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OIL POLLUTION
COMPENSATION
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INCREASE OF THE MAXIMUM LIABILITY
OF THE IOPC FUND

Note by the Director

Introduction

1 Under Article 4.4 of the Fund Convention, the aggregate amount of compensation payable by the IOPC Fund in respect of any one incident is limited to 450 million (gold) francs (equivalent to 30 million SDR); this amount includes the amount of compensation actually paid under the Civil Liability Convention. The IOPC Fund's Assembly may, under Article 4.6 of the Fund Convention, increase the maximum amount of the IOPC Fund's liability, provided that this maximum shall not exceed 900 million francs (60 million SDR). Any decision to increase the maximum amount requires a three-fourths majority of the Member States present at the meeting at the time of the vote (Article 33.1(a) and Article 32(c) and (d)).

2 At its second session in April 1979, the Assembly considered a proposal to increase the maximum amount to 900 million francs. This proposal did not receive the required majority and was thus rejected. Instead, however, the Assembly decided to increase the maximum amount of the IOPC Fund's liability to 675 million francs (45 million SDR) (document FUND/A.2/16/1, paragraph 14).

3 A proposal to increase the maximum amount to 900 million francs was again considered at the 4th session of the Assembly in October 1981. The proposal was rejected, as it did not receive the required majority (document FUND/A.4/16, paragraph 18).

4 At its 8th session in October 1985, the Assembly discussed the question of an increase of the maximum liability of the IOPC Fund, following the submission of a note on this subject by the United Kingdom delegation (document FUND/A.8/14). The Assembly decided not to take any decision on the question at that session.

However, the Assembly instructed the Director to submit to its 9th session a document containing factual information relating to the question of an increase of the maximum amount (document FUND/A.8/15, paragraph 17).

5 When examining the question of an increase of the maximum amount, the Assembly shall, under Article 4.6 of the Fund Convention, have regard to incidents which have occurred and, in particular, the amount of damage resulting therefrom, and to changes in monetary values.

6 In fulfilling the task given to him, the Director considers that he should give the Assembly factual information relating to the two aspects specifically mentioned in the Fund Convention, ie the effects of inflation on the value of the maximum amount of the IOPC Fund's liability and the aggregate amount of the damage caused by major oil pollution incidents. This document contains information on these two points. In addition, it deals briefly with the question of the impact that an increase of the maximum amount would have on the level of contributions to the IOPC Fund.

Effects of Inflation on the Maximum Amount of the IOPC Fund's Liability

7 The purchase value of any fixed monetary amount, such as a maximum amount of liability, is eroded by inflation. Inflation is normally expressed in terms of the development of an index over a given period of time. Various indices have been developed for different purposes. The basis of a given index varies from one country to another, as it is developed for the purpose of the statistics of the country concerned.

8 There is no index of direct relevance for oil pollution damage. However, compensation for oil pollution damage relates mainly to expenses incurred for the purchase of goods (equipment, materials, etc) and to costs for personnel employed in connection with clean-up operations. For this reason, the consumer price index (CPI) has been used in this document to measure inflation. Information on the development of the CPI is given in Annexes I and II, which set out the change in the CPI for the period 1971-1985, ie from the year when the Fund Convention was adopted, and for the period 1979 - 1985, ie from the year when the present maximum amount was fixed.

9 Annex I shows the development of the CPI in the Member States in respect of which figures are available. It is based on statistics published by the International Monetary Fund (IMF). Annex II sets out the weighted average of the development of the CPI. Figures are provided for industrial countries and developing countries separately (also based on IMF statistics).

10 Annex I shows that the rate of inflation has varied considerably from one IOPC Fund Member State to another. For the world as a whole, consumer prices rose by a factor of 4.35 between 1971 and 1984, and by a factor of nearly 2.0 in the period 1979 - 1984 (the latest date for which data are available), as shown in Annex II. The corresponding factors for the industrial countries are 2.95 and 1.52, respectively.

11 The increase in the maximum amount of compensation from 450 million to 675 million francs (from 30 million to 45 million SDR) decided in 1979 corresponds to an increase of 50%. A further increase from 675 million francs to 900 million francs (to 60 million SDR), the highest amount provided for in the Fund Convention, would be an increase of another 33%. An increase to 900 million francs would result in a doubling of the maximum amount of compensation compared to the initial level set in 1971.

