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OIL POLLUTION
COMPENSATION
FUND

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ASSESSMENT OF ANNUAL CONTRIBUTIONS

Note by the Director

1 Introduction

1.1 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.

1.2 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 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)).

2 General Fund

2.1 Estimate of Contributions Needed for 1990

2.1.1 Financial Regulation 5.1 provides that the General Fund shall be maintained at such 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 claims up to 15 million (gold) francs per incident.

2.1.2 The amount of annual contributions needed for the General Fund in 1990 is estimated as follows:

	£
(i) Expenditure	
(a) Administrative expenses	485 530
(b) Minor claims	120 470
(c) Working capital	<u>4 000 000</u>
	<u>4 606 000</u>
(ii) Income	
(a) Surplus as at 31.12.89	2 623 548
(b) Interest to be earned in 1990	450 000
(c) Annual contributions required for General Fund	<u>1 532 452</u>
	<u>4 606 000</u>

2.1.3 This estimate is based on the following considerations. As for the individual incidents, reference is made to the information contained in documents FUND/A.12/4 (Annex IV, Schedule III), FUND/EXC.22/2 and FUND/EXC.22/3.

2.1.4 It should be noted that any estimate in this document of amounts to be paid by the IOPC Fund in compensation or indemnification has been made solely for the purpose of the assessment of annual contributions, without prejudice to the position of the IOPC Fund in respect of the claims.

2.2 Surplus as at 31 December 1989

2.2.1 As shown in the draft budget for 1990 (document FUND/A.12/9, Annex, section B.I), the surplus at the end of 1989 is estimated at £2 623 548. This figure has been arrived at on the basis of an estimated General Fund claim expenditure in 1989 of £2 799 176, as shown in Annex I to the present document.

2.2.2 The estimated expenditure from the General Fund in 1989 includes payments of compensation, indemnification and fees in respect of the OUED GUETERINI incident, totalling £260 335.

2.2.3 Payments of £808 861 from the General Fund are anticipated in 1989 with respect to the THUNTANK 5 incident. This amount, plus the amount of £30 477 paid by the end of 1988, corresponds to the first 15 million (gold) francs (£839 338), ie the maximum amount payable from the General Fund. As for the establishment of a Major Claims Fund, reference is made to paragraph 3.1 below.

2.2.4 Large payments from the General Fund are also anticipated during 1989 in respect of the ANTONIO GRAMSCI and KASUGA MARU N°1 incidents. The claims against the IOPC Fund arising out of these incidents have not yet been settled. However, on the basis of the examination of these claims carried out so far by the IOPC Fund's Secretariat, it is estimated that the total amount of compensation to be paid by the IOPC Fund during 1989 will reach the maximum amount payable from the General Fund in respect of these incidents, ie 15 million (gold) francs, corresponding to £829 041 and £739 496, respectively.

2.2.5 As can be seen from Annex I, payments of compensation and/or indemnification have been made or are anticipated during 1989 in respect of the KOSHUN MARU N°1, HINODE MARU N°1, TAIYO MARU N°13 and FUKKOL MARU N°12 incidents.

2.2.6 As for the TSUBAME MARU N°58 and TSUBAME MARU N°16 incidents, no payments have been included in the estimate for 1989, since the question of whether or not the damage arising from these incidents falls within the definition of "pollution damage" in the Civil Liability Convention has been submitted to the Executive Committee for decision (document FUND/EXC.22/3, paragraphs 13.2 and 14.2). However, if the Executive Committee were to answer this question in the affirmative, payments of compensation would have to be made before the end of 1989. The maximum amounts payable by the IOPC Fund in compensation in respect of these incidents are estimated at £141 100 and £1 240, respectively. If these payments were made, the surplus in the General Fund as at 31 December 1989 would be correspondingly reduced.

2.2.7 During 1989, a considerable amount will be paid in fees in respect of the PATMOS incident. Fees will also be paid in respect of the AKARI and AMAZZONE incidents.

