



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND**

EXECUTIVE COMMITTEE
12th session
Agenda item 3

FUND/EXC.12/3
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INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS

Note by the Director

1 Article 26.1(b) (ii) of the Fund Convention provides that the Executive Committee shall approve settlements of claims against the IOPC Fund and take all other steps envisaged in relation to such claims in Article 18.7 of the Fund Convention.

2 Since the end of the previous session of the Executive Committee, there have been relatively few new incidents which may lead to claims by persons in States Parties to the Fund Convention. However, it should be noted that, of the six incidents which occurred in 1983, three of them, namely the CASTILLO DE BELLVER (South Africa), the SIVAND (United Kingdom) and the MONEMVASIA (Indonesia) incidents, might have caused catastrophic disasters with the quantity of spilt oil exceeding several thousand tonnes in each case, had it not been for fortuitous meteorological and geographical conditions.

3 Details of the ten incidents other than the TANIO incident with which the IOPC Fund is at present dealing are given in the Annex. Documents FUND/EXC.7/2, FUND/EXC.7/2/Add.1, FUND/EXC.9/2, FUND/EXC.10/3 and FUND/EXC.10/3/Add.1, submitted to the Executive Committee's seventh, ninth and tenth sessions, contain the information available at the time; reference is made to these documents.

4 Developments regarding the above ten incidents since the end of the previous session of the Executive Committee can be summarised as follows:

- (a) All claims arising out of the GLOBE ASIMI and the SHIOTA MARU N°2 incidents have been settled.
- (b) The settlement of claims has reached the very final stages in the FUKUTOKU MARU N°8 and SHINKAI MARU N°3 incidents.

- (c) With regard to the ONDINA, EIKO MARU N°1 and KOEI MARU N°3 incidents, it is expected that final settlement of all claims will soon be reached, most major issues having been settled already.
- (d) With regard to the TARPENBEK and JOSE MARTI incidents, there is no clear prospect of early settlements, despite the considerable efforts of the Director to achieve quick settlements.
- (e) The Indonesian Government has informed the Director of its intention to submit a claim relating to the MONEMVASIA incident.

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ANNEX

(The conversion of figures from national currencies into Pound Sterling is, unless otherwise stated, as at 2 July 1984)

1 TARPENBEK

(United Kingdom, 21 June 1979)

1.1 With respect to this incident the IOPC Fund is only liable to pay compensation if it can be proven that there was actually a spill of persistent oil. Regarding this principal question, further investigations by the IOPC Fund's surveyor have not revealed any new findings, nor has the owner produced any new evidence to prove that an actual spill of persistent oil occurred. Therefore, the Director maintains his view that there is a strong case for the IOPC Fund saying that no persistent oil was spilled in this incident and that the owner cannot provide evidence that persistent oil was spilled on the dates and in the quantities alleged by the owner in his claim statement.

1.2 The Director held discussions with the UK Government regarding the quantum of its claim. No final agreement on the amount of the different items of the claims has yet been reached. However, it is expected that, by the time of the 12th session of the Executive Committee, the quantum of the UK Government's claim will have been agreed.

1.3 At present the claims for pollution damage made against the IOPC Fund, excluding claims for interest, stand as follows:

	£
UK Government	983 444.82
Nature Conservancy Council	1 738.52
Isle of Wight County Council	9 666.23
South Wight Borough Council	1 195.69
Shipowner	594 357.79
	<hr/>
	1 590 403.05
<u>Minus</u> Owner's Liability	- 64 356.31
	<hr/>
	1 526 046.74
<u>Plus</u> Indemnification	16 089.08
	<hr/>
	1 542 135.82

1.4 Apart from the basic question of the factual basis of the above claims against the IOPC Fund, it has become clear that the IOPC Fund's ultimate liability in this case depends largely on the

apportionment of liability between the SIR GERAINT, the other ship involved in the collision, and the TARPENBEK. The SIR GERAINT, which is owned by the UK Government as part of its Royal Auxiliary Fleet, is believed to be more to blame for the incident. The liability for the collision has not yet been agreed or determined, hence the question of whether the UK Government, in its capacity as the owner of the SIR GERAINT, may limit its liability, has not yet been settled. The Director is informed that negotiations on this issue have taken place between the parties concerned.

1.5 While awaiting developments in the above issues, the Director has assessed the claims and entered into talks with the UK Government and the owner, in order to clarify ambiguous points in their claims. As explained in paragraph 1.2 above, these talks were held on the basis of reservation with regard to the factual basis of their claims. Negotiations are still continuing.

