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OIL POLLUTION
COMPENSATION
FUND

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Agenda item 3

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INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS

Note by the Director

1 Introduction

Since the issuance of document FUND/EXC.18/4, further developments have taken place with regard to the JOSE MARTI, EIKO MARU N°1, JAN, BRADY MARIA, TAKE MARU N°6, OUED GUETERINI and THUNTANK 5 incidents. There has also been a new incident, the AKARI incident, which occurred in the United Arab Emirates on 25 August 1987.

2 JOSE MARTI

(Sweden, 7 January 1981)

All fees and expenses arising out of this incident have now been paid. The total payments by the IOPC Fund in respect of fees and travel expenses amount to £11 751.

3 EIKO MARU N°1

(Japan, 13 August 1983)

3.1 As reported in paragraph 4.1 of the Annex to document FUND/EXC.14/4, the claims for pollution damage arising out of this incident were settled at an aggregate amount of ¥64 181 029 (£276 050). In March 1984, the IOPC Fund made a payment of ¥26 258 399 (£81 447), representing the total sum of the agreed claims minus the shipowner's liability plus the IOPC Fund's share of the surveyor's fees. Indemnification of the shipowner, amounting to ¥9 861 480 (£32 018), was paid in May 1985.

3.2 Agreement has now been reached between the CAVALRY interests and the EIKO MARU N°1 interests, including the IOPC Fund, on an apportionment of liability at 41:59 in favour of the CAVALRY interests. The amount to be recovered from the owner of the CAVALRY for pollution damage is ¥28 million, of which the IOPC Fund will receive ¥14 843 746 (£63 845).

3.3 The calculation of the total damage and the respective shares of liability for the IOPC Fund and the shipowner are as follows:

	<u>Total</u>	<u>Shipowner's</u> <u>Share</u>	<u>IOPC Fund's</u> <u>Share</u>
	¥	¥	¥
Clean-up Costs	60 181 029	36 987 504	23 193 525
Fishery Damage	4 000 000	2 458 416	1 541 584
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Total Third Party Claims	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
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Total Payments	68 133 519	32 013 640	36 119 879
Recovery from CAVALRY	- 28 000 000	- 13 156 254	- 14 843 746
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	40 133 519	18 857 386	21 276 133
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3.4 The lawyer's fees have not yet been paid.

4 JAN

(Denmark, 2 August 1985)

4.1 As reported in paragraph 4.10 of document FUND/EXC.18/4, agreement was reached in April 1987 regarding a number of items of the claim made by the Danish authorities. Further discussions have been held with the Danish authorities in September 1987 and at a meeting on 1 October 1987. Considerable progress has been made, but so far no final settlement has been reached in respect of the outstanding items.

4.2 A farmer submitted a claim amounting to DKr18 575 (£1 675) which related to the repair of a private road. This claim was accepted by the IOPC Fund and the Skuld Club and paid by the Skuld Club in September 1987.

5 BRADY MARIA

(Federal Republic of Germany, 3 January 1986)

5.1 As set out in paragraph 6.5 of the Annex to document FUND/EXC.18/4, agreement had been reached between the IOPC Fund and the German authorities in respect of the majority of the items of their claim, which were settled at an aggregate amount of DM2 767 873.77 (£944 000). In September 1986, the Director had set out in writing the position of the IOPC Fund in respect of the outstanding items. After the German authorities had indicated their position on these items on 8 September 1987, further negotiations took place and a final settlement was reached on 17 September 1987.

5.2 The outstanding items, totalling DM867 457.01 (€296 010), related in particular to the use of certain oil combating vessels, the tariffs applied in respect of certain vessels owned by public authorities and costs of permanent staff of public authorities carrying out work in connection with the incident.

5.3 The claims under these items partly relate to costs which would have arisen for the German authorities even if the incident had not occurred, hereinafter referred to as "fixed costs", as opposed to "additional costs", ie expenses incurred solely as a result of the incident and which would not have been incurred had the incident and the operations relating thereto not taken place.

