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OIL POLLUTION
COMPENSATION
FUND

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Agenda item 3

FUND/EXC.14/4
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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 previous session of the Executive Committee, four incidents have occurred that are likely to give rise to claims against the IOPC Fund.

3 Details of these new incidents and the incidents reported to previous sessions of the Executive Committee, other than the TANIO and TARPENBEK incidents, with which the IOPC Fund has been dealing since the 13th session of the Committee are given in the Annex to this document. Documents FUND/EXC.7/2, FUND/EXC.7/2/Add.1, FUND/EXC.9/2, FUND/EXC.10/3, FUND/EXC.10/3/Add.1, FUND/EXC.12/3, FUND/EXC.12/3/Add.1 and FUND/EXC.12/WP.1 submitted to the Executive Committee's 7th, 9th, 10th and 12th sessions, contain the information available at the time; reference is made to these documents.

4 Developments regarding the settlement of claims since the 13th session of the Executive Committee can be summarised as follows:

- (a) All claims arising out of the ONDINA, the SHINKAI MARU N°3, the EIKO MARU N°1 and the TSUNEHISA MARU N°8 incidents have been settled.
- (b) With regard to the KOEI MARU N°3 and the KOHO MARU N°3 incidents, all third party claims have been settled; the indemnification of the shipowner has not yet been paid.

- (c) As regards the MONEMVASIA incident mentioned in the report to the 12th session of the Executive Committee (FUND/EXC.12/3, Annex, paragraph 9), it is very unlikely that this incident will lead to any claims against the IOPC Fund.
- (d) With regard to the JOSE MARTI incident, the liability of the IOPC Fund depends on the outcome of the court proceedings in Sweden; judgement has been rendered by the Court of first instance, but appeals have been lodged against the judgement.
- (e) All claims have not yet been submitted in respect of the KOSHUN MARU N°1 incident.
- (f) In the PATMOS incident, very large claims have been lodged against the shipowner's limitation fund.
- (g) As for the JAN incident, it is expected that the claims will greatly exceed the shipowner's limitation amount; no claims have so far been submitted.

* * *

ANNEX

(The conversion of figures from national currencies into Pound Sterling is, unless otherwise stated, as at 1 July 1985)

1 JOSE MARTI

(Sweden, 7 January 1981)

1.1 A court action has been taken in the Stockholm City Court, against the owner of the JOSE MARTI, by the Swedish Government and two private claimants. The claims are as follows:

	SKr	SKr
(a) Swedish Government		
- Swedish Coast Guard	5 658 800	
- State Fire Service Board (subrogated claims from municipalities)	13 637 200	
	<hr/>	
	19 296 000	19 296 000
	<hr/>	
(b) Two Private Persons		850 000
		<hr/>
		20 146 000
		(£1 762 555)

1.2 In the court action, the owner of the JOSE MARTI has maintained that he has no liability for the pollution damage because the incident was wholly caused by the negligence of the Swedish Government in the maintenance of navigational aids (cf Article III.2(c) of the Civil Liability Convention). Secondly, the owner has argued that, if the court does not accept that the damage was wholly caused by such negligence, he should nevertheless be wholly exonerated from liability to the Swedish Government on the ground of contributory negligence due to lack of maintenance of navigational aids, or that the compensation should be substantially reduced (cf Article III.3 of the Civil Liability Convention).

1.3 The Stockholm City Court rendered its judgement on 3 May 1985. The Court held that the incident was caused by negligence attributable to the shipowner. It was recognised by the Court that there was a certain negligence on the part of the Swedish authorities in the maintenance of navigational aids and that this negligence had contributed to the incident. This negligence was, however, considered as relatively minor. For this reason, the Court did not reduce the compensation to the Swedish Government on the ground of contributory negligence, but awarded the Swedish Government full compensation for the pollution damage arising out

of the incident. It should be added that the shipowner was awarded compensation from the Swedish Government for the damage caused to the JOSE MARTI as a result of the incident, but as the negligence on the part of the shipowner was the major factor that contributed to the incident, the compensation was fixed at 25% of the total amount of damage sustained.

