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COMPENSATION
FUND

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REPORT OF THE DIRECTOR

1 Introduction

1.1 This report covers the operations of the IOPC Fund since the 8th session of the Assembly. It contains a survey 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 9th session of the Assembly and to the 16th session of the Executive Committee. The report also deals with the finances of the IOPC Fund for the first three quarters of 1986.

1.2 A survey of the operations of the IOPC Fund during the calendar year 1985 was given in the Annual Report for that year which was published in February 1986. In comparison with the annual reports for previous years, the 1985 Annual Report gives a more extensive presentation of various aspects of the IOPC Fund's activities which may be of interest to those dealing with the IOPC Fund, ie governments and public authorities, shipowners, P & I Clubs, contributors, inter-governmental and non-governmental organisations, as well as victims of oil pollution damage. The 1985 Annual Report was also given a new layout.

1.3 Since the 8th session of the Assembly, there have been only four new incidents involving the IOPC Fund. The IOPC Fund's Secretariat has, therefore, been able to concentrate on the settlement of claims arising out of incidents which occurred in previous years. The most important of these was the PATMOS incident, which occurred in the Straits of Messina in Italy in March 1985. Large claims were submitted against the IOPC Fund, and it became involved in complicated court proceedings in Italy. The recourse action in the TANIO case which the IOPC Fund, together with the French Government, has taken against the owner of the TANIO and other parties, has also required a considerable amount of work by the Secretariat.

2 Membership

2.1 Since the 8th session of the Assembly, three States have become Members of the IOPC Fund. The Fund Convention entered into force for the Portuguese Republic on 10 December 1985, for the

Polish People's Republic of 15 December 1985, and for the People's Republic of Benin on 30 January 1986. The IOPC Fund now has 34 Member States.

2.2 On the basis of the information available to the IOPC Fund's Secretariat, there are reasons to expect that several States will join the IOPC Fund in the near future. The Director has been informed that Côte d'Ivoire and Greece will become Parties to the Fund Convention very soon. Legislation implementing the Fund Convention is in an advanced stage in Belgium, Canada, Ireland, Morocco and Senegal. Several other States, such as Cyprus, Egypt, Republic of Korea and the Seychelles, are also examining the question of ratification. In addition, the matter is under serious consideration in the People's Republic of China.

3 Contacts with Governments and Interested Bodies

3.1 As in previous years, the IOPC Fund Secretariat has made considerable efforts to increase the number of Member States. In view of the complexity of the compensation system under the Civil Liability Convention and the Fund Convention, the Secretariat has tried to convey as much information as possible about the Conventions to governments and representatives of industry. For this purpose, the Director went to China, Malaysia, Singapore and Thailand for discussions on the Fund Convention with government officials in these States. During his visit to China, the Director had extensive discussions with representatives of the ministries and authorities concerned on matters relating to the IOPC Fund.

3.2 In addition, the Director visited France, Italy, Japan and Sweden for further discussions with government officials on the Fund Convention and the operations of the IOPC Fund. In Japan he was given the opportunity of holding very interesting and useful discussions with the ministries concerned, as well as with representatives of shipowners, P & I insurers, the oil industry and fishermen.

3.3 The Director and the Legal Officer also had discussions with government representatives in connection with meetings within the International Maritime Organization (IMO), in particular during the IMO Assembly in November 1985.

3.4 The Director took part in a Chinese National Workshop on Marine Pollution Prevention, Control and Response in Beijing (China). He attended a meeting of an advisory group convened by IMO on Arrangements for Combating Major Incidents or Threats of Marine Pollution. In addition, he gave a lecture on liability and compensation for oil pollution damage to the students of the World Maritime University in Malmö (Sweden). The Legal Officer lectured on oil pollution liability at a training course (MEDIPOL 86) in Valetta (Malta) which was organised by the Regional Oil Combating Centre for the Mediterranean Sea (ROCC).

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

4.1 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. The Protocol to the Fund Convention was signed by the following 12 States, in chronological order as per the date of signature: United Kingdom, United States of America, Sweden, Poland, Portugal, Federal Republic of Germany, Morocco, France, Denmark, Netherlands, Norway and Finland. The Protocol to the Civil Liability Convention was signed by the same 12 States and also by the People's Republic of China.

