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COMPENSATION  
FUND

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## REPORT OF THE DIRECTOR

### **1 Introduction**

1.1 This report covers the activities of the IOPC Fund since the 13th 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 14th session of the Assembly and to the 28th session of the Executive Committee. This report also deals with the finances of the IOPC Fund for the first eight months of 1991.

1.2 The IOPC Fund's Annual Report for the calendar year 1990 was published in February 1991. The Report, which gives an extensive presentation of the activities of the Fund, has attracted great interest from all those dealing with the IOPC Fund as well as from persons and bodies interested in environmental matters in general.

1.3 Since the 13th session of the Assembly, there have been eight new incidents involving the IOPC Fund. One of these, the HAVEN incident which occurred in Italy in April 1991, has resulted in claims for compensation against the Fund which greatly exceed the total amount of compensation payable under the Civil Liability Convention and the Fund Convention. Another, the RIO ORINOCO incident which took place in Canada in October 1990, has given rise to substantial claims for compensation. Several incidents which occurred in previous years still require a considerable amount of work by the IOPC Fund's Secretariat. There are sizeable claims against the IOPC Fund resulting from four previous incidents: the PATMOS, the AKARI, the TOLMIROS and the VOLGONEFT 263.

### **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 13th session of the Assembly in September 1990, 44 States were Members of the IOPC Fund.

2.2 One State, the Republic of India, has become a Member of the IOPC Fund since the 13th session of the Assembly. The Fund Convention entered into force for India on 8 October 1990. By the time of the 14th session of the Assembly, the IOPC Fund will have 45 Member States.

2.3 As a result of the unification on 3 October 1990 of the Federal Republic of Germany (Party to the Fund Convention) and the German Democratic Republic (which was not a Party to the Fund Convention), the Fund Convention applies also to the territory of the former German Democratic Republic as from that date.

2.4 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. It is anticipated that Ireland, Malta, Morocco, Saudi Arabia and Venezuela will soon deposit their instruments of accession to the Fund Convention. Legislation implementing the Fund Convention is in an advanced stage in Australia, Belgium, Brazil, Malaysia, Panama, the Republic of Korea and Senegal. Many other States, eg Argentina, Bahrain, Barbados, China, Costa Rica, the Gambia, Jamaica, Kenya, Marshall Islands, Mauritania, Mexico, St Kitts and Nevis, Singapore and Trinidad and Tobago, 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 13th session of the Assembly, the Director has visited three Member States - Canada, France and Italy - for discussions with government officials on the Fund Convention and the operations of the IOPC Fund.

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 to governments and representatives of industry about the complex compensation system created by the Civil Liability Convention and the Fund Convention. For this purpose, the Director went to Argentina, Malta, Mauritius and Venezuela for discussions on these Conventions and the operations of the IOPC Fund with government officials in these States. The Legal Officer went to Kenya, the Republic of Congo and the Republic of Korea for the same purpose.

3.4 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 1990 and June 1991, and during the Conference on International Co-operation on Oil Pollution Preparedness and Response, held in November 1990.

3.5 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 intergovernmental organisations.

4.2 The support given by the International Maritime Organization (IMO) to the IOPC Fund is of special importance. The Director would like to express 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 maintained 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 Limited

(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. The support of ITOPF proved especially vital in connection with two major incidents which took place in Italy in April 1991. 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.

## **5 Conferences and Seminars**

5.1 Since the 13th session of the Assembly, the Director and the Legal Officer have given a number of lectures at seminars, conferences and workshops on the activities of the IOPC Fund.

5.2 The Director took part in the 1991 Oil Spill Conference in San Diego (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 "Future of the International Conventions on Liability and Compensation for Oil Pollution Damage". He also made presentations on the IOPC Fund's activities at a meeting within the network of Regional Maritime Co-operation amongst South American Countries, Mexico and Panama (ROCRAM) in Mar del Plata (Argentina) and at a Seminar in Valletta (Malta) held under the auspices of the Regional Maritime Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC). He participated in a Workshop for the Wider Caribbean on Oil Spill Preparedness and Response organised by IMO/UNEP in Caracas (Venezuela). He also addressed the Council of the Port Management Association of Eastern and Southern Africa, held in Curepipe (Mauritius). The Director lectured to students at the World Maritime University in Malmö (Sweden) on Liability and Compensation for Oil Pollution Damage, and to the students at the IMO International Maritime Law Institute in Valletta (Malta).

