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INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS

Note by the Director

1 Since the issuance of document FUND/EXC.14/4, further progress has been made with regard to the settlement of claims arising out of the KOSHUN MARU N°1 incident. As for the PATMOS incident, claims have been submitted to the Court of Messina and the limitation proceedings will soon begin. There is also some additional information available in respect of the JAN incident. This document contains details of the recent developments concerning these incidents. In addition, information is given on a new incident, the SOTKA incident, which occurred on 12 September 1985 in the Baltic Sea.

2 KOSHUN MARU N°1

(Japan, 5 March 1985)

2.1 Agreement has now been reached as regards the claims submitted by the JMDPC and Fukada Salvage & Marine Works Co Ltd.

2.2 The claims against the IOPC Fund in respect of clean up costs are as follows:

	<u>Claimed</u>	<u>Agreed</u>
	¥	¥
JMDPC	32 210 504	27 170 909
Fukada Salvage & Marine Works Co Ltd	2 107 104	850 000
	<u>34 317 608</u>	<u>28 020 909</u>
	(£107 075)	(£87 428)

2.3 No further claims have been submitted so far. It is possible that a claim will be made by the Association of Game Fishing Boat Owners.

2.4 On 18 September 1985, the IOPC Fund paid ¥26 124 589 (£81 512 at the rate of exchange on the date of the actual transaction), representing the total agreed amount of the above-mentioned clean-up costs, minus the owner's liability of ¥1 896 320.

3 PATMOS

(Italy, 21 March 1985)

Claims Submitted

3.1 The owner of the PATMOS and the owner's insurer, the United Kingdom Mutual Steam Ship Assurance Association, have established a limitation fund with the Court of Messina. The Court has fixed the limitation amount at 13 263 703 649.8 lira (£5.25 million). At the expiry of the time limits fixed by the Court for the presentation of claims against the limitation fund, 30 claims had been submitted. Of these claims, 29 were submitted by Italian claimants and one by a foreign claimant, the shipowner (Patmos Shipping Corporation). It should be noted that these time limits are not preclusive, and further claims may thus be submitted.

3.2 The 30 claims presented so far against the limitation fund total 52 446 025 202 lira (£20.7 million). A summary of the claims is given in the Annex to this document.

3.3 As regards the claim presented by the Italian Government on behalf of a number of public authorities and private companies, the Government has reserved its right to claim compensation for damage to the marine environment.

3.4 The IOPC Fund and the UK Club are at present examining the claims. This examination is only in its early stages.

3.5 It appears that an amount of approximately 11 800 million lira (£4.7 million) has been claimed twice, both by ESSO and by other claimants. The total amount of the claims should, therefore, be reduced to approximately 40 000 million lira (£16 million).

3.6 The IOPC Fund and the UK Club will enter into negotiations with the claimants as soon as the examination of the claims is completed, with a view to arriving at a settlement out of court.

Salvage Costs and the Definition of Pollution Damage

3.7 As reported in document FUND/EXC.14/4, paragraph 9.1, fire broke out on board the PATMOS as a result of the incident and the crew had to abandon ship. Tugs with fire fighting equipment were used to combat and extinguish the fire. Tugs were also used to manoeuvre the ship in order to keep it away from the shore. After the fire had been extinguished, the PATMOS was towed to a tank cleaning station in the port of Messina where the oil was discharged. Such operations would normally be considered as salvage operations. To a large extent the measures were taken on

the order of the Harbour Master of the Port of Messina; in view of the seriousness of the incident, a state of emergency had been declared locally. Claims relating to measures of this kind amount to approximately 20 000 million lira (£8 million).

3.8 The question arises as to whether and to what extent costs for salvage operations fall within the definition of "pollution damage" laid down in the Civil Liability Convention, ie whether such costs could be considered as costs of preventive measures as defined in that Convention (Article I, paragraphs 6 and 7). It appears that this question was not dealt with in the preparatory work that led up to the adoption of the Civil Liability Convention; nor was the problem discussed in any detail during the revision of the Civil Liability Convention and the Fund Convention which resulted in the adoption of the 1984 Protocols to the Conventions. This issue has been raised in the IMO Legal Committee in connection with the work on a new Convention on salvage (cf IMO document LEG/54/7, paragraphs 47-81, in particular paragraphs 48-51 and 67).