2 JOSE MARTI

(Sweden, 7 January 1981)

2.1 A preliminary meeting with the Swedish Government and the owner of the JOSE MARTI took place before the Stockholm City Court at the end of 1983. The IOPC Fund's lawyer was present at this meeting. However, there was no significant progress in the proceedings at this meeting, and the Director has not been informed of any further developments since then on this issue. The limitation fund under the CLC, which is about SKr20 100 000, has not yet been established.

2.2 Two private persons have issued writs at the Stockholm District Court, seeking compensation for pollution damage from the owner of the JOSE MARTI. As was reported in the Annex to document FUND/EXC.9/2, the claims amount to SKr500 000 (£45 208) and SKr350 000 (£31 646). The IOPC Fund has been notified of the above legal action in accordance with Article 6.1 of the Fund Convention.

2.3 Claims arising out of this incident are as follows:

	SKr
Swedish Coast Guard	5 658 879.99
Haninge Fire Department	2 502 117.00
Värmdö Fire Department	1 186 150.05
Värmdö Health Department	9 949 030.00
Two Private Persons	850 000.00
	20 146 177.04

2.4 Since a prerequisite for a payment by the IOPC Fund is the establishment of the Swedish Government's contributory negligence in this incident, if any, (Article 4.3 of the Fund Convention), and since this will be decided in the proceedings before the Stockholm City Court between the Government and the owner, it is unlikely that the IOPC Fund will be able to establish its liability to pay compensation very soon. The slow progress in the Court proceedings is delaying the settlement procedures of the IOPC Fund.

3 GLOBE ASIMI

(USSR, 22 November 1982)

3.1 Whilst no claim for pollution damage has been made against the IOPC Fund, a claim for indemnification was lodged in accordance with Articles 3.2 and 5 of the Fund Convention (FUND/EXC.10/3, Annex, FUND/EXC.7/2, Annex).

3.2 With regard to the question of whether the owner had complied with the requirements laid down in Article 5.3 of the Fund Convention, especially in relation to OILPOL 1954 as amended and COLREG 1972, the Director was informed by the IOPC Fund's lawyer that no evidence had been obtained to prove the owner's non-compliance with Article 5.3 of the Fund Convention. The criminal proceedings against the Master of the GLOBE ASIMI, while decreeing that he was in breach of some domestic rules and regulations, did not give any indication of the owner's non-compliance with the requirements in Article 5.3 of the Fund Convention. The court found no reason to deny the owner's right to limit his liability in accordance with the CLC. On the basis of the above findings, the Director decided that there were no grounds on which the IOPC Fund could be exempt from its obligation to pay indemnification.

3.3 The claim for indemnification was made by both a liquidator of the owning company and by the owner's insurer. It was proved that it was the owner's insurer who had established the limitation fund in the sum of Rblsl 350 324 (\$1 871 810.31 at the rate of exchange on the date of the actual transaction) at the People's Court of Klaipeda. After an exchange of correspondence, the Counsel of the liquidator informed the Director that the liquidator would withdraw his claim for indemnification. The Director agreed with the owner's insurer that the IOPC Fund would pay indemnification in the sum of a quarter of \$1 871 810.31. The amount of \$467 952.59 was therefore paid to the owner's insurer in April 1984.

3.4 A final summary of payments made by the IOPC Fund is as follows:

		£
Indemnification	\$467 952.59	326 508.92
Legal fees	Rb1s750.00	634.18
		368.58
Surveyors fees		1 103.12
		<hr/>
		328 614.80

Note: Conversion of indemnification and legal fees into Pounds Sterling is made at the rates of exchange on the date of the actual transaction

4 ONDINA

(Federal Republic of Germany, 3 March 1982)

4.1 In accordance with the decision of the Executive Committee at its tenth session (FUND/EXC.10/3/Add.1, section 2 and FUND/EXC.10/5, paragraph 3.2), the Director paid to the Environmental Protection Office of Hamburg (BBNU) and to the United Kingdom P & I Club the amounts agreed by the Executive Committee, minus the claimants' share from the CLC limitation fund. The CLC limitation fund (including interest) amounted to DM10 080 133.67. The limitation fund was distributed as at 31 December 1983. Payments were made on 16 February 1984 and 22 March 1984, as follows:

(a) <u>BBNU</u>	DM
Claim for booms	9 863.71
6% administrative surcharge	591.82
Booms provided by Germany Navy	73 587.75
	<hr/>
	84 043.28
<u>Minus</u> Share in CLC limitation fund	41 880.77
	<hr/>
Total paid by IOPC Fund on 16.2.84	42 162.51
	<hr/>
	(£11 017.47 including £30.50 for bank charges)