2.3 Estimated 1990 Expenditure

Administrative Expenses

2.3.1 The administrative expenses of the IOPC Fund for 1990, as proposed by the Director in the draft budget for 1990, amount to £485 530 (document FUND/A.12/9).

Minor Claims

2.3.2 The known incidents in respect of which payments may have to be made from the General Fund during 1990 are listed in Annex II.

2.3.3 Included in the estimated expenditure for 1990 in Annex II is the payment from the General Fund of indemnification in respect of the FUKKOL MARU N°12 incident.

2.3.4 As for the AKARI incident, certain claims totalling £250 000 have been submitted (document FUND/EXC.22/3, paragraph 7.4). 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, if any, in respect of this incident. Any such payments would therefore have to be met from the working capital.

2.3.5 With regard to the AMAZZONE incident, only some claims have been submitted. 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. 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 this incident will therefore have to be met from the working capital.

2.3.6 With respect to the NANCY ORR GAUCHER incident, no claims have been submitted so far. Any payments of claims arising out of this incident will also have to be met from the working capital.

2.3.7 It is anticipated that the IOPC Fund will have to pay a considerable amount in fees in 1990 with respect to the PATMOS incident and that costs will

also be incurred in fees as a result of three other incidents, as shown in Annex II.

2.3.8 It is estimated that the total payments from the General Fund in 1990 will amount to £120 470, as set out in Annex II. 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 1990. 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 1991, actually have to be made earlier.

2.3.9 If the Executive Committee were to decide that the damage arising out of the TSUBAME MARU N°58 and TSUBAME MARU N°16 incidents falls within the definition of "pollution damage" (cf paragraph 2.2.6 above), the IOPC Fund would have to pay indemnification to the shipowner. These payments, amounting to £2 155 and £1 810 respectively, as well as payments of fees, would probably be made in 1990 and would have to be met from the working capital.

Working Capital

2.3.10 In October 1988, at its 11th session, the Assembly decided that the IOPC Fund should maintain a working capital of £4 million (document FUND/A.11/20, paragraph 14.2). This capital is needed to cover payments in respect of claims not included in the estimated expenses for minor claims.

2.4 Estimated 1990 Income

2.4.1 Surplus

As set out in paragraph 2.2.1 above, the surplus in the General Fund at the end of 1989 is estimated at £2 623 548.

2.4.2 Interest

The income in interest from the IOPC Fund's investments in 1990 is estimated at £450 000 (Budget 1990, document FUND/A.12/9, Annex, section B.II). This estimate is based on an average principal of about £4.5 million, generating a yield of around £450 000 during the calendar year.

2.4.3 Initial Contributions

At the time of drafting this document, only one State (Cyprus) is known in respect of which initial contributions will have to be paid in 1990. However, the initial contributions in respect of Cyprus will represent only a small amount.

2.5 General Fund Assessment

2.5.1 The total amount of contributions required is estimated at £1 532 452, as shown in the table in paragraph 2.1.2 above. The Assembly may wish to assess the 1989 annual contributions to the General Fund at £1 600 000.

2.5.2 According to Article 12.2(a) of the Fund Convention, the calculation of the 1989 annual contributions to the General Fund shall be based on the quantity of contributing oil received during 1988.

3 Major Claims Funds

3.1 THUNTANK 5

3.1.1 The total claims arising out of this incident amount approximately to SKr25 million (£2.4 million) (cf document FUND/EXC.22/3, Annex, paragraphs 4.8 and 4.11). After negotiations held in June 1989 between the IOPC Fund and the Swedish Government, agreement was reached in principle on the majority of the items of the Government's claim, but it has not yet been possible to reach a final settlement in respect of that claim. The claims submitted by private claimants have been settled and paid.

