case, the IOPC Fund has taken action in the Court of Brest (France) against the owner of the TANIO and other parties to recover the amounts paid to the claimants, up till now FF221 million (£18.6 million). The French Government has taken action against the same defendants for the purpose of obtaining compensation for that part of its total claim which was not compensated by the shipowner's limitation fund and the IOPC Fund. Up to the time of the 9th session of the Assembly, the Court procedure had concentrated on establishing the technical cause of the incident and on the disclosure of documents. However, late in 1986 the Court fixed a strict timetable for the procedural steps to be taken by the parties. All defendants have submitted pleadings to the Court, and the IOPC Fund and the French Government have submitted pleadings in response to the arguments put forward by the defendants. The oral hearing concerning the question of liability is scheduled to take place in October 1987.

8.11 As for the PATMOS incident, 42 claims totalling £36 million were filed against the shipowner's limitation fund. The shipowner's P & I insurer (the UK Club) and the IOPC Fund carried out negotiations with the claimants, and it was possible to arrive at settlements with 29 of the claimants within a comparatively short period of time. The IOPC Fund has become involved in complicated legal proceedings in Italy concerning the claims which were rejected by the Director. In these proceedings, some important legal issues arose, ie the relationship between salvage operations and preventive measures and questions relating to damage to the marine environment. In a judgement rendered in July 1986, the Court of first instance accepted to a large extent the position taken by the IOPC Fund. The claims accepted by the Court do not exceed the shipowner's limitation amount. However, several claimants have appealed against this judgment. The judgement of the Court of Appeal is not expected until June 1988.

8.12 The Director has made considerable efforts to arrive at final settlements in respect of the JAN and BRADY MARIA incidents, but this has so far not been possible. He considers, however, that there is a good possibility that settlements will be reached in the near future.

8.13 For details of the new incidents and for recent developments regarding the settlement of claims arising out of earlier incidents, reference is made to documents FUND/EXC.18/2 (the TANIO incident), FUND/EXC.18/3 (the PATMOS incident) and FUND/EXC.18/4 (all other incidents).

9 Administration of the IOPC Fund

9.1 Mr K Wada (Japan) succeeded Mr M Dobashi as Legal Officer with effect from 1 November 1987.

9.2 The Director's Secretary since 1983, Miss I Buhagiar, left the IOPC Fund on 31 July 1987 at her own request. The Director

appointed Mrs H Rubin, Secretary to the Legal Officer since 1979, as his new Secretary from 1 August 1987. Miss R Booth has been appointed Secretary to the Legal Officer from 1 October 1987.

9.3 The Secretary to the Finance Officer, Miss J Duchemin, was on maternity leave from 18 May to 4 September 1987. Her tasks were carried out by supernumerary staff. She left the IOPC Fund for family reasons at the end of her maternity leave. It is expected that her successor will be appointed before the 10th session of the Assembly.

9.4 The Director would like to express his gratitude to all members of the IOPC Fund's Secretariat for their work which, as in previous years, has been of very high quality.

10 Developments regarding the Voluntary Industry Schemes relating to Compensation for Oil Pollution Damage

10.1 At the 9th session of the Assembly, it was reported that revised voluntary industry schemes were under consideration. Revised schemes entered into force on 20 February 1987. With regard to the Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP), the revision was made by the addition of a Supplement to the original TOVALOP Agreement. In respect of the Contract Regarding a Supplement to Tanker Liability for Oil Pollution (CRISTAL), an extensively amended contract was adopted.

10.2 The main features of the revised voluntary schemes are set out in document FUND/A.10/13.

10.3 Of special interest to IOPC Fund Member States is a reimbursement system included in the revised CRISTAL contract for members of CRISTAL who pay contributions to the IOPC Fund because they are situated in a State Party to the Fund Convention. These CRISTAL members will be reimbursed by CRISTAL for contributions paid to the IOPC Fund in respect of incidents involving cargoes owned by any CRISTAL member. This means that the total contributions of any CRISTAL member in respect of compensation to victims of oil pollution incidents will be the same whether or not the member concerned is situated in a State Party to the Fund Convention.

10.4 The Director of the IOPC Fund and the President of CRISTAL have agreed on the procedures for co-operation between the two bodies, as reported in document FUND/A.10/13.

11 Relationship with other Organisations

11.1 The IOPC Fund has continued to benefit from close and friendly relations with many international, inter-governmental and non-governmental organisations.

11.2 The assistance and support given by IMO to the IOPC Fund is of special importance. The Director expresses his profound gratitude to the Secretary-General of IMO and his staff for their assistance to the IOPC Fund.

11.3 The IOPC Fund also has a close co-operation with a number of international non-governmental organisations which greatly facilitates its operations. The Director would like to emphasise the importance of the co-operation with the P & I Clubs in connection with the settlement of claims. The International Tanker Owners Pollution Federation Limited (ITOPF) is usually called upon by the IOPC Fund to provide technical expertise with regard to oil pollution incidents (except for those occurring in Japan), and ITOPF's assistance is vital, as the IOPC Fund does not have such expertise within its Secretariat. There is also close co-operation between the IOPC Fund, on the one hand, and oil industry interests represented by the Oil Companies International Marine Forum (OCIMF) and CRISTAL, on the other hand.

12 Final Remarks

12.1 In conclusion, the Director would like to express his relief that there have been no disastrous oil pollution incidents in any Member State since the 9th session of the Assembly, although several incidents involving tankers which took place in these States were very close to becoming real disasters.

12.2 The IOPC Fund Secretariat has made great efforts to settle the claims arising out of earlier incidents which are still pending. The Director and his staff will do their utmost to continue the IOPC Fund's established policy of reaching settlements within a short period after the incident.

12.3 The continuing growth of the membership of the IOPC Fund is of great importance. As indicated above, it can be expected that a number of States will soon join the IOPC Fund, thereby giving the organization a more universal character. An enlarged membership would enable it to provide compensation to victims of oil pollution damage on a more world-wide basis.