1.4 An appeal against this judgement has been lodged by the shipowner and the Swedish Government. The proceedings before the Court of Appeal in Stockholm will probably take at least one year.

1.5 The IOPC Fund has been notified of the legal action against the shipowner in accordance with Article 7.6 of the Fund Convention. The IOPC Fund's lawyer has followed the court proceedings to the extent required for the safeguarding of the IOPC Fund's interests. So far, it has not been considered necessary for the IOPC Fund to take any active part in the proceedings.

1.6 Since the IOPC Fund's liability to pay compensation cannot be determined until the question of whether the shipowner is exempted from liability has been settled, the Director is awaiting the final outcome of the Swedish court proceedings.

1.7 The limitation amount under the Civil Liability Convention is SKr23 844 593 (£2 086 141). The shipowner's limitation fund has been established with the City Court of Stockholm.

2 ONDINA

(Federal Republic of Germany, 3 March 1982)

2.1 The Director reported to the 12th and 13th sessions of the Executive Committee that the only outstanding issues with regard to the ONDINA incident were the UK P & I Club's claims for VAT and interest (FUND/EXC.12/3 Annex paragraph 4 and FUND/EXC.13/2 paragraph 4.2).

2.2 After the 13th session of the Executive Committee, it was confirmed that the UK Club was entitled to recover, and had in fact recovered from the German tax authorities the amount representing the VAT paid. The claim against the IOPC Fund as regards compensation for VAT was therefore withdrawn.

2.3 With regard to the UK Club's claim for interest, the UK Club was of the opinion that it was entitled to compensation from the IOPC Fund for the UK Club's loss of interest on the amount advanced by the UK Club to the shipowner in order to enable him to carry out the necessary clean-up operations, but claimed only interest on the amount exceeding the shipowner's liability limit under the Civil Liability Convention. In the view of the UK Club, the loss of interest should in principle be calculated at between 12% and 14% pa. The UK Club argued, in addition, that the Environmental Protection Office of Hamburg (BBNU) had stated that it would carry out the clean-up operations, charging an additional

fee of 6% for overhead costs, if the owner did not undertake these operations in accordance with the administrative order which had been issued. The UK Club therefore advanced the required amount to the owner.

2.4 Under the authority given to him by the Executive Committee, the Director agreed with the UK Club, as a compromise, to pay the UK Club 6% interest on its expenses to the extent that the UK Club's established claim exceeded the limit of the shipowner's liability under the Civil Liability Convention. The compromise was proposed by the Director on the basis of the law of the Federal Republic of Germany, taking into account that the IOPC Fund would have become liable to pay 6% administrative surcharges if BBNU had carried out the clean-up operations instead of the UK Club. Interest was calculated from the date when the limit of the shipowner's liability was exceeded (6 April 1982) to the date of payment of compensation to the UK Club by the IOPC Fund (22 March 1984). The interest amounted to DM1 148 018 (£311 623). Payment was made in December 1984.

2.5 The final summary of the payments made by the IOPC Fund in respect of this incident is as follows:

	DM	DM
(a) BBNU	84 043.28	
<u>Minus</u> Share in CLC limitation fund	41 880.77	
	<hr/>	
Paid by IOPC Fund	42 162.51	42 162.51
	<hr/>	
(b) UK Club		
Total damage	20 193 495.45	
Interest on claim	1 148 018.31	
	<hr/>	
	21 341 513.76	
<u>Minus</u> Share in CLC limitation fund	10 038 502.50	
	<hr/>	
Paid by IOPC Fund	11 303 011.26	11 303 011.26
	<hr/>	
		11 345 173.77
<u>Plus</u> IOPC Fund's share of joint surveying costs		10 886.37
IOPC Fund's own expert		4 503.00
		<hr/>
TOTAL paid by IOPC Fund		11 360 563.14
		<hr/>
		(£3 006 040)

Note The conversion of DM into Pounds Sterling is made at the rate of exchange on the day of the actual transaction.