3.1.2 As mentioned above (paragraph 2.2.3), the Director estimates that the total payments to be made before the end of 1989 in respect of the THUNTANK 5 incident will reach the maximum amount to be paid from the General Fund in respect of this incident (15 million (gold) francs or £839 338). In his view, the aggregate amount of the accepted claims will exceed that amount. If this limit were exceeded, a Major Claims Fund would have to be established and contributions levied to that Fund. Since no final settlement has been reached, the Director considers it premature to make any proposal at this stage 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 12th session of the Assembly, and if this settlement were to result in payments by the IOPC Fund exceeding 15 million (gold) francs, the Director would, in an addendum to this document, make a proposal to the Assembly in this regard.

3.1.3 However, if no final settlement were to be reached in time for the Director to make such a proposal at 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 THUNTANK 5 Major Claims Fund have been levied and received (cf Financial Regulations 5.1(c)(iv), 5.2(b)(iii) and 5.2(d).

3.2 ANTONIO GRAMSCI

3.2.1 In respect of this incident, claims totalling Rbls2 312 864 (£2 315 410) have been submitted by the USSR authorities and claims totalling FM21 327 893 (£3 095 540) by the Finnish authorities. Although the damage caused in the USSR is not covered by the Fund Convention, the claims submitted by the USSR authorities compete with the claims submitted by the Finnish authorities in the distribution of the amount available under the Civil Liability Convention; the damage in the USSR will therefore affect the amount to be paid by the IOPC Fund under the Fund Convention. Negotiations are at present being held between the IOPC Fund and the claimants.

3.2.2 As stated in paragraphs 2.2.4 above, it is estimated that an amount corresponding to 15 million (gold) francs (£829 041), ie the maximum amount to be paid from the General Fund in respect of this incident, will be paid in respect of the ANTONIO GRAMSCI incident before the end of 1989. If the limit of 15 million (gold) francs were to be exceeded, a Major Claims Fund would have to be established and contributions levied to that Fund. However, in view of the uncertainty of the level of a final settlement, the Director considers it premature to make any proposal at this stage on the establishment of a Major Claims Fund in respect of this incident. Any payments made before the establishment of the Major Claims Fund which were over the limit of 15 million (gold) francs would have to be made from money borrowed from the General Fund (cf paragraph 3.1.3 above).

3.2.3 If a settlement of the claims arising out of this incident is reached before the 12th session of the Assembly, however, the Director may, in an addendum to this document, make a proposal to the Assembly regarding the establishment of a Major Claims Fund in respect of the ANTONIO GRAMSCI incident.

3.3 KASUGA MARU N°1

3.3.1 Claims totalling approximately ¥570 million (£2.6 million) have been submitted in respect of this incident. Negotiations with the claimants have not yet started.

3.3.2 As mentioned in paragraph 2.2.4 above, it is estimated that an amount corresponding to 15 million (gold) francs (£739 496), ie the maximum amount to be paid from the General Fund in respect of this incident, will be paid in respect of the KASUGA MARU N°1 incident before the end of 1989. If the limit of 15 million (gold) francs were to be 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 a final settlement, the Director considers it premature to make any proposal at this stage on 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 before the establishment of this Major Claims Fund, such payments would have to be made from money to be borrowed from the General Fund (cf paragraph 3.1.3 above).

3.3.3 If a settlement of the claims arising out of this incident is reached before the 12th session of the Assembly, the Director may, in an addendum to this document, make a proposal to the Assembly regarding the establishment of a Major Claims Fund in respect of the KASUGA MARU N°1 incident.

4 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 1989 annual contributions should be 1 February 1990.

5 Surplus on the JAN Major Claims Fund

5.1 Internal Regulations 4.4.1 and 4.4.2 deal with the case where there is a surplus in a Major Claims Fund after the periods set out in Article 6 of the Fund Convention for bringing actions have lapsed and all claims and expenses arising out of the relevant incident have been settled, or where the Executive Committee is satisfied that no more claims will be made against the IOPC Fund and no more expenses will have to be met. If there remains a substantial amount in the Major Claims Fund, the Assembly shall decide whether such an amount shall be credited or reimbursed pro rata to the contributors to that Major Claims Fund. If the Assembly considers that the remaining amount is not substantial, this amount shall be transferred to the General Fund.

