



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
20th session
Agenda item 3

FUND/EXC.20/2
20 September 1988

Original: ENGLISH

INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS
(TANIO INCIDENT)

Note by the Director

1 Introduction

1.1 The TANIO incident, which occurred off the coast of Brittany (France) on 7 March 1980, is the most important and also the most complicated case in which the IOPC Fund has been involved. All claims arising out of this incident have now been settled. Part payments totalling FFr221 201 452 were made to claimants in the period 1983 - 1985. A further amount of FFr939 191 is payable to claimants by the IOPC Fund, and it is expected that the IOPC Fund will make final payments to all claimants before the 20th session of the Executive Committee. The legal action which the IOPC Fund, together with the French Government, had taken in France against the owner of the TANIO and other third parties was settled out of court in December 1987. Apart from the distribution to contributors of the balance on the TANIO major claims fund and the above-mentioned final payments, there are no outstanding issues arising out of this incident.

1.2 In view of the importance of this case, it has been considered appropriate to recapitulate its major aspects in this document. The developments that have taken place since the 18th session of the Executive Committee are also set out herein. An appraisal of the experience gained from this case has been presented in document FUND/EXC.20/5.

2 The Incident

The Malagasy tanker TANIO (18 048 GRT), carrying 26 000 tonnes of N°6 fuel oil, broke amidship in heavy weather conditions off the coast of Brittany, France. The master and seven other crew members were killed as a result of the incident. About 13 500 tonnes of cargo oil spilled from the wreck. More than 200 kilometres of the Brittany coast were polluted by the spilt oil; the Channel Islands were also affected. The stern section, with about 7 500 tonnes of cargo aboard, remained afloat and was towed to the port of Le Havre. The bow section, with about 5 000 tonnes of cargo oil on board, sank to a depth of 90 metres. The oil contained in the sunken bow section was pumped out in order to prevent further pollution from the wreck.

3 Claims Settlement

3.1 Claims for compensation were submitted to the IOPC Fund by nearly 100 claimants, totalling FFr527 million (£50 million <1>). The claim submitted by the French Government accounted for more than 90% of that amount. This claim related to expenses for pumping the oil from the sunken bow section, costs of clean-up operations and compensation paid by the Government to private persons for loss of earnings. Claims from local authorities related to costs of clean-up work, road repairs, beach restoration and the loss of earnings of municipal camping sites. Private persons submitted claims for loss of earnings in their business. The shipowner's P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (the UK Club), claimed for expenses incurred for a survey of the sunken fore section and for a provisional sealing of holes in the wreck.

3.2 After long and difficult negotiations, the Director reached agreement on the quantum of each of the claims. These agreements were approved by the Executive Committee at various sessions. In respect of some claims, the Director was given the authority to conclude binding agreements on behalf of the IOPC Fund without the prior approval of the Committee. These claims were then settled by the Director, as authorised. For details of the claims and the settlements, and of the decisions of the Executive Committee at previous sessions relating thereto, reference is made to documents FUND/EXC.6/3/Add.1, FUND/EXC.6/3/Add.3, FUND/EXC.6/4 paragraph 4, FUND/EXC.7/2 paragraph 5, FUND/EXC.7/2/Add.1 paragraph 3, FUND/EXC.7/3 paragraph 3, FUND/EXC.9/3, FUND/EXC.9/4 paragraph 3, FUND/EXC.10/2, FUND/EXC.10/5 paragraph 3.3, FUND/EXC.10/WP.1, FUND/EXC.11/2, paragraph 4, FUND/EXC.12/2 and FUND/EXC.14/2 paragraphs 2 and 3.

3.3 At the time of the 18th session of the Executive Committee, there was only one claim in respect of which a settlement had not been reached. This claim was presented in 1980 by an association of French fishermen, l'Association des marins pêcheurs victimes des marées noires de l'AMOCO CADIZ et du TANIO, in the amount of FFr500 000. However, no explanation or documentation was submitted in support of this claim. After lengthy discussions between the Director and the lawyer representing this claimant, the claim was withdrawn in March 1988 and the action taken by this claimant against the IOPC Fund in the Court of Brest was also withdrawn. As a result, there are no claims outstanding against the IOPC Fund.

3.4 The total amount of the claims accepted by the IOPC Fund is approximately FFr348 million (£33 million). Since that amount exceeds the compensation available under the Civil Liability Convention and the Fund Convention (FFr244 746 000), each claimant will recover only about 63% of the agreed quantum.

<1> The conversion of French francs into Pounds Sterling in this document of amounts actually paid is at the rate of exchange on the date of payment; in respect of other amounts, the rate applicable on 27 June 1988 has been used.

3.5 It should be noted that the amounts claimed against the IOPC Fund by many of the claimants exceeded the amounts at which settlements were made. For example, the French Government had assessed its total damage at FFr489 820 401, whereas in the settlement between the IOPC Fund and the French Government only an amount of FFr326 921 937 was accepted by the Fund. However, the agreements on the amounts between the IOPC Fund and the various claimants were reached for the purpose of distributing the money available under the Fund Convention, in the interest of a speedy settlement, without prejudice to each claimant's right to claim beyond the amount accepted by the IOPC Fund against the owner of the TANIO and other third parties.

3.6 A difficult situation would have arisen if the Director had not been able to reach agreement relatively rapidly as to the quantum of almost all but a few claims relating to minor amounts. If this had not been the case, it would have been difficult, or perhaps even impossible, to make any part payments until the contested claims had been established by the courts. This is due to the fact that the aggregate amount of the claims far exceeded the total amount available under the Conventions, and it would not have been possible to establish with any degree of accuracy the proportion of the claims which could be compensated, if major claims had still been outstanding.

4 The Shipowner's Limitation Fund

4.1 In the TANIO case, the limit of the shipowner's liability under the Civil Liability Convention was FFr11 833 717.79 (£1.1 million). The UK Club established the limitation fund under that Convention in April 1980 by paying this amount to the Court in Brest (Tribunal de Grande Instance). The Court appointed a liquidator of the limitation fund, who invested the amount deposited by the Club.

