



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

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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, three incidents have occurred that are likely to give rise to claims against the IOPC Fund, namely the ROSE GARDEN MARU, the BRADY MARIA and the TAKE MARU N°6 incidents.

3 Details of these new incidents and the incidents reported to previous sessions of the Executive Committee, other than the TARPENBEK, TANIO and PATMOS incidents, with which the IOPC Fund has been dealing since the 15th session of the Committee are given in the Annex to this document. Documents FUND/EXC.7/2, FUND/EXC.9/2, FUND/EXC.10/3, FUND/EXC.12/3, FUND/EXC.12/WP.1, FUND/EXC.14/4 and FUND/EXC.14/4/Add.1, submitted to the Executive Committee's 7th, 9th, 10th, 12th, and 14th sessions, contain the information available at the time; reference is made to these documents. The TARPENBEK, TANIO and PATMOS incidents are dealt with in documents FUND/EXC.16/2, FUND/EXC.16/3 and FUND/EXC.16/4, respectively.

4 Developments regarding the settlement of claims since the 14th and 15th sessions of the Executive Committee can be summarised as follows:

- (a) All claims arising out of the KOEI MARU N°3, TSUNEHISA MARU N°8 and KOHO MARU N°3 incidents have been settled.
- (b) With regard to the EIKO MARU N°1 incident, all third party claims have been settled and the indemnification of the shipowner has been paid, leaving the recourse action against the owner of the colliding vessel as the only outstanding issue.

- (c) With regard to the KOSHUN MARU N°1 incident, all claims presented so far have been settled. It is not clear whether there will be any further claim in relation to this incident. Indemnification of the shipowner has not yet been paid.
- (d) Agreement on the claims arising out of the TAKE MARU N°6 incident has been reached and the claims have been paid in full by JPIA. Due to uncertainty about the amount of the shipowner's liability, the IOPC Fund will probably not make any payments in reimbursement to JPIA before the spring of 1987.
- (e) As regards the SOTKA and FOLGOET incidents, it is very unlikely that these incidents will lead to any claims against the IOPC Fund.
- (f) With regard to the JOSE MARTI incident, the liability of the IOPC Fund depends on the outcome of court proceedings in Sweden.
- (g) In respect of the JAN and BRADY MARIA incidents, claims have been submitted recently and negotiations with the claimants are being carried out.
- (h) As for the ROSE GARDEN MARU incident, it has not yet been possible to establish whether the IOPC Fund will be obliged to pay any compensation, since there is a lack of information on many essential points.

Action to be Taken by the Executive Committee

5 The Executive Committee is invited to take note of the information contained in this document and its Annex.

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ANNEX

(The conversion of figures from national currencies into Pound Sterling is made, unless otherwise stated, at the rate of exchange on 30 June 1986)

1 JOSE MARTI

(Sweden, 7 January 1981)

1.1 At the 14th session of the Executive Committee it was reported (document FUND/EXC.14/4, paragraph 1) that claims had been made against the shipowner by the Swedish Government amounting to SKr19.3 million (£1.75 million). In addition, two private persons had claimed SKr850 000 (£78 000). A court action had been taken in respect of these claims in the Stockholm City Court against the owner of the JOSE MARTI. The limitation fund under the Civil Liability Convention, amounting to SKr23 844 593 (£2.2 million), had been constituted with the City Court. The aggregate amount of the claims would thus be covered by the limitation amount.

1.2 It was also reported that, in the court action, the owner of the JOSE MARTI had maintained that he had 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 argued that he should in any case be exonerated wholly or partially from liability on the grounds of contributory negligence (cf Article III.3). In its judgement in May 1985, the City Court did not accept the shipowner's defence and awarded the Swedish Government full compensation for the oil pollution damage resulting from the incident; however, the shipowner was granted a reduced compensation from the Swedish Government for the damage caused to the JOSE MARTI.

1.3 An appeal against this judgement was lodged by the shipowner and the Swedish Government. The oral hearing in the Court of Appeal started on 18 August 1986 and will probably last until 12 September 1986. The Court of Appeal is expected to render its judgement before the end of 1986.

1.4 In the autumn of 1985, two further private claimants lodged claims amounting to SKr215 000 (£19 700) against the limitation fund. In the Director's opinion, these claims are time-barred.