2.6 As the total amount of contributions raised in 1983 in respect of the ONDINA major claims fund is £3 109 816, there will be a surplus which, by the end of 1985, will amount to approximately £718 000. The Director has recommended to the Assembly that an amount of £700 000 should be credited to the contributors concerned and the balance transferred to the general fund (document FUND/A.8/11, paragraph 5).

3 SHINKAI MARU N°3

(Japan, 21 June 1983)

3.1 This incident occurred entirely as a result of the negligence of the master, who was at the same time the owner of the vessel. At its 12th session, the Executive Committee accepted that the owner/master's negligence, attributable to his capacity as the master, should not deprive him of his right to limit his liability under the Civil Liability Convention. The Committee also accepted the claims for expenses voluntarily incurred by the owner/master for the taking of preventive measures. Compensation in the amount of ¥1 005 160 (£3 295) and indemnification to the shipowner's insurer in the amount of ¥470 235 (£1 541) were paid by the IOPC Fund in November 1984.

3.2 The calculation of the total damage and the respective shares of liability and of surveyor's fees between the IOPC Fund and the shipowner is as follows:

	<u>Total</u>	<u>Shipowner's</u> <u>Share</u>	<u>IOPC Fund's</u> <u>Share</u>
	¥	¥	¥
Clean-up Costs			
- Private Contractors	2 601 300		
- Shipowner	284 800		
	2 886 100	1 880 940	1 005 160
Surveyor's Fees	314 870	205 208	109 662
	3 200 970	2 086 148	1 114 822
Indemnification		- 470 235	+ 470 235
	3 200 970	1 615 913	1 585 057
			(£5 195)

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

4 EIKO MARU N°1

(Japan, 13 August 1983)

4.1 As reported in paragraph 8 of the Annex to document FUND/EXC.12/3, the total claims as agreed by the Director amounted to ¥64 181 029 (£199 073). A table showing a summary of the claims is contained in that document.

4.2 The owner's liability under the Civil Liability Convention is ¥39 445 920 (£122 351).

4.3 The IOPC Fund paid ¥26 258 399 (£81 447 at the rate of exchange on the date of the actual transaction), in March 1984, representing the total sum agreed minus the owner's liability plus the IOPC Fund's share of the surveyor's fees, amounting to ¥1 523 290. Indemnification amounting to ¥9 861 480 (£32 018) was paid in May 1985, after the limitation proceedings had been terminated.

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

	<u>Total</u>	<u>Shipowner's</u> <u>Share</u>	<u>IOPC Fund's</u> <u>Share</u>
	¥	¥	¥
Clean-up Costs			
- JMDPC	52 204 200		
- Maritime Safety Office	7 454 434		
- Shipowner	522 395		
	60 181 029	36 987 504	23 193 525
Fishery Damage	4 000 000	2 458 416	1 541 584
	64 181 029	39 445 920	24 735 109
Surveyor's Fees	3 952 490	2 429 200	1 523 290
Indemnification		- 9 861 480	+ 9 861 480
	68 133 519	32 013 640	36 119 879
			(£113 464)

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

4.5 The official investigation into the cause of the incident has been concluded. The Sendai Marine Court (an administrative court) held that the incident (ie the collision between the EIKO MARU N°1

and the CAVALRY) was caused by improper navigation on the part of both vessels. The Court did not make any statement as to the apportionment of liability between the vessels. The IOPC Fund has been advised that the findings probably indicate an apportionment of 50:50. On the basis of this advice, the IOPC Fund and the Japan P & I Club (JPIA) have taken recourse action against the owner of the CAVALRY.

