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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, two incidents have occurred that will or may give rise to claims against the IOPC Fund, namely the AMAZZONE and the TAIYO MARU N°13 incidents.

3 Details of these new incidents and the incidents reported to previous sessions of the Executive Committee, other than the TANIO and the PATMOS incidents, with which the IOPC Fund has been dealing since the 19th session of the Committee are given in the Annex to this document. Documents FUND/EXC.12/3, FUND/EXC.12/WP.1, FUND/EXC.14/4, FUND/EXC.14/4/Add.1, FUND/EXC.16/5, FUND/EXC.16/5/Add.1, FUND/EXC.18/4 and FUND/EXC.18/4/Add.1, submitted to the Executive Committee's 12th, 14th, 16th and 18th sessions, contain the information available at the time; reference is made to these documents. The TANIO and the PATMOS incidents are dealt with in documents FUND/EXC.20/2 and FUND/EXC.20/3, respectively.

4 Developments regarding the settlement of claims since the 19th session of the Executive Committee can be summarised as follows:

(a) As for the EIKO MARU N°1 incident, all claims have been paid and the outstanding recourse action has been settled.

(b) With respect to the KOSHUN MARU N°1 incident, all third party claims have been settled. Indemnification of the shipowner has not yet been paid. Another outstanding issue is a recourse claim by the IOPC Fund against the owner of the colliding vessel.

(c) Concerning the JAN incident, all third party claims have been settled and paid, leaving the payment of indemnification of the shipowner as the only outstanding issue.

(d) All claims arising out of the BRADY MARIA incident have been settled and paid, leaving the distribution of the limitation fund established by the owner of the colliding vessel as the main outstanding issue.

(e) With regard to the OUED GUETERINI incident, the claims made against the IOPC Fund are being examined, and discussions with the claimants should start in the near future.

(f) Claims submitted by private claimants in respect of the THUNTANK 5 incident have been settled and paid. A claim has been presented by the Swedish Government, and this claim is being examined by the IOPC Fund.

(g) As for the ANTONIO GRAMSCI incident, claims have been submitted by the authorities in Finland and the USSR. These claims are being examined by the IOPC Fund.

(h) With respect to the EL HANI incident, the Director considers that the IOPC Fund will not be called upon to pay any compensation.

(i) Some claims have been received in respect of the AKARI incident, but no discussions with the claimants have taken place so far.

(j) Concerning the AMAZZONE incident, no claims have been received from the French Government. Claims have been submitted by the Département des Côtes-du-Nord and by three private claimants in France, and these claims are being examined.

(k) In the TAIYO MARU N°13 case, the third party claims have been approved by the Director, but so far no payments have been made.

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ANNEX

(The conversion of figures from national currencies into Pound Sterling is made at the rate of exchange on 27 June 1988, except for amounts which correspond to actual payments by or to the IOPC Fund; in respect of the latter, the conversion is made at the rate of exchange on the date of the payment)

1 EIKO MARU N°1

(Japan, 13 August 1983)

1.1 As reported in paragraph 3 of document FUND/EXC.18/4/Add.1, all claims arising out of this incident have been settled and paid and agreement has been reached between the EIKO MARU N°1 interests and those of the other vessel involved in the collision (the CAVALRY) on the apportionment of liability. The only outstanding issue at the time of the 18th session of the Executive Committee was the payment of the lawyer's fees.

1.2 In February 1988, the shipowner's P & I insurer (JPIA) paid to the IOPC Fund an amount of ¥12 602 022 (£55 030), representing the IOPC Fund's share of the amount recovered from the owner of the CAVALRY (¥14 843 746), less the IOPC Fund's share of the lawyer's fees (¥2 241 724).

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

	Total	Shipowner's Share	IOPC Fund's Share
	¥	¥	¥
Clean-up Costs	60 181 029	36 987 504	23 193 525
Fishery Damage	4 000 000	2 458 416	1 541 584
Total Third Party Claim	64 181 029	39 445 920	24 735 109
Surveyor's Fees	3 952 490	2 429 200	1 523 290
Lawyer's Fees	5 816 720	3 574 996	2 241 724
Indemnification		- 9 861 480	+ 9 861 480
Total Payments	73 950 239	35 588 636	38 361 603
Recovery from the CAVALRY	- 28 000 000	- 13 156 254	- 14 843 746
	45 950 239	22 432 382	23 517 857

2 KOSHUN MARU N°1

(Japan, 5 March 1985)

2.1 As reported to the 18th session of the Executive Committee (document FUND/EXC.18/4, Annex, paragraph 3), in September 1985 the IOPC Fund paid an amount of ¥26 124 589 (£81 512), representing the total amount of the agreed third party claims, ie ¥28 020 909, minus the owner's liability of ¥1 896 320. There will be no more claims arising out of this incident.

2.2 The incident resulted from a collision between the KOSHUN MARU N°1 and the RYOZAN MARU in Tokyo Bay. An official investigation into the cause of the incident has been carried out. On the basis of the findings of the Yokohama Marine Court, the Director is of the opinion that part of the blame for the collision falls on the RYOZAN MARU. The IOPC Fund will soon initiate negotiations with the owner of that vessel with a view to recovering part of the amount paid in compensation by the IOPC Fund.

2.3 Indemnification of the shipowner amounting to ¥474 080 (£2 130) has not yet been paid, as the limitation proceedings have not been completed.