1.5 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.

2 EIKO MARU N°1

(Japan, 13 August 1983)

2.1 As reported in paragraph 4 of the Annex to document FUND/EXC.14/4, the only outstanding issue was the recourse action against the owner of the other vessel involved in the collision, the CAVALRY.

2.2 The Director has tried, through the IOPC Fund's lawyer, to put pressure on the owner of the CAVALRY in order to arrive at a quick settlement of this issue. However, no real progress has so far been made.

3 KOEI MARU N°3

(Japan, 22 December 1983)

3.1 As reported to the 14th session of the Executive Committee (document FUND/EXC.14/4, Annex, paragraph 5), all third party claims have been paid.

3.2 After the conclusion of the official investigation into the cause of the incident, the limitation proceedings were recommenced and concluded in December 1985 (document FUND/EXC.14/4, Annex, paragraph 5.3). Indemnification of the owner, amounting to ¥772 915 (£2 674), was paid in January 1986. The IOPC Fund's share of the legal fees, ¥913 420 (£3 477), was paid in April 1986.

3.3 The IOPC Fund and the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) had initiated negotiations with the owner of the ALBIREO, the other ship involved in the collision, for the purpose of recovering part of the amounts paid by them to claimants. The owner of the ALBIREO agreed to reimburse one-third of the total compensation for clean-up operations and fishery damage which had been paid by JPIA and the IOPC Fund. The amount recovered for pollution damage was ¥10 024 636, of which the IOPC Fund received ¥8 994 083 (£34 273).

3.4 The calculation of the total damage and the respective shares of liability and fees for 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			
- Maritime Safety Agency	1 123 356		
- Nagoya Port Authorities	3 093 587		
- Six Private Companies	15 448 265		
- Shipowner	408 700		
	<hr/> 20 073 908		
Fishery Damage	10 000 000		
	<hr/>		
Total Third Party Claims	30 073 908	3 091 660	26 982 248
Surveyor's Fees	2 808 173	288 680	2 519 493
Legal Fees	1 148 140	234 720	913 420
Indemnification		-772 915	772 915
	<hr/> 34 030 221	2 842 145	31 188 076 (£104 525)
Recovered from owner of colliding vessel	-10 024 636	-1 030 553	-8 994 083
	<hr/> 24 005 585	1 811 592	22 193 993 (£70 252)
	<hr/>		

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

#### 4 TSUNEHISA MARU N°8

(Japan, 26 August 1984)

4.1 As reported in paragraph 6 of the Annex to document FUND/EXC.14/4, there were only a few outstanding issues with regard to this incident at the time of the 14th session of the Executive Committee.

4.2 One of these issues was the question of whether there was any possibility for the IOPC Fund of breaking the limit of the owner's liability. Since no official investigation had been carried out, the Director engaged a lawyer to investigate this question. The lawyer reported that the incident was caused by river water entering the engine room through a hose. According to the report, this may have been due to the negligence of the vessel's chief engineer, who was at the same time the president of the company which owned the TSUNEHISA MARU N°8. The IOPC Fund's lawyer was of the opinion that this would not constitute fault or privity, as the person concerned acted in his capacity as chief engineer, and it would therefore not be possible to break the limitation of liability of the shipowner.

4.3 In view of the decision taken by the Executive Committee with regard to a similar situation (the KOHO MARU N°3 incident; document FUND/EXC.14/7, paragraph 3.3.3; see also paragraph 5.2

below), the Director accepted that there was no fault or privity in this case and that the shipowner would thus be entitled to limit his liability.

4.4 In addition to the payment of compensation, indemnification and surveyors' fees, as reported in paragraph 6.4 of the Annex to document FUND/EXC.14/4, the sum of ¥1 524 170 (£5 274) was paid as legal fees in December 1985 and January 1986.