5.2 All known claims arising out of the JAN incident have been settled and all expenses have been paid (cf document FUND/EXC.20/4/Add.1, paragraph 2). The three year period of prescription laid down in Article 6 of the Fund Convention has expired, and it appears that the six year period laid down in that Article is not applicable in this case.

5.3 The contributions to the JAN Major Claims Fund were due on 1 February 1989. Although the Income and Expenditure Account for the JAN Major Claims Fund will not be finalised till 31 December 1989, it is estimated that there will be a surplus of about £9 000 on this account at that date. In previous years it has been the practice to wait until the accounts have been certified before inviting the Assembly to decide on the application of the surplus balance on a Major Claims Fund account. However, in view of the small amount involved in this instance, the Assembly may wish to take a decision in accordance with Internal Regulations 4.4.1 and 4.4.2 at this session, without waiting until the Financial Statements for the year ended 31 December 1989 have been submitted.

5.4 If the Assembly were to consider this matter at its 12th session, it may wish to decide that the amount remaining in the JAN Major Claims Fund be transferred to the General Fund on 31 December 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 in respect of:

- (a) the assessment of the 1989 annual contributions to the General Fund (paragraph 2.5.1);
- (b) the date of payment of annual contributions (paragraph 4); and
- (c) the surplus in the JAN Major Claims Fund (paragraph 5.4).

6.2 The Assembly may later be invited, in an addendum to this document, to decide on the assessment of the 1989 annual contributions to the THUNTANK 5, ANTONIO GRAMSCI and KASUGA MARU N°1 Major Claims Funds (paragraphs 3.1.2, 3.2.3, and 3.3.3).

* * *

ANNEX I

CLAIMS EXPENDITURE IN 1989 (General Fund)

(Figures in £ Sterling)

Incident	Compensation/Indemnification			Miscellaneous			1989	Total
	Paid by 31.12.88	Paid 1.1.89 - 30.6.89	Estimate 1.7.89 - 31.12.89	Paid by 31.12.88	Paid 1.1.89 - 30.6.89	Estimate 1.7.89 - 31.12.89	Total	
KOSHUN MARU N°1	81 512	-	2 130	7	-	3 000	5 130	86 649
PATMOS	-	-	-	308 485	35 653	40 000	75 653	384 138
Oued GUETERINI	-	-	220 000	3 061	5 335	35 000	260 335	263 396
* THUNTANK 5	-	-	785 426*	30 477	13 435	10 000	808 861	839 338**
* ANTONIO GRAMSCI	-	-	802 438*	1 603	-	25 000	827 438	829 041**
* AKARI	-	-	-	10 175	3 767	20 000	23 767	33 942
HINODE MARU N°1	-	-	8 800	-	-	2 000	10 800	10 800
AMAZZONE	-	-	-	1 246	445	10 000	10 445	11 691
TAIYO MARU N°13	-	27 254	2 780	-	7	5 000	35 041	35 041
KASUGA MARU N°1	-	-	729 708*	-	4 788	5 000	739 496	739 496**
FUKKOL MARU N°12	-	-	2 210	-	-	-	2 210	2 210
TSUBAME MARU N°58	-	-	-	-	-	-	-	-
TSUBAME MARU N°16	-	-	-	-	-	-	-	-
NANCY ORR GAUCHER	-	-	-	-	-	-	-	-
Expenditure							2 799 176	

* Remainder of first 15 million (gold) francs

** First 15 million (gold) francs

ANNEX II

CLAIMS THAT MAY HAVE TO BE PAID FROM THE GENERAL FUND DURING 1990 (estimates)

(Figures in £ Sterling)

Incident	Compensation/Indemnification	Miscellaneous	Total
PATMOS	-	80 000	80 000
AKARI	-	25 000	25 000
AMAZZONE	-	10 000	10 000
FUKKOL MARU N°12	2 470	3 000	5 470
TSUBAME MARU N°58	-	-	-
TSUBAME MARU N°16	-	-	-
NANCY ORR GAUCHER	-	-	-
Expenditure 1990			120 470