3.9 The P & I Clubs have maintained that salvage operations could be considered as preventive measures only if the primary purpose was to prevent or minimise pollution damage. Salvage costs have, except in rare cases, been paid by the hull and cargo insurers. However, the P & I Clubs pay remuneration in the case of unsuccessful salvage of laden tankers under the "safety-net" provisions of Lloyd's Open Form 80.

3.10 The question of the relationship between salvage and preventive measures has arisen in two cases previously dealt with by the IOPC Fund, the TANIO and the TARPENBEK cases (cf documents FUND/EXC.14/2, paragraph 2.3 and FUND/EXC.14/3, paragraphs 3.7 and 3.8). The situation in each of these cases was, however, very different from that in the PATMOS case. They do not, therefore, give any guidance for the IOPC Fund's handling of the PATMOS case in this regard.

3.11 The Director would at this stage like to set out some of the problems that arise in this connection.

3.12 It appears that measures taken for the sole purpose of preventing oil pollution would fall within the definition of preventive measures even if, from a technical point of view, the measures could be considered as salvage operations. On the other hand, if the measures were taken only for the purpose of salvaging the ship and cargo, they should not be considered as preventive measures. This should probably be the case even if the measures also had the effect of preventing or minimising oil pollution.

3.13 As in the PATMOS case, claims will, however, often relate to measures that could be considered as serving a dual purpose, ie both to prevent oil pollution and to preserve hull and cargo. It could be argued that such measures should be considered as preventive measures, provided that the primary purpose was to

prevent pollution damage. However, it could be difficult to determine the primary purpose of the measures taken in a specific case. It should also be noted that the definition of "preventive measures" does not contain any qualifying words of this kind. Preventive measures means "any reasonable measures taken ... to prevent or minimise pollution damage".

3.14 If it were to be admitted that "dual purpose measures" should in principle be considered as preventive measures, provided that the primary purpose was to prevent pollution, it could be argued that some apportionment of the costs between salvage and pollution prevention ought ultimately to be made. The question would then be what criteria are relevant for the purpose of this apportionment. It could, on the other hand, be maintained that the test of "primary purpose" should be decisive and that no apportionment should be made.

3.15 It should be mentioned that the cargo on board the PATMOS represented a value of approximately £12.6 million; the value of the ship at the end of the salvage operations was about £0.75 million.

3.16 Under the Civil Liability Convention and the Fund Convention only costs of reasonable measures to prevent or minimise pollution damage are to be compensated. If salvage operations were to fall within the definition of preventive measures, the test of reasonableness would apply also to such measures.

3.17 It could be argued that the assessment of compensation under the Civil Liability Convention for salvage operations should not, in any event, be made on the basis of the criteria applied for the assessment of salvage awards but should be limited to compensation for costs incurred (cf Article 8 of the 1910 Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea and Article 3-2 of the CMI draft for a new Salvage Convention).

3.18 To the extent that salvage operations were to be considered as preventive measures, claims could be submitted by the person who had carried out those operations, or by the person who had paid the salvor (eg the shipowner) and thereby acquired by subrogation the rights of the salvor under the Civil Liability Convention and the Fund Convention (Article V, paragraphs 5 and 6 of the Civil Liability Convention).

3.19 In order to fall within the definition of "preventive measures", the measures must have been taken during a period of time when there was a real risk of oil pollution damage. If a damaged tanker has been repaired so as to avert the escape of oil, or if the tanker in question has been brought to port and is safe there, then there would no longer be any such risk. Measures taken thereafter could clearly not be considered as preventive measures for the purpose of the Civil Liability Convention.

3.20 Should it be accepted that salvage operations under certain conditions fall within the definition of preventive measures, the question arises as to the relationship between the procedure for the granting of salvage awards and the court procedures under the Civil Liability Convention and the Fund Convention. The issue is whether the decision on compensation under these Conventions with regard to claims in respect of salvage operations should be deferred until the salvage awards have been decided, or whether claims for salvage costs could be pursued as costs of preventive measures even before the salvage remunerations have been determined.

3.21 In the Director's opinion, the question as to whether and, if so, to what extent salvage operations should be considered as falling within the definition of "preventive measures" would have to be solved in the light of the particular circumstances of each individual case.

Court Proceedings in Italy

3.22 As previously stated, the limitation fund has been established with the Court of Messina. The Court decided on 24 June 1984 to open limitation proceedings. The IOPC Fund was notified of these proceedings in accordance with Article 7.6 of the Fund Convention.