4.2 Several States have begun preparing legislation enabling them to ratify the Protocols. So far, however, no State has become a Party to the Protocol to the Fund Convention. The Protocol to the Civil Liability Convention has been ratified only by South Africa. It should be mentioned that in the United States of America, the President has transmitted the Protocols to the Senate for advice and consent to ratify, and a Bill containing legislation implementing the Conventions as amended by the Protocols is being considered by the House of Representatives.

5 Contributions

5.1 The Assembly decided at its 8th session to levy 1985 annual contributions in the amount of £1.5 million to the general fund. No contributions were levied for any major claims fund. The date of payment was 15 January 1986. Only a small amount remains unpaid.

5.2 It should be noted that the Assembly also decided that a distribution should be made of an amount of £700 000 remaining on the ONDINA/FUKUTOKU MARU N°8 Major Claims Fund levied in 1983. This resulted in very considerable reductions in the actual payments due from most contributors in respect of the 1985 assessment.

5.3 In general, the situation regarding the payment of contributions for previous years must be considered very satisfactory, as only small amounts are in arrears. For details reference is made to document FUND/A.9/7 and FUND/A.9/7/Add.1.

5.4 The Director has not yet received the reports on contributing oil receipts in 1985 from some Member States. By 31 March 1986, the last date for Member States to submit their reports in accordance with the IOPC Fund's Internal Regulations, only 10 reports had been received by the Director; by 20 September 1986 altogether 28 reports had been received. In addition, a few States have still not submitted their reports in respect of 1984 contributing oil receipts (cf Annex I to document FUND/A.9/8). The Director must express his concern in this regard. It is obviously of decisive importance for the functioning of the IOPC

Fund that the reports on contributing oil receipts are actually submitted by the respective governments. When these reports are not received, the Director is unable to issue invoices to the contributors in the States concerned.

6 Investment of Funds

6.1 Investments were made with several leading London banks of funds which were not required for the short-term operation of the IOPC Fund. The average rate of interest on the investments in 1985 was 12%. Due to the fall in interest rates that has taken place during the last ten months, the rates obtained on investments made in 1986 have generally been lower than in 1985. In the beginning of 1986, the United Kingdom clearing banks' lending rate stood at 11.5%, then rose to 12.5% on 9 January 1986. It fell in stages until 22 May 1986, when it stabilised at 10%.

6.2 It is expected that the average interest rate on the IOPC Fund's investments in 1986 will be approximately 11%. Interest earned during the first three quarters of the year will amount to £366 550, with nearly as much due during the fourth quarter, on an estimated average capital of £5.2 million.

6.3 Details of the investments are given in document FUND/A.9/4.

7 Accounts of the IOPC Fund

7.1 The expenditure for the administration of the IOPC Fund in 1985 was £275 180, compared with the budgetary appropriation of £292 600. Details of the accounts of the IOPC Fund for the financial year 1985 are given in the Financial Statements (document FUND/A.9/5).

7.2 The expenditure for the administration during the first three quarters of 1986 will amount to approximately £217 000. The budget appropriation for the whole of 1986 is £347 850. It is expected that there will be a budgetary surplus at the end of the year.

7.3 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.

8 Settlement of Claims

8.1 As at 15 September 1986, there have been 29 incidents in respect of which the IOPC Fund, since its inception, has been or may be liable for compensation or indemnification. The total amount of compensation and indemnification paid as at this date is £34 600 000. For details reference is made to the 1985 Annual Report and Table M of the updated Statistics (1986) distributed during this session of the Assembly.

8.2 Since the 8th session of the Assembly, three incidents have occurred which have given or may give rise to claims for compensation and indemnification against the IOPC Fund, namely the ROSE GARDEN MARU, BRADY MARIA and TAKE MARU N°6 incidents.

8.3 The most important of these new incidents is the BRADY MARIA incident, which took place in January 1986 in the estuary of the River Elbe in the Federal Republic of Germany. This incident led to extensive clean-up operations, in spite of the fact that only a relatively small quantity of oil escaped. The negotiations on the claims arising out of this incident have reached a very advanced stage.

8.4 In the 1985 Annual Report, another new incident was also mentioned, namely the FOLGOET incident which occurred in France in December 1985. The IOPC Fund was originally involved in this incident, but it is now clear that there will not be any claims against the IOPC Fund.

