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OIL POLLUTION  
COMPENSATION  
FUND

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Agenda item 15

FUND/A.11/12  
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## ASSESSMENT OF ANNUAL CONTRIBUTIONS

### Note by the Director

1 Article 12 of the Fund Convention provides that the Assembly shall determine the amount of annual contributions to be levied, if any. For this purpose the Assembly shall make an estimate in the form of a budget of the IOPC Fund's expenditure and income for each calendar year, taking into account the necessity to maintain sufficient liquid funds.

2 The IOPC Fund's expenditure consists of:

- (a) costs and expenses of the administration of the IOPC Fund, and any deficit from preceding years;
- (b) payments of minor claims up to 15 million (gold) francs per incident; and
- (c) payments of claims to the extent that the aggregate amount of claims in respect of any one incident is in excess of 15 million (gold) francs (major claims).

Expenses mentioned in sub-paragraphs (a) and (b) above have to be met from the General Fund (Financial Regulation 5.1(c)) and expenses with respect to major claims as defined in sub-paragraph (c) above have to be met from Major Claims Funds (Financial Regulation 5.2(d)).

### 3 General Fund

3.1 Financial Regulation 5.1 provides that the General Fund shall be maintained at such a level as the Assembly may decide from time to time and that the monies in the General Fund shall be used to meet the costs and expenses of the administration of the IOPC Fund and for the satisfaction of minor claims.

The amount of annual contributions needed for the General Fund in 1989 is estimated as follows:

(i)	Expenditure	E
	(a) Administrative expenses	427 110
	(b) Minor claims	1 748 176
	(c) Working capital	4 000 000
		<hr/>
		6 175 286
(ii)	Income	
	(a) Surplus as at 31.12.88	2 979 079
	(b) Interest to be earned in 1989	320 000
	(c) Annual contributions required for General Fund	2 876 207
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		6 175 286
		<hr/>

This estimate is based on the following considerations <1>.

### Expenses

#### 3.2 Administrative Expenses

The administrative expenses of the IOPC Fund for 1989, as proposed by the Director in the draft budget for 1989, amount to £427 110 (document FUND/A.11/9).

#### 3.3 Minor Claims

3.3.1 The known incidents in respect of which payments may have to be made from the General Fund during 1989 are listed in Annex I. The estimates for these incidents are based on the information contained in documents FUND/A.11/5 (Annex IV, Schedule III), FUND/EXC.20/3 and FUND/EXC.20/4.

3.3.2 Included in the estimated expenditure for 1989 in Annex I are the payments from the General Fund of compensation and indemnification regarding the THUNTANK 5 incident, and payments of compensation in respect of the ANTONIO GRAMSCI incident. It should be noted the the estimates in Annex I are made solely for the purpose of the assessment of annual contributions and are without prejudice to the position of the IOPC Fund in respect of the claims arising out of these incidents.

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<1> As mentioned in paragraph 3.4 below, the estimates in this document are based on the assumption that the Director's proposal to increase the working capital from £2 million to £4 million is adopted by the Assembly. If this proposal is not adopted, the Director will have to revise certain figures in the table above.

3.3.3 With regard to the THUNTANK 5 incident, claims submitted by eight private claimants have been approved by the IOPC Fund, totalling SKr47 912 (£4 490). In July 1988, the Swedish Government submitted a claim for an amount of SKr24 992 884 (£2 342 350). On the basis of the information available concerning the extent of the oil pollution damage caused by this incident and the clean-up operations that have been carried out, the Director estimates that the total payments to be made before the end of 1989 will reach the maximum amount payable from the General Fund, ie 15 million (gold) francs, corresponding to £839 338.