4.2 In September 1984, the liquidator of the limitation fund made a first distribution of the fund, amounting to FFr19 147 973. Out of this amount, FFr17 980 707 was paid to the French Government, FFr489 873 to local authorities in France, FFr420 056 to the UK Club and FFr257 337 to private claimants in France. An amount was reserved for the final distribution of the fund, since not all claims had been settled by the time of the first payment. A second distribution of FFr98 937 was made in March 1987 to some of the claimants.

4.3 The limitation fund reserve was earning interest at market rate until 1 March 1988. The total amount of interest earned on the investment of the limitation fund was FFr10 979 188.82. The aggregate amount available for distribution under the Civil Liability Convention was, therefore, FFr11 833 717.79 plus FFr10 979 188.82, ie a total of FFr22 812 906.61.

4.4 In connection with the final distribution of the limitation fund, a problem arose concerning the payment of the fees and expenses incurred for the administration of that fund. This issue was of interest to the IOPC Fund since it had an impact on the maximum amount to be paid by the Fund. The question was whether these fees and costs should be paid from the limitation fund or by the UK Club, the party which had established the fund. The French legislation dealing with maritime limitation funds is silent on this point. It was argued that, by analogy with French bankruptcy law, these fees and costs should be paid from the assets of the limitation fund. As a compromise, in view of the

legal uncertainty that exists, the UK Club agreed to pay half of the liquidator's fee, ie FFr175 000, while the other half of his fee, as well as a small amount in respect of other costs (FFr32 550), should be paid from the limitation fund. In the view of the Director, this was a reasonable compromise, and for this reason the Director did not oppose this solution.

4.5 An amount of FFr207 550 was thus paid from the limitation fund in respect of fees and costs. The aggregate amount available for payment to claimants in compensation for pollution damage was, therefore, FFr22 812 906.61 less FFr207 550, ie a total of FFr22 605 356.61.

4.6 The final distribution of the limitation fund took place in May 1988, when an amount of FFr3 358 446.19 was paid to the claimants. A summary of the payments made from the limitation fund to the claimants is given in Annex I to the present document.

5 Payments by the IOPC Fund

5.1 The aggregate amount of compensation payable by the IOPC Fund in respect of any one incident was, at the time of the TANIO incident, 675 million (gold) francs (corresponding to 45 million SDR), less the amount actually paid under the Civil Liability Convention for pollution damage. The amount of 675 million (gold) francs was established pursuant to Article 4.4(a) of the Fund Convention and the decision taken by the IOPC Fund Assembly at its 2nd session in accordance with Article 4.6.

5.2 The Fund Convention does not specify the date on which the conversion of the amount of 675 million (gold) francs into national currency should be made. This problem was discussed by the Executive Committee at its 6th session. The Committee was then informed that an agreement had been reached between the Director, on one side, and the French Government, the UK Club and the Channel Islands, on the other, to the effect that the method of conversion laid down in Internal Regulation 2 should be applied (ie that 15 (gold) francs are equal to 1 SDR), and that the relevant date was the day of the constitution of the limitation fund under the Civil Liability Convention. The limitation fund was established with the Court of Brest on 29 April 1980. The value of the SDR in French francs on that day was 5.4388; consequently, the amount of 675 million (gold) francs or 45 million SDR corresponds to FFr244 746 000 (documents FUND/EXC.6/3/Add.1, paragraph 4 and FUND/EXC.6/4, paragraph 4.4). No objection to this method of conversion was raised by other claimants.

5.3 The total amount of compensation payable by the IOPC Fund in respect of this incident is FFr244 746 000.00, less the sum actually paid under the Civil Liability Convention for pollution damage, in accordance with Article 4.4(a) of the Fund Convention. Of the total amount of FFr22 812 906.61 available for distribution from the shipowner's limitation fund, FFr207 550 was used for the payment of fees to the liquidator of the fund and of other costs incurred in the administration of the fund, as set out in paragraphs 4.4 and 4.5 above. The total sum paid in compensation for pollution damage under the Civil Liability Convention amounts to FFr22 605 357. The amount of compensation to be paid by the IOPC Fund is, therefore, FFr244 746 000 less the total amount of FFr22 605 357 paid to claimants from the limitation fund, ie FFr222 140 643.

5.4 The calculation of the amount to be paid by the IOPC Fund can be summarised as follows:

	FFr	FFr	FFr
IOPC Fund's limit			244 746 000
Limitation Fund: Amount deposited by UK Club	11 833 718		
Interest accrued	<u>10 979 189</u>		
	22 812 907	22 812 907	
Liquidator's Fees		<u>- 207 550</u>	
Compensation under the Civil Liability Convention		22 605 357	<u>22 605 357</u>
Total compensation payable by IOPC Fund			
= IOPC Fund limit - compensation under the Civil Civil Liability Convention			<u>222 140 643</u>

5.5 Part payments were made by the Fund in the period 1983 - 1985 totalling FFr221 201 452 (£18.2 million). Of this amount, FFr208 134 552 was paid to the French Government, FFr5 468 892 to local authorities in France, FFr4 679 742 to the UK Club, FFr2 846 703 to private claimants in France and FFr71 563 to the Port Autonome du Havre.

5.6 At the time when the question of part payments was considered by the IOPC Fund in 1983, it was not known when the final distribution of the limitation fund would take place, and thus it was not possible to determine the total amount that would be distributed from that fund. The Director could not establish at that time the amount which the IOPC Fund should pay to claimants, but he estimated that the limitation fund would not grow beyond FFr30 million. The decision as to the amount available for part payments was based on this assumption (document FUND/EXC.12/2, paragraphs 4.2 and 4.3).

5.7 Since the shipowner's limitation fund has been distributed, a final distribution can be made by the IOPC Fund of the remaining amount payable by the latter to the claimants, FFr939 191. It is expected that this amount will be distributed before the 20th session of the Executive Committee.