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

	<u>Total</u>	<u>Shipowner's</u>	<u>IOPC Fund's</u>
		<u>Share</u>	<u>Share</u>
	¥	¥	¥
Clean-up Costs			
- Port Authorities	1 833 800		
- Five Private Contractors	6 616 700		
- Shipowner	6 824 500		
	15 275 000		
Damage to Vessel Under Construction	2 300 000		
	17 575 000	964 800	16 610 200
Total Third Party Claims			
Surveyors' Fees	1 596 030	87 622	1 508 408
Legal Fees	2 454 570	930 400	1 524 170
Indemnification		-241 200	241 200
	21 625 600	1 741 622	19 883 978 (£64 801)

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

## 5 KOHO MARU N°3

(Japan, 5 November 1984)

5.1 As reported in paragraph 7.5 of the Annex to document FUND/EXC.14/4, all third party claims had been settled and paid by August 1985.

5.2 The official investigation into the cause of the incident concluded that the master was mainly to blame, as the incident, the grounding of the KOHO MARU N°3, was caused by his careless manoeuvring of the vessel. Although the master was the president of the company which owned the KOHO MARU N°3, his negligence was committed in his capacity as master. The Court accepted that the owner should be entitled to limit his liability. The same position was taken by the Executive Committee at its 14th session (document FUND/EXC.14/7, paragraph 3.3.3).

5.3 Following the conclusion of the official investigation, the limitation proceedings were resumed and concluded in March 1986. Indemnification of the shipowner, amounting to ¥1 346 480 (£5 139), was paid in April 1986.

5.4 The IOPC Fund paid its share of surveyors' fees, ¥6 118 429 (£24 484), in May 1986, while legal fees, amounting to ¥3 856 815 (£16 267), were paid in July 1986.

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

	<u>Total</u>	<u>Shipowner's</u>	<u>IOPC Fund's</u>
		<u>Share</u>	<u>Share</u>
	¥	¥	¥
Clean-up Costs			
- Maritime Safety Agency	2 604 884		
- Japan Marine Disaster Prevention Centre	64 186 909		
- Shipowner	5 744 340		
	72 536 133		
Fishery Damage	26 961 605		
Total Third Party Claims	99 497 738	5 385 920	94 111 818
Surveyors' Fees	6 468 580	350 151	6 118 429
Legal Fees	6 315 320	2 458 505	3 856 815
Indemnification		-1 346 480	1 346 480
	112 281 638	6 848 096	105 433 542 (£340 717)

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

## 6 KOSHUN MARU N°1

(Japan, 5 March 1985)

6.1 There have been no developments in this case since the 14th session of the Executive Committee. As reported to that session (document FUND/EXC.14/4, Annex, paragraph 8 and FUND/EXC.14/4/Add.1, paragraph 2), third party claims totalling ¥26 124 589 (£81 512), representing the total amount of the agreed claims, minus the owner's liability of ¥1 896 320, were paid in September 1985.

6.2 It is possible that a claim may be made by the Association of Game Fishing Boats.

6.3 An official investigation into the cause of the incident is being carried out. Indemnification of the shipowner amounting to ¥474 080 (£1 891) has not yet been paid, as the limitation proceedings have not been concluded.

7 JAN

(Denmark, 2 August 1985)

7.1 Details of the incident and the clean-up operations which followed were given in paragraph 10 of the Annex to document FUND/EXC.14/4 and in paragraph 4 of document FUND/EXC.14/4/Add.1.

7.2 As reported in the above-mentioned documents, 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. The collision caused a 20 metre gash through two forward tanks with a combined capacity of 500 tonnes. It is estimated that approximately 300 tonnes of oil escaped into the sea.

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

7.4 Operations to clean up the polluted areas were carried out by the Danish National Agency of Environmental Protection, the National Civil Defence Force and local authorities of the island of Laesø. The clean-up operations on the contaminated beaches of the islands of Laesø and Hirsholmene and on the mainland of Jutland were completed within a few weeks of the incident. The clean-up of the polluted marshland on the island of Laesø caused greater problems, because of the sensitive ecological conditions in the area, but these operations were concluded by late October 1985.

7.5 As a result of the clean-up operations, approximately 1 925m<sup>3</sup> of oiled sand, grass, debris, etc were collected in depots on Laesø and on Jutland, and a major problem arose concerning the disposal of the collected material. The Director urged the Danish authorities to consider the most economic method which would also be acceptable from an environmental point of view. After having considered several options, the authorities decided that the debris containing less than 5% oil (approximately 968m<sup>3</sup> of material) would be disposed at local dumps on Laesø and on Jutland. The remaining quantity of about 957m<sup>3</sup>, with more than 5% oil content, was transported to a municipal chemical waste disposal plant at Nyborg on the island of Fyn. The disposal of the oily debris was completed by the end of 1985.