3 JAN

(Denmark, 2 August 1985)

3.1 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. Approximately 300 tonnes of oil escaped into the sea as a result of the incident.

3.2 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 coast. 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.

3.3 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 major part of the clean-up operations was completed within a few weeks of the incident, whereas in some sensitive areas these operations continued until October 1985.

3.4 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 £134 085). Under Danish law, an extra amount should be added to cover interest and costs, and the Court fixed the limitation fund at DKr2 million (£170 140). The limitation fund was constituted by the shipowner's P & I insurer (the Skuld Club) by means of a letter of guarantee.

3.5 The Danish Government presented its claim for compensation in July 1986; this claim covered the operations carried out by the local authorities of Laesø. The total amount claimed was DKr11 805 021 (£1 005 000) plus interest.

3.6 Claims submitted by five private persons totalling DKr53 007 (£4 510) were accepted in full by the IOPC Fund and the Skuld Club. Payments were made by the Skuld Club in April 1986 and September 1987.

3.7 An additional claim amounting to DKr24 126 (£2 050), relating to the costs of hiring machines and equipment deployed for clean-up operations, was submitted by the Municipality of Laesø. The claim was accepted by the IOPC Fund and the Skuld Club and paid by the Skuld Club in September 1987.

3.8 In April 1987, agreement was reached between the Danish Government, on the one side, and the IOPC Fund and the Skuld Club, on the other side, regarding a number of items of the claim made by the Danish Government, totalling DKr3 307 044.47 (£281 300).

3.9 Since agreement had been reached on the majority of the items of the claim submitted by the Danish Government (45 out of 55 items), the Director agreed, at the request of the Danish Government, to pay compensation in respect of the accepted items (cf Internal Regulation 8.4.4). The amount payable was DKr1 789 432.47 (£158 849), being the total amount of the accepted items (DKr3 307 044) less the remaining part of the owner's liability under the Civil Liability Convention (DKr1 576 170). Payment was made on 3 August 1987. The Skuld Club paid an amount of DKr1 517 612 (£129 100) to the Danish Government in July 1987.

3.10 The main outstanding items of the Government's claim related to the tariffs applied in respect of oil combating vessels owned by public authorities which took part in the operations at sea and to the rates for personnel of Government agencies used for clean-up operations. These items partly related to "fixed costs", ie costs which would have arisen for the Danish authorities even if the incident had not occurred, as opposed to "additional costs", ie expenses incurred solely as a result of the incident and which would not have arisen had the incident and the operations relating thereto not taken place.

3.11 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, but 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). 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 (document FUND/A.4/16, paragraph 13).

3.12 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 Danish Government in connection with the JAN 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 corresponding 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.

3.13 Negotiations concerning the outstanding items were held with the Danish Government in September and October 1987. Considerable progress was made, but no final settlement was reached. In December 1987 the Director set out in writing to the Danish Government the position of the IOPC Fund regarding the outstanding items of the claim. The Danish Government presented its position to the IOPC Fund at the beginning of August 1988.

3.14 Final negotiations in respect of the outstanding items were held on 1 September 1988. It should be noted that the amounts originally claimed had been calculated on the basis of guidelines issued by the Danish Ministry of Finance. The Director was, nevertheless, unable to accept the amounts claimed in respect of a number of items. In view of the arguments put forward by the Director during the negotiations, the Danish Government agreed to reduce its claim in respect of a number of items to amounts which the Director considered reasonable. The settlement in respect of the outstanding items can be summarised as follows:

Items	Claimed DKr	Agreed DKr
Civil Defence Assistance	3 726 608.50	3 057 550.22
Danish Army Assistance	384 602.36	336 070.91
Use of certain vessels belonging to the National Environment Protection Agency	2 485 356.67	1 533 910.23
Other outstanding items	1 819 659.24	1 770 797.83
	8 416 226.77	6 698 329.19

3.15 Under Danish law, a claimant is entitled to interest on his established claim from the expiry of a period of one month after the date when the claim was presented to the debtor together with supporting documentation which enabled him to assess the claim. The rate is fixed at 6% above the official discount rate of the Bank of Denmark, which for the period in question was 7%pa, giving an interest rate of 13%pa. Since part of the documentation supporting the Danish Government's claim was not made available to the IOPC Fund until a considerable time after the claim was submitted in July 1986, it was agreed, as a compromise, that interest should be calculated for 4 months on the amount paid by the IOPC Fund in August 1987 and for 12 months on the amount

payable in September 1988. The agreed amounts in respect of interest payable by the IOPC Fund were DKr77 542.07 and DKr870 782.79, respectively, or a total of DKr948 324.86 (£80 675). The interest payable by the Skuld Club was DKr65 763.19 (£5 810). In addition, an amount of DKr1000 (£85) was payable by the IOPC Fund for the purpose of correcting an error of calculation made in respect of the items on which agreement was reached in April 1987.

3.16 The total amount of the claim submitted by the Danish Government, including interest, as accepted by the IOPC Fund, was thus DKr11 020 461.71 (£937 500). As mentioned above, the IOPC Fund paid DKr1 789 432.47 (£158 849) in August 1987, representing the total of the accepted items less the remaining part of the shipowner's limitation amount. The remaining amount to be paid by the IOPC Fund was thus the sum of the outstanding items (DKr6 698 329.19) plus the agreed interest (DKr948 324.86), plus the above-mentioned sum of DKr1000, viz DKr7 647 654.05 (£634 660). This amount was paid to the Danish Government on 20 September 1988.

