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REPORT OF THE DIRECTOR

1 Introduction

1.1 This report covers the activities of the IOPC Fund since the 11th session of the Assembly. As in previous years, the report contains a review 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 12th session of the Assembly and to the 22nd session of the Executive Committee. This report also deals with the finances of the IOPC Fund for the first eight months of 1989.

1.2 The IOPC Fund's Annual Report for the calendar year 1988 was published in April 1989. In the first years after the establishment of the IOPC Fund, the Annual Report was very modest in size. Over the years it has been expanded to give a more extensive presentation of the activities of the Fund. The 1988 Annual Report was particularly comprehensive, as the IOPC Fund had been in existence for ten years when it was issued. The 1988 Report therefore not only covered the activities of the organisation during its tenth year of operation but also included a résumé of the major developments over the years. Great interest has been shown in the 1988 Annual Report by all those dealing with the IOPC Fund, ie Governments, public authorities, shipowners, P & I Clubs, contributors, inter-governmental and non-governmental organisations, as well as victims of oil pollution damage.

1.3 Since the 11th session of the Assembly, there have been six new incidents involving the IOPC Fund. One of these, the KASUGA MARU N°1 incident which occurred in Japan in December 1988, has resulted in large claims for compensation being submitted to the IOPC Fund. Several incidents which occurred in previous years still require a considerable amount of work by the IOPC Fund's Secretariat. 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 Fund has become involved in complex court proceedings in Italy. There are also major claims against the IOPC Fund resulting from three other previous incidents.

2 Membership

2.1 At the time of the entry into force of the Fund Convention in October 1978, the IOPC Fund had 14 Member States. By the time of the 11th Assembly in October 1988, after ten years, 40 States were Members of the IOPC Fund.

2.2 Three States have become Members of the IOPC Fund since the 11th session of the Assembly. The Fund Convention entered into force for the Republic of Vanuatu on 13 April 1989 and for Canada on 24 April 1989. The Convention will enter into force for the Republic of Cyprus on 24 October 1989. By the time of the 12th session of the Assembly the IOPC Fund will have 43 Member States.

2.3 On the basis of the information available to the IOPC Fund's Secretariat, it is expected that several States will join the IOPC Fund in the near future. In Ireland and Morocco 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. Legislation implementing the Fund Convention is in an advanced stage in the German Democratic Republic and Saudi Arabia. Many other States, such as Argentina, Bahrain, Barbados, Belgium, Brazil, China, Costa Rica, El Salvador, the Gambia, India, Jamaica, Malaysia, Malta, Marshall Islands, Mexico, Republic of Korea, St Kitts and Nevis, Senegal, Sierra Leone, Singapore, Trinidad and Tobago, and Venezuela, are also examining the question of accession to the Fund Convention.

3 Contacts with Governments

3.1 The IOPC Fund and its Secretariat have always benefited from strong support from the Governments of Member States. Due to the spirit of co-operation shown by these Governments, it has been possible to solve most problems that have arisen.

3.2 Over the years, the Director's visits to Member States have contributed to the establishment of valuable personal contacts between the IOPC Fund's Secretariat and officials within the national administrations dealing with Fund matters. Since the 11th session of the Assembly, the Director has visited six Member States - Algeria, Canada, Finland, France, Japan and Sweden - for discussions with government officials on the Fund Convention and the operations of the IOPC Fund. The Director has been invited to visit the Union of Soviet Socialist Republics in October 1989.

3.3 As instructed by the Assembly at its 11th session, the IOPC Fund's Secretariat has continued its efforts to increase the number of Member States, taking into account the emphasis placed by the Assembly on the importance of strengthening the financial basis of the Fund. To this end, the Secretariat has tried to convey as much information as possible about the complex compensation system created by the Civil Liability Convention and the Fund Convention to Governments and representatives of industry. For this purpose, the Director went to Australia, Mexico, New Zealand, Trinidad and Tobago, United States of America and Venezuela for discussions on the Civil Liability Convention and the Fund Convention with Government officials in these States.

3.4 At the invitation of the Commandant of the United States Coast Guard, the Director followed, for four days in April 1989, the clean-up operations carried out in Alaska as a result of the EXXON VALDEZ incident.