5.8 The total amount actually paid by the IOPC Fund in compensation will be FFr221 201 452 plus FFr939 191, ie a total of FFr222 140 643 (£18 347 127), which corresponds to the maximum amount payable under the Fund Convention in respect of this incident, as set out in paragraphs 5.3 and 5.4 above.

5.9 As mentioned in paragraph 6.15 below, the UK Club had, in the out-of-court settlement in the recourse action in the Court of Brest, waived its rights to any further payments from the IOPC Fund. As a result, the UK Club's share of the final payment will be distributed to the other claimants.

5.10 The amounts accepted by the liquidator of the limitation fund and those accepted by the IOPC Fund differ in respect of six claimants (viz, two local authorities, the UK Club, the shipowner and two private claimants). The discrepancies relating to the two local authorities resulted from the fact that their respective claims against the limitation fund were submitted at a time when the precise amounts of the claims were not yet available, and so estimates were used. Their claims against the IOPC Fund were amended when the precise figures were known, and the amounts accepted by the IOPC Fund were somewhat

higher than those accepted by the liquidator. In the case of the UK Club's claim, the discrepancy arose from a difference in the conversion method applied to one payment made by the Club to a contractor; the amount accepted by the IOPC Fund was based on the conversion of the actual dollar expenditure made by the UK Club, whereas the figure accepted by the liquidator was based on the contractor's invoice in Pounds Sterling (which had not then been paid by the UK Club), and the amount of the invoice was converted directly into French Francs. The owner of the TANIO did not submit any claim against the IOPC Fund, whereas a claim was presented by the shipowner to the liquidator of the limitation fund and was accepted by him. One private claimant who submitted his claim against the limitation fund before the expiry of the period of prescription did not observe that period for presenting his claim against the IOPC Fund. This claim was accepted by the liquidator of the limitation fund but was rejected by the Director. Finally, there is a small difference in the accepted amounts in respect of another private claimant, but this was probably due to a typing error in respect of the claim against the limitation fund.

5.11 In view of these discrepancies, the question arose as to how the amount of the final payment by the IOPC Fund to these claimants should be calculated. This question is dealt with in Article 4.5 of the Fund Convention, which governs the case where the amount of the established claims against the IOPC Fund exceeds the aggregate amount of compensation payable under Article 4.4. On this point, there is a discrepancy between the English and French texts which are equally authentic.

5.12 Under the English text, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under the Civil Liability Convention and the Fund Convention shall be the same for all claimants. This text seems to indicate that the distribution should be made in such a way that the total amount received under both Conventions is identical for all claimants. However, if the amounts accepted under the Civil Liability Convention and those accepted under the Fund Convention are not identical in respect of all claims, it is virtually impossible to follow the letter of the English text of this provision.

5.13 The French text provides that the amount available under the Civil Liability Convention and under the Fund Convention shall be distributed pro rata between the claimants on the basis of their established claims ("le montant disponible au titre de la Convention sur la responsabilité et de la présente Convention est réparti au marc le franc entre les demandeurs sur la base des créances établies"). It appears that under the French text the proportional distribution should be made separately in respect of the amount available under each Convention. In the view of the Director, this is the only reasonable way of making the distribution when the established claims under the two Conventions are not identical. The Director has, therefore, distributed the amounts available under the Fund Convention pro rata in proportion to the amount of their claims as accepted by the IOPC Fund, disregarding the fact that different amounts were accepted under the Civil Liability Convention in respect of some claims.

5.14 It should be added that the 1984 Diplomatic Conference which adopted a Protocol modifying the Fund Convention considered that the most appropriate solution would be the one followed by the Director in this instance. The text of Article 4.5 of the Fund Convention was amended accordingly (cf IMO documents LEG/CONF.6/20, page 4 and LEG/CONF.6/21, paragraph 3.4).

5.15 The part payments made by the IOPC Fund to claimants in the period 1983-1985 correspond to 61.37836136% of the agreed claims. However, in respect of the claim presented by the French Government, a further part payment of FFr7 475 225 was made by the IOPC Fund in 1984. It was recognised that this additional part payment could lead to a situation in which the aggregate amount paid by the IOPC Fund exceeded the total amount to be paid by the Fund under the Fund Convention (ie FFr244 746 000 less the amount actually paid under the Civil Liability Convention). The French Government undertook, in such a case, to repay to the IOPC Fund the difference between the amount due to the French Government and the amount received by the latter from the IOPC Fund (document FUND/EXC.12/2, paragraph 4.2). However, as can be seen from the figures given in paragraphs 5.3 to 5.7 above, no such "overpayment" situation will arise. Nevertheless, when, for the purpose of the final distribution by the IOPC Fund, the amounts to be paid to claimants were calculated, this extra part payment to the French Government are taken into account, thus ensuring that all claimants will receive amounts from the IOPC Fund which correspond to the same percentage of their agreed claims.

5.16 A summary of the payments by the IOPC Fund to the claimants is given in Annex II and the amounts paid by the IOPC Fund to individual claimants are set out in Annex III to the present document. The figures given in these Annexes include the payments to be made in the context of the distribution of the remaining amount of FFr939 191.

5.17 As a result of the final payment to be made by the IOPC Fund to claimants, all claimants will have received payments from the IOPC Fund corresponding to 63.8489% of the amount of their respective claim as accepted by the IOPC Fund, with the exception of the UK Club which, as indicated above, waived its rights to its share of the final payment.

5.18 In addition, the payments from the shipowner's limitation fund represented 6.4597% of the amounts accepted by the liquidator. Consequently, the regime of compensation established by the Civil Liability Convention and the Fund Convention will give each claimant (except the UK Club) compensation corresponding to approximately 70.3% of his agreed claim (subject to minor discrepancies with respect to those claims mentioned in paragraph 5.10 above).