3.3.4 Concerning the ANTONIO GRAMSCI incident, claims totalling Rbls2 312 864 (£2 130 690) have been submitted to the owner of the ANTONIO GRAMSCI by the USSR Authorities, whilst claims amounting to FM22 124 415 (£3 015 130) have been made by the Finnish Authorities against the IOPC Fund as well as against the owner of the ANTONIO GRAMSCI. Although the damage caused in the USSR is not covered by the Fund Convention, the claim submitted by the USSR Authorities will compete with the claim submitted by the Finnish Authorities in the distribution of the amount available under the Civil Liability Convention, and therefore it will affect the amount to be paid by the IOPC Fund under the Fund Convention. No substantive discussions have yet been held between the IOPC Fund and the claimants. However, on the basis of the information available concerning the clean-up operations carried out and the preventive measures undertaken in respect of this incident, it is estimated that the total amount of compensation to be paid by the IOPC Fund before the end of 1989 will reach the maximum amount payable from the General Fund, ie 15 million (gold) francs, corresponding to £829 041.

3.3.5 As for the AKARI and the AMAZZONE incidents, certain claims have been submitted. However, the Director considers that it is not yet possible to assess with any degree of certainty the amounts that will be paid by the IOPC Fund. Any payments in respect of these incidents will, therefore, have to be met from the working capital. It should be noted that, according to information provided by the French Government, the claims resulting from the AMAZZONE incident will considerably exceed the limit of the shipowner's liability.

3.3.6 It is anticipated that the IOPC Fund will have to pay a considerable amount in fees in 1989 with respect to the PATMOS incident and that minor costs will be incurred in fees as a result of five other incidents, as shown in Annex I.

3.3.7 It is estimated that the total payments from the General Fund in 1989 will amount to £1 748 176, as set out in Annex I. This estimate does not include any provision for the payment of claims in respect of incidents which may occur after the drafting of this document for which payments may have to be made before the end of 1989. Such payments would have to be met from the working capital. This would also apply to payments which, although envisaged as not being due before 1990, actually have to be made earlier.

#### 3.4 Working Capital

In 1979, at its 2nd session, the Assembly decided that the IOPC Fund should maintain a working capital of £2 million. This capital is needed to cover payments in respect of claims not included in the estimated expenses for minor claims. The Director has submitted a proposal to the 11th session of the

Assembly that the working capital should be increased from £2 million to £4 million (document FUND/A.11/11). The table in paragraph 3.1 above is based on the assumption that the Director's proposal is approved by the Assembly.

### Income

#### 3.5 Surplus

3.5.1 As shown in the draft budget for 1989 (document FUND/A.11/9, Annex, section B.I), the surplus at the end of 1988 is estimated at £2 979 079. This figure has been arrived at on the basis of an estimated General Fund claim expenditure in 1988 of £932 365, as shown in Annex II to the present document.

3.5.2 Payments of £593 585 from the General Fund are anticipated in 1988 with respect to the JAN incident, as shown in Annex II to this document. This amount plus the amount of £160 597 paid by the end of 1987 corresponds to the first 15 million (gold) francs (£754 182). This estimate has been made for the purpose of the assessment of annual contributions without prejudice to the position of the IOPC Fund in respect of the remaining items of the claim submitted by the Danish Government. The Director hopes that a final settlement will be reached on the outstanding items before the end of 1988. As for the possible establishment of a Major Claims Fund, reference is made to paragraph 4.2 below.

3.5.3 The estimated expenditure from the General Fund in 1988 also includes payments of compensation, indemnification and fees in respect of the OUED GUETERINI incident, totalling £110 000. This estimate is made for the purpose of the assessment of annual contributions, on the basis of the examination carried out so far of the claims submitted to the IOPC Fund, and is therefore without prejudice to the position of the IOPC Fund regarding the claims. Substantive negotiations with the claimants have not yet started at the time of drafting this document. However, the Director hopes that the claims arising out of this incident will be settled and paid before the end of 1988.

3.5.4 With respect to the TAIYO MARU N°13 incident, claims totalling ¥10 212 210 (£45 850) have been submitted by four claimants for the costs of clean-up operations. No substantive negotiations regarding the claims have taken place at the time of drafting this document. The total amount of compensation and indemnification to be paid by the IOPC Fund during 1988 is estimated at £30 000.

3.5.5 During 1988, a considerable amount will be paid in fees in respect of the PATMOS incident.

#### 3.6 Interest

The income in interest from the IOPC Fund's investments in 1989 is estimated at £320 000 (Budget 1989, document FUND/A.11/9, Annex, section B.II). This estimate is based on an average principal of about £4 million generating a yield of around £320 000 during the calendar year, on the assumption that the working capital is increased to £4 million, as proposed by the Director.