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

	Claimed DKr	Agreed DKr
Danish Government: Principal	11 805 021.00	10 006 373.66
Interest	1 014 088.05	1 014 088.05
Laesø Municipality	24 126.00	24 126.00
	12 843 235.05	11 044 587.71
Private Boat Owner	7 202.00	7 202.00
Private Land Owner	18 575.00	18 575.00
3 Farmers	27 230.00	27 230.00
	12 896 242.05	11 097 594.71
	(£1 097 085)	(£944 075)

3.18 Indemnification of the shipowner, DKr394 043 (£33 520), has not yet been paid, since the limitation proceedings have not been completed.

4 BRADY MARIA

(Federal Republic of Germany, 3 January 1986)

4.1 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. 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 as a result of the collision. The oil which escaped from the BRADY MARIA

contaminated a large area on both banks of the River Elbe and the River Oste, as well as near-by islands, necessitating extensive clean-up operations.

4.2 As reported to the 18th session of the Executive Committee, all claims arising out of this incident have been settled and paid. The settlement can be summarised as follows:

Claimant	Agreed
	DM
German authorities:	3 544 054.34
Two private claimants	1 085.80
	3 545 140.14
Minus Owner's limitation amount	- 324 629.47
Total amount payable by IOPC Fund	3 220 510.67
	(£1 106 289)

4.3 The IOPC Fund made a part payment of DM2 443 244 (£846 438) to the German authorities in October 1986 and a final payment of DM776 180.57 (£259 488) in October 1987. The claims submitted by the two private claimants had been paid by the German authorities; the latter were reimbursed by the IOPC Fund, also in October 1987, for an amount of DM1 085.80 (£363).

4.4 The official investigation into the cause of the incident showed that the pilot of the WAYLINK was mainly to blame for the collision, since he gave a wrong order to the helmsman of the WAYLINK, causing the vessel to cross the course of the on-coming BRADY MARIA.

4.5 A limitation fund for the WAYLINK was established at the District Court of Hamburg in January 1986. The limitation amount was fixed by the Court at DM440 185 (£142 100).

4.6 The IOPC Fund had taken action in the Hamburg Landgericht against the owner of the WAYLINK, challenging his right to limit his liability. After careful examination of the matter, and in consultation with the IOPC Fund's German lawyer, the Director decided in January 1988 to withdraw this action, since it was considered unlikely that the IOPC Fund would be able to prove fault or privity on the part of the owner of the WAYLINK.

4.7 The IOPC Fund claimed in subrogation against the WAYLINK limitation fund an amount DM3 220 510.67 (£1 040 000), ie the amount paid by the IOPC Fund to victims, plus an amount of DM110 302.23 (£35 600) representing costs incurred by the IOPC Fund in respect of this incident. Other claims which were made against this limitation fund related 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).

4.8 After having considered the oppositions made by the IOPC Fund to the claims against the WAYLINK limitation fund, the liquidator of this limitation fund rendered his decision in August 1988. The liquidator accepted the IOPC Fund's subrogated claim for an amount of DM3 134 119.89 (£1 011 800), whereas he rejected it in respect of an amount of DM86 390.78 (£27 890) relating to

interest for the period after the establishment of the limitation fund; he also accepted an amount of DM110 302.23 in respect of costs. The total amount approved in respect of the IOPC Fund's claim was thus DM3 244 422.12 (£1 047 400). The other claims were accepted by the liquidator for a total amount of DM1 185 559.02 (£383 500). The position taken by the liquidator in respect of the claims has been endorsed by the Court. It is expected that the Court will take its decision on the distribution of this limitation fund in the near future. The IOPC Fund will recover approximately DM322 000 (£103 950).

4.9 The IOPC Fund has so far incurred expenses for surveyor's fees, lawyer's fees and travelling costs in respect of the BRADY MARIA incident, totalling £42 258 Some further payments will have to be made in respect of lawyer's fees.

4.10 The IOPC Fund is investigating whether it will be possible to get reimbursement from the Federal Ministry of Finance of certain amounts paid in respect of the expenses incurred by the German authorities relating to VAT.

5 OUED GUETERINI

(Algeria, 18 December 1986)

5.1 The Algerian tanker OUED GUETERINI (1 576 GRT) was unloading bitumen (a persistent oil) in the port of Algiers on 18 December 1986 when part of the cargo was spilled onto the deck of the vessel. From there, some bitumen escaped into the water in the port area.

5.2 There was no pollution damage in the port itself. However, a considerable quantity of bitumen (approximately 15 tonnes) entered the sea-water intake of a power station, necessitating a shut-down of the station for a short period of time. Some equipment at the power station was polluted and had to be cleaned.

5.3 In September 1987, the owner of the power station (Société Nationale de l'Electricité et du Gaz, SONELGAZ) brought legal action in the Court of Algiers against the UK Club (the shipowner's P & I insurer) and the IOPC Fund. In February 1988, the Court fixed the limitation amount of the shipowner's liability at 1 175 064.20 Algerian Dinars (£119 400). The limitation fund was constituted in February 1988 by the UK Club by means of a bank guarantee. The reason for the long delay in the establishment of the limitation fund was the uncertainty that existed as to the procedure to follow for this purpose under Algerian law.