3.5 The Director and the Legal Officer also had discussions with government representatives of both Member and non-Member States in connection with meetings within the International Maritime Organization (IMO), in particular during the sessions of the IMO Council in November 1988 and June 1989.

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

4 Relationship with International Organisations and Interested Circles

4.1 As in previous years, the operation of the IOPC Fund has benefited from close co-operation with many international, inter-governmental and non-governmental organisations.

4.2 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 the assistance they have given the IOPC Fund.

4.3 The IOPC Fund has also a close co-operation with a number of international non-governmental organisations and other non-governmental bodies. The co-operation with the P & I Clubs in connection with the settlement of claims is of great importance. This co-operation is not only in the interest of the IOPC Fund and the Clubs, but also in the interest of claimants, since it contributes to speedy settlements. The International Tanker Owners Pollution Federation Ltd (ITOPF) is usually called upon by the IOPC Fund to provide technical expertise with regard to oil pollution incidents; ITOPF's assistance is crucial, as the IOPC Fund does not have such expertise within its Secretariat. There is also close co-operation between the IOPC Fund and oil industry interests represented by the Oil Companies International Marine Forum (OCIMF) and CRISTAL Ltd. The co-operation between the IOPC Fund and CRISTAL has become more important, in view of the link between the system of compensation governed by the international Conventions and the voluntary industry schemes (TOVALOP and CRISTAL) created by the revision of these schemes in 1987.

5 Conferences and Seminars

5.1 Since the 11th session of the Assembly, the Director and the Legal Officer have given a number of lectures at seminars, conferences and workshops.

5.2 The Director gave lectures on Liability and Compensation for Oil Pollution Damage and the Operations of the IOPC Fund at a Pacific Regional Workshop on Oil Spill Response, held in Brisbane (Australia), at a seminar on the Legal Aspects of a Major Tanker Spill, held in Caracas (Venezuela), and at a seminar on the Civil Liability Convention and the Fund Convention in Mexico City (Mexico). He took part in the 1989 Oil Spill Conference in San Antonio (United States of America), organised by the United States Coast Guard, the American Petroleum Institute and the United States Environmental Protection Agency, where he presented a paper entitled "The International Oil Pollution Compensation Fund - Ten Years of Claim Settlement Experience". The Director participated in a seminar on Oil Spills in Ottawa (Canada) and lectured on Liability and Compensation for Oil Pollution Damage to students at the World Maritime University in Malmö (Sweden). The Director also gave a lecture on recent

developments within the framework of the Civil Liability Convention and the Fund Convention to representatives of oil industry, shipowners and P & I insurers in Tokyo (Japan).

5.3 The Legal Officer gave a lecture on the Civil Liability Convention and the Fund Convention at a regional seminar on Liability and Compensation for Marine Pollution held in Cartagena (Colombia) under the auspices of the Permanent South Pacific Commission. He also participated in a seminar on Evidence to Court held in Copenhagen (Denmark), sponsored by the European Economic Community, where he lectured on Liability and Compensation for Oil Pollution Damage.

6 The 1984 Protocols to the Civil Liability Convention and the Fund Convention

6.1 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.

6.2 The Protocol to the Civil Liability Convention has been ratified by Australia, Federal Republic of Germany, France, Peru, St Vincent and Grenadines and South Africa, whereas only France and the Federal Republic of Germany have so far become Parties to the Protocol to the Fund Convention. In the United Kingdom, a bill which would enable the Government to ratify the Protocols has been approved by Parliament, and it is expected that the United Kingdom will soon deposit its instruments of ratification. In the United States of America, a number of bills dealing with liability and compensation for damage caused by oil spills have been submitted to Congress, and the 1984 Protocols and the necessary implementing legislation are being considered by Congress in that context. Several other States, eg Denmark, Finland, Netherlands, Norway and Sweden, have begun preparing legislation enabling them to ratify the Protocols.