12 A comparison with Annex II shows that an increase in the maximum amount of compensation to 900 million francs would correspond to less than half the increase in world prices over the period since 1971, and to two thirds of the increase in prices in industrial countries over that period.

Damage Caused by Major Oil Pollution Incidents

13 When examining the implications of an increase in the maximum amount of the IOPC Fund's liability, the question is to what extent would such an increase result in the IOPC Fund paying more compensation than if the present maximum amount were retained. It should be noted that only those incidents in respect of which the aggregate amount of the damage exceeds the present maximum amount of 675 million francs (45 million SDR) would be of direct interest for this purpose. With regard to other incidents, the present limit of 45 million SDR has covered the total amount of the damage, and an increase of the maximum amount would, therefore, be without importance. This document deals with incidents in the past in respect of which the total amount of damage exceeded 45 million SDR, or was close to that limit.

14 The IOPC Fund has been involved in only one incident where the maximum amount of the IOPC Fund has been exceeded, namely the TANIO incident. However, the Director considers that this study should not be limited to only those incidents which have involved the IOPC Fund, but should also include incidents where it was not involved in order to cover the situation where the IOPC Fund would have had global scope. As regards the latter group of incidents, the Director has had to rely on information from various sources. In respect of some incidents, it has not been possible to obtain exact figures for the damage caused.

15 On the basis of statistics available, it appears that, in the period 1976-1985, there were four incidents in respect of which the aggregate amount of the damage was in excess of the IOPC Fund's present limit of 45 million SDR or was close to that limit. The data for the period 1971-1975 are incomplete, but it would appear that there were no such incidents during that period.

16 For each incident, the total amount of damage is given both as the actual amount claimed or assessed (in the currency in which the claim was made) and in terms of its 1985 monetary value. The CPI for all industrial countries, as calculated by the IMF, has been used in the calculation of the 1985 monetary values. It must be recognised that due to currency fluctuations and the variations in inflation between different countries, it is only possible to give a rough indication of the scale of the damage measured in 1985 SDRs.

17 There are three incidents during the period 1976-1985 in respect of which the total amount of damage exceeded, or was close to exceeding, the present maximum amount of 45 million SDR:

<u>Name of Ship</u>	<u>Year</u>	<u>Place of Incident</u>	<u>Total Damage</u>	<u>Total Damage 1985 Value</u> <1>	<u>Total Damage 1985 Value</u> SDR <2>
Amoco Cadiz	1978	France	US \$600m (claimed)	US \$1 000m	910 million
Princess Anne-Marie	1980	Cuba	US \$30m (agreed)	US \$40.5m	37 million
Tanio	1980	France	FFr527m (submitted)	FFr712m	86 million
			FFr348m (agreed)	FFr470m	57 million

<1> Total damage has been expressed in 1985 values by applying the increase in consumer prices in all industrial countries, as calculated by the IMF, between the date of the incident and 1985.

<2> Conversion to SDR has been made by using the end-1985 exchange rates given in International Financial Statistics published by the IMF.

17.1 In respect of the AMOCO CADIZ incident which occurred in France before the entry into force of the Fund Convention, claimants have taken legal action in the United States of America.

The claims submitted to the District Court of Chicago total \$600 million. The Court has not yet taken any decision on the quantum of the claims.

17.2 In the PRINCESS ANNE-MARIE incident, the claims originally amounted to approximately \$70 million and related almost entirely to alleged damage to lobster fisheries. The case was settled out of court at \$30 million. A major part of the amount agreed was paid by CRISTAL. The amount at which settlement was made, \$30 million, corresponds in 1985 values to approximately \$40 million (SDR 37 million), if the inflation is measured by the increase in consumer prices in all industrial countries. However, if the price increase in the world as a whole were applied, the 1985 values would be about \$54 million (49 million SDR).

17.3 With regard to the TANIO incident, the total amount of the claims as accepted by the IOPC Fund was FFr348 million (£32 million). Each claimant will recover about 70% of the agreed quantum. The total claims as originally submitted to the IOPC Fund amounted to FFr527 million (£49 million). It should be noted that the agreements on the amounts were reached for the purpose of distributing the money available under the Fund Convention, without prejudice to each claimant's right to claim beyond the amount accepted by the IOPC Fund against the shipowner and others (document FUND/EXC.14/2, paragraph 2.6).