5.4 SONELGAZ has submitted a claim totalling 5 278 524.78 Algerian Dinars (£536 350) relating to damage to equipment in the power station, costs of cleaning some equipment and loss of profit as a result of the closure of the station. The main part of this claim relates to such loss of profit.

5.5 A claim has also been submitted by the owner of the OUED GUETERINI (Société Nationale du Transport Maritime des Hydrocarbures et des Produits Chimiques, SNTM/HYPROC) in the amount of 5 649.85 Algerian Dinars (£575) in respect of costs for clean-up operations.

5.6 The Director has requested the claimants to provide further information concerning the claims. So far no negotiations with the claimants have taken place concerning the substance of the claims.

5.7 From the outset the IOPC Fund and the UK Club were represented by the same Algerian lawyer, as foreseen in the Memorandum of Understanding signed in 1980 by the IOPC Fund and the International Group of P & I Clubs (document FUND/A/ES.1/3, Attachment). However, in June 1988 it became clear that there was a certain conflict of interests between the IOPC Fund and the Club. The Director decided, therefore, to retain a separate lawyer for the IOPC Fund.

5.8 The UK Club has maintained that the owner should be exonerated from any liability in respect of this incident, in accordance with Article III.2(b) of the Civil Liability Convention. The Club has argued that the damage was wholly caused by an act or omission done with intent to cause damage by a third party, since SONELGAZ continued to discharge oil at its terminal in the port of Algiers in spite of the grave risk caused by the location of this terminal near the water intake of the power station, evidenced by similar incidents in the past. The IOPC Fund has rejected this defence and maintained that the circumstances in this case cannot be considered as being covered by Article III.2(b).

6 THUNTANK 5

(Sweden, 21 December 1986)

6.1 The Swedish vessel THUNTANK 5 (2 866 GRT), carrying 5 024 tonnes of heavy fuel oil, ran aground on 21 December 1986 in very bad weather outside Gävle, on the east coast of Sweden, 200 kilometers north of Stockholm. The tanker was severely damaged, and there was a considerable risk that the ship would break up. However, after about half the cargo had been transferred to another vessel, the THUNTANK 5 was refloated. Most of the remaining cargo was then transferred to the other vessel, and the THUNTANK 5 was towed to a safe port. It is estimated that 150-200 tonnes of oil escaped as a result of the incident.

6.2 Due to the difficult weather conditions, with very strong winds, snow and ice, no major attempts to collect the oil could be carried out in the days following the incident. Some oil reached the coast where it mixed with snow and ice. Air surveillance was carried out by the Swedish Coast Guard. It is estimated that ten kilometres of the coast were polluted immediately after the incident. Due to ice and snow, clean-up operations were postponed until inspections were carried out in the spring of 1987.

6.3 In Sweden the responsibility for the clean-up on the shore rests with the municipalities. On-shore operations were started at the beginning of April 1987. By then the oil had affected various areas along a 150 kilometre stretch of coast around Gävle, including a number of small islands. The polluted areas were very difficult to clean, since they consisted mainly of stones and rough rocks, which had to be scraped manually. The oil which remained was then removed by hot water washing or high pressure steam washing. Priority was given to nature reserves for wild birds and to areas of special importance for tourism. Small quantities of the sunken oil resurfaced in late August and

early September 1987, polluting some areas of the coast again, and further clean-up operations became necessary. The clean-up operations on the coast were in principle completed in late September 1987.

6.4 A small quantity of oil - estimated at 20-40 tonnes - was found on the sea bed at a depth of between 8 and 16 metres, close to where the vessel had grounded. Since it was feared that the sunken oil might resurface and pollute the coast, attempts were made by the Swedish Coast Guard in April and May 1987 to collect this oil, firstly by divers working manually and, later, by hydraulic pumping. During a visit to the site of the incident in May 1987, the Director discussed with representatives of the Coast Guard whether these operations were reasonable, in view of the very high costs which, in his opinion, were out of proportion to the small quantities of oil collected. The Swedish authorities called off these operations a few days later. In August 1987, parts of the sunken oil resurfaced. The Coast Guard had by then developed new equipment for recovery of this oil, and the operations were resumed. These operations, which were more successful than the earlier attempts, were completed at the end of August 1987, after having recovered several tonnes of oil.

6.5 Fishermen in the area had expressed great concern about the risk of their equipment and catches becoming polluted when the fishing season started in late May 1987. A meeting was held in May between the Director, a representative of the shipowner's P & I insurer (the Skuld Club) and representatives of the fishermen to discuss the situation and, in particular, how the fishermen could reduce the risk of damage to their equipment. Some fishing gear was in fact later polluted with oil from the THUNTANK 5.

6.6 The official investigation into the cause of the incident has shown that the grounding was due to an error by the master of the THUNTANK 5 in the navigation of the ship.

6.7 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 (£2.5 million). The IOPC Fund was notified of the action in accordance with Article 7.6 of the Fund Convention.

6.8 The Court established the limit of the shipowner's liability at SKr2 741 746 (£260 000). Under Swedish Law, an extra amount should be added to cover interest and costs, and the Court fixed that additional amount at SKr700 000 (£65 000). The limitation fund was constituted in October 1987 by the Skuld Club by means of a letter of guarantee.