5.3 The Legal Officer participated in a Regional Seminar on MARPOL 73/78 for the East African Region held in Mombasa (Kenya). He gave a presentation at a session of the Council of the Port Management Association of West and Central Africa, held in Brazzaville (Republic of Congo). The Legal Officer also took part in a seminar on oil pollution in Seoul (Republic of Korea).

5.4 The Director and the Legal Officer represented the IOPC Fund at the Conference on International Co-operation on Oil Pollution Preparedness and Response, held in November 1990 under the auspices of IMO.

## **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, the Federal Republic of Germany, France, Peru, Saint Vincent and the Grenadines and South Africa, whereas only the Federal Republic of Germany and France have so far become Parties to the Protocol to the Fund Convention. In the United Kingdom of Great Britain and Northern Ireland, a bill which would enable the Government to ratify the Protocols has been approved by Parliament. Some States, eg Denmark, Finland, Greece, the Netherlands, Norway and Sweden, have begun preparing legislation enabling them to ratify the Protocols.

6.3 In the United States of America, Congress had for some time considered proposals for new comprehensive oil spill legislation. In that context, consideration was also given to ratification of the 1984 Protocols. However, the legislation adopted by Congress which entered into force on 18 August 1990 did not contain provisions implementing the 1984 Protocols. It thus became clear that the United States would not ratify the Protocols.

6.4 In view of this development, and taking into account the requirements for their entry into force, it is unlikely that the 1984 Protocols will come into force in the near future.

6.5 On the initiative of the Government of the United Kingdom of Great Britain and Northern Ireland, the IOPC Fund Assembly discussed, at its 13th session, the future development of the intergovernmental oil pollution liability and compensation system based on the Civil Liability Convention and the Fund Convention. The Assembly decided to set up an Intersessional Working Group with the following mandate:

"To consider the future development of the intergovernmental oil pollution liability and compensation system by:

- (a) examining the prospects for the entry into force of the 1984 Protocols to the Civil Liability Convention and the Fund Convention;
- (b) considering whether it would be possible to facilitate the entry into force of the content of the 1984 Protocols possibly by amending their entry into force provisions;
- (c) considering which substantive provisions in the existing Conventions and the 1984 Protocols appear to form the main obstacles to their continued relevance, including an examination of the present contribution scheme."

6.6 The Working Group held two meetings, the first on 13 and 14 March 1991 and the second on 17 June 1991. The Assembly will be invited to examine the report of the Working Group (document FUND/A.14/14) at its 14th session.

## **7 Contributions**

7.1 The Assembly decided at its 13th session to raise £500 000 for the 1990 annual contributions to the General Fund. The amount payable by each contributor per tonne of contributing oil received was £0.0005563, based on the quantities of oil received in 1989. The payments were due by 1 February 1991. Only a small amount (£6 040) remained unpaid as at 15 September 1991. There was no levy of 1990 annual contributions to any major claims fund.

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 1991, only an amount of £18 600 was outstanding.

7.3 The levy of contributions to the IOPC Fund is based on reports of contributing oil receipts submitted by Governments of Member States. In October 1988, 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.

7.4 The Director is pleased to inform the Assembly that there has been some improvement on previous years as regards the submission of the reports on contributing oil receipts, but the situation is not yet entirely satisfactory. On 31 March 1991, the last date for Member States to submit their reports on oil receipts in 1990 in accordance with the IOPC Fund's Internal Regulations, only 11 reports had been received by the Director. By 15 September 1991, 32 reports had been submitted. In addition, a few States have still not submitted their reports on contributing oil receipts in previous years (see Annexes II and III of document FUND/A.14/5). It should again be emphasized that it is of decisive importance for the operation of the IOPC Fund that these reports are actually submitted by Governments. If the reports on contributing oil receipts are not submitted to the IOPC Fund, the Director is unable to issue invoices for the contributions in respect of the States concerned, and the system of levying contributions will then not function in an equitable manner.