6 Legal Action Against the Shipowner and Other Parties

The Legal Action and the Position of the Parties

6.1 In 1983, the IOPC Fund took legal action in the Court of Brest against the following persons for the purpose of recovering the amounts paid by the Fund to the claimants:

- (a) La société Industrie Navale Meccaniche Assini (INMA), the shipyard that repaired the TANIO in 1979;
- (b) La société Locafrance International Leasing (Locafrance), the registered owner of the TANIO at the time of the incident;
- (c) La société Guardiola Shipping Corporation (Guardiola), charterer of the TANIO at the time of the incident;
- (d) La compagnie Malgache de Transports Pétroliers (Petromad), the company having sub-chartered the vessel and being responsible for the management of the TANIO at the time of the incident;

- (e) La Société Française des Transports Pétroliers (SFTP), the company responsible for the control of the repairs carried out by INMA and the technical management of the TANIO at the time of the incident;
- (f) Le Bureau Véritas, the classification society that monitored the repairs to the TANIO in 1979; and
- (g) The United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club), in its capacity as insurer of the civil liability of certain defendants.

6.2 The French Government commenced proceedings against the same defendants for the purpose of obtaining compensation for that part of its total claim which was not compensated by the shipowner's limitation fund and the IOPC Fund. The IOPC Fund and the French Government co-operated closely in their respective legal actions and submitted joint pleadings.

6.3 The IOPC Fund claimed in subrogation an amount of FFr221 201 452, being the aggregate it had paid to all claimants up to 1985. The French Government claimed an amount of FFr261 737 874, being the amount at which the French Government had assessed its damage minus the amounts paid to it from the limitation fund and by the IOPC Fund.

6.4 In addition, other claimants (namely the Département des Côtes-du-Nord, 28 communes in the Département des Côtes-du-Nord and in the Département du Finistère, and some 50 private claimants) took legal action against the above-mentioned defendants.

6.5 The grounds on which the actions taken by the IOPC Fund and the French Government against the various defendants were based can be briefly summarised as follows:

Locafrance, as the registered owner of the TANIO, had failed to put the ship in a seaworthy and navigable state. The failure of Locafrance to organise a proper mechanism of control of the quality of the extensive repairs carried out by INMA constituted a personal fault on the part of Locafrance, which was therefore not entitled to limit its liability under the Civil Liability Convention. INMA had not carried out the repairs to the TANIO in a proper manner. SFTP had not exercised due diligence in the supervision of the repair work at INMA and in checking the results thereof. Guardiola had failed to supervise the execution of the repair work properly. In addition, Guardiola had an obligation to put the ship in a seaworthy condition. Bureau Véritas did not fulfil its obligation to check the quality of the repair work at INMA properly. Petromad, being responsible for the operations of the TANIO, had an obligation to ensure that the crew was competent and properly trained. Petromad had failed to ensure that the Master of the TANIO was properly instructed concerning cargo distribution. The UK Club was sued as insurer of Petromad and Guardiola.

The IOPC Fund and the French Government maintained that the defendants were jointly and severally liable for the amounts claimed.

6.6 The defendants maintained that the actions of the IOPC Fund, the French Government and the other plaintiffs were ill-founded and that their claims should, therefore, be rejected.

6.7 Investigations into the cause of the incident were carried out by a Technical Enquiry Commission, which was set up by the French Ministry of Transport, and by an Expertise Judiciaire ordered by the Court. The two reports submitted by the Expertise Judiciaire were summarised in documents FUND/EXC.16/3, paragraphs 3.11 - 3.13 and FUND/EXC.18/2, paragraphs 3.13 - 3.17, respectively.

6.8 The Expertise Judiciaire concluded that the initial fracture which broke the TANIO originated in the vicinity of frame 131 in wing tank n°6. As for the cause of the initial fracture, the Expertise maintained that there were three causes that contributed to the disaster, viz insufficient reduction of speed to allow for bad weather, defective cargo loading at the time of the disaster and on previous voyages, and defects in the replacement carried out by INMA of the bottom structure in n°6 wing tanks of the TANIO.

6.9 The IOPC Fund and the French Government employed eminent French and English technical experts for the purpose of establishing the cause of the incident. All parties submitted extensive pleadings to the Court both in respect of the technical aspects of the case and in respect of the legal position of the various defendants. The positions taken by the parties were reported to the Executive Committee in document FUND/EXC.18/2, paragraphs 3.21 - 3.37.

6.10 The defendants contested the plaintiffs' interpretation of the findings of the Expertise Judiciaire. They argued that the cause of the incident remained uncertain and hypothetical. In addition, they maintained that even if some defects in the repairs carried out could have contributed to the incident, it had been impossible to discover these defects, and that the defects could not, therefore, give rise to a liability based on fault.

6.11 An assessment by the Director of the financial position of the defendants was given in document FUND/EXC.18/2, paragraph 3.38.

6.12 The oral hearing was scheduled to take place in the Court of Brest in October 1987. It was expected that the Court would then decide the question of liability, whereas the quantum of the claims would be dealt with at a later stage.

Negotiation of an Out-of-Court Settlement

6.13 During the summer of 1987, discussions were held between some of the defendants, on one side, and the IOPC Fund and the French Government, on the other, with a view to reaching an out-of-court settlement. After very complex and difficult negotiations, agreement on the main elements of a possible out-of-court settlement was reached at the beginning of October 1987 between the Director on behalf of the IOPC Fund and the Agent Judiciaire du Trésor representing the French Government, on one side, and the defendants, on the other.

6.14 The proposed agreement on an out-of-court settlement was submitted by the Director to the Executive Committee for consideration at its 18th session in October 1987. In a closed session, the Director informed the Committee of his

assessment of the proposed agreement. The Committee approved the proposed agreement, provided that the agreement was approved by the competent authorities of the French State. The Committee also authorised the Director to approve any necessary agreement concerning the details of the proposed settlement, to sign the necessary documents relating thereto and to take any other decision on outstanding questions relating to the TANIO incident (document FUND/EXC.18/5, paragraphs 3.3.3 and 3.3.4). The French authorities approved the settlement in November 1987.