7.6 The marshland and the sandy beaches of Laesø were damaged by the use of vehicles during the clean-up work. A joint inspection was carried out in April 1986 with the participation of the shipowner's P & I insurer (the Skuld Club), the IOPC Fund and the Danish authorities, in order to consider the need for such work. The necessary restoration measures were taken soon thereafter.

7.7 In December 1985 the Maritime and Commercial Court of Copenhagen established the limit of the owner's liability at 157 936 SDR (DKr1 576 170, corresponding to £125 968). Under Danish law, an extra amount should be added to cover interest and costs, and the Court fixed the limitation fund at DKr2 million (£159 840). The limitation fund was established by the Skuld Club by means of a letter of guarantee.

7.8 Claims for compensation have been submitted to the Skuld Club and the IOPC Fund as follows:

<u>Claimant</u>	<u>Amount Claimed</u>
	DKr
Danish Government, through the National Agency of Environmental Protection (NAEP)	11 804 554
Private Boat Owner	7 202
3 Farmers	27 230
	<hr/>
Total Claimed	11 838 986
	<hr/>
	(£946 173)

7.9 The claims submitted by the four private persons have been accepted in full. Payment was made by the Skuld Club in April 1986, totalling DKr34 432 (£2 752).

7.10 The claims presented by the Danish Government, covering also the operations carried out by the local authorities at Laesø, were received by the IOPC Fund in July and August 1986. At the time of drafting this document, the examination of the documents submitted by the Danish authorities has not been concluded. In co-operation with the Skuld Club, the Director will enter into negotiations with the Danish authorities as soon as the examination of the claim documents has been completed. The Director hopes that he will be able to report developments in the claims settlement by the time of the 16th session of the Executive Committee.

7.11 The Maritime Board of Enquiry of the Ministry of Transport of the Federal Republic of Germany carried out an official investigation into the cause of the incident and announced its findings in March 1986. In its view, the JAN collided with the lighthouse because she had deviated from the appropriate course, and this was not recognised early enough. The enquiry concluded that the master and the mate of the JAN were at fault.

8 SOTKA

(Sweden, 12 September 1985)

8.1 Information on this incident was given in paragraph 5 of document FUND/EXC.14/4/Add.1.

8.2 The Director has been informed that the total claims for clean-up costs and fishery damage, as settled by the shipowner, amounted to FM950 003 and SKr300 000, respectively (£148 528).

8.3 As reported to the 14th session of the Executive Committee, approximately 250 tonnes of oil were believed to have sunk below the sea's surface, since the specific gravity of the oil was greater than that of sea water at ambient temperatures. Fears were expressed that the sunken oil might move with the currents and resurface on the Swedish or Finnish coast, resulting in expensive clean-up operations. It appears, however, that there is no longer any risk of this happening.

8.4 The limit of the shipowner's liability is FM7 360 328 (£937 801).

8.5 In view of the information given above concerning the sunken oil, the Director considers that the IOPC Fund will not be called upon to pay any compensation or indemnification as a result of this incident.

9 ROSE GARDEN MARU

(United Arab Emirates, 26 December 1985)

9.1 On 26 December 1985 a leak of oil from a sea valve of the Panamanian tanker ROSE GARDEN MARU (2 621 GRT) was observed by an official of the Umm Al Qaiwain Municipality, in the United Arab Emirates. At that moment, the tanker had been carrying out an internal transfer of her cargo oil slop from one tank to another at the berth of the Umm Al Qaiwain port. She was engaged in the transport of oil slop from tankers passing through the Gulf and used Umm Al Qaiwain as a base port. The quantity of oil spilt has not been established.

9.2 It was alleged that the spilt oil polluted the coast, lagoon and islands of the Emirates, and that it caused "massive" damage to trees, vegetation and fishing resources. Some of the contaminated trees and vegetation were said to be unique species which could be found nowhere outside the Emirates.

9.3 At the time of the incident, there were two other tankers in the same port, the Dominican tanker ROMANA (1 586 GRT) and the Saudi Arabian tanker NAWAL 1 (886 GRT). These were bunker supply vessels for large tankers passing through the Gulf. The three tankers were owned by different companies, but operated by one single company, Vertona Barba Cleaning Ltd (VBC) of Dubai.