5.4 The question of the admissibility of claims for compensation for fixed and additional costs was discussed within the IOPC Fund by the fifth Inter-sessional Working Group in 1981. The Working Group agreed that additional costs were always recoverable under the Civil Liability Convention and the Fund Convention, whereas the Group could not reach unanimity on the question of the admissibility of fixed costs. Most delegations agreed that a reasonable proportion of fixed costs should be recoverable, since it was in the interest not only of the particular State but also of the IOPC Fund that a State maintained a response force in order to be able to respond quickly and cheaply in the event of a spill. If the clean-up operations were left entirely to private firms, this would exclude fixed costs from the bill to the IOPC Fund but it would mean, in the Working Group's view, that the additional costs would be much higher, possibly even higher than if the clean-up operations had been carried out by the State employees with fixed costs included in the bill. The Working Group agreed that in the calculation of the relevant fixed costs only those expenses which correspond closely to the clean-up period in question and which do not include remote overhead charges should be included (document FUND/A.4/10, Annex, paragraph 23).

5.5 At its 4th session, the IOPC Fund's Assembly took note of the information contained in the report of the Working Group and generally endorsed the results of the Working Group's discussions. The Japanese delegation reserved its position on the inter-relationship between fixed and additional costs (document FUND/A.4/16, paragraph 13).

5.6 The results of the discussions of the Working Group must be regarded as defining the policy of the IOPC Fund with regard to additional and fixed costs. In the negotiations with the German authorities in connection with the BRADY MARIA incident, the Director based his approach on the position taken by the Working Group. In particular, the Director insisted that only those expenses which corresponded closely to the clean-up period in question and did not include remote overhead charges should be compensated. The Director also pointed out that the acceptance by most participants of the Inter-sessional Working Group of certain fixed costs was based on the assumption that it would normally be cheaper to have an efficient public force to deal with oil spill incidents than having to rely entirely on private contractors. On

the other hand, if clean-up operations carried out by the public authorities were more expensive than operations undertaken by private contractors would have been, it could be questioned, in the view of the Director, whether the position taken by the Working Group to accept certain fixed costs ought to be maintained.

5.7 In view of the arguments put forward by the Director, the German authorities agreed to reduce their claim in respect of a number of items to amounts which the Director considered to be reasonable. The settlement in respect of the outstanding items can be summarised as follows:

<u>Item</u>	<u>Claimed</u>	<u>Agreed</u>
	DM	DM
Costs of vessels	624 448.01	499 270.42
Administration costs	188 878.60	136 630.06
Helicopter surveillance	24 832.40	18 362.35
Miscellaneous	29 298.00	25 700.00
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Total	867 457.01	679 962.83
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	(£296 010)	(£232 030)

5.8 Agreement was also reached on the payment of interest at a rate of 6.5% pa, to be calculated for the period 1 July to 9 October 1986 on the amount paid by the IOPC Fund on the latter date, and for the period 1 August 1986 to 5 October 1987 on the remaining amount. The interest payable totals DM96 217.74 (£32 830).

5.9 The total amount of the claim submitted by the German authorities, including interest, as accepted by the IOPC Fund, was DM3 544 054.34 (£1 209 368). In October 1986 the IOPC Fund paid DM2 443 244.30 (£846 438) to the German authorities, representing the total of the accepted items minus the shipowner's limitation amount. The remaining amount to be paid by the IOPC Fund was thus the sum of the outstanding items (DM679 962.83) plus the agreed interest (DM96 217.74), viz DM776 180.57 (£259 488); this amount was paid on 5 October 1987.