18 In one case, the ANTONIO GRAMSCI incident, the clean-up costs and the damage to third parties did not exceed 45 million SDR. However, large claims were made for compensation for damage to the marine environment. The following figures are given:

<u>Name of Ship</u>	<u>Year</u>	<u>Place of Incident</u>	<u>Total Damage</u>	<u>Total Damage 1985 Value*</u>	<u>Total Damage 1985 Value SDR*</u>
Antonio Gramsci	1979	USSR	SKr93 m Rbls48 m FM1.75 m £43 m (approx)	£65 m	85 million

* See notes <1> and <2> to table in paragraph 17 on previous page.

19 The ANTONIO GRAMSCI incident caused damage in Sweden, Finland and the USSR. With regard to the damage in Sweden, the claims agreed between the Swedish Government and the IOPC Fund amounted to SKr93 million (£9 million). Claims totalling Rbls 48 million (£34 million) were submitted to the Court of Riga in

respect of damage in the USSR, ie in a State which was not a Member of the IOPC Fund. Of this claim, Rbls 47 million (£33 million) related to damage to the marine environment calculated in an abstract way in accordance with a mathematical formula, and this part of the claim was accepted by the Court. This claim led to the adoption by the IOPC Fund's Assembly in 1980 of a Resolution on damage to the environment under which claims of this kind were not admissible. If this part of the claim were excluded, the ANTONIO GRAMSCI incident would be totally covered by the present maximum amount of the IOPC Fund's liability and would thus be without relevance for the present study. Some compensation for damage in the USSR was paid by CRISTAL, which did not accept the claim relating to damage to the environment. In respect of Finland, which was not a Contracting Party to either the Civil Liability Convention or to the Fund Convention at the time of the incident, compensation was paid by CRISTAL.

20 There have also been a few incidents in States which are not Members of the IOPC Fund causing substantial pollution damage in respect of which the total claims exceed the present maximum liability of the IOPC Fund and where court proceedings are pending. The IOPC Fund does not have any accurate information concerning these incidents. However, it appears that, to a large extent, the claims do not relate to pollution damage as defined in the Civil Liability Convention. It is probable, therefore, that compensation awarded by a court applying the Convention or agreed in an out-of-court settlement based on the Convention would have stayed within the IOPC Fund's limit in all these cases. It should be noted, however, that these incidents occurred in States which are Parties neither to the Civil Liability Convention nor to the Fund Convention. The question of compensable damage will be governed, therefore, by national law which may differ from the Conventions.

21 On the basis of the information available to the IOPC Fund Secretariat, the following conclusions could be drawn regarding the ten-year period 1976-1985. In all the present 34 Member States, there were only two incidents in respect of which the aggregate amount of damage exceeded 45 million SDR (the AMOCO CADIZ and the TANIO incidents). Even on a global scale, there were during this period only three incidents in which the total damage exceeded or was close to exceeding the present limit (the two cases just mentioned and the PRINCESS ANNE-MARIE incident); it has then been assumed that all IOPC Fund Member States (present and future) were to make their legislations conform with the 1980 Resolution adopted by the IOPC Fund's Assembly under which non-economic damage to the marine environment is not to be compensated.

22 The number of incidents of interest for the purpose of this study is thus very small. In the opinion of the Director, the statistics available do not give a basis for any conclusion as to the likelihood of future incidents causing damage of such

magnitude that it would not be covered by the existing maximum amount. In addition, it is often a matter of chance whether or not an incident develops into a major pollution disaster.

23 It should be noted that there have been several incidents during the ten-year period 1976-1985 which could have given rise to massive oil pollution damage, but where the actual damage was relatively limited. Five incidents during that period which led to the escape of very large quantities of oil should be mentioned, namely, the URQUIOLA (Spain 1976), the ATLANTIC EMPRESS (Trinidad and Tobago 1979), the IRENE SERENADE (Greece 1980), the CASTILLO DE BELVER (South Africa 1983) and the NOVA (Arabian Gulf, 1985) incidents. However, the damage in each of these cases was limited.

24 On the other hand, spills of comparatively small quantities may also lead, in certain circumstances, to very costly clean-up operations and to great loss of income for fishermen and others. The ONDINA incident, which occurred in the Federal Republic of Germany in 1982, led to the escape of only 200-300 tonnes of oil, but the total amount of the damage was DM22 million (£6 million). In the ANTONIO GRAMSCI case only 5 500 tonnes of oil were spilled.