9.4 The authorities of the Emirates detained not only the ROSE GARDEN MARU but also the ROMANA and the NAWAL 1. The reason for the detention of the latter two vessels is not clear, as it appears that they did not cause any oil spill.

9.5 The Umm Al Qaiwain Municipality sued VBC and the master of the ROSE GARDEN MARU at the Penal Court of Umm Al Qaiwain for compensation for any damage already sustained, in the amount of Dh2 million (£355 100), and for any damage which may arise in the future. A penal case against the master of the ROSE GARDEN MARU was also initiated in the same Court.

9.6 In its judgement, which was rendered on 14 January 1986, the Court ordered:

- (a) VBC to pay Dh2 million (£355 100) to the Umm Al Qaiwain Municipality for indemnification of current damages, to be increased if the damage were aggravated;
- (b) VBC to deposit Dh1 million (£177 550) at a designated bank in the name of the Umm Al Qaiwain Municipality as a precaution, to be paid to the Municipality subject to consent by the Court;
- (c) the master of the ROSE GARDEN MARU to pay a fine of Dh5 000 (£890), or to serve one month's prison sentence in default of payment; and
- (d) the three tankers to be kept under detention until otherwise ordered by the Court.

9.7 The judgement did not contain any reference neither to the Civil Liability Convention, nor to the question of limitation of liability. No indication was given of how the damages were calculated.

9.8 The limit of liability of the ROSE GARDEN MARU under the Civil Liability Convention is estimated at about Dh300 000 (£53 265). She was carrying a certificate in accordance with Article VII.2 of the Civil Liability Convention at the time of the incident. However, it has been alleged by the shipowner's P & I insurer (the Skuld Club) that this was not taken into consideration by the Court. No limitation fund was established.

9.9 The defendants appealed against the judgement, but the right of appeal was denied.

9.10 It was only at this stage that the IOPC Fund was informed of the incident. On 18 February 1986, the Skuld Club notified the IOPC Fund that there might be a claim against the IOPC Fund with regard to this incident.

9.11 Meanwhile, VBC entered into negotiations with the authorities of the Emirates. In March 1986, agreement was reached on a reduction of the amount of compensation from Dh3 million to Dh1.5 million (£266 326). These negotiations had been carried out without the involvement of the IOPC Fund.

9.12 On being notified of the incident in February 1986, the Director tried in vain to obtain information from the authorities in the United Arab Emirates. He also sought information from the Skuld Club and some information was given. However, there is still a lack of information on many important points.

9.13 The Director has informed the Skuld Club that the judgement by the Court in the United Arab Emirates is not binding on the IOPC Fund, since the latter had not been notified of the court proceedings in accordance with Article 7.6 of the Fund Convention. In his opinion, it is not clear that this case falls under the Civil Liability Convention and the Fund Convention. It appears that the defendants in the legal proceedings were not any of the persons liable under the Civil Liability Convention, ie the registered owner of the tanker concerned and her insurer. There are many other points where more information is required, for example the factual basis of the claims and the reasonableness of the assessment of the damages.

9.14 The Director has raised these issues with the Skuld Club. A decision as to whether the IOPC Fund is obliged to pay any compensation will be made after these questions have been answered.

## 10 FOLGOET

(France, 31 December 1985)

10.1 The French vessel FOLGOET (14 545 GRT) was loading heavy fuel oil at Donges in the mouth of the River Loire in France. During the loading, 300 tones of heavy fuel oil escaped from a cargo tank through a drain hole and caused light pollution to 60 kilometres of the coast. Damage was caused to fishing grounds for shell-fish and eels.

10.2 Shortly after the incident, the oil entered the heating system of a gas terminal. There was a risk that the terminal would be forced to close, which would have resulted in considerable costs for cleaning and consequential losses. However, the operations of the terminal were not affected, and the terminal only incurred costs for minor cleaning.

10.3 It is estimated that the total claims arising out of this incident (claims for clean-up operations and for losses incurred by fishermen) will not exceed FFr7 million (£650 709). The limit of the owner's liability is approximately FFr14.7 million (£1 366 488). The indemnification of the shipowner, if any, would not exceed about FFr3 675 000 (£341 622).