(b) <u>UK Club</u>	DM
Payment to clean-up contractors	20 101 415.82
Cleaning of boats and equipment	19 267.23
Road repair (exclusive of VAT)	12 982.20
Clean-up co-ordination	59 830.20
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Total damage	20 193 495.46
<u>Minus</u> Share in CLC limitation fund	10 038 502.50
	<hr/>
Total compensation payable by IOPC Fund	10 154 992.96
<u>Plus</u> IOPC Fund's share of joint surveying costs	10 886.37
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Total paid by IOPC Fund on 22.3.84	10 165 879.33
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	(£2 683 290.06)
(c) TOTAL AMOUNT PAID BY IOPC FUND TO THE TWO CLAIMANTS [(a) + (b)]	10 208 041.83
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	(£2 693 307.53)

4.2 The agreement concluded with the UK Club states that the UK Club is entitled to claim an amount of DM2 615 183.75 (£691 848), representing the VAT paid, if, and to the extent that, the owner is not entitled to recover this amount from the German tax authorities. It is not expected that this claim will be made against the IOPC Fund.

4.3 The Director continued to examine the possibility of breaking the shipowner's limitation of liability. He employed an expert for a thorough investigation of the cause of the incident. Details of this expert's findings will be submitted orally to the Executive Committee. A fee of DM4 503 (£1 149.43) was paid to the expert.

5 SHIOTA MARU N°2
(Japan, 31 March 1982)

5.1 The investigation by the Maritime Accident Inquiry Agency into the grounding of the tanker has been completed, and no actual fault or privity on the part of the owner has been found. The limitation proceedings were resumed in December 1983 with no claimant submitting further claims. Eventually the court declared that the proceedings were to be cancelled in March 1984.

5.2 Having been notified of the above development, the Director agreed to pay indemnification to the owner. The sum of ¥1 576 075 (£4 953 at the rate of exchange on the date of the actual transaction) was paid as indemnification to the owner's insurer in June 1984.

5.3 The calculation of the total damage and the respective shares of liability and of fees between the IOPC Fund and the shipowner is as follows:

	Accepted Claims ¥	Shipowner's Share ¥	IOPC Fund's Share ¥
JMDPC Clean-up	47 786 708		
MSA Clean-up	2 563 306		
Owner's Clean-up	300 000		
	<hr/>		
Fishery Damage	50 650 014	4 125 489	46 524 525
	26 750 000	2 178 811	24 571 189
	<hr/>	<hr/>	<hr/>
Third Party Claims	77 400 014	6 304 300	71 095 714
Surveyors' fees	2 848 500	232 013	2 616 487
Legal fees	5 000 000	407 254	4 592 746
	<hr/>	<hr/>	<hr/>
	85 248 514	6 943 567	78 304 947
Indemnification	<hr/>	- 1 576 075	1 576 075
	<hr/>	<hr/>	<hr/>
	85 248 514	5 367 492	79 881 022
	(£240 148.68)	(£14 623.93)	(£225 524.74)

Note: The conversion of Japanese Yen into Pounds Sterling is made at the rate of exchange on the date of the actual transactions.

6 FUKUTOKU MARU N°8
(Japan, 3 April 1982)

6.1 As reported in paragraph 9 of the Annex to document FUND/EXC.10/3, total claims arising out of this incident amounted to ¥384 576 195. The IOPC Fund has paid ¥363 731 231 (£947 262 at the rate of exchange on the date of the actual transaction), which represents the total sum claimed minus the owner's liability under the CLC.

6.2 In December 1983, the Kobe District Marine Court judged that the FUKUTOKU MARU N°8 was wholly to blame for the incident, whereas the KOSHU MARU, the other ship involved in the collision, was entirely free of liability. In the judgement it was pointed out that the collision did not occur as a result of the actual fault or privity of the owner of the FUKUTOKU MARU N°8.

6.3 The Director agreed that the limitation proceedings be resumed and terminated. He has now been informed that the Court has cancelled the Proceedings. Indemnification amounting to ¥5 211 110 (£16 184) will now be paid. A summary of the claims and the calculation of the respective shares of liability and of the fees will be submitted as soon as the fees are known and the calculation has been agreed with the P & I Club.

7 SHINKAI MARU N°3

(Japan, 21 June 1983)

7.1 In respect of this incident which occurred as a result of the mishandling of a valve by the owner/master, a total amount of ¥3 104 000 has been claimed for clean-up and preventive measures taken after the incident. The IOPC Fund's surveyor assessed the sum of ¥2 886 100 (£8 955) as justified. The owner's liability under the CLC, if limited, amounts to ¥1 880 940 (£5 836).