## **8 Investment of Funds**

8.1 During 1990 and 1991, funds which were not required for the short-term operation of the IOPC Fund were placed on term deposits with several leading London banks, discount houses and building societies. A decision to include building societies in the list of institutions with which the IOPC Fund's assets may be invested was taken by the Assembly at its 13th session. Apart from investments placed overnight till the next business day, the average rate of interest on the investments in 1990 was 14.9%.

8.2 The base rate in London, which was cut from 15% to 14% a week after the 13th session of the Assembly, has been reduced to 10.5% by series of half-percentage cuts during the period February to September 1991. The major part of the IOPC Fund's portfolio of investments, however, had been spread beyond September at rates varying between 11.25% and 14.4375%. Consequently, there will be a significant yield on the investments for 1991.

8.3 It is estimated that the average rate of interest on the IOPC Fund's investments in 1991 will be approximately 12.5%. Interest earned during the first eight months of the year is £800 000 with about £400 000 due during the remaining four months, on an estimated average capital of £6 million.

8.4 Details of the investments from 1 July 1990 to 30 June 1991 are given in document FUND/A.14/3.

## **9 Accounts of the IOPC Fund**

9.1 The expenditure for the administration of the IOPC Fund in 1990 was £437 305, compared with the budgetary appropriation of £485 530. Details of the accounts of the IOPC Fund for the financial year 1990 are given in the Financial Statements (document FUND/A.14/4, Annex IV).

9.2 The format of the financial statements for the Financial Year 1990 has been changed in comparison with the statements for previous financial periods. The changed format has been elaborated in consultation with the External Auditor. It is designed to improve the disclosure of information on important financial matters, thereby facilitating the interpretation of the Financial Statements. In addition, the changes reflect current trends in international accounting standards.

9.3 The expenditure for the administration during the first eight months of 1991 amounts to approximately £282 000. The budget appropriation for the whole of 1991 is £520 390. It is expected that there will be a budgetary surplus at the end of the year.

9.4 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 eight staff members: the Director, the Legal Officer, the Finance/Personnel Officer, four Secretaries and a Messenger.

10.2 At its 13th session, the Assembly decided to establish a new post of Clerk-Secretary, owing to the increasing workload due mainly to expanding membership. Miss Diane Grace was employed in this post from 21 January 1991.

10.3 In June 1991, at its 27th session, the Executive Committee established a new post of Claims Officer, due mainly to the heavy increase in workload resulting from two major incidents which occurred in Italy in April 1991. The Director expects to make the appointment for this post during September 1991.

10.4 The Director has submitted a document on the structure of the IOPC Fund Secretariat for consideration by the Assembly (document FUND/A.14/9).

10.5 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. Only due to their efforts has it been possible to keep a very small Secretariat, in spite of the great increase in workload which has taken place over the last few years.

10.6 The present lease of the IOPC Fund's offices in the IMO building expires on 31 October 1992. At its 13th session, the Assembly expressed the view that it was desirable that the IOPC Fund's offices should remain in the IMO building after that date. On the basis of this position, the Director has entered into negotiations with the Secretary-General of IMO concerning an extension of the lease. The Director is pleased to inform the Assembly that an agreement in principle has been reached with the Secretary-General for such an extension. This issue is dealt with in document FUND/A.14/10.

## 11 Incidents Involving the IOPC Fund

11.1 Since its establishment in October 1979 the IOPC Fund has, up to 15 September 1991, been involved in the settlement of claims arising out of 57 incidents. 31 of these incidents occurred in Japan, whereas 19 incidents, leading in general to much larger claims, took place in European waters, one in Algeria, two in Canada, one in the Caribbean, one in Indonesia and two in the Persian Gulf. However, some of these incidents did not result in any payment of compensation by the IOPC Fund. The total amount of compensation and indemnification paid by the IOPC Fund as at 15 September 1991 is £42 million.

11.2 For details regarding the various incidents with which the IOPC Fund has dealt over the years, reference is made to the 1990 Annual Report and to the updated statistics (1991) distributed during this session of the Assembly.