6.9 The Swedish Government submitted its claim in July 1988, at an aggregate amount of SKr24 992 884 (£2 340 000), both to the IOPC Fund and to the owner of the THUNTANK 5. This claim covers the operations of the Swedish Coast Guard and the on-shore operations undertaken by the municipalities concerned.

6.10 At the time of drafting this document, the IOPC Fund and the Skuld Club are examining the claims submitted by the Swedish Government, with the assistance of a local surveyor. The Director has requested further information on many points. The Director hopes that negotiations with the Swedish Government can take place in the near future.

6.11 At the 18th session of the Executive Committee, the Director was authorised, pursuant to Internal Regulation 8.4.2, to settle claims of private claimants up to an aggregate amount of SKr400 000 (£37 500) (document FUND/EXC.18/5. paragraph 3.1.5). Claims totalling SKr51 469 (£4 800) have been submitted by seven 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. All these claims have been accepted by the Director and the Skuld Club, after some reductions, at an aggregate amount of SKr49 361 (£4 600). The claims were paid by the Skuld Club, seven of them in December 1987, one in February and one in August 1988.

7 ANTONIO GRAMSCI

(Finland, 6 February 1987)

7.1 While on a voyage from Ventspils in Latvia (USSR), the USSR tanker ANTONIO GRAMSCI (27 706 GRT), loaded with 38 445 tonnes of crude oil, grounded near Borgå on the south coast of Finland on 6 February 1987. It is estimated that 600-700 tonnes of the cargo escaped as a result of this incident.

7.2 Oil combating vessels were sent to the area on 9 February 1987. At first, the oil remained in open pack-ice in relatively thick layers. However, under the prevailing icy weather conditions, it was extremely difficult to recover the spilt oil. After two days, the Finnish authorities decided to suspend the clean-up operations until the conditions improved, in view of the very limited effect of the operations. By this time, the ice had closed up and the oil had mixed with the ice. On 18 February, when the operations were resumed, an attempt was made by the Finnish authorities to collect oil using skimmers, but without success. Subsequently, another attempt to collect the oily ice was made jointly with oil combating vessels from the USSR, using hydraulic grabs. 10-15 tonnes of oil were recovered by the Finnish vessel and it was reported that 68 tonnes of oil had been recovered by one of the USSR vessels. The operations were again suspended on 27 February, due to severe weather conditions. In March, attempts were made from time to time by the Finnish authorities to collect oil, but without success, due to the weather.

7.3 In mid-April, strong northerly winds pushed the oily ice into international waters. At the end of April, part of the oily ice went into USSR territorial waters and remained there till early May. Thereafter, the oily ice stayed partly in Finnish territorial waters and partly in international waters. At the end of May, on-shore clean-up operations were carried out on the Finnish coast, east of the grounding site, and approximately 0.4 tonnes of oil and a large quantity of oily waste were collected.

7.4 From 10 to 15 May, a USSR hopper dredger/oil combating vessel was deployed in Soviet territorial and international waters, off the coast of Estonia, in an attempt to recover films of oil from the water surface. This operation was abandoned on 16 May, due to a deterioration in the weather conditions and an assessment that the oil films were too thin for the effective use of this equipment. It was reported that some 40 tonnes of oil were recovered during this period.

7.5 In March 1987 a limitation fund amounting to Rbls2 431 854 (£2 240 300) was established with the Court in Riga (USSR) on behalf of the owner of the ANTONIO GRAMSCI, for the purpose of limiting his liability under the Civil Liability Convention.

7.6 According to the results of the official Finnish investigation into the cause of the incident, the grounding was due to a misunderstanding between the master of the ANTONIO GRAMSCI and the pilot.

7.7 Since the USSR was not a Contracting Party to the Fund Convention at the date of the incident, pollution damage in the USSR, including measures taken to prevent or minimise pollution damage in the USSR, is not covered by the Fund Convention. However, claims in respect of pollution damage in the USSR will be compensated under the Civil Liability Convention and will compete with claims in respect of pollution damage in Finland for the amount available in the limitation fund set up under that Convention. For this reason, the amount of compensation paid under the Civil Liability Convention for pollution damage in the USSR may be of importance in establishing the extent of the IOPC Fund's obligation to pay compensation for pollution damage in Finland.

7.8 In view of the inter-dependence between the claims relating to damage in Finland and those relating to damage in the USSR, a meeting was held in February 1988 to discuss the procedure for dealing with the claims. It was then agreed between the Finnish authorities, the USSR authorities, the shipowner's P & I insurer (the UK Club) and the IOPC Fund that the claim to be submitted by the USSR authorities, as well as the claim of the Finnish authorities, would be examined by the IOPC Fund and the UK Club, and that all the parties involved would aim at arriving at an overall out-of-court settlement.

7.9 In April 1988, a claim totalling Rbls2 312 864 (£2 130 700) was submitted to the owner of the ANTONIO GRAMSCI by the USSR authorities, whilst a claim amounting to FM22 124 415 (£3 015 130) was made by the Finnish authorities against the IOPC Fund as well as against the owner of the ANTONIO GRAMSCI. It is possible that the Finnish authorities will submit further claims. Claims from fishermen in Finland are expected.

7.10 A preliminary examination of the claims presented so far has been made by the IOPC Fund in co-operation with the UK Club. In August 1988, the Director requested more information and documentation from the Finnish authorities. A corresponding request has been made by the UK Club to the USSR authorities. So far no further information or documentation has been received.