7.2 In accordance with the decision taken by the Executive Committee at its tenth session, the Director, as an exception for this particular incident, waived the requirement to establish a limitation fund before the payment of compensation or indemnification (FUND/EXC.10/5).

7.3 Before payment of compensation, however, the Director has to be convinced that the incident did not occur as a result of the actual fault or privity of the owner; if it did, the owner will have unlimited liability for pollution damage. A municipal court carried out an official investigation in the course of criminal proceedings against the master. The court held that the incident occurred entirely as a result of the negligence of the master. This court finding on the cause of the incident agrees with the investigation carried out by the IOPC Fund's surveyor.

7.4 The master of the SHINKAI MARU N°3 is also the owner of the vessel. Therefore, the question of whether the owner/master was entitled to limit his liability under the CLC was discussed. The opinion given by Japanese counsel of the owner's insurer was that the owner/master is entitled to limit his liability despite his actual fault or privity, if his fault arose while he was acting in his capacity as master. It was stated that this incident was caused as a result of negligence of the owner/master acting in his capacity as a master. The Director accepted the limitation of the owner's liability, in this particular incident, without prejudice.

7.5 With regard to the settlement of claims referred to in paragraph 7.1 above, the Director has raised a question concerning a claim for clean-up costs incurred by the owner/master. The sum claimed by the owner/master is small: ¥284 800 (£884). Nevertheless, in the Director's view, it is questionable whether the owner/master is entitled to compensation from the IOPC Fund if the pollution damage resulted wholly from negligence of the owner/master (Article 4.3 of the Fund Convention). The owner's insurer, however, has contended that the owner/master is entitled to the compensation since the negligence concerned was committed by him, acting in his capacity as master, and expenses for clean-up costs were incurred by him, acting in his capacity as the owner. This issue is still being discussed.

7.5 Indemnification amounts to ¥470 235 (£1 459). No payment has so far been made by the IOPC Fund in connection with this incident.

8 EIKO MARU N°1

(Japan, 13 August 1983)

8.1 The Japanese tanker EIKO MARU N°1 (99 GRT), carrying approximately 2 500 tonnes of heavy oil, collided in dense fog with the Panamanian cargo ship CAVALRY (4 827 GRT) off Karakuwazaki, Miyagi Prefecture, Japan on 13 August 1983. The EIKO MARU N°1 sustained heavy damage to the fore section of N° 4 starboard tank and slight damage to the after part of N° 3 starboard tank. As a result, 357 tonnes of heavy oil "A" were spilled and were swiftly carried towards the shore by the gales associated with an approaching typhoon. Oil was deposited along the shore of the bays and cliffs. A wide area of rich fishery activities was polluted, causing damages to cultured oysters, scallops, wakame seaweed, etc, as well as to natural fishery resources in the surrounding area.

8.2 Immediately after the incident, the Maritime Safety Agency established an oil combating headquarters and ordered the owner and private contractors to carry out clean-up operations. Despite rough weather resulting from the typhoon, the clean-up work was carried out quickly and smoothly. Since local fishermen had been celebrating the "Bon" festival holiday at the time of the incident, damage to boat fishery was avoided.

8.3 The Miyagi Prefectural Fishery Co-operative Association claimed damages sustained to its members' cultured and natural fishery resources, in the amount of ¥79 152 000. After difficult negotiations, the IOPC Fund's surveyor agreed with the claimant to settle the claim at ¥4 million (£12 407 at the rate of exchange on the date of the actual transaction). The Japan Maritime Disaster Prevention Center (JMDPC), the Maritime Safety Agency (MSA) and the owner claimed compensation for their expenses for clean-up work. The aggregate amount of their claims was ¥60 953 899. The Director has agreed to settle these claims at ¥60 181 029 (£186 666 at the rate of exchange on the date of the actual transaction). The following table shows a summary of the claims:

	Claimed (¥)	Agreed (¥)
<u>Clean-up</u>		
JMDPC	52 977 070	52 204 200
MSA	7 454 434	7 454 434
Owner's clean-up	522 395	522 395
<u>Fishery Damage</u>		
Miyagi FCA	79 152 000	4 000 000
	<u>140 105 899</u>	<u>64 181 029</u> (£186 666)

Note: The conversion of Japanese Yen into Pounds Sterling is made at the rate of exchange on the date of the actual transaction.

