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COMPENSATION
FUND

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APPRAISAL OF EXPERIENCE GAINED FROM THE
TANIO INCIDENT

Note by the Director

1 Introduction

1.1 As reported in document FUND/EXC.20/2, all claims arising out of the TANIO incident have been settled. The file on this incident will be closed as soon as the balance on the TANIO major claims fund has been distributed. Since the TANIO incident is the most important case in which the IOPC Fund has been involved, the Director has considered it appropriate to assess the IOPC Fund's involvement and draw lessons from this case.

1.2 This subject has been examined within the IOPC Fund Secretariat. A meeting was organised by the IOPC Fund in Paris in January 1988 to review the TANIO case. Amongst those present were Dr R H Ganten, previous Director of the IOPC Fund, representatives of the Agence Judiciaire du Trésor of the French Ministry of Economy, Finance and Privatisation, the French lawyer who had represented the IOPC Fund and the French Government in the legal action in the Court of Brest, the IOPC Fund's London lawyer, and the Managing Director of ITOFF who had monitored the clean-up operations in his capacity as technical expert for the IOPC Fund.

1.3 The present document contains a summary of the observations which, in the view of the Director, should be borne in mind when the IOPC Fund deals with any major incident in future.

2 IOPC Fund's Involvement in the Investigations Concerning the Cause of the Incident

2.1 The IOPC Fund and the French Government did not take an active part in the Expertise Judiciaire, which was ordered by the French Court for the purpose of establishing the cause of the incident, during the elaboration of its first report. Since it was clear at an early stage that the limitation amount of the IOPC Fund's liability would be exceeded, the Director tried to make everybody work together so as to avoid confrontation.

2.2 The IOPC Fund was advised by the French lawyer it employed in the early stages of the incident (who later withdrew from the case because of a conflict of interests) that it should not become involved in the technical assessment of the cause of the incident. Since the IOPC Fund, at that time, had no experience of cases of such complexity as the TANIO incident, it followed the advice given. In retrospect, it could be questioned whether the IOPC Fund should not have taken an active part in this technical assessment. It could have been advisable, for example, for the IOPC Fund's lawyer to have assembled evidence and to have talked to witnesses as soon as possible. It should also be noted that within the French legal system an Expertise Judiciaire is very important. However, the Director's decision was also influenced by the fact that the French Government did not actively participate in the Expertise Judiciaire.

2.3 From the IOPC Fund's point of view, the main concern at the outset related to the assessment of the damage and the compensation of victims. However, the focus of interest changed at a later stage when the IOPC Fund considered taking recourse action against the shipowner and other parties. In view of the fact that the IOPC Fund later decided to take recourse action, it would have been valuable if it had participated in the early stages of the Expertise Judiciaire.

3 Co-operation with the P & I Club in the Employment of Technical Experts

3.1 The IOPC Fund and the shipowner's P & I insurer (the UK Club) jointly used technical experts provided by the International Tanker Owners Pollution Federation Limited (ITOPF) for advice on the clean-up operations and on the extent of the pollution damage. The question is whether, with hindsight, this was the right procedure.

3.2 It should be noted that whilst ITOPF is financed by the world's tanker owners, its staff act as totally independent and objective experts. The ITOPF staff advise objectively, whoever they are working for. In the TANIO case, the reports of the ITOPF experts were submitted to both the Club and the IOPC Fund. The expertise provided by ITOPF was restricted to the clean-up operations and the assessment of damages, and questions relating directly thereto. These experts did not give any opinion as to the cause of the incident or the liabilities of the various parties involved. It would be very difficult to find any other experts with sufficient knowledge in the field who are, at the same time, impartial and objective. It could also be counter-productive if the P & I Club and the IOPC Fund were to use different experts to advise on the clean-up operations. It should be noted that the expertise provided by ITOPF, both in the TANIO case and in other cases, relates to issues where there are normally no conflicts of interests between the IOPC Fund, on one side, and the shipowner and his P & I insurer, on the other.

3.3 The role of the ITOPF experts in respect of the examination of the claims in the TANIO case was to sort the claims under different headings and to give an opinion on the technical reasonableness of the various operations and the claims for pollution damage. It was for the Director of the IOPC Fund to assess the opinion of the experts when deciding on the admissibility of the claims, and the actual negotiations with the claimants were the responsibility of the Director.

3.4 It should be mentioned that in the TANIO case the IOPC Fund engaged a special expert to advise on the feasibility of the various options in respect of the measures to be taken to prevent further pollution by the oil contained in the sunken bow section of the TANIO.

3.5 The situation is different as regards technical experts used for the purpose of establishing the cause of the incident as well as in respect of legal experts. With regard to these two categories of experts it could more often be necessary for the IOPC Fund and the P & I Club to use different experts, in view of the possibility of a conflict of interests arising at a later stage.

4 Relationship between Compensation and Recourse Action

Before the TANIO case, the IOPC Fund had not developed any policy as to the relationship between compensation to victims and recourse actions. For this reason, the French Government had to consider whether primarily to claim compensation from the IOPC Fund or to take action against the shipowner and run the risk of having to wait for compensation from the IOPC Fund until the legal action against the shipowner had been completed. It was at that time considered by the French Government that its position vis-à-vis the shipowner was comparatively weak. The French Government decided, therefore, to concentrate on obtaining compensation from the IOPC Fund. The decisions of the IOPC Fund Executive Committee in the TANIO case clarified this issue; the fact that legal action is taken by a victim against other parties does not necessarily mean that no compensation will be paid by the IOPC Fund until this action is completed.