7 Contributions

7.1 The Assembly decided at its 11th session to levy 1988 annual contributions in the amount of £2 900 000 for the General Fund and in the amount of £90 000 for the JAN Major Claims Fund. The amount payable by each contributor per tonne of contributing oil received was £0.0036502 in respect of the General Fund, based on the quantities of oil received in 1987, and £0.0001097 in respect of the JAN Major Claims Fund, based on the quantities received in 1984 (the year before the incident). The payments were due by 1 February 1989. Only a small amount (£42 951) remained unpaid as at 15 September 1989.

7.2 In respect of contributions levied for previous years, the situation is very satisfactory, as only very small amounts are in arrears. On 15 September 1989, only an amount of £14 490 was outstanding, representing less than 0.04% of the contributions assessed for all previous years.

7.3 The payments made by the IOPC Fund in respect of claims for compensation for oil pollution damage and for indemnification of shipowners vary considerably from year to year. Consequently, the level of contributions to the IOPC Fund varies from one year to another, as illustrated in the following table setting out the contributions levied during the period 1979-1988.

<u>Year</u>	<u>General Fund</u>	<u>Major Claims Funds</u>	<u>Total Levy</u>
	£	£	£
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

7.4 If, after all claims and expenses arising out of a particular incident have been paid, there remains a substantial amount in the Major Claims Fund set up in respect of that incident, the balance is re-paid to the contributors. Pursuant to the decision of the Assembly at its 11th session, an amount of £13.9 million of the balance on the TANIO Major Claims Fund was reimbursed on 1 February 1989 to the persons who paid 1983 contributions to that Major Claims Fund. The high balance on that Major Claims Fund resulted from the recovery of an important amount in recourse proceedings (cf document FUND/A.12/11).

7.5 The levy of contributions to the IOPC Fund is based on reports of contributing oil receipts submitted by Governments of Member States. At its 11th session, the Assembly discussed the system for reporting oil receipts to the IOPC Fund, since the existing system did not function entirely satisfactorily. The main problem was that a number of States did not submit their reports in time. The Assembly adopted a Resolution in which Member States were urged, inter alia, to submit their reports on contributing oil receipts at the time and in the manner prescribed in the IOPC Fund's Internal Regulations. In this regard, reference is made to document FUND/A.12/15.

7.6 The Director is pleased to inform the Assembly that the reports on contributing oil receipts submitted to the IOPC Fund so far in 1989 have been very well presented; in this regard there has been noticeable improvement on previous years. However, the situation is still not satisfactory, as the Director has not yet received the 1989 reports on contributing oil receipts from a number of Member States. In fact, by 31 March 1989, the last date for Member States to submit their reports on oil receipts in 1988 in accordance with the IOPC Fund's Internal Regulations, only 12 reports had been received by the Director; by 15 September 1989 altogether 30 reports had been received. In addition, a few States have still not submitted their reports on contributing oil receipts in previous years (cf Annexes to document FUND/A.12/5). It should again be emphasized that it is of decisive importance for the functioning of the IOPC Fund that these reports are actually submitted by Governments. If the reports on contributing oil receipts are not received by the IOPC Fund, the Director is unable to issue invoices to contributors in the States concerned.

8 Investment of Funds

8.1 During 1988 and 1989, funds which were not required for the short-term operation of the IOPC Fund were invested with several leading London banks. Apart from investments placed overnight till the next business day, the average rate of interest on the investments in 1988 was 9.5%. Due to the rise in interest rates which took place in several stages during the period June 1988-

April 1989, the rates obtained on investments made during the latter half of 1988 and during 1989 have generally been higher than on those made during the first half of 1988. It is expected that investments made during the second half of 1989 will also attract high interest rates.

8.2 It is estimated that the average rate of interest on the IOPC Fund's investments in 1989 will be approximately 12%. Disregarding the investment of the balance on the TANIO Major Claims Fund (£13.9 million) until 1 February 1989, interest earned during the first eight months of the year is £340 000 with about £400 000 due during the remaining four months, on an estimated average capital of £6.5 million.

8.3 Details of the investments from 1 July 1988 to 30 June 1989 are given in document FUND/A.12/3.

8.4 The Director continuously monitors investment trends and asset management with a view to ensuring that the IOPC Fund gets a high return on its investments. As a result of this monitoring, the Director has invited the Assembly to review the IOPC Fund's investment policy on the basis of document FUND/A.12/16.