#### 3.7 Initial Contributions

At the time of drafting this document no States are known in respect of which initial contributions will have to be paid in 1989.

### 3.8 General Fund Assessment

3.8.1 The total amount of contributions required is estimated at £2 876 207, as shown in the table in paragraph 3.1 above. The Assembly may wish to assess the 1988 annual contributions to the General Fund at £2 900 000.

3.8.2 According to Article 12.2(a) of the Fund Convention, the calculation of the 1988 annual contributions to the General Fund shall be based on the quantity of contributing oil received during 1987.

## 4 Major Claims Funds

### 4.1 TANIO

All claims arising out of the TANIO incident have been settled and the IOPC Fund will have made final payments to all claimants before the 11th session of the Assembly. The legal action taken by the IOPC Fund together with the French Government against the owner of the TANIO and other parties was settled out of court in December 1987. The question of the distribution to contributors of the balance on the TANIO Major Claims Fund is dealt with in document FUND/A.11/10.

### 4.2 JAN

4.2.1 The total claims arising out of this incident amount to DKr11 882 154 (£1 010 820) (cf document FUND/EXC.20/4, Annex). After negotiations held in 1987 between the IOPC Fund and the Danish Authorities, agreement was reached on a number of items, but it has not yet been possible to reach a final settlement in respect of the major part of the claim submitted by the Danish authorities. The claims submitted by private claimants have been settled and paid.

4.2.2 As mentioned above (paragraph 3.5.2), the estimates for the General Fund are based on the assumption that an amount of £593 585 will be paid in respect of the JAN incident during 1988, ie the maximum amount to be paid from the General Fund in respect of any one incident (15 million (gold) francs or £754 182) less the payments made during the period 1985 - 1987 (£160 597).

4.2.3 It is possible that the total payments by the IOPC Fund resulting from this incident will exceed 15 million (gold) francs. If this amount were exceeded, a Major Claims Fund would have to be established and contributions levied to that Fund. In view of the uncertainty of the level of the final settlement, the Director considers it premature to make any proposal for the amount of contributions to be levied to such a Major Claims Fund. If, as the Director hopes, a final settlement were to be reached before the 11th session of the Assembly and if the limit of 15 million (gold) francs were to be exceeded, the Director would, in an addendum to this document, make a proposal to the Assembly in this regard. However, if no final settlement were to be reached in time for the Director to make such a proposal to this session, any payments over the limit of 15 million (gold) francs would have to be made from money to be borrowed from the General Fund; the loan would be repaid with interest to the General Fund when contributions to the JAN Major Claims Fund were levied and received (cf Financial Regulations 5.1(c)(iv), 5.2(b)(iii) and 5.2(d)).

#### 4.3 BRADY MARIA

All claims arising out of the BRADY MARIA incident have been settled and the IOPC Fund made final payments to all claimants in October 1987. The IOPC Fund will incur some further payments in respect of fees. The IOPC Fund has made a recourse claim against the owner of the colliding vessel, the WAYLINK, who has constituted a limitation fund. This limitation fund has not been distributed at the time of drafting this document, since the limitation proceedings have not yet been finalised. The remaining amount on the BRADY MARIA Major Claims Fund, including the amount to be recovered from the WAYLINK limitation fund, should be sufficient to make the necessary payments in fees. The Director hopes that the WAYLINK limitation fund will be distributed before the 11th session of the Assembly. The Director will then submit a proposal to the Assembly as to the amount remaining in the BRADY MARIA Major Claims Fund.

#### 4.4 THUNTANK 5

4.4.1 As mentioned in paragraph 3.3.3 above, the estimates for the General Fund are based on the assumption that an amount corresponding to 15 million (gold) francs (f839 338), ie the maximum amount to be paid from the General Fund in respect of any one incident, will be paid in respect of the THUNTANK 5 incident before the end of 1989.