5 Contacts between the IOPC Fund and the French Authorities during the Clean-up Operations

5.1 The co-operation between the French Authorities and the IOPC Fund during the clean-up operations was very good. However, problems arose due to the fact that during the monitoring of the operations it proved very difficult - as in most pollution cases - to get the right contacts at the right level. Many authorities and agencies were involved, and this made it harder for the technical experts to reach the right persons rapidly.

5.2 With regard to the operation to pump the oil from the sunken bow section of the TANIO, the IOPC Fund was involved in the decision to carry out this operation. With hindsight, it would have been better if the IOPC Fund's experts (London Offshore Consultants) had monitored the operation throughout, rather than reviewing the operation after completion for the purpose of assessing the costs.

6 Documentation of Clean-up Operations and Presentation of Claims

6.1 The IOPC Fund's examination of the claims was very difficult, due to the way in which the documents were presented. Much of the documentation consisted of invoices arranged in chronological order of the date of payment from the French Government Intervention Fund. A further complication resulted from the

fact that even within the same geographical area the clean-up operations were carried out by several authorities, without any co-ordination in respect of the documentation and the submission of claims to the IOPC Fund.

6.2 In order to enable the IOPC Fund to assess the claims, it was necessary to classify and analyse the various items of claims using a computer. Until this was done, it was not possible to establish what the money had actually been spent on. In addition, the majority of the claims were submitted without any accompanying explanations of the operations to which they related.

6.3 It would have been much easier to examine the claims if the costs of all items relating to the operations in a particular area had been grouped together. This would certainly be the best method for the presentation of claims in any future cases.

6.4 It would be extremely useful if, in every major incident, a specific person was given the task of ensuring that the documentation (invoices as well as reports on the work undertaken) was collected in an appropriate way in respect of each area covered by the operations. This should not be the on-scene commander, as he would be too occupied with leading the actual operations.

7 Negotiations with Claimants

7.1 One difficulty for the IOPC Fund was that, at the time of the negotiations with the claimants in the TANIO case, the Fund had not developed any policy as regards many important questions of principle, eg loss of income, VAT and fixed costs. Since policy decisions on these and many other points were taken during the TANIO settlement, it would probably be easier to deal with such questions should a new incident of the same magnitude arise.

7.2 It had been clear at the time of the negotiations with the claimants that the limits of the Fund Convention would be greatly exceeded. Therefore, it had not been necessary to discuss all the controversial items of the French Government's claim, since the acceptance or non-acceptance of a number of items would not significantly affect the amount payable by the IOPC Fund to the French Government. This facilitated a speedy settlement. However, if it had been necessary to pursue the examination of the remaining items, the problems relating thereto would certainly also have been solved.

7.3 The negotiations were greatly facilitated by the IOPC Fund negotiating with each individual claimant, and by these negotiations being carried out mainly in France rather than in London.

7.4 The Director gave interviews to local newspapers in Brittany in which he informed the public of the possibility of submitting claims against the IOPC Fund. This contributed to making private claimants aware of the IOPC Fund's role in providing compensation to victims of oil pollution damage.

8 Legal Action Against the Shipowner and Other Parties

8.1 It should be noted that the French Government was at first reluctant to start legal proceedings against the shipowner, since - as pointed out above - it feared that such action might delay the IOPC Fund's payment to victims. The

initiative to take legal action was taken by the Director, Dr Ganten. At the above-mentioned meeting in Paris in January 1988, the representatives of the French Government expressed their gratitude to the IOPC Fund and to Dr Ganten for having taken this initiative.

8.2 It should be mentioned that the IOPC Fund does not normally take recourse action, except in collision cases. In the view of the Director, recourse action should be considered in other cases only where there are very strong reasons for taking such action and where, in addition, there is a considerable likelihood of success, as was the situation in the TANIO case.

8.3 In the TANIO case, the French Government and the IOPC Fund agreed in 1984 on the apportionment of any amount recovered and on the distribution of the costs that would be incurred. This prior agreement greatly facilitated the co-operation between them in the legal action. It also avoided the potential conflict of interests which could have arisen between the French Government and the IOPC Fund, due to the fact that there was no final agreement between the Fund and the French Government on the quantum of the Government's valid claim. However, this never became a problem during the legal action.

8.4 The co-operation between the French Government and the IOPC Fund during the legal action was excellent. This was facilitated by the good contacts between the persons involved on both sides. In addition, there was close co-ordination in respect of all the steps that had to be taken during the court proceedings.

8.5 During certain stages of the legal action the progress was very slow. The question could be raised whether it would have been possible for the French Government and the IOPC Fund to have made the court action proceed more speedily. It appears, however, that it would not have been possible to proceed faster. Nevertheless, it is possible that, had the IOPC Fund and the French Government taken a more active part in the Expertise Judiciaire at an early stage, some time may have been saved later.

8.6 The TANIO case has shown that it is important in any legal action to use technical experts of the country in which the proceedings take place.

9 Action to be Taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document and to make such observations on the matters dealt with therein as the Committee considers appropriate.