Impact of an Increase of the Limitation Amount on the Level of Contributions

25 The annual contributions to the IOPC Fund are paid by any person who, in the relevant calendar year, receives contributing oil as defined in the Fund Convention (crude oil and heavy fuel oil) in ports or terminal installations in a State Party to the Fund Convention after sea transport in total quantities exceeding 150 000 tonnes (Article 10.1). The level of annual contributions is calculated on the basis of a fixed sum for each tonne of contributing oil received by the individual contributor during the relevant year.

26 The total quantity of contributing oil received in 1984 in the 34 Member States of the IOPC Fund, as reported by the Governments of these States, was 830 942 721 tonnes. In respect of some Member States, no report has yet been submitted for 1984. As there are many reports on 1985 receipts which have not yet been submitted, the figures for that year cannot be used for the purpose of this document.

27 The impact of an increase of the maximum amount of the IOPC Fund's liability on the level of contributions depends obviously on the number of incidents in respect of which the total amount of damage exceeds the present maximum amount. For reasons stated above (paragraph 22), it is impossible to make any predictions in this regard.

28 However, in order to give an idea of the financial consequences for contributors of an increase of the maximum amount of the IOPC Fund's liability, the following example can be given. Let us assume that an incident occurs where the total amount of the damage is 60 million SDR, the maximum amount of liability provided for in the Fund Convention. An increase of the maximum amount from 45 million SDR to 60 million SDR would result in the IOPC Fund having to pay an additional 15 million SDR, which corresponds to £11.59 million (at the rate of exchange applicable on 2 June 1986). On the basis of a total receipt of 830 942 721 tonnes of contributing oil in IOPC Fund Member States (ie the 1984 reported figures), the extra contribution resulting from the increase in the limitation amount would be £0.0139481 per tonne of contributing oil received by each individual contributor. A contributor who received 1 million tonnes of contributing oil in the year before that in which the incident occurred would have to pay an extra contribution of £13 948.

Action to be Taken by the Assembly

29 The Assembly is invited to take note of the information contained in this document.

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ANNEX I

DEVELOPMENT OF CONSUMER PRICE INDEX IN IOPC FUND MEMBER STATES

<u>Member State</u>	<u>1985</u> (1971 = 100)	<u>1985</u> (1979 = 100)
Algeria <1>	299	149
Bahamas <1>	250	143
Benin <2>	-	-
Cameroon <1>	429	178
Denmark	354	165
Fiji	342	160
Finland	410	168
France	377	180
Gabon	431	167
Germany, Federal Republic of	189	128
Ghana	22 215	1 237
Iceland	11 885	1 149
Indonesia	764	188
Italy	659	229
Japan	254	123
Kuwait <3>	-	133
Liberia <1>	308	136
Maldives <2>	-	-
Monaco <2>	-	-
Netherlands	232	131
Norway	324	171
Oman <2>	-	-
Papua New Guinea	298	151
Poland <2>	-	-
Portugal	1 400	332
Spain	667	206
Sri Lanka	395	222
Sweden	346	175
Syrian Arab Republic	444	208
Tunisia	264	171
Tuvalu <2>	-	-
United Arab Emirates <2>	-	-
United Kingdom	467	167
Yugoslavia	3 334	911

Source: Derived from the CPI data in International Financial Statistics (IFS) published by the IMF

- <1> For Algeria, Bahamas, Cameroon and Liberia the CPI relates to 1984 as 1985 data are unavailable
- <2> CPI is not available from IFS for these Member States
- <3> CPI data are unavailable for 1971 for Kuwait.

ANNEX II

DEVELOPMENT OF WORLD CONSUMER PRICE INDEX

	1985 (1971 = 100)	1985 (1979 = 100)
World Total <1> <2>	435	190
Industrial Countries	295	152
Developing Countries <1>	1 883	434

Source: Derived from the CPI data in International Financial Statistics Yearbook 1985, published by the IMF

- <1> Data relate to 1984 for the world total and for developing countries
- <2> The world, industrial and developing countries' indices are the weighted geometric means of country indices. For each country, the weight is the Gross Domestic Product (GDP) measured in US dollars.