8.4 The owner's limited liability under the CLC is ¥39 445 920. Indemnification amounts to ¥9 861 480 (£30 597).

8.5 Whilst an official investigation into the cause of the incident is still pending, the Director has agreed to pay the agreed figures, minus the CLC liability, plus surveyors fees, which amount to ¥1 523 290. In March 1984, the IOPC Fund paid the sum of ¥26 258 399 (£81 477 at the rate of exchange on the date of the actual transaction) representing the total sum agreed minus the owner's liability plus surveyor's fees.

8.6 The IOPC Fund's lawyer is following closely the official investigation into the cause of the incident, with a view to seeking recourse against the CAVALRY interests.

9 MONEMVASIA

(Indonesia, 18 October 1983)

9.1 On 18 October 1983 the Greek tanker MONEMVASIA (61 172 GRT), loaded with approximately 120 390 tonnes of Indonesian crude oil, struck an underwater object off the Bintan Island, Indonesia. The bottom plating of the vessel suffered substantial damage, and about 4 200 tonnes of cargo oil escaped from n°s 1,2 and 5 port cargo tanks.

9.2 The nearby coastline of Bintan Island is very remote from any centres of habitation, and is mainly composed of coral sands and mangrove swamps. Fishing is not intensive and it was reported that the most significant threat posed by the spilt oil was to the mangrove communities.

9.3 The bulk of the spilt oil drifted away from the coast of Bintan Island. Calm seas prevented the formation of stable water in oil emulsions and the oil broke up and was rapidly dispersed by natural processes. Two small spills which occurred during the attempt to stabilize the vessel and transfer the cargo were treated with dispersant as a precautionary measure. In the event, it was reported that no contamination of the shore occurred and no significant damage was thought to have been suffered.

9.4 There has been relatively little information concerning claims. Requests by the Director to the Indonesian Government for detailed information and consultation, made shortly after the incident, have not been answered. However, the Director has now been notified by the Indonesian Government that it will file a claim against the IOPC Fund.

9.5 The CLC limitation amount is not yet known, but is estimated to be around £5 million.

10 KOEI MARU N°3

(Japan, 22 December 1983)

10.1 While approaching the entrance of the main breakwater of the port of Nagoya, Japan, on 22 December 1983, the Japanese tanker KOEI MARU N°3 (82 GRT), loaded with 100 tonnes of heavy oil "A", collided with the car ferry ALBIRO (9 548 GRT) which had approached the same entrance. The port bow of the ALBIRO struck the starboard side of the KOEI MARU N°3 and the latter immediately capsized, resulting in the death of the master, who was one of the two crew on board the KOEI MARU N°3. As a result of the collision, approximately 49 tonnes of cargo oil was spilled and spread over the water inside the port of Nagoya. Clean-up work was completed by 24 December. In order to prevent the oil from moving southwards, absorbents and dispersants were used in considerable quantity. These materials drifted southwards along the east coast of the Chita peninsula and drifted into nori seaweed farms. The capsized KOEI MARU N°3 was towed to shallow water and was righted in order to search for the missing master and to pump out the remaining cargo on board. These operations were carried out smoothly and the wreck was moved inside Nagoya port. The owner and the hull underwriter declared that the wreck would be abandoned as a total loss.

10.2 The IOPC Fund's lawyer, after investigating the cause of the incident, advised the Director that actual fault or privity of the owner was in no way involved in the collision.

10.3 Claims lodged against the IOPC Fund amount to ¥66 897 179 (£207 562), of which ¥46 128 000 (£143 121) is claimed by local fishery co-operative associations for their expenses incurred for the removal of absorbents which drifted into their nori seaweed farms.

The Director has agreed to settle the fishery claim in the sum of ¥10 000 000 (£31 027). Also, minor reductions have been made with regard to several other claims. The following table shows a summary of the claims and the agreed amounts:

	<u>Claimed</u>	<u>Agreed</u>
<u>Clean-up Expenses</u>		
Maritime Safety Office	1 123 356	1 123 356
Nagoya Port Authorities	3 258 587	3 093 587
Four Private Companies	15 739 006	14 788 265
Owner's Clean-up	518 230	408 700
<u>Salvage</u>		
One private salvor	130 000	0
<u>Fishery Damage</u>		
Four local FCAs	46 128 000	10 000 000
	<hr/>	<hr/>
	66 897 179	29 413 908
	(£207 562)	(£91 263)

10.4 The shipowner's liability under the CLC amounts to ¥3 091 660. Indemnification to the shipowner will be ¥772 915. The limitation proceedings have not yet been initiated. Payment of compensation will be made after the limitation proceedings have been commenced.