9 Accounts of the IOPC Fund

9.1 The expenditure for the administration of the IOPC Fund in 1988 was £309 789, compared with the budgetary appropriation of £344 130. Details of the accounts of the IOPC Fund for the financial year 1988 are given in the Financial Statements (document FUND/A.12/4, Annex IV).

9.2 The expenditure for the administration during the first eight months of 1989 amounts to approximately £270 000. The budget appropriation for the whole of 1989 is £446 840. It is expected that there will be a budgetary surplus at the end of the year.

9.3 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.

10 Administration of the IOPC Fund

10.1 The Secretariat has at present seven staff members: the Director, the Legal Officer, the Finance/Personnel Officer, three Secretaries and a Messenger. No new post has been created since 1983 when the post of messenger was established.

10.2 There has been only one change in the permanent staff of the IOPC Fund's Secretariat since the 11th session of the Assembly. The Secretary to the Finance/Personnel Officer, Miss B See, left the IOPC Fund for family reasons on 31 July 1989. Her successor has not yet been appointed.

10.3 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. Due to their efforts, it has been possible to meet the great increase in workload which has taken place over the last few years without the employment of more permanent staff.

11 Settlement of Claims

11.1 Since its establishment in October 1978 the IOPC Fund has, up to 20 September 1989, been involved in the settlement of claims arising out of 42 incidents. 24 of these incidents occurred in Japan, whereas 13 incidents, leading in general to much larger claims, took place in European waters, one in Algeria, one in Canada, one in Indonesia and two in the Persian Gulf. The total amount of compensation and indemnification paid by the IOPC Fund as at 20 September 1989 is £37 million.

11.2 For details regarding the various incidents with which the IOPC Fund has dealt over the years, reference is made to the 1988 Annual Report and to the updated statistics (1989) distributed during this session of the Assembly.

11.3 Over the years the Assembly and the Executive Committee have taken a number of important decisions on the admissibility of claims. Of particular importance are the decisions taken by the Assembly and the Executive Committee concerning the interpretation of the definition of "pollution damage" as laid down in the Civil Liability Convention and the Fund Convention. At its 11th session, the Assembly endorsed the view expressed by the Director that a uniform interpretation of that definition was essential for the functioning of the regime of compensation created by the Conventions.

11.4 The Director believes that such a uniform interpretation by the IOPC Fund Member States would be promoted if the position taken by the Fund in this respect is made widely known. For this reason he considered it appropriate to set out in the 1988 Annual Report in general terms the policy of the IOPC Fund as regards the admissibility of claims, as developed over the years. In view of the complexity of this issue, it was not possible to include a detailed analysis of the position taken by the IOPC Fund on various kinds of claims. The presentation was thus limited to questions of principle. It was emphasized in the 1988 Report that, taking into account these principles, each individual claim had to be assessed on the basis of all the elements of the particular case.

11.5 Since the 11th session of the Assembly, six incidents have occurred that will or may give rise to claims against the IOPC Fund, namely the KASUGA MARU N°1, FUKKOL MARU N°12, TSUBAME MARU N°58, TSUBAME MARU N°16 and KIFUKU MARU N°13 incidents, which took place in Japan, and the NANCY ORR GAUCHER incident which occurred in Canada. In addition, the IOPC Fund has been informed of two incidents which took place in 1987 in Japan, namely the SOUTHERN EAGLE and HINODE MARU N°1 incidents.

11.6 The most serious of the above-mentioned cases was the KASUGA MARU N°1 incident. This small coastal tanker (480 GRT) was carrying 1 100 tonnes of heavy fuel oil along the west coast of Japan when it capsized and sank in stormy weather. The sunken tanker, lying at a depth of approximately 270 metres, was leaking oil for many months. Extensive fishing is carried out by local fishermen in the area around the site of the incident. Operations were carried out for the purpose of preventing the oil from coming ashore. Claims totalling approximately £2.6 million have been submitted to the IOPC Fund in respect of this incident.

11.7 In addition to the new incidents mentioned above, there are, as at 20 September 1989, six incidents in respect of which final settlements have not yet been reached, namely: the KOSHUN MARU N°1 (in respect of which only a recourse claim is outstanding), PATMOS, THUNTANK 5, ANTONIO GRAMSCI, AKARI and AMAZZONE incidents.