7.11 The claim submitted by the USSR authorities includes an amount of Rbls712 200 (£656 100) relating to environmental damage. This amount has been arrived at by the application of a certain formula, in accordance with Soviet legislation, under which the assessment of the damage is linked to the quantity of the oil collected in the USSR territorial waters. It may be recalled that a similar claim was made by the USSR authorities in a USSR Court in connection with the first ANTONIO GRAMSCI incident which took place in February 1979; as a result of that incident approximately 5 500 tonnes of oil escaped and caused pollution damage in Sweden, Finland and the USSR. In view of that claim, the question of the admissibility of claims for damage to the marine environment was examined by the IOPC Fund. As a result of this examination the IOPC Fund Assembly, at its first extraordinary session held in 1980, unanimously adopted a resolution stating that "the assessment of compensation to be paid by the International Oil Pollution Compensation Fund is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models" (document FUND/A.ES.1/13 paragraph 11 and Annex I). Following the adoption of this Resolution, a Working Group was set up by the Assembly to consider the admissibility of claims. The Working Group examined the question

as to whether and, if so, to what extent a claim for environmental damage was admissible under the Civil Liability Convention and the Fund Convention. The Working Group agreed that compensation could be granted only if a claimant had suffered quantifiable economic loss (document FUND/A.4/10, paragraph 19). The position taken by the Working Group was endorsed by the Assembly at its 4th session in 1981 (document FUND/A.4/16, paragraph 13).

7.12 It should be noted that this issue has also been discussed within the IOPC Fund in respect of the PATMOS incident, in connection with a claim submitted by the Italian Government for damage to the marine environment. In this regard, reference is made to document FUND/EXC.20/3, paragraphs 2.6-2.8 and 4.10.

7.13 In a letter sent to the USSR authorities in August 1988, the Director set out the IOPC Fund's position on claims relating to damage to the environment based on theoretical calculations, on the basis of the above-mentioned Resolution and the endorsement by the Assembly of the conclusions of the Working Group.

7.14 As regards the procedure to be followed by the IOPC Fund in dealing with the claim for compensation for damage to the marine environment in the present case, the situation is the same as it was in the first ANTONIO GRAMSCI case. In that case, the Executive Committee expressed its objection to the claim relating to environmental damage. The position of the IOPC Fund had been made clear to the USSR representatives. However, the Executive Committee did not see any possibility of raising objections in court proceedings against the owner or the claimant (document FUND/A.ES.1/9, paragraphs 4 and 5). The Executive Committee may wish to give the Director instructions as to the position to be taken by the IOPC Fund in this regard in the present ANTONIO GRAMSCI case.

8 EL HANI

(Indonesia, 22 July 1987)

8.1 The Libyan tanker EL HANI (81 412 GRT), bound for the Republic of Korea, ran aground outside Singapore in Indonesian territorial waters on 22 July 1987. The grounding caused fractures in the hull. Approximately 3 000 tonnes of crude oil escaped as a result of the incident. A large part of the spilt oil spread into Singapore territorial waters, and the Singapore authorities undertook extensive clean-up operations. Considerable quantities of oil drifted out to sea. Some oil may have stayed within Indonesian territorial waters. There was also a risk that some pollution damage would be caused in Malaysia.

8.2 Since Singapore and Malaysia are not Parties to the Fund Convention, pollution damage in these countries, including measures taken to prevent or minimise pollution damage there, is not compensated under that Convention.

8.3 In August 1987 the Indonesian authorities informed the IOPC Fund that the incident had caused pollution damage in Indonesia and that they would claim compensation from the IOPC Fund. No information was given as to the nature and extent of the damage. The Indonesian authorities requested urgent advance payment from the IOPC Fund of US$242 800 (£142 600) to enable them to carry out an assessment of the damage. The Director informed the Indonesian authorities

that the IOPC Fund would pay compensation only if the aggregate amount of the damage in the States involved in the incident were to exceed the limitation amount of the shipowners' liability and also that the costs for assessment of any damage were not in principle considered as pollution damage to be compensated under the Fund Convention. Since the extent of the pollution damage caused in Indonesia could not be established at that stage and it was therefore not possible for the Director to assess whether the limitation amount would be exceeded, he informed the Indonesian authorities that the IOPC Fund could not make any payment in response to their request. On the occasion of a visit to Indonesia in March 1988, the Director discussed this issue with representatives of the Indonesian Government who understood the position taken by the Director with regard to their request for advance payment.

8.4 A claim has been made by the Indonesian authorities against the shipowner and his P & I insurer (the West of England Shipowners Mutual P & I Association), and negotiations on the claim are being held.

8.5 The Singapore authorities have made a claim against the West of England Club in respect of clean-up costs totalling approximately US$950 000 (£560 000). It appears that there will be no claim in respect of Malaysia.

8.6 After the fractures in the hull of the EL HANI had been provisionally repaired, the vessel resumed her voyage to the Republic of Korea, where further leakage of oil occurred. Claims were made against the shipowner for fishery damage and clean-up costs in the Republic of Korea, which is not Party to the Fund Convention. These claims were settled by the West of England Club at US$731 519 (£430 000) in respect of clean-up costs and at US$698 921 (£410 000) in respect of damage suffered by fishermen.