The Settlement

6.15 The details of the proposed settlement were negotiated during the autumn of 1987. The settlement was embodied in a Protocol (Protocole d'accord transactionnel) which was signed on 15 December 1987 in Paris. This Protocol (in English translation) is at Annex IV to the present document. The main elements of the settlement are as follows:

Locafrance and the UK Club pay, on behalf of all defendants, a total amount of US \$50 million to the IOPC Fund and the French State, less the shipowners' limitation amount under the Civil Liability Convention, FFfr11 833 717.79 (US \$1 931 089.71), the total amount payable being US \$48 068 910.29. This payment represents full and final compensation from all the defendants in respect of all claims by the IOPC Fund and the French State arising out of this incident, including interest and costs. The settlement is without prejudice to the positions taken by the parties as to the question of liability. Locafrance and the UK Club waive their rights to any further distribution of the amounts remaining in the shipowners' limitation fund, and the UK Club waives its rights to any further payments from the IOPC Fund.

6.16 On 15 December 1987, an amount of US \$17 480 028.50 (£9 537 855.90) was paid to the IOPC Fund and an amount of US \$30 588 881.79 (approximately £16.7 million) to the French Government. The apportionment between the IOPC Fund and the French Government of the amount recovered was made in accordance with an agreement reached between them in 1984, which was reported to the 12th session of the Executive Committee (document FUND/EXC.12/5, paragraph 3.1.1). The amount recovered by the IOPC Fund has been credited to the TANIO major claims fund.

6.17 As already mentioned, the total amount paid by the IOPC Fund to claimants will be FFfr222 140 643, corresponding to approximately £18.3 million at the rate of exchange when the respective payments were made. By this settlement, the IOPC Fund has thus recovered more than half the amount paid by it in compensation.

6.18 As a result of the settlement, the IOPC Fund and the French Government withdrew their legal actions in the Court of Brest in February 1988 (cf document FUND/EXC.18/5, paragraph 3.3.4, last sentence).

6.19 The out-of-court settlement referred to above did not cover the local authorities in France and the private claimants who had also instituted legal proceedings against the above-mentioned defendants. However, a separate out-of-court settlement was reached in March 1988 between the local authorities and the private claimants, on one side, and all the defendants, on the other.

7 Total Cost of the TANIO Incident for the IOPC Fund

7.1 As mentioned in paragraph 5.8 above, the IOPC Fund will pay a total of FFr222 140 643 (£18 347 127) to victims in respect of claims for pollution damage arising out of this incident.

7.2 The IOPC Fund has paid the following amounts in fees and expenses in respect of this incident:

	<u>1980-1987</u>	<u>Estimate 1988</u>	<u>Total</u>
	£	£	£
Fees	355 693	120 000	475 693
Travel costs	16 856	2 000	18 856
Miscellaneous	694	20	714
Total	373 243	122 020	495 263

7.3 It should be noted that the major part of the fees were incurred in connection with the legal action in the Court of Brest. The costs which related to this action were shared equally between the IOPC Fund and the French Government, as agreed in a Protocol between them dated 4 August 1984, in which the conditions of their co-operation in the legal action were laid down (cf document FUND/EXC.12/5, paragraphs 3.1.1).

7.4 The total cost of the TANIO case for the IOPC Fund can be summarised as follows:

	£	£
Payment of compensation 1983 - 1985	18 253 207	
1988 (estimate)	93 920	
	<u>18 347 127</u>	18 347 127
Fees and other costs		495 263
Total payments		18 842 390
<u>Less Recovery by way of recourse</u>		<u>- 9 537 856</u>
Total cost to the IOPC Fund		9 304 534

8 Reimbursement to Contributors

8.1 The recovery by the IOPC Fund as a result of the above-mentioned out-of-court settlement has resulted in a considerable balance on the major claims fund constituted for the TANIO incident, all payments to claimants having been made and all expenses paid.

8.2 In September 1983, at its 6th session, the Assembly decided to levy annual contributions in an amount of £20 million for the payment of compensation in respect of the claims submitted in connection with the TANIO incident (documents FUND/A.6/16, paragraph 13.2 and FUND/A.6/WP.1, paragraph 4). The levy was based on the quantities of contributing oil received in 1979, the calendar year preceeding that in which the incident occurred. A total amount of £20 087 296 was actually paid by the contributors. In addition, an amount of £59 528 was paid by contributors as interest on overdue contributions.

8.3 The assets of the TANIO major claims fund over the years have been invested and have earned substantial amounts in interest. Up to 31 December 1987, there had been an aggregate yield of £1 097 118.

8.4 The Assembly will be invited, at its 11th session in October 1988, to take a decision on the reimbursement of the amount remaining in the TANIO major claims fund to the contributors who paid 1983 annual contributions to that fund (cf documents FUND/A.11/10 and FUND/A.11/10/Add.1). The Director proposes that such a reimbursement should be made as at 1 February 1989.

8.5 It is estimated that a further amount of £1 421 832 will accrue in interest by 1 February 1989. The balance on the TANIO major claims fund as at that date can be estimated as follows:

	£	£
Total amount received in contributions		20 087 296
Interest paid by contributors		59 528
Recovery by way of recourse		9 537 856
Investment interest: To 31.12.87	1 097 118	
1.1.88-1.2.89 (estimate)	1 421 832	
	2 518 950	2 518 950
		32 203 630
Total payments	18 842 390	
<u>Less First 15 million (gold) francs</u>	- 580 973	
Payments from major claims fund	18 261 417	- 18 261 417
Balance as at 1 February 1989 (estimate)		13 942 213