11.8 The most important development since the 11th session of the Assembly relates to the OUED GUETERINI incident which occurred in 1986 in Algeria. All claims arising out of this incident have been settled, and payments to claimants will be made by the end of September 1989. The negotiations in respect of the THUNTANK 5 incident (Sweden, 1986) have reached a very advanced stage and it is expected that a proposal for a final settlement will be submitted to the Executive Committee for consideration at its 22nd session. Considerable progress has also been made in the negotiations concerning the ANTONIO GRAMSCI incident (Finland, 1987).

11.9 As for the PATMOS incident, claims totalling £33 million were filed against the shipowner's limitation fund and against the IOPC Fund. Most of the claims were settled out of court. However, the IOPC Fund has become involved in complex legal proceedings in Italy concerning some claims which had been rejected by the Director. In these proceedings, some important legal questions have arisen. The main outstanding issue relates to a claim submitted by the Italian Government for compensation for damage to the marine environment which was rejected by the Court of first instance. The Court of Appeal rendered a non-final judgement in March 1989 concerning that claim. In that judgement the Court stated that the owner of the PATMOS, his P & I insurer 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. The Director has reserved the IOPC Fund's right to appeal before the Supreme Court as to the question of principle addressed by the non-final judgement in conjunction with any appeal against the final judgement by the Court of Appeal.

11.10 The IOPC Fund's Secretariat has made great efforts to settle outstanding claims arising out of earlier incidents. The Director will do his utmost to continue the IOPC Fund's established policy of reaching settlements within a short period of the incident.

11.11 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.22/2 (PATMOS incident) and FUND/EXC.22/3 (all other incidents).

12 Final Remarks

12.1 When the IOPC Fund was established in October 1978, the Fund had 14 Member States. On 1 January 1985, when the present Director took up office, the organisation had 30 Members. During his five year mandate, he has had the satisfaction of seeing the continuing growth of the IOPC Fund's membership, and at the end of his present term of office, on 31 December 1989, the IOPC Fund will have 43 Member States. In the Director's view, this expansion of membership shows that States have found the system of compensation created by the Civil Liability Convention and the Fund Convention a viable one. As indicated above, it is expected that a number of States will join the IOPC Fund in the near future. Some of these States are situated in parts of the world where the IOPC Fund at present has few Members or no Members at all. The Director hopes that the States which will soon accede to the Fund Convention will give the

Organisation an even more universal character, thereby enabling the IOPC Fund to provide compensation to victims of oil pollution damage on a more world-wide basis.

12.2 The Assembly will note with satisfaction that there has been no disastrous oil pollution incident in any Member State since its 11th session. In recent years Member States have been fortunate in this regard, no major disaster having occurred in these States since the TANIO incident in 1980. However, several incidents involving laden tankers which took place in these States in recent years were very close to becoming real disasters. It should also be noted that some serious oil spills involving laden tankers occurred during the last 12 months in non-Member States.

12.3 During 1989, problems relating to oil pollution have attracted world-wide attention as a result of the grounding of the tanker EXXON VALDEZ on 24 March 1989 in Prince William Sound in Alaska (United States of America). This grounding led to one of the most serious oil pollution incidents in history. The ensuing discussions have been focused on the necessity of enhancing safety in tanker navigation, of improving contingency plans and of developing better equipment and materials for oil spill clean-up. The Summit of the Leaders of the seven largest world economies, held in Paris in July 1989, dealt with this matter in its final communiqué, in which the leaders expressed their concern that national, regional and global capabilities to contain and alleviate the consequences of maritime oil spills be improved, and all countries were urged to implement fully the international conventions for the prevention of oil pollution of the oceans. IMO was asked to put forward proposals for further preventive action.

12.4 Questions of liability and compensation have also been addressed in the public debate following the EXXON VALDEZ incident. This has led to increased interest in the IOPC Fund and its activities from Governments and public bodies, as well as from the media and the general public. The Director hopes that the increased awareness of the potential consequences of tanker incidents will contribute to more States joining the IOPC Fund.