8.5 The Director has finally succeeded in arriving at a settlement of all claims arising out of the TARPENBEK incident, which occurred in the United Kingdom in June 1979.

8.6 Regarding the other incidents which occurred before the 8th session of the Assembly, all claims arising out of the EIKO MARU N°1, KOEI MARU N°3, TSUNEHISA MARU N°8 and KOHO MARU N°3 incidents have been finally settled. In addition to the three new incidents mentioned above, there are, as at 15 September 1986, five incidents in respect of which final settlements have not yet been reached: the TANIO, JOSE MARTI, KOSHUN MARU N°1, PATMOS and JAN incidents.

8.7 As regards the TANIO case, the IOPC Fund has taken action in the Court of Brest (France) against the owner of the TANIO and other parties to recover the amounts paid to the claimants, up till now FFr221 201 452 (£18.6 million). The Court procedure has so far concentrated largely on establishing the technical cause of the incident and on the disclosure of documents. The Director is of the opinion that the results of the examination carried out by the Expertise Judiciaire appointed by the Court support the grounds on which the legal action is based. He considers, therefore, that the legal action should be maintained. The Director believes that the case will proceed faster in the future and expects considerable activity in the next 12 months.

8.8 As for the PATMOS incident, 42 claims totalling £33 million were filed against the shipowner's limitation fund. The shipowner's P & I insurer (the UK Club) and the IOPC Fund carried out negotiations with the claimants, and it was possible to arrive at settlements with 29 of the claimants within a comparatively short period of time. These claims were paid by the UK Club in April and May 1986. The remaining claims were rejected by the Director, as, in his opinion, they did not fall within the definition of pollution damage as laid down in the Civil Liability Convention. These claims related to operations which in his view were taken not for the purpose of preventing pollution but for the

purpose of salvaging ship and cargo. In addition, he rejected a claim relating to non-economic damage to the marine environment. In a judgement rendered in July 1986, the Court of Messina accepted to a large extent the position taken by the IOPC Fund. The claims accepted by the Court do not exceed the shipowner's limitation amount. However, several claimants have appealed against this judgment.

8.9 It is worth noting that in spite of all the complications connected with the PATMOS case, all claims which did not give rise to questions of principle were paid by the P & I insurer within 14 months of the incident. The IOPC Fund was not directly involved in these payments, as the aggregate amount of the accepted claims was covered by the shipowner's limitation amount. However, the UK Club would not have felt able to make any payments at such an early stage without the reassurance that, due to the existence of the IOPC Fund and its involvement in the incident, the Club would not later have to pay beyond that limit in respect of the remaining claims.

8.10 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.16/2 (the TARPENBEK incident), FUND/EXC.16/3 (the TANIO incident), FUND/EXC.16/4 (the PATMOS incident) and FUND/EXC.16/5 (all other incidents).

9 Administration of the IOPC Fund

9.1 The contract of the present Legal Officer, Mr M Dobashi, expires on 31 October 1986. Mr Dobashi informed the Director that he did not wish to have a renewal of his contract, as he will be taking up a post in the Ministry of Transport in Japan. The vacancy of the post of Legal Officer was notified to Member States. Having considered all the applications received for the post, the Director decided to appoint Mr K Wada (Japan) to the post of Legal Officer with effect from 1 November 1986.

9.2 The Director would like to express his gratitude to Mr Dobashi for the invaluable contribution he has made to the IOPC Fund during his four years as Legal Officer.

9.3 The Director would also like to express his gratitude to every other member of the IOPC Fund's Secretariat for their work which, as in previous years, has been of very high quality.

9.4 Formal documentation relating to the occupation of the IOPC Fund's offices in the IMO building was signed on 26 September 1986 by the Secretary-General of IMO and the Director. This documentation is in the form of an agreement and licence to occupy, to which is attached a draft underlease. The reason for this legal construction is that IMO has not yet been granted a final lease by the United Kingdom Government as the construction costs of the IMO building have not yet been finally established, and IMO is still operating on a draft lease contract with a

suitable covering document. The United Kingdom Government requested that the corresponding documentation should be used as regards the relationship between IMO and the IOPC Fund. A number of complications arose during the elaboration of the documents, mainly due to the fact that the documents relate to a situation involving three parties. However, due to the positive attitude taken by the United Kingdom Government and IMO, it has been possible to overcome the difficulties.