9 Action to be Taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document in respect of the TANIO incident.

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ANNEX I

Summary of Claims Against the Limitation Fund

Claimant	Accepted by Liquidator	First Payment by Liquidator	Second Payment by Liquidator	Total Payment by Liquidator
French Government	326,921,937	17,980,707	3,223,347	21,204,053
Local Authorities in France				
- Côtes-du-Nord Département	2,410,595			
- Côtes-du-Nord 20 Communes	4,982,295			
- Finistère 7 Communes	1,513,899			
	8,906,789	8,906,789	489,873	87,818
Port Autonome du Havre	116,595	6,413	1,150	7,562
* * * Association Interprofessionnelle des Victimes de la Marée Noire: 50 Members	4,452,754	244,902	43,903	288,804
4 Private Claimants	185,783	10,218	1,832	12,050
1 Private Claimant	40,314	2,217	397	2,615
UK Club	7,637,388	420,056	0	420,056
Locafrance	1,682,263	92,524	0	92,524
Total	349,943,823	19,246,910	3,358,446	22,605,357

ANNEX II

Summary of Claims Against the IOPC Fund

FUND/EXC. 20/2

Claimant		Accepted by IOPC Fund	First Payment by IOPC Fund	Second Payment by IOPC Fund	Total Payment by IOPC Fund
French Government		326,921,937	200,659,327	8,076,815	
- Advance 2nd Payment			7,475,225	(7,475,225)	
			208,134,552	601,590	208,736,142
Local Authorities in France					
- Cotes-du-Nord Departement	2,410,595				
- Cotes-du-Nord 20 Communes	4,985,659				
- Finistere 7 Communes	1,513,899				
	8,910,153	8,910,153	5,468,892	220,133	5,689,025
* Port Autonome du Havre		116,594	71,563	2,881	74,444
* Association Interprofessionelle des Victimes de la Maree Noire: 50 Members		4,452,214	2,732,674	109,997	2,842,671
* 4 Private Claimants		185,783	114,029	4,590	118,619
UK Club					
- Own Expenses	7,298,630				
- Subrogated Claims	325,787				
	7,624,417	7,624,417	4,679,742	0	4,679,742
Total		348,211,098	221,201,452	939,191	222,140,643

ANNEX III

Details of Individual Claims Against the IOPC Fund

Claimant	Accepted by IOPC Fund	First Payment by IOPC Fund	Second Payment by IOPC Fund	Total Payment by IOPC Fund
French Government	326,921,937	200,659,327	8,076,815	
- Advance Second Payment		7,475,225	(7,475,225)	
		208,134,552	601,590	208,736,142
Local Authorities				
- Departement des Cotes-du-Nord	2,410,595	1,479,583	59,555	1,539,138
- Binic	2,404	1,475	59	1,534
- Brehat	80,168	49,205	1,981	51,186
- Lanmodez	8,764	5,379	217	5,596
- Lezardrieux	9,818	6,026	243	6,269
- Louannec	243,603	149,519	6,018	155,537
- Paimpol	5,008	3,073	124	3,197
- Penvenan	600,289	368,447	14,831	383,278
- Perros-Guirec	1,667,903	1,023,731	41,207	1,064,938
- Plestin-les-Greves	41,788	25,648	1,032	26,680
- Pleubian	147,931	90,797	3,655	94,452
- Pleumeur-Bodou	280,528	172,183	6,931	179,114
- Ploubazlanec	22,820	14,006	564	14,570
- Plougrescant	561,066	344,373	13,862	358,235
- Plouguiel	18,699	11,477	462	11,939
- Plouha	25,759	15,810	636	16,446
- Trebeurden	11,001	6,752	272	7,024
- Tregastel	615,485	377,774	15,206	392,980
- Treguier	5,356	3,287	132	3,419
- Treleven	423,950	260,213	10,474	270,687
- Trevou-Treguignec	213,319	130,931	5,270	136,201
- Cleder	263,835	161,937	6,518	168,455
- Ile de Batz	351,249	215,590	8,678	224,268
- Locquirec	107,955	66,261	2,667	68,928
- Plouescat	15,352	9,422	379	9,801
- Plougasnou	387,487	237,833	9,573	247,406
- Sibiril	101,212	62,122	2,501	64,623
- Treflez	286,809	176,038	7,086	183,124

Claimant	Accepted by IOPC Fund	First Payment by IOPC Fund	Second Payment by IOPC Fund	Total Payment by IOPC Fund

Association Interprofessionnelle des Victimes de la Marée Noire (AIVMN)				
- M le Barazer	13,300	8,163	329	8,492
- Mme Baudoin	66,000	40,509	1,631	42,140
- M Bothorel	87,329	53,601	2,158	55,759
- M le Bourdonnec	13,480	8,273	333	8,606
- M Buckinx	53,238	32,676	1,315	33,991
- Mme le Coadou	16,946	10,401	419	10,820
- M Colin	400,000	245,513	9,882	255,395
- M Floury	80,000	49,102	1,976	51,078
- M Guy Derriennic	81,505	50,026	2,014	52,040
- M Roger Derriennic	52,780	32,395	1,304	33,699
- SARL Camping du Port Landrelec	1,500	920	37	957
- M Floch	64,155	39,377	1,585	40,962
- M Aime le Gall	20,000	12,275	494	12,769
- Mme Annick le Gall	49,213	30,206	1,216	31,422
- M Garat	42,704	26,211	1,055	27,266
- Gicquel (4 together)	225,000	138,101	5,559	143,660
- Mme le Goff	3,111	1,909	77	1,986
- Mme Justin	46,000	28,234	1,136	29,370
- M Keruzore	27,000	16,572	667	17,239
- SARL Beauséjour	140,828	86,437	3,479	89,916
- SA Ets Lesbleiz	608,069	373,222	15,023	388,245
- Mme le Locat	37,800	23,201	934	24,135
- Mme Luron	8,203	5,034	203	5,237
- M Méheu	43,782	26,872	1,082	27,954
- SARL le Gulf Stream	118,300	72,610	2,923	75,533
- M Naour	70,000	42,964	1,729	44,693
- M Pauwels	200,000	122,756	4,941	127,697
- SA Galeries de Ker Iliz	170,000	104,343	4,200	108,543
- Mme Salvi	44,000	27,006	1,087	28,093
- SARL Sofra	89,521	54,946	2,212	57,158
- SA Ets Sylvestre	300,000	184,135	7,412	191,547
- M Margraff	30,000	18,413	741	19,154