5.10 In the Annex to document FUND/EXC.18/4 (paragraphs 6.5 and 6.11), it was mentioned that there were two private claimants, Tankrode Shipping Company and the German Association for the Salvage of the Shipwrecked. The claim by the Tankrode Shipping Company, originally in the amount of DM1 333.57, was reduced to DM1 000 during the limitation proceedings, and that amount was paid by and subrogated by WSD. The reduced claim was accepted by the Director. The claim for DM85.80 submitted by the above-mentioned Association was also accepted by the Director. It was agreed that the claim should be paid by WSD, and that the latter would then be reimbursed by the IOPC Fund. These reimbursements, totalling DM1 085.80 (£363), were also made on 5 October 1987.

5.11 The final settlement of all claims arising out of this incident is set out in the following table:

<u>Claimant</u>	<u>Claimed</u>	<u>Agreed</u>
	DM	DM
German authorities: Principal	3 637 429.85	3 447 836.60
Interest	96 217.74	96 217.74
Private claimants	1 419.37	1 085.80
	3 735 066.96	3 545 140.14
<u>Minus</u> Owner's limitation amount		- 324 629.47
Total amount payable by IOPC Fund		3 220 510.67
		(£1 106 289)

5.12 So far the IOPC Fund has incurred expenses totalling £37 369 relating to surveyors' fees, lawyers' fees and travelling costs. It is estimated that a further £40 000 will be paid in fees.

5.13 In view of the final settlement of all claims for oil pollution damage to be paid by the IOPC Fund, the IOPC Fund has reduced its claim against the WAYLINK limitation fund to DM3 220 510.67 (£1 106 289) (cf document FUND/EXC.18/4, Annex, paragraph 6.14). The total claims against this limitation fund now stand at approximately DM5.1 million. It is estimated that the IOPC Fund will recover approximately DM272 000 (£92 815), when this limitation fund is distributed.

5.14 As previously reported (document FUND/EXC.18/4, Annex, paragraph 6.15), the IOPC Fund has taken action against the owner of the WAYLINK, challenging his right to limit his liability. The Director will decide whether or not to pursue this action once a decision has been rendered in respect of the appeal made by the pilot of the WAYLINK in the administrative proceedings against him.

5.15 With regard to the question of a possible liability of the German authorities in this case for the acts of the pilot of the WAYLINK (document FUND/EXC.18/4, Annex, paragraph 6.13), the Director has come to the conclusion that, in view of the position of German law, it would not be meaningful to pursue any action on that basis against any authority for the purpose of recovering the amounts paid by the IOPC Fund in compensation for oil pollution damage.

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

6.1 On the basis of the measurement of the vessel's tonnage, which was made in July 1987 (cf document FUND/EXC.18/4, Annex, paragraph 7.3), the limitation amount was fixed at ¥3 876 800

(£16 675), ie at an amount exceeding the aggregate amount of the claims as settled, ¥3 012 479 (£13 000). The IOPC Fund will thus not be obliged to pay any compensation under Article 4 of the Fund Convention in respect of this incident.

6.2 The indemnification of the shipowner amounts to ¥104 987 (£446). This sum was paid on 24 September 1987.

6.3 With regard to incidents occurring in Japan in which the IOPC Fund is involved, JPIA and the IOPC Fund normally share the costs for surveyors and lawyers arising out of the particular incident. However, since the IOPC Fund in this case is not liable to pay any compensation for oil pollution damage under Article 4 of the Fund Convention, any costs for surveyors and lawyers will be borne by JPIA alone (cf Memorandum of Understanding between JPIA and the IOPC Fund, paragraph 8; document FUND/EXC.16/6, Annex).

7 OUED GUETERINI

(Algeria, 18 December 1986)

7.1 In September 1987, the owner of the power station, SONEGGAZ, brought legal action against the UK Club and the IOPC Fund in the Court of Algiers. Since there is some uncertainty as to the procedure to be followed, the limitation fund has not yet been established.