10.4 During the period immediately following the incident, it appeared that the IOPC Fund would have to make payments to victims and to the shipowner, and the incident was, therefore, included in the 1985 Annual Report. However, in the light of the information

now available, it is very unlikely that the IOPC Fund will have to pay any compensation or indemnification as a result of this incident.

11 BRADY MARIA

(Federal Republic of Germany, 3 January 1986)

11.1 On 3 January 1986 the Panamanian tanker BRADY MARIA (996 GRT) was proceeding up the River Elbe, south of the entrance to the Kiel Canal, with a cargo of 2 000 tonnes of heavy fuel oil destined for Hamburg. At about 4.00 am on that date, the dry cargo ship WAYLINK (3 453 GRT), registered in Gibraltar, which was proceeding down the river, suddenly turned to port across the river and hit the port forward bow of the BRADY MARIA, causing holes in two of the BRADY MARIA's port cargo tanks. Approximately 200 tonnes of cargo oil escaped into the river. The WAYLINK suffered slight denting.

11.2 An official investigation into the cause of the incident is being carried out by the Federal Waterway and Shipping Administration (Wasser- und Schifffahrtsamt). The Director has been informed that the pilot of the WAYLINK was mainly to blame for the incident. It is alleged that the pilot who was drunk gave a wrong order to the helmsman of the WAYLINK, causing the vessel to cross the course of the on-coming BRADY MARIA. A blood test taken after the incident showed that the pilot had an alcohol content of 2.03 ppm. Since he is at present undergoing treatment in an institution for alcohol addicts, the investigation will not be concluded until late in the autumn of 1986.

11.3 The northern bank of the River Elbe is situated in Schleswig-Holstein, whereas the southern bank lies in Niedersachsen. Pollution was caused on both banks of the river. Initially, the spilt oil caused only local pollution on the muddy beaches of the southern bank of the Elbe. Because of the very low temperature, the spilt oil weathered very quickly and mixed with icy patches and was blown onto a five kilometre stretch of sandy beach east of the River Oste (a tributary of the Elbe) in Niedersachsen. While immediate clean-up operations were hampered by thick fog, the wind changed and blew the oil and the icy patches towards the northern bank of the Elbe, polluting the Schleswig-Holstein coast. Much of the oil was covered by ice and as such was both difficult to see and virtually impossible to recover. The day after the incident, the changing wind sent part of the oil back towards the southern bank of the Elbe, contaminating the shore west of the River Oste down to Cuxhaven. Some oil also drifted up the River Oste. When the temperature rose above freezing point, oil was released from the ice and settled on stone embankments and mud flats. By mid January, the contaminated area stretched along approximately 150 kilometres on both banks of the Elbe and on near-by islands.

11.4 The eastern bank of the estuary of the River Oste is renowned for its nature and bird reserve. It is reported that 2 000 - 3 000 birds died as a result of the incident. The west

bank of the River Oste consists of mud-flats with grassland and stone embankments. Behind this submersible land there are dykes several metres high. Most parts of the coast in Niedersachsen are left in their natural habitat, with the exception of a few kilometres near Otterndorf which is used as a camp site and swimming area. The Schleswig-Holstein side of the Elbe is mainly composed of similar mud-flats and grassland. Many areas along the northern bank are used as grazing land for cattle.

11.5 On being notified of the incident, the Federal Waterway and Shipping Administration at Cuxhaven mobilised its anti-pollution vessels. On 3 January, a ship was engaged for the trans-shipment of the cargo oil on board the BRADY MARIA. From 5 January, five vessels with special equipment were dispatched to collect drifting oil. However, it soon became clear that the mixture of ice and weathered oil was too viscous to be sucked into the pumps on board these vessels. In view of the very limited efficiency of the vessels, the German authorities agreed, after discussions with the IOPC Fund expert, to withdraw them on 9 January. From that date, there were no off-shore clean-up operations, except for very limited oil removing operations.

11.6 The on-shore clean-up operations on the Schleswig-Holstein coast were carried out on behalf of the authorities by a private company. The operations lasted from 5 January till 21 February.