5 KOEI MARU N°3

(Japan, 22 December 1983)

5.1 In addition to the claims reported in paragraph 10.3 of the Annex to document FUND/EXC.12/3 and in paragraph 1 of the Annex to document FUND/EXC.12/WP.1, one private company has claimed compensation for expenses incurred for preventive measures. This claim, amounting to ¥60 000, was accepted by the Director. The following table shows a revised summary of claims and amounts agreed:

	<u>Claimed</u>	<u>Agreed</u>
	¥	¥
Clean-up Costs		
- Maritime Safety Office	1 123 356	1 123 356
- Nagoya Port Authorities	3 258 587	3 093 587
- Five Private Companies	15 799 006	14 848 265
- Shipowner	518 230	408 700
Salvage		
- Fukuda Salvage Co Ltd	5 430 989	600 000
- One private salvor	130 000	0
Fishery Damage		
- Four local FCAs	46 128 000	10 000 000
	<u>72 388 168</u>	<u>30 073 908</u>
		(£99 695)

5.2 The sum of ¥29 501 741 (£98 375 at the rate of exchange on the date of the actual transaction), representing the total amount of the agreed third party claims minus the shipowner's liability under the Civil Liability Convention (¥3 091 660), together with surveyor's fees, was paid by the IOPC Fund in October 1984 and February 1985.

5.3 The official investigation into the cause of the incident has been concluded. The Yokohama Marine Court held that the KOEI MARU N°3 was "mainly to blame" for the incident, ie the collision between the KOEI MARU N°3 and the ALBIREO. Following this, the limitation proceedings have been recommenced. Indemnification amounting to ¥772 915 (£2 412) will be paid to the owner upon completion of the limitation proceedings.

5.4 On the basis of the finding of the Court, the IOPC Fund's lawyer has started negotiations with the owner of the ALBIRO to explore the possibility of recovering part of the amount paid by the IOPC Fund.

6 TSUNEHISA MARU N°8

(Japan, 26 August 1984)

6.1 As reported in paragraph 2 of the Annex to document FUND/EXC.12/WP.1, the stern section of the TSUNEHISA MARU N°8 sank whilst the ship was moored overnight alongside the bank of a river in the port of Osaka. About 30 tonnes of cargo oil was spilled and was carried down the river into the port. Due to strong tides, the spilt oil spread rapidly to piers and wharfs within the port. Vessels moored there were contaminated by the oil. In particular, damage was caused to the unfinished paintwork of a vessel under construction at a nearby dock. The incident did not cause any damage to fisheries.

6.2 As the oil spill occurred in one of the busiest areas of the port, it was necessary to carry out the clean-up operations rapidly. The main clean-up of the port was completed within three days of the incident, whereas the cleaning of the oil-stained paintwork of the vessel under construction, as well as the cleaning of polluted port facilities, took some time.

6.3 Claims for compensation in respect of expenses for clean-up operations and in respect of the damage to the vessel under construction amount as follows:

	<u>Claimed</u>	<u>Agreed</u>
	¥	¥
Clean-up Costs		
- Shipowner	7 676 048	6 824 500
- Port & Harbour Authorities	1 833 800	1 833 800
- 5 Private Contractors	6 826 666	6 616 700
 Damage to Vessel Under Construction	 2 388 050	 2 300 000
	<hr/> 18 724 564	<hr/> 17 575 000
		(£57 472)

6.4 In April 1985, the IOPC Fund paid ¥16 610 200 (£54 317), representing the total sum of the claims as agreed, minus the owner's liability, ¥964 800. Indemnification of the shipowner, amounting to ¥241 200 (£718), together with surveyor's fees amounting to ¥1 508 408 (£4 492), were paid in July 1985. The only outstanding issue is the payment of lawyer's fees.

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

7 KOHO MARU N°3

(Japan, 5 November 1984)

7.1 The Japanese tanker KOHO MARU N°3 (199 GRT), laden with about 500 tonnes of heavy oil, went aground on the east coast of Hayamajima Island, Hiroshima, Japan. The bottom of n°1 port and starboard cargo tanks was damaged and about 20 tonnes of heavy oil leaked into the sea.

7.2 Hayamajima Island is part of an archipelago in the Bay of Hiroshima. Intensive fishing activities, including aquaculture, are carried out in the area. The clean-up measures were undertaken by Japanese Maritime Disaster Prevention Centre (JMDPC) and the shipowner.