11.3 Since the 13th session of the Assembly, eight incidents have occurred which will or may give rise to claims against the IOPC Fund, namely the BONITO and PORTFIELD incidents which occurred in the United Kingdom, the RIO ORINOCO incident which took place in Canada, the VISTABELLA incident which happened in the Caribbean, the AGIP ABRUZZO and HAVEN incidents which occurred in Italy and the HOKUNAN MARU N°12 and KAIKO MARU N°86 incidents which took place in Japan.

11.4 The most serious of the above-mentioned cases was the HAVEN incident. The Cypriot tanker HAVEN, carrying 144 000 tonnes of crude oil, exploded and sank off Genoa (Italy) in April 1991. This incident caused serious pollution in Italy, France and Monaco, necessitating extensive clean-up operations at sea and on shore. The clean-up operations are not yet completed. So far, more than 1 600 claims for compensation have been submitted, and the aggregate amount of the claims greatly exceeds the total amount of compensation payable under the Civil Liability Convention and the Fund Convention.

11.5 Another serious incident resulting in the loss of life of a great number of people also occurred in Italy in April 1991, when the ferry MOBY PRINCE struck the tanker AGIP ABRUZZO off the port of Livorno. The tanker was carrying 80 000 tonnes of crude oil, and it is estimated that about 2 000 tonnes of cargo oil and an unknown quantity of bunker oil was spilled, necessitating clean-up operations at sea and on shore. The incident has given rise to significant claims against the IOPC Fund.

11.6 The RIO ORINOCO incident, which took place in the Gulf of St Lawrence (Canada) in October 1990, has also resulted in large claims for compensation. The vessel, which was carrying a cargo of asphalt, grounded and had to be refloated and towed to a safe place. Some of its bunker oil caused on-shore pollution. It is estimated that the aggregate amount of the claims arising out of this incident will be in the region of Can\$12 million (£6.5 million).

11.7 In addition to the new incidents mentioned above, there are, as at 15 September 1991, five incidents in respect of which final settlements of third party claims have not yet been reached, namely the PATMOS, AKARI, TOLMIROS, AMAZZONE and VOLGONEFT 263 incidents.

11.8 The most important developments since the 13th session of the Assembly relate to the settlement of the French Government's claim in respect of the AMAZZONE incident, the settlement of several claims in respect of the AKARI incident, the settlement of all claims arising out of the KAZUEI MARU N°10 incident and the settlement of a number of claims relating to the PORTFIELD and VISTABELLA incidents.

11.9 As for the PATMOS incident, which took place in Italy in 1985, claims totalling £35 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. 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. In March 1990 the Court experts submitted their report in which they took the view that they could not quantify the damage to the marine environment. The Court of Appeal held its final hearing on 18 June 1991, and it is expected that the Court will render its judgement in October of this year.

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. He will also endeavour to ensure that the definition of "pollution damage" is given a uniform interpretation in IOPC Fund Member States.

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 various documents submitted to the 28th session of the Executive Committee.

## 12 Final Remarks

12.1 Unfortunately, several major oil pollution incidents have occurred in IOPC Fund Member States since the 13th session of the Assembly. Reference is made to the RIO ORINOCO, AGIP ABRUZZO and HAVEN incidents mentioned above. In addition, several serious incidents took place in non-Member States, eg the sinking in May 1991 off the coast of Angola of the ABT SUMMER with its cargo of 260 000 tonnes of crude oil and the KIRKI incident off the west coast of Australia in July 1991 which resulted in the escape of 19 000 tonnes of crude oil.

12.2 The worldwide public debate concerning problems relating to oil pollution from ships which resulted from the EXXON VALDEZ incident in Alaska in March 1989 has continued. Although much of this debate 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, questions of liability and compensation were addressed. As a result of this debate, there is an increased awareness in all States, also in States not Members of the IOPC Fund, of the importance of an effective system for compensating victims of oil pollution damage.

12.3 At the International Conference, held in London in November 1990, which adopted the Convention on Oil Pollution Preparedness, Response and Co-operation, a number of delegations stated that an efficient system of compensation was of great importance for ensuring rapid response and assistance between States, since such a system would make it easier for the States involved to recover costs incurred for the assistance given. In the preamble to that Convention the Conference inserted a reference to the importance of the Civil Liability Convention and the Fund Convention. The continuing expansion of the IOPC Fund's 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 rapid compensation to victims of oil pollution damage.

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