7.2 The claim submitted by SONEGGAZ to the Court stands at 4 902 579.48 Dinars (£655 425).

8 THUNTANK 5

(Sweden, 21 December 1986)

8.1 The attempts made by the Coast Guard in August 1987 to recover the sunken oil (cf document FUND/EXC.18/4, Annex, paragraph 9.4) were more successful than the corresponding operations in May, and several tonnes were recovered. The operations were terminated on 31 August 1987.

8.2 Small quantities of the sunken oil resurfaced in late August and early September 1987, polluting some areas of the coastline, and further clean-up operations became necessary. This oil also caused further damage to fishery equipment.

8.3 The clean-up operations on the coast were completed in late September 1987. However, if more oil resurfaces and reaches the coast, the operations may have to be resumed.

8.4 In September 1987, the Swedish Government took legal action against the owner of the THUNTANK 5 in the City Court of Stockholm for the purpose of obtaining compensation for pollution damage. The aggregate amount of the damage was provisionally indicated at SKr27 million (£2.6 million). The IOPC Fund was notified of the

action in accordance with Article 7.6 of the Fund Convention. The limitation fund has not yet been established, but the limitation amount of the shipowner's liability is estimated at SKr2.7 million (£264 000).

8.5 Claims totalling SKr49 737 (£4 865) have been submitted by six fishermen and two other private claimants. They relate to compensation for destroyed equipment, costs of cleaning polluted equipment and loss of income due to polluted catches. These claims have been examined by the IOPC Fund's Secretariat with the assistance of a surveyor. In the opinion of the Director, these claims are in general acceptable. The Skuld Club shares this view. However, certain items have been questioned and the examination of these items has not yet been completed. It is possible that further claims will be submitted by other private claimants.

8.6 The aggregate amount of the damage is likely to exceed 25 million (gold) francs or 1.67 million SDR (SKr13.9 million or £1.4 million), the limit of the Director's authority to make binding settlements, as laid down in Internal Regulation 8.4.1. The Director is unable, therefore, to make any binding settlement in respect of claims arising out of this incident without the prior approval of the Executive Committee.

8.7 The Director considers it important that claims from fishermen and other private claimants should be settled and paid rapidly. For this reason, he proposes that the Executive Committee should authorise him, pursuant to Internal Regulation 8.4.2, to settle claims from private claimants up to an aggregate amount of SKr400 000 (£39 110).

9 AKARI

(United Arab Emirates, 25 August 1987)

9.1 While outside Dubai, United Arab Emirates, on 24 August 1987, the Panamanian coastal tanker AKARI (1 345 GRT) had a switchboard fire resulting in a loss of electrical power and main engines. The ship took in water and was towed towards the port of Jebel Ali, where she was refused entry. The AKARI was then towed along the coast. As the vessel was listing badly, she was beached to the east of Jebel Ali port with tug assistance. In the period before subsequent refloating with tugs, approximately 1 000 tonnes of her cargo of heavy fuel oil escaped. The remaining cargo was transferred to another vessel before the AKARI was towed back to the port of Jebel Ali.

9.2 It is estimated that 25 - 30 kilometres of the coast were polluted as a result of the incident. Clean-up operations at sea were undertaken by the Dubai Petroleum Company and the Coast Guard. Booms were deployed to protect the water intakes of a power station and an aluminium plant. Both plants provide desalinated water for Dubai, and some contamination which required

clean-up inside the plants was reported. However, no contamination of desalinated water occurred and the plants remained operational. On-shore clean-up was undertaken by the local authorities and continued over a period of some five weeks. Certain anti-pollution measures may have been undertaken by the company which salvaged the AKARI.

9.3 No claims have so far been submitted to either the shipowner or his P & I insurer (the Shipowners' Mutual Protection and Indemnity Association Ltd), or to the IOPC Fund.

9.4 The limitation amount of the shipowner's liability under the Civil Liability Convention is estimated at approximately £115 000.

10 Action to be Taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
 - (b) to take a decision on the Director's request for authorisation to settle certain claims arising out of the THUNTANK 5 incident (paragraph 8.7).
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