7.3 Claims against the IOPC Fund are as follows:

	<u>Claimed</u>	<u>Agreed</u>
	¥	¥
Clean-up Costs		
- JMDPC	75 171 428	64 186 909
- Shipowner	5 836 100	5 744 340
- 6th Regional Maritime Safety Headquarters	2 604 884	2 604 884
Fishery Damage	106 613 478	26 961 605
Damage to fishing grounds	10 000 000	0
	<u>200 225 890</u>	<u>99 497 738</u>
		(£311 658)

7.4 Claims for compensation for damage to fishing grounds were submitted by two Fishery Collective Associations. These claims related to the after-effects of oil pollution on fisheries. The claims were not accepted by the IOPC Fund, as the claimants did not produce sufficient data to enable the IOPC Fund to assess the validity of claims of this kind. The Associations did not pursue these claims.

7.5 In June 1985, the IOPC Fund paid ¥64 545 329 (£205 232 at the rate of exchange on the date of the actual transaction), representing the total amount of the claims by JMDPC and the shipowner, minus the owner's liability of ¥5 385 920. A further amount of ¥29 566 489 (£89 595) was paid in August 1985 in respect of the claims by the Regional Maritime Safety Headquarters and in respect of the claims for compensation of fishery damage. All third party claims have thus been settled.

7.6 Indemnification of the shipowner, amounting to ¥1 346 480 (£4 201), has not yet been paid as the limitation proceedings have not been concluded.

7.7 It appears that the incident was caused by the master's lack of due diligence in manoeuvring the vessel. The master is also the president of the company which owns the KOHO MARU N°3. His negligence was, however, committed entirely in his capacity as the master of the vessel. This being so, the Director is of the opinion that this negligence should not deprive the owner of his right to limit his liability (cf paragraph 3.2.3 of document FUND/EXC.12/5).

8 KOSHUN MARU N°1

(Japan, 5 March 1985)

8.1 On 5 March 1985 the Japanese tanker KOSHUN MARU N°1 (68 GRT), carrying 100 tonnes of heavy oil, collided with the RYOZAN MARU (2 569 GRT) off Haneda, Tokyo Bay, Japan. As a result of the collision, the KOSHUN MARU N°1 sank, with the exception of the bow section. Approximately 80 tonnes of oil leaked out from the sunken tanker. The spilt oil spread across Tokyo Bay. Some oil reached the beaches whilst some moved up a river which flows into the Bay. The clean-up operations were carried out by the shipowner and were completed within four days of the incident.

8.2 Claims have so far been submitted against the IOPC Fund in respect of clean-up expenses as follows:

	<u>Claimed</u>	<u>Assessed</u> <u>by</u> <u>MAPSS</u>	<u>Accepted</u> <u>by</u> <u>IOPC Fund</u>
	¥	¥	¥
JMDPC	32 210 504	27 170 990	27 170 990
Fukada Salvage & Marine Works Co Ltd	2 107 104	pending	pending
	<u>34 317 608</u>		
	(¥107 075)		

The third party claims other than those relating to clean-up costs are estimated at ¥10 million (£31 200).

8.3 The limit of the shipowner's liability is ¥1 896 320 (£5 917). Indemnification will amount to ¥474 080 (£1 479).

8.4 An official investigation of the cause of the incident will be carried out. The investigation conducted by the IOPC Fund's lawyer suggests that the collision occurred without any actual fault or privity on the part of the owner of the KOSHUN MARU N°1.

9 PATMOS

(Italy, 21 March 1985)

9.1 On 21 March 1985, the Greek tanker PATMOS (51 627 GRT), carrying 83 689 tonnes of crude oil, collided off the coast of Calabria in the Straits of Messina, Italy, with the Spanish tanker CASTILLO DE MONTEARAGON (92 289 GRT), which was in ballast. As a result of the collision, fire broke out on board the PATMOS, and the crew had to abandon ship. The PATMOS was damaged in the hull. The ship was beached and then towed off to be manoeuvred by tugs in the northern end of the Straits until the fire was totally extinguished. By the afternoon of 23 March, the fire was out, and the vessel was considered to be in a sufficiently safe state to be brought into the port of Messina for her cargo to be discharged.