11.7 On the Niedersachsen side, there was no single body responsible for the operations which were carried out by various authorities operating individually, and there was some lack of co-ordination. By the end of January, the shore clean-up on the Niedersachsen side was nearly completed, the only remaining task being the washing of the stones on the embankment between Cuxhaven and the Oste estuary.

11.8 The German authorities intended to remove the oily patches from the stones and the oil deposits from underneath the stone embankment, to prevent oil being released into the water as the temperature rose. On the advice of marine biology experts, the Director strongly urged the German authorities not to use extensive mechanical or chemical methods which would be more harmful than beneficial to the sensitive balance of the ecosystem.

11.9 In April 1986 an inspection was carried out jointly by the IOPC Fund and the German authorities in sensitive areas in Niedersachsen between Cuxhaven and the River Oste. As a result, agreement was reached on the extent of further clean-up operations in certain areas, ie the yacht harbour of Cuxhaven, two kilometres of stone embankment on the east bank of the River Oste of particular importance as a bird and nature reserve, and two kilometres of stone embankment close to a camp site and along a swimming area near Otterndorf.

11.10 Regarding the polluted stone embankment by the camp site near Otterndorf, it was agreed that the extent of the cleaning and the method to be used would be decided after an experiment had

been made as to the effectiveness and the impact on the environment of such cleaning. The experiment was carried out in late May in the presence of experts in marine biology and clean-up technology, employed by the IOPC Fund for that purpose. As a result of this experiment, it was agreed that, in order to avoid damage to marine life, the clean-up operations should be confined to certain clearly defined areas where members of the public needed to cross the tidal zone. The clean-up operations were carried out by means of scrubbing and washing, and the work was completed by the middle of June.

11.11 Farmers in Schleswig-Holstein had informed the Director that their sheep had been contaminated by oiled reeds while grazing in early spring. After an inspection by the IOPC Fund's surveyor, work was carried out to remove the oiled reeds from the meadows. The sale of the polluted wool was closely monitored by the surveyor. In the end, the farmers suffered no loss, and no claims were filed by them.

11.12 The limitation amount of the BRADY MARIA under the Civil Liability Convention is DM324 629.47 (£96 187). The limitation fund for the BRADY MARIA was established at the Hamburg District Court (Amtsgericht) in May 1986. The period for filing claims against the limitation fund expired on 26 August 1986, and the examination of such claims will be made by the Court on 21 October 1986.

11.13 Claims have been submitted by the Federal Waterway and Shipping Administration on behalf of the Federal Government, the Länder and some local authorities. These claims relate to clean-up operations carried out by the German authorities. In addition, two claims have been submitted by private claimants for cleaning of vessels polluted by oil.

11.14 The claims can be summarised as follows:

	<u>Amount Claimed</u>	
		DM
Federal Waterway and Shipping Administration		
On-shore clean-up in Schleswig-Holstein	1 548 224.66	
On-shore clean-up in Niedersachsen	1 328 833.06	
Off-shore clean-up by Federal Waterway and Shipping Administration	<u>733 263.67</u>	
		3 610 321.39
Private Claimants		
Tankrode Shipping Company	1 333.57	
German Association for the Salvage of the Shipwrecked	<u>85.80</u>	
		<u>1 419.37</u>
Total		<u>3 611 740.76</u>
		(£1 070 145)

11.15 It is possible that some additional claims for small amounts will be filed by private claimants.

11.16 The claim documents for this incident have been submitted in successive sets since the beginning of March this year, the last set of documents having been received in the beginning of August. After the documents had been examined by the Director and the IOPC Fund's surveyor, discussions were held with the German authorities in April and August 1986.

11.17 At the time of drafting this document, negotiations have not been concluded. The Director hopes that agreement on the claims, or at least on the major part of these, will be reached with the German authorities in the very near future. The Director will report to the Executive Committee at its 16th session on the developments in these negotiations.

11.18 A limitation fund for the WAYLINK was established at the District Court of Hamburg in January 1986. The limitation fund amounts to DM440 185.05 (£130 425). Claims totalling DM6.9 million (£2 million) have been filed against this limitation fund. The German authorities have submitted a claim for oil pollution damage amounting to DM3.6 million. The IOPC Fund has filed a claim in subrogation for an estimated amount of DM5 million (£1.5 million); this claim (which includes the amount claimed by the German authorities) had to be submitted in May 1986 before the exact amount of the claims against the IOPC Fund was known. The other claims relate to damage caused to the hull of the BRADY MARIA (DM1.6 million) and loss suffered by the owner of the cargo of that vessel (DM329 000).