Claimant	Accepted by IOPC Fund	First Payment by IOPC Fund	Second Payment by IOPC Fund	Total Payment by IOPC Fund
- SARL Galeries Ste Anne (2 together)	68,000	41,737	1,680	43,417
- M & Mme Droniou	26,000	15,958	642	16,600
- M Besco	120,557	73,995	2,978	76,973
- Mme le Flem	129,951	79,761	3,211	82,972
- M le Guillou	52,000	31,916	1,285	33,201
- Mme Frésil	40,915	25,112	1,011	26,123
- SA Ponant Loisirs	400,000	245,513	9,882	255,395
- Mme Riou	15,743	9,662	389	10,051
- Hotel Printania SA	141,700	86,973	3,501	90,474
- Mme le Dauphin	111,000	68,129	2,742	70,871
- M Prat	125,887	77,267	3,110	80,377
- M Dinahet	5,413	3,322	134	3,456
- Club de Plongé sous Marin de Léon /M Mer (2 together)	11,284	6,926	279	7,205
* * * Port Autonome du Havre	116,594	71,563	2,881	74,444
UK Club		4,679,742	0	4,679,742
- UK Club	7,298,630			
- States of Guernsey	175,153			
- States of Jersey	98,176			
- Comite des Assureurs Maritimes de Paris	47,000			
- Guernsey Hotelier	5,458			
Société pour l'Etude et la Protection de la Nature en Bretagne (SEPNB)	166,937	102,463	4,124	106,587
M Boisgegrain	4,971	3,051	123	3,174
Mme Lavéan	11,619	7,131	287	7,418
M Roussel	2,256	1,384	56	1,440
M Godeau	0	0	0	0
Locafrance	0	0	0	0
TOTAL	348,211,098	221,201,452	939,191	222,140,643

ANNEX IV

Original: FRENCH

SETTLEMENT AGREEMENT

BETWEEN:

- 1 THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED, a corporation existing under Bermudan law, the registered office of which is at Mercury House, Front Street, PO Box 665, Hamilton (Bermuda) represented by Mr R J Palmer partner of THOMAS R MILLER AND SON (BERMUDA) managers of THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA), who has been duly empowered for the purposes hereof

hereinafter called the "UK CLUB"

- 2 The Company LOCAFRANCE INTERNATIONAL LEASING, a joint stock company existing under Swiss law, the registered office of which is at 4 Avenue de la Gare, 1003 Lausanne (Swiss Confederation) represented by Mr Jean V BAS RABERIN, president of LOCAFRANCE INTERNATIONAL LEASING, who has been duly empowered for the purposes hereof

hereinafter called "LIL"

on the one hand,

AND:

THE FRENCH STATE, represented by the Agent Judiciaire du Trésor [Treasury Law Officer], Mr G Scribot, and legally domiciled at the AGENCE JUDICIAIRE DU TRESOR PUBLIC [Treasury Law Office], 41 Quai Branly, 75700 PARIS

hereinafter called the "FRENCH STATE"

THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, legally domiciled at 4 Albert Embankment, London SE1 7SR and represented by its Director, Mr M Jacobsson

hereinafter called the "IOPC FUND"

on the other,

WHEREAS

- 1 On 7 March 1980, 35 nautical miles north-west of the island of Batz, off Brittany, the Malagasy tanker TANIO broke in two. The bow section sank but the stern section was towed to Le Havre. The oil in the damaged parts of the vessel spread over the sea and reached the north coast of Brittany, causing damage of various kinds, in particular to the FRENCH STATE.
- 2 As a result of this incident, LIL, which had insured its liability as the owner of the vessel under the Brussels Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 with the UK CLUB, established a limitation fund as provided in the aforesaid Convention. By an order dated 29 April 1980, the President of the Tribunal de Commerce, citing the Convention aforesaid, the French Shipping and Other Seagoing Vessels Act of 3 January 1967 and the decree of 27 October 1967 implementing that Act, declared the fund established in the sum of FFr11 833 717.79. As of the date hereof the fund has not been liquidated.
- 3 Pursuant to Article 4 of the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 18 December 1971, the IOPC Fund compensated the victims of the pollution caused by the TANIO casualty in a sum amounting at the date hereof to FFr221 201 442, thereby acquiring their rights by virtue of subrogation.
- 4 On 3 March 1983 the FRENCH STATE and the IOPC FUND issued a writ against LIL, the UK CLUB, COMPAGNIE MALGACHE DE TRANSPORTS PETROLIERS (hereinafter called "PETROMAD"), GUARDIOLA SHIPPING CORPORATION (hereinafter called "GUARDIOLA"), SOCIETE FRANCAISE DES TRANSPORTS PETROLIERS (hereinafter called "SFTP"), INDUSTRIE NAVALE MECCANICHE ASSINI (hereinafter called "INMA") and BUREAU VERITAS in the Tribunal de Grande Instance in Brest claiming compensation "in solidum" for their respective losses, these being provisionally set, in pleadings dated 12 September 1986, at FFr261 737 874 in the case of the FRENCH STATE and FFr221 201 442 in the case of the IOPC FUND.
- 5 In pleadings served subsequently the defendants called for the claims of the FRENCH STATE and the IOPC FUND to be dismissed.

THE ABOVE BEING THE CASE, THE PARTIES HAVE AGREED TO RECONCILE THEIR DIFFERENCES AND TO CONCLUDE THIS SETTLEMENT AGREEMENT.

IT HAS ACCORDINGLY BEEN AGREED AS FOLLOWS:

ARTICLE I

The UK CLUB and LIL on the one hand and the FRENCH STATE and the IOPC FUND on the other agree, without prejudice to their respective positions on the question of liability, to settle the disputes between them in their entirety in a final and binding manner on the terms set forth below.