9.2 Approximately 1 100 tonnes of her cargo oil escaped. However, only a few tonnes reached the shore. The Italian authorities undertook extensive measures, with the assistance of a private contractor employed by the owner of the PATMOS, in order to contain the spilt oil and to prevent it polluting the Sicilian and Calabrian coasts. Dispersants were also used in large quantities.

9.3 At the request of the third party liability insurer of the PATMOS, the UK Club, a staff member of the International Tanker Owners Pollution Federation Ltd (ITOPF) went to the site of the incident on 22 March. It was agreed that he should act also on behalf of the IOPC Fund in his role of advising and assisting the authorities responsible for the clean-up operations. He expressed the view that the costs of pollution damage, including reasonable costs of preventive measures, would remain well within the limitation amount applicable to the PATMOS under the Civil Liability Convention.

9.4 Esso International Shipping (Bahamas) Co Ltd as charterer of the PATMOS invoked a charter party clause under which the charterer is entitled to respond to an oil spill on the shipowner's behalf. Out of its own volition, Esso had equipment flown from a response base in Southampton (United Kingdom) to Sicily. An Esso Europe response team was set up at the site of the incident. In fact, the authorities required only minimal assistance from this team.

9.5 The owner has constituted a limitation fund with the Court of Messina amounting to 13 268 510 390 lira (£5.25 million). Italian claimants were given a period of 30 days and foreign claimants a period of 60 days, as from 24 June 1985, within which to lodge their claims. The hearing of claims by the Court of Messina is scheduled for October and November 1985.

9.6 The claims against the limitation fund are not yet fully known. So far, 28 claims have been submitted to the Court of Messina, totalling 46.819 million lira (£18.5 million). In addition, the Italian Government has reserved the right to submit a further claim. It has not yet been possible to establish to what extent the claims relate to "pollution damage" as defined in

the Civil Liability Convention; it appears that they include salvage costs and expenses to preserve hull and cargo.

9.7 The liability of the CASTILLO DE MONTEARAGON for the collision is being investigated. The limitation amount applicable for that ship is approximately £3.2 million.

9.8 The Director has instructed an Italian lawyer to follow closely the proceedings in the Court of Messina on behalf of the IOPC Fund.

10 JAN

(Denmark, 2 August 1985)

10.1 On 2 August 1985 the tanker JAN (1 400 GRT), registered in the Federal Republic of Germany, collided with a fixed navigational light at the entrance to the port of Aalborg on the eastern coast of Jutland in Denmark. The Jan was carrying 3 000 tonnes of heavy fuel oil. It has been suggested that the collision resulted from a failure in the steering equipment of the ship. The collision caused a 20 metre gash through two forward tanks with a combined capacity of 500 tonnes. The cargo oil was transferred to another tanker, but it is estimated that approximately 300 tonnes of oil escaped into the sea.

10.2 The spilt oil was carried in a north-westerly direction by strong winds. During the days that followed the incident more than 100 tonnes of oil came ashore on the south coast of the island of Laesø, which is situated between Jutland and Sweden. Some small quantities also polluted the east coast of the mainland of Jutland. Approximately ten kilometres of the coastline of the island of Laesø was affected. The polluted area consists partly of sandy beaches, and partly of salt marshes of great importance to large populations of migrating birds.

10.3 Operations to clean up the polluted area were carried out by the Danish National Agency of Environmental Protection, the National Civil Defence Force and the local authorities of the island. The operations took the form of manual removal of oil. Fortunately, the number of birds in the area at the time of the incident was far below the normal figure for this time of the year. It is estimated that approximately one thousand birds died as a result of the pollution.

10.4 No formal claims for compensation have been submitted so far. It is expected that the claims will greatly exceed the limit of the shipowner's liability, SDR 157 936 (£120 398).

10.5 The Danish Authorities are investigating the cause of the incident.

Note: The JAN incident occurred after the drafting of document FUND/A.8/11 and was therefore not covered in the Director's assessment of annual contributions, as contained in that document.