8.7 The limitation amount of the shipowner's liability under the Civil Liability Convention is estimated at approximately £7.9 million. In view of this high figure, the Director considers that the IOPC Fund will not be called upon to pay any compensation as a result of this incident.

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 of the use of the 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. Since the vessel was listing badly, she was beached to the east of the port of Jebel Ali with tug assistance. Approximately 1 000 tonnes of her cargo of heavy fuel oil escaped before the AKARI was refloated. The remaining cargo was then transferred to another vessel, and 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 were undertaken by the company which salvaged the AKARI.

9.3 Criminal proceedings were brought against the master of the AKARI and the shipowner's agent in a Court in Dubai. They were acquitted by a judgment rendered in June 1988 against which the public prosecutor has appealed.

9.4 Claims for clean-up costs, totalling approximately US$394 000 (£230 000), have been submitted to the shipowner's P & I insurer (the Shipowners' Mutual Protection and Indemnity Association Ltd) by several private claimants and local authorities. It is expected that further claims will be presented. No claims have yet been submitted to the competent court.

9.5 No limitation fund has been established, so far. The limitation amount of the shipowner's liability under the Civil Liability Convention is estimated at approximately £115 000.

9.6 The Director has held several meetings with those representing the P & I Club and the shipowner to discuss the legal problems involved. These discussions have not resulted in any agreement on the issues raised by the incident.

10 AMAZZONE

(France, 31 January 1988)

10.1 During the night of 30 to 31 January 1988, the Italian tanker AMAZZONE (18 325 GRT) was damaged in a severe storm off the west coast of Brittany. The vessel was on a voyage from Libya to Antwerp (Belgium), carrying about 30 000 tonnes of heavy fuel oil. Several covers were lost from the butterworth holes (access points for tank washing) of two cargo tanks and, as a result, approximately 2 000 tonnes of the cargo escaped, displaced by seawater entering the open holes. Over the following three to four weeks, oil came ashore in patches along 450 - 500 kilometres of coastline, affecting four different Departments in France (Finistère, Côtes-du-Nord, Manche and Calvados) and the Channel Islands (Jersey and Guernsey).

10.2 Aerial surveillance was carried out by the French Navy, but it was not possible to combat the oil at sea due to severe weather conditions and the nature of the oil. The spilt heavy fuel oil was not amenable to dispersants because of its high viscosity. After the weather had moderated, the Navy attempted to recover oil off the coast of Finistère using a small trawl and an integral boom and pumping system, but these attempts were later abandoned as they proved to be ineffective. Consequently, the oil had to be dealt with after it had reached the shoreline.

10.3 In order to cope with the widespread pollution onshore, the French national oil spill contingency plan, "PLAN POLMAR", was activated in Finistère on 2 February 1988, in Côtes-du-Nord on 3 February 1988 and on the Cherbourg Peninsula on 11 February. In the Calvados area of Normandy, the level of pollution was not considered sufficiently severe to merit activating PLAN POLMAR and the clean-up was handled on a local basis.

10.4 The first oil came ashore in the north of Finistère on 2 February 1988, and in the south of the Department the following day. Booms were deployed to protect the mouths of the three main rivers on the west coast of north Finistère. For the most part, the shore was cleaned manually by personnel drawn from the local fire brigades, the Army, the Service de la Défense et de la Protection Civile (Protection civile) and the Direction Départementale de l'Equipement (DDE) supported by the local authorities. In some areas steep cliffs made it difficult to recover stranded oil, whereas in others specialised equipment was used to clean oiled cobbles. Most of the clean-up was completed by the end of February, but the cobble cleaning continued into March. In the north of Finistère the collected oily weed was disposed of at a local domestic refuse dump in Brest, whereas in the south a local contractor used quicklime (anhydrous calcium oxide) to stabilise oily beach material prior to burying it.

10.5 Following the activation of PLAN POLMAR in the Côtes-du-Nord, the major river estuaries were boomed. However, the oil was carried further north and very little reached the west and north coasts of the Département. It was not until mid-February that the north and east coasts were affected, the length of patchily oiled coast totalling about 120 kilometres. The oil was cleaned up by the local authorities and the DDE over a period of approximately two weeks at the end of February and in early March 1988.

10.6 The first oil to reach the Channel Islands arrived on 5 February 1988 and oil continued to come ashore until 25 February, although the majority had stranded by the middle of the month. The coastal topography of the Islands is similar to much of Brittany, except that in places the cliffs are higher, making considerable stretches of the shoreline inaccessible from land. In Guernsey, five to ten kilometres of coast were contaminated. The Public Works Department commenced shore clean-up operations on 8 February and continued to 1 March 1988. Manual clean-up was used in the main and about 500m^3 of oily debris were collected. In Jersey approximately 15 kilometres of the west and southwest coasts were contaminated with weed mixed with oil, which had formed into balls of water-in-oil emulsion or "mousse". Oil was collected manually by the Public Works Department in areas where it was widely scattered, while bulldozers and trucks were used where there were larger accumulations. The operations were completed by 18 March 1988, by which time a total of some 65m^3 of oily waste had been collected. Oily beach material was disposed of at local dumps in both Guernsey and Jersey.