11.19 However, the P & I insurer of the BRADY MARIA, the British Marine Mutual Insurance Association, has instituted recourse proceedings in Gibraltar against the owner of the WAYLINK, for the purpose of breaking the owner's limitation. A writ has been served on the owner, and the Gibraltar Court has accepted jurisdiction in the case. Consequently, limitation proceedings in respect of the WAYLINK are going on both in Hamburg and in Gibraltar.

11.20 The reason for this action taken by the insurer of the BRADY MARIA is the difference that exists between German law and the law in Gibraltar concerning the burden of proof in limitation proceedings. It appears that, under the law in Gibraltar, a shipowner who wishes to limit his liability must prove the absence of fault or privity. Under German law, however, the person who challenges the owner's right to limit his liability has to prove that the incident was caused by the fault or privity of the shipowner. The law in Gibraltar is thus more favourable to the plaintiff in this regard.

11.21 The question then arose as to whether the IOPC Fund should initiate recourse actions against the owner of the WAYLINK in Hamburg or in Gibraltar. Since the incident occurred in the Federal Republic of Germany and the pollution damage was suffered



in that country, the Director decided that the IOPC Fund should take action against the owner of the WAYLINK in the Court of Hamburg.

11.22 The Director considered it necessary to bring an action against the owner of the WAYLINK, challenging his right to limit his liability, in order to safeguard the IOPC Fund's rights, pending the result of the investigation into the cause of the incident (cf paragraph 11.2 above). As the IOPC Fund had not paid any compensation before the expiry of the time period for bringing such an action, it was not entitled to institute this action itself. However, the German authorities complied with a request from the Director to bring an action in the Hamburg Landesgericht for such purpose.

11.23 It should be mentioned that under German law a pilot is entitled to limit his liability and is covered by the shipowner's limitation amount, unless the incident was caused by him intentionally or recklessly and with knowledge that damage would probably result. Even if it were possible to break the pilot's limitation in this case, this would not be of any real advantage to the IOPC Fund, as it is unlikely that the pilot would be able to pay any significant amount in compensation. The Director has decided, therefore, not to take any action against the pilot of the WAYLINK. The Director has been advised that under German law there is no public authority which has general liability for damage caused by the acts of pilots. The German authority competent for the licensing of pilots has stated that it did not know that this pilot had an alcohol problem.

12        TAKE MARU N°6  
          (Japan, 9 January 1986)

12.1 While loading cargo oil at a refinery in Sakai-Senboku Port, Japan, on 9 January 1986, the Japanese tanker TAKE MARU N°6 (83 GRT) spilled some of her cargo. The oil escaped from a manhole in a port-side tank, because its valve had not been tightly closed.

12.2 It is estimated that 0.1 tonnes of cargo oil escaped on to the deck, and some of the oil spilled into the sea because of the heavy rolling of the vessel. Due to the strong wind, the spilt oil began spreading over nearby waters, polluting tetrapods in front of the wharf. Oil fences were quickly deployed to prevent the oil from spreading widely. The clean-up operations were carried out over several days.

12.3 Claims were lodged for clean-up costs and costs of replacing severely damaged booms. The claims totalled ¥3 088 770 (£12 318). Following the advice of the IOPC Fund's surveyor, the Director agreed in July 1986 to settle these claims at ¥3 012 479 (£12 014). There are no fishery claims.

12.4 The limit of the shipowner's liability under the Civil Liability Convention is approximately ¥2 million (£8 000). However, an exact calculation of the limitation amount cannot be made due to the lack of some data in the tonnage certificate. The measurement of the tonnage will be made when the vessel is dry-docked in April 1987.

12.5 In order to avoid delay in the payment to claimants, the Director agreed with JPIA that the latter should pay the accepted amount of the claim; that amount was paid in July 1986. The IOPC Fund will reimburse its share of that amount to JPIA when the figure for the owner's liability under the Civil Liability Convention has been established.

12.6 Indemnification of the shipowner, estimated at a ¥500 000 (£1 994), will be paid when the owner's limitation amount is established.

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