4.4.2 It is possible that the total payments by the IOPC Fund resulting from this incident will exceed 15 million (gold) francs. In view of the uncertainty of the level of a final settlement, the Director considers it premature to make any proposal to this session of the Assembly for the establishment of a Major Claims Fund in respect of this incident. If payments over the limit of 15 million (gold) francs were to be made in respect of this incident during 1989, such payments would have to be made from money to be borrowed from the General Fund (cf paragraph 4.2.3 above).

#### 4.5 ANTONIO GRAMSCI

4.5.1 As stated in paragraph 3.3.4 above, it is estimated that an amount corresponding to 15 million (gold) francs (f829 041), ie the maximum amount to be paid from the General Fund in respect of any one incident, will be paid in respect of the ANTONIO GRAMSCI incident before the end of 1989.

4.5.2 It is possible that the total payments by the IOPC Fund with respect to this incident will exceed 15 million (gold) francs. However, for the same reason as mentioned in paragraph 4.4.2 above regarding the THUNTANK 5 incident, the Director considers it premature to make any proposal to the present session of the Assembly for the establishment of a Major Claims Fund. Any payments during 1989 over the limit of 15 million (gold) francs would have to be made from money borrowed from the General Fund (cf paragraph 4.2.3 above).

### 5 Date of Payment

Internal Regulation 3.8 provides that, unless the Assembly decides otherwise, payment of annual contributions shall be due on 1 February of the year following that in which the Assembly decides on the levy of annual contributions. It is suggested that the date of payment for the 1988 annual contributions should be 1 February 1989.

6 Action to be Taken by the Assembly

6.1 The Assembly is invited, in accordance with Article 12 of the Fund Convention, to decide on:

- (a) the assessment of the 1988 annual contributions to the General Fund (paragraph 3.8); and
- (b) the date of payment of annual contributions (paragraph 5).

6.2 The Assembly may later be invited, in an addendum to this document, to decide on the assessment of the 1988 annual contributions to the JAN Major Claims Fund (paragraph 4.2).

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ANNEX I

CLAIMS THAT MAY HAVE TO BE PAID FROM THE GENERAL FUND DURING 1989 (estimates)

(Figures in £ Sterling)

Incident	Compensation/Indemnification	Miscellaneous	Total
KOSHUN MARU N°1	-	18 000	18 000
PATMOS	-	100 000	100 000
THUNTANK 5	777 678	10 000	787 678*
ANTONIO GRAMSCI	802 498	10 000	812 498*
AKARI	-	15 000	15 000
AMAZZONE	-	15 000	15 000
Expenditure 1989			1 748 176

\* First 15 million (gold) francs (Article 12.1(i) (b) of the Fund Convention) less miscellaneous expenses paid in 1987 and 1988.

ANNEX II

## CLAIMS EXPENDITURE IN 1988 (General Fund)

(Figures in £ Sterling)

Incident	Compensation/Indemnification			Miscellaneous			1988	Total
	Paid by 31.12.87	Paid 1.1.88 - 30.6.88	Estimate 1.7.88 - 31.12.88	Paid by 31.12.87	Paid 1.1.88 - 30.6.88	Estimate 1.7.88 - 31.12.88	Total	
EIKO MARU N°1	108 740	-	-	4 739	9 789	-	9 789	123 268
KOSHUN MARU N°1	81 512	-	2 000	7	-	2 000	4 000	85 519
PATMOS	-	-	-	237 005	25 662	50 000	75 662	312 667
JAN	158 849	-	583 550**	1 748	35	10 000	593 585	754 182*
OUED GUETERINI	-	-	100 000	800	-	10 000	110 000	110 800
THUNTANK 5	-	-	-	14 985	6 675	30 000	36 675	51 660
ANTONIO GRAMSCI	-	-	-	-	1 543	15 000	16 543	16 543
AKARI	-	-	-	-	-	25 000	25 000	25 000
AMAZZONE	-	-	-	-	1 111	25 000	26 111	26 111
TAIYO MARU N°13	-	-	30 000	-	-	5 000	35 000	35 000
Expenditure 1988							932 365	

\* First 15 million (gold) francs (Article 12.1(i)(b) of the Fund Convention)

\*\* Remainder of first 15 million (gold) francs