10.7 Balls of oiled weed and mousse arrived on the Cherbourg Peninsula (Department of Manche) in mid-February. It is estimated that 200 - 300 tonnes came ashore along approximately 60 kilometres of coast. Shore cleaning was carried out by the DDE, fire brigades, Protection Civile and local authorities. Clean-up started on 12 February and continued until the beginning of March 1988. More than 3 000m^3 of oil mixed with sand, stones and weed were collected, using a combination of manual and mechanical techniques. This material was stabilised with quicklime for disposal at a landfill site.

10.8 On the Calvados coast of Normandy, the oil came ashore at the end of February 1988, almost four weeks after the original spill, probably due at least in part to refloating of oil from other areas. The oil was scattered along about 45 kilometres of the coast. Clean-up was carried out by the local authorities and fire brigades, co-ordinated by the DDE, and operations were finalised by 5 March 1988.

10.9 Throughout the affected area, mariculture, commercial fisheries, important recreational beaches and holiday resorts are widespread. Despite this and the length of coast affected, it is the opinion of the IOPC Fund's experts that the impact on these commercial resources and the marine environment in general was minimal.

10.10 At a very early stage, the Director considered it likely that the IOPC Fund would be involved in the settlement of the claims arising out of this incident. For this reason, the Director and the Legal Officer visited Brittany on 8 and 9 February 1988, at the invitation of the French Minister of the Sea. Extensive discussions were held on this occasion between the IOPC Fund and the French authorities with respect to the extent of oil pollution, the organisation of the clean-up operations, the problems arising in connection with the oil combating, and the procedures for presenting claims.

10.11 The Commercial Court of Antwerp (Belgium) has appointed a legal expert with the task of establishing the cause of the incident. An investigating judge ("juge d'instruction") in Paris has appointed two technical experts, for the same purpose. The judge will decide, in the light of the findings of these experts, whether criminal proceedings should be brought against the master of the AMAZZONE.

10.12 The limitation amount was provisionally fixed by the Court in Brest at FFr13 612 749.30 (£1 300 000). The limitation fund was constituted on 12 February 1988 in the Court by the shipowner's insurer (The Standard Steamship Owners' Protection and Indemnity Association Ltd) by payment of the above-mentioned amount into the Court. After the instruments on the tonnage measurement had been examined, it was established that the limitation amount should be increased to FFr13 860 379.52 (£1 325 000), but the Court has not yet taken any decision in this regard.

10.13 Originally, the limitation fund was constituted on behalf of two persons, since in the Italian registration document the vessel was registered in the name of two persons, indicated as "proprietario" and "armatore". The Director objected to this procedure, and after discussions with the Standard Club and the French lawyer representing the Club and the shipowner, it was agreed that the limitation fund should be established on behalf of only the person indicated in the registration document as "proprietario". This issue is being submitted to the Court for decision.

10.14 A claim for clean-up costs has been submitted by the authorities in Jersey in the amount of £11 380.33. A corresponding claim is expected from the authorities in Guernsey. Claims totalling FFr60 090.70 (£5 750) have been submitted by two French fishermen. A private organisation has claimed FFr50 326.93 (£4 815) for the cost of cleaning oiled seabirds. These claims are being examined by the IOPC Fund and the Standard Club.

10.15 A claim has been submitted by the Department of Côtes-du-Nord for an amount of FFr978 852.67 (£93 650). No claims have so far been received from the French Government, the other Departments affected or the local authorities in France involved in this incident. It is expected that these claims will be presented during the autumn of 1988.

10.16 It is still an open question as to whether the aggregate amount of the damage caused by this incident will be of such a magnitude that the total amount payable by the IOPC Fund in compensation will exceed 25 million (gold) francs or 1.67 million SDR (FFr13.3 million or £1.25 million), the limit of the Director's authority to make binding settlements without the prior approval of the Executive Committee, as laid down in Internal Regulation 8.4.1. However, the Director considers it important that claims from 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 arising out of this incident up to an aggregate amount of FFr400 000 (£38 270).

11 TAIYO MARU N°13

(Japan, 12 March 1988)

11.1 While heavy fuel oil was being transferred from one cargo tank of the Japanese tanker TAIYO MARU N°13 (86GRT) to another in the Port of Yokohama on 12 March 1988, part of the cargo escaped into the sea, due to a mistake by the crew in handling the valves. It is estimated that about 6 tonnes of heavy fuel oil escaped as a result of this incident. Clean-up operations were immediately undertaken by the shipowner who deployed several oil combating vessels supplied by contractors. The clean-up operations were completed on 16 March 1988.

11.2 Claims for clean-up costs, totalling ¥10 212 210 (£45 850), were submitted to the shipowner and the IOPC Fund by three private claimants. In August 1988, the Director agreed to settle these claims at ¥8 611 685 (£38 660). It is unlikely that any further claims will be submitted.

11.3 At the time of drafting this document, limitation proceedings had not yet started. The shipowner's limitation amount under the Civil Liability Convention is estimated at ¥2 476 800 (£11 120). The indemnification of the shipowner will amount to approximately ¥619 200 (£2 780).

12 Action to be taken by the Executive Committee

The Executive Committee is invited:

(a) to take note of the information contained in this document;

(b) to give the Director such instructions as it considers appropriate in respect of the ANTONIO GRAMSCI incident concerning the issue set out in paragraph 7.14 above; and

(c) to take a decision on the Director's request for authorisation to settle claims from private claimants arising out of the AMAZZONE incident (paragraph 10.16 above).