9.5 It should be noted that the signing of this documentation does not in any way change the actual situation concerning the IOPC Fund's use of its offices or the relationship between IMO and the IOPC Fund. The Director would like to emphasise that IMO has always treated the IOPC Fund as if a formal tenancy agreement existed and has given the Fund excellent services.

10 Proposed New Voluntary Industry Schemes relating to Compensation for Oil Pollution Damage

10.1 As reported to the 8th session of the Assembly, proposals had been made for new voluntary industry schemes for compensation of oil pollution damage. A draft for a new agreement on tanker owners' liability, entitled Pollution Liability Agreement among Tanker Owners (PLATO), had been developed. In addition, a new CRISTAL agreement, CRISTAL (Revised) 1985, had been adopted. The proposed new schemes contained higher limits of compensation than under the present schemes (TOVALOP and CRISTAL) as well as a redistribution of the financial burden between shipowners and the oil industry. For PLATO to come into force, shipowners representing at least 50 million GRT had to sign the agreement by 31 March 1986. The entry into force of CRISTAL Revised was dependent upon the entry into force of PLATO. In addition, the parties to the present CRISTAL agreement had stated that, if PLATO did not come into force due to lack of support from shipowners, the present CRISTAL would be terminated on 1 June 1986.

10.2 PLATO did not receive sufficient support from shipowners for it to come into force. In this situation, the parties to the present CRISTAL agreement decided to extend that agreement until 1 November 1986, in order to give time for further discussions between the oil industry and shipowners, for the purpose of arriving at a mutually acceptable solution.

10.3 It is understood that the Directors of the International Tanker Owners' Pollution Federation Ltd (ITOPF) and of CRISTAL have agreed in principle on an outline of revised voluntary schemes. The proposed new CRISTAL agreement will be submitted to the CRISTAL members in October 1986 for consideration and approval. The Directors of ITOPF will, also in October, be considering an amendment to TOVALOP for submission to its members in December 1986. The Director is not in a position at this stage to give any details of the content of the proposed new schemes.

10.4 In this context, the Director would like to refer to the position taken by the Assembly at its 8th session concerning the voluntary industry schemes. The Assembly maintained that States

could not ultimately rely on voluntary schemes for compensation for oil pollution damage but that they considered it necessary to have an inter-governmental regime based on international legal instruments. In the view of the Assembly, any voluntary scheme should, therefore, be constructed in such a way as not to interfere with the functioning of the system of compensation established by the Civil Liability Convention and the Fund Convention nor delay the entry into force of the 1984 Protocols to these Conventions (document FUND/A.8/15, paragraph 6.5).

11 Relationship with other Organisations

11.1 As in previous years, the IOPC Fund has enjoyed and benefitted from close and friendly relations with many international, inter-governmental and non-governmental organisations.

11.2 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 their assistance to the IOPC Fund.

11.3 The IOPC Fund also has a close co-operation with a number of international non-governmental organisations which greatly facilitates its operations. The co-operation with the P & I Clubs in connection with the settlement of claims should be specially mentioned as being of great importance. 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 (except for those occurring in Japan), and ITOPF's assistance is vital, as the IOPC Fund does not have such expertise within its Secretariat. There is also close co-operation between the IOPC Fund, on the one hand, and oil industry interests represented by the Oil Companies International Marine Forum (OCIMF) and CRISTAL, on the other hand.

12 Final Remarks

12.1 In conclusion, the Director would like to express his satisfaction that so many incidents have been finally settled during the period since the 8th session of the Assembly. In particular, it is very important that the TARPENBEK incident has been settled and all claims paid, since the delay in settlement, although due to circumstances beyond the control of the IOPC Fund, was not in keeping with the IOPC Fund's established policy of making settlements within a short period of time of the incident. It is also important that many of the claims arising out of the PATMOS incident have already been paid.

12.2 In view of the developments mentioned above, the IOPC Fund Secretariat will be able to concentrate on the settlement of the claims which are still pending. In addition, it will be in a better position to handle efficiently any new incidents which may occur.