3.23 In order to observe the time limits imposed on it under Italian Law, the Court will hold a hearing on 22 October 1985. It appears that the Court will have to rule in connection with that hearing as to whether each particular claim is accepted or rejected, wholly or in part. This ruling is subject to opposition. Such oppositions will be dealt with by the same Court at a second hearing to be held on 11 November 1985. It is not excluded that these two hearings will be postponed. In any event, the Court will obviously not be able to take any final decision concerning the claims against which oppositions have been lodged until after a considerable period of time.

3.24 The Court procedures concerning the granting of salvage awards in connection with the PATMOS incident will also take place at the Court of Messina, but will be dealt with by a Chamber other than the one dealing with the limitation proceedings. The question is whether the limitation proceedings will be suspended, wholly or in part, pending the outcome of the litigation concerning the salvage awards.

3.25 Legal proceedings concerning liability and compensation for damage arising out of the collision between the PATMOS and the CASTILLO DE MONTEARAGON will take place at the Court of Genoa. A summary administrative enquiry into the cause of the collision has already been carried out by the Messina port authorities. The result of this enquiry is secret but has been transmitted to the port authorities in Catania which will conduct a formal enquiry into the cause of the accident. The result of this latter enquiry will be made available to the Court of Genoa. It could be

expected that the formal enquiry will take eight to ten months. It is unlikely that the proceedings in Genoa will be terminated within a year.

3.26 The right of limitation as regards the CASTILLO DE MONTEARAGON will, under Italian private international law, be decided in accordance with Spanish law. As reported in the Annex to document FUND/EXC.14/4, paragraph 9.7, the limitation amount applicable to that ship will be approximately £3.2 million. Substantive issues as regards the collision will be governed by the 1910 Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels, which is part of Italian law.

3.27 The IOPC Fund has lodged an appeal against the above-mentioned decision of the Court of Messina of 24 June 1985 to open limitation proceedings, in order to reserve its right to break the limitation of the PATMOS if the investigation into the cause of the incident were to show that the incident occurred as a result of the actual fault or privity of the shipowner.

4 JAN

(Denmark, 2 August 1985)

4.1 Immediately after the incident, three vessels were sent to the site of the incident with the task of collecting floating oil. The vessels were engaged in clean-up operations for about a week.

4.2 The main pollution was caused on the island of Laesø. Small quantities of oil polluted the islands of Hirsholmene, northwest of Laesø and close to the mainland of Jutland. Some oil also reached the east coast of Jutland. It is estimated that some 1 500 to 2 000 birds died as a result of the pollution.

4.3 As regards the island of Laesø, the clean-up operations on the sandy beaches were brought to an end within two weeks of the incident. The polluted marshlands caused more problems. Unusually high water on 6 August 1985 flooded the marshlands and spread the oil over wide areas which are of great importance to migrating birds. It was not possible to clean the marshlands by collecting the oil nor by using chemicals. After discussions with an expert from ITOPF who surveyed the operations on behalf of the IOPC Fund and the P & I insurer (the Skuld Club, Oslo), it was agreed that the floating oil should be collected and the oiled grass cut, but no further measures should be taken. The clean-up operations, which involved 150 men, will probably be completed during the first week of October.

4.4 The islands of Hirsholmene form a nature reserve, probably the largest in Denmark. The cleaning of the coastline was carried out by a limited number of people, as the oil quantities on the shore were very small. The operations were completed in a few weeks.

4.5 On the mainland of Jutland there was only minor pollution, and the coast was cleaned rapidly.

4.6 The remaining problem is the disposal of the oil, sand and other debris that were collected on Laesø and Hirsholmene during the clean-up operations. The Danish legislation is very strict in respect of such disposal in areas of the kind represented by the islands. In principle, the collected material should be sent to a special plant at Nyborg on the island of Fyn to be burned there. As this plant is situated far away from the polluted islands, the costs involved would be considerable. Based on advice given by the ITOPF expert, the Director has urged the Danish authorities to consider other less costly methods of disposal which would also be acceptable from an environmental point of view. No decision has yet been taken by the Danish authorities in this regard.

4.8 So far no claims have been made against the IOPC Fund. It is not possible to give an estimate regarding the total amount of the damage caused. There is no doubt that the claims for compensation will greatly exceed the limitation amount under the Civil Liability Convention, 157 936 SDR (£120 398).