ARTICLE II

The UK CLUB and LIL undertake to pay the FRENCH STATE and the IOPC FUND the sum of fifty million United States dollars (US \$50 000 000).

The above sum is reduced by one million nine hundred and thirty-one thousand and eighty-nine dollars and seventy-one cents (\$1 931 089.71) corresponding to the limitation fund established by LIL (namely FFr11 833 717.79 converted into dollars, as agreed between the parties, at the rate of exchange in force on 2 October 1987, namely US \$1 = FFr6.1280).

The total sum to be paid by the UK CLUB and LIL therefore amounts to forty-eight million sixty-eight thousand nine hundred and ten dollars and twenty-nine cents (US \$48 068 910.29).

ARTICLE III

The sum of US \$48 068 910.29 shall be paid to the FRENCH STATE and the IOPC FUND in accordance with the apportionment notified to the UK CLUB by 12 noon (London time) on Friday 11 December 1987.

ARTICLE IV

The sums resulting from the apportionment notified to the UK CLUB shall be paid as follows:

- (1) to the IOPC FUND by telegraphic transfer to BARCLAYS BANK PLC London by 1400 hrs (London time) on 15 December 1987 in accordance with instructions given to the UK CLUB by the IOPC FUND;
- (2) to the FRENCH STATE by a cheque handed over at the time of the signing hereof, which shall take place on 15 December 1987.

ARTICLE V

In consideration of the above payment, the FRENCH STATE and the IOPC FUND undertake to withdraw any proceedings or actions pending on the day of the date hereof in the Tribunal de Grande Instance in Brest in respect of the TANIO incident against LIL, the UK CLUB, PETROMAD, GUARDIOLA, SFTP, INMA and BUREAU VERITAS, and to refrain from bringing in the future any proceedings or actions against any of the defendants or any other parties in respect of the above incident.

Each of the parties to this agreement declares that, subject to the performance by the other parties of their obligations hereunder, it deems itself fully reinstated in its rights in regard to the matters set forth above.

ARTICLE VI

The FRENCH STATE and the IOPC FUND note that a settlement has taken place between the UK CLUB, LIL and certain other defendants in the proceedings pending in the Tribunal de Grande Instance in Brest.

ARTICLE VII

Each of the parties to this agreement shall be responsible for the costs and expenses it has incurred in connection with the proceedings pending in the Tribunal de Grande Instance in Brest, including any ad valorem fees found to be owing to the advocates of the Brest Bar appearing on their behalf.

ARTICLE VIII

Each of the parties to this agreement shall endeavour to facilitate the distribution and liquidation of the limitation fund constituted at Brest as quickly as possible. LIL and the UK CLUB declare that they waive their rights to any further distribution of the amounts remaining in the limitation fund and shall so notify the liquidator of the fund in writing.

ARTICLE IX

The UK CLUB declares that it waives its right to any further payment from the IOPC FUND in respect of compensation for the victims of the pollution caused by the TANIO.

The IOPC FUND declares that it waives its right to bring any action to recover the sums it has paid to the UK CLUB in connection with the TANIO incident.

ARTICLE X

The parties undertake not to produce this agreement in any court hearing which may take place in the Tribunal de Grande Instance in Brest at the instance of local authorities and other victims of the pollution caused by the TANIO unless so ordered by that Court or with the agreement of the other parties.

ARTICLE XI

This agreement is a full, final and binding agreement and is concluded in respect of all claims. The parties hereto agree that it shall have the irrevocable effect of a settlement as provided for in Articles 2044 et seq of the French Civil Code. It is therefore res judicata as regards the IOPC FUND, the FRENCH STATE and all the defendants.

ARTICLE XII

Any dispute arising from the interpretation and application of this protocol shall be subject to the exclusive jurisdiction of the Tribunal de Grande Instance in Paris, French law being exclusively applicable.

Done in Paris on 15 December 1987
In nine copies:

For THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED (UK CLUB)
Mr R J Palmer, Partner of THOMAS R MILLER AND SON (BERMUDA) managers of the UK CLUB (BERMUDA)
Valid for settlement and reciprocal agreement to withdraw proceedings and actions

(Signed) Reginald G Palmer

For LOCAFRANCE INTERNATIONAL LEASING (LIL)
Mr J V BAS RABERIN
Valid for settlement and reciprocal agreement to withdraw proceedings and actions

(Signed) J V Bas Raberin

For THE FRENCH STATE
Mr G Scribot
Valid for settlement and agreement to withdraw proceedings and actions

(Signed) G Scribot

For THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND (IOPC FUND)
Mr M Jacobsson
Valid for settlement and agreement to withdraw proceedings and actions

(Signed) Måns Jacobsson

INTERVENTION

The undersigned PETROMAD, GUARDIOLA, SFTP, INMA and BUREAU VERITAS, having noted the contents of this settlement agreement, declare that they accept the provisions of the agreement relating to them, and in particular Articles V, VII, X and XI. They agree that any difficulty which may arise between the parties to the settlement referred to in Article VI shall be settled between those parties themselves, who shall in no event be entitled to involve the FRENCH STATE or the IOPC FUND.

Paris, 15 December 1987

For COMPAGNIE MALGACHE DE TRANSPORTS PETROLIERS (PETROMAD)
Mr Luc Grellet

(Signed) L Grellet

For GUARDIOLA SHIPPING CORPORATION
Mr Luc Grellet

(Signed) L Grellet

For SOCIETE FRANCAISE DES TRANSPORTS PETROLIERS (SFTP)
Mr Luc Grellet

(Signed) L Grellet

For INDUSTRIE NAVALE MECCANICHE ASSINI (INMA)
Mr Jean-Serge Rohart

(Signed) J-S Rohart

For BUREAU VERITAS
Mr Gerard Coffinet

(Signed) G Coffinet