5 SOTKA

(Sweden and Finland, 12 September 1985)

5.1 On 12 September 1985 the Finnish tanker SOTKA (16 000 GRT) struck a concrete fairway marking beacon under construction in the Åland Sea (the Baltic) on the border between the Swedish and Finnish territorial waters, one nautical mile on the Swedish side. The ship was carrying 14 500 tonnes of heavy fuel oil. The incident caused a gash of 20 metres on the port side of the ship. 350 tonnes of heavy fuel oil escaped into the sea. After 2 000 tonnes of the cargo had been transferred to another tanker, the ship proceeded to a Finnish port.

5.2 Small quantities of oil reached the beaches of the Åland islands in Finland. The cleaning of the polluted beaches was completed in a few days. 40 tonnes of oil have so far been collected. The balance of approximately 300 tonnes is believed to have sunk below the sea surface, since the specific gravity of the oil is greater than that of sea water at ambient temperatures. The possibility that the sunken oil will move with currents and resurface at the Swedish or Finnish coastline cannot be ruled out.

5.3 It is estimated that the costs arising out of the incident so far fall below £100 000. However, if the oil still in the sea reaches the shore, the costs may become much higher.

5.4 The limit of the shipowner's liability is approximately 1.25 million SDR (£0.9 million).

* * *

ANNEX

SUMMARY OF CLAIMS - PATMOS INCIDENT

(Numbering of claims follows that used by the Court of Messina)

Claimant	Main Subject of Claim	Amount Claimed Lira
1 Ciane Anapo	Clean-up operations at sea	74 877 000
2 Rimorchiatori Napoletani srl	Clean-up operations at sea	130 121 575
3 Maresud srl	Clean-up operations at sea	228 085 000
4 Somat srl	Clean-up operations at sea	105 839 000
5 Ditta Mellina Francesco	Diving services	200 000 000
6 Esso Italiana SpA	(a) Financial guarantee for CLC limit	13 280 000 000
	(b) SMEB Cantieri Navali	5 712 835 847
	(c) Chartering of vessels	1 365 100 000
	(d) Southampton response base team	<u>1 623 300 000</u>
		21 981 235 847
7 Ditta A Previti	Transport services	30 841 719
8 Mare Pulito srl	Clean-up operations at sea	198 793 324
9 SMEB Cantieri Navali SpA	Salvage operations & measures to remove gas from the PATMOS	4 697 595 386
10 Lorefice & Ponzio sdf	Clean-up operations at sea	150 172 500
11 Società Navigazione e Antincendio e Disinqui- namento SpA (SNAD)	Clean-up operations at sea	1 350 000 000
12 Ditta Camelo Picciotto fu Gius	Towage	4 493 129 500
13 Augustea SpA	Clean-up operations at sea	395 348 000
14 Camelo Picciotto fu Gius	Fire fighting operations	2 857 132 980
15 Augustea SpA	Salvage of the PATMOS	1 447 969 770
16 Capieci SpA	Salvage of the PATMOS	1 785 910 230
17 Medit SpA	Clean-up operations at sea	292 438 800
18 Silmar snc	Clean-up operations at sea	88 150 000
19 Compagnia Portuale "Italia"	Supply of labour	22 652 109
20 Corpo dei Piloti dello Stretto di Messina	Pilot services	157 533 284

Claimant	Main Subject of Claim	Amount Claimed Lira
21 IMCO Services Italian SpA	Supply of dispersants	24 297 600
22 ANIC Stabilimento di Gela	Supply of dispersants	33 069 736
23 Ternullo Cristoforo & C snc	Clean-up operations at sea	737 150 000
24 Giuseppe Patania	Clean-up operations at sea	750 000 000
25 Ecolmare SpA	Clean-up operations at sea	3 800 000 000
26 Dr Salvatore Ciotto	Adviser for operations to remove gas from the PATMOS	522 700 000
27 LaReSub sas	Fire fighting operations	482 000 000
28 Italian Government*	Clean-up operations	233 717 9 0
29 Noe Italia SpA	Pollution prevention	556 000 000
30 Patmos Shipping Corporation	(a) Salvesen (b) ITOPF (c) Payment to salvors (d) SMEB Cantieri Navali (e) Salvage	646 170 000 48 234 354 2 020 000 000 634 759 538 <u>1 270 100 000</u>
		4 619 263 892 4 619 263 892
TOTAL		52 446 025 202

(E20 746 054)

* The Italian Government has reserved its right to claim compensation for damage to the marine environment (cf paragraph 3.3)