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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, six incidents have occurred that will or may give rise to claims against the IOPC Fund, namely the KASUGA MARU N°1, FUKKOL MARU N°12, TSUBAME MARU N°58, TSUBAME MARU N°16, KIFUKU MARU N°13 and NANCY ORR GAUCHER incidents. In addition, the IOPC Fund has been informed of two incidents which occurred in 1987, namely the SOUTHERN EAGLE and HINODE MARU N°1 incidents.

3 Details of these new incidents and the incidents reported to previous sessions of the Executive Committee, other than the PATMOS incident, with which the IOPC Fund has been dealing since the 21st session of the Committee, are given in the Annex to this document. Documents FUND/EXC.14/4, FUND/EXC.14/4/Add.1, FUND/EXC.16/5, FUND/EXC.16/5/Add.1, FUND/EXC.18/4, FUND/EXC.18/4/Add.1, FUND/EXC.20/4 and FUND/EXC.20/4/Add.1, submitted to the Executive Committee's 14th, 16th, 18th and 20th sessions, contain the information available at the time; reference is made to these documents. The PATMOS incident is dealt with in document FUND/EXC.22/2.

4 Developments regarding the settlement of claims since the 21st session of the Executive Committee can be summarised as follows:

- (a) 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 other vessel involved in this incident.

- (b) All claims arising out of the BRADY MARIA incident have been settled and paid, and the limitation fund established by the owner of the other vessel involved in this incident has been distributed. The only remaining issue relates to the possibility of the IOPC Fund being reimbursed for certain amounts paid in VAT.
- (c) With regard to the OUED GUETERINI incident, all claims have been settled and payments will be made by the end of September 1989.
- (d) All claims submitted by private claimants in respect of the THUNTANK 5 incident have been settled and paid. Agreement has been reached in principle on a settlement of a claim presented by the Swedish Government, and the details of this settlement are being worked out.
- (e) As for the ANTONIO GRAMSCI incident, claims have been submitted by the authorities in Finland and the USSR, and negotiations concerning the claims will take place in early October 1989.
- (f) Concerning the SOUTHERN EAGLE incident, which was mentioned in the IOPC Fund's Annual Report 1988, it has been established that the IOPC Fund will not be called upon to make any payments as a result of this incident.
- (g) Some claims have been received in respect of the AKARI incident, but no discussions with the claimants have taken place so far.
- (h) In the HINODE MARU N°1 case, all third party claims have been settled and paid, whereas indemnification of the shipowner has not yet been paid.
- (i) Concerning the AMAZZONE case, the French Government has not yet submitted its claim. Claims have been presented by the Department of Côtes-du-Nord and by some private claimants in France, and these claims are being examined. Some claims by French private claimants have been settled and paid, and claims by the authorities of Jersey and Guernsey have been settled.
- (j) All third party claims arising out of the TAIYO MARU N°13 incident have been settled and paid, whereas indemnification of the shipowner has not yet been paid.
- (k) As for the KASUGA MARU N°1 incident, claims were submitted in the summer of 1989 and the claim documents are being examined.
- (l) With respect to the FUKKOL MARU N°12 incident, all claims have been settled, but no payments have been made.
- (m) Concerning the TSUBAME MARU N°58 and TSUBAME MARU N°16 incidents, the Executive Committee is invited to consider whether the damage resulting from these incidents is covered by the notion of "pollution damage", as defined in the Civil Liability Convention.
- (n) As for the NANCY ORR GAUCHER and KIFUKU MARU N° 13 incidents, no claims have been submitted so far.

ANNEX

(The conversion of figures from national currencies into Pound Sterling is made at the rate of exchange on 3 July 1989, 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 KOSHUN MARU N°1

(Japan, 5 March 1985)

1.1 As reported to the 18th session of the Executive Committee (document FUND/EXC.18/4, Annex, paragraph 3), the IOPC Fund paid in September 1985 ¥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.

1.2 The incident resulted from a collision between the KOSHUN MARU N°1 and the coal carrier RYOZAN MARU in Tokyo Bay. According to the findings of the Yokohama Marine Court, part of the blame for the collision fell on the RYOZAN MARU. The IOPC Fund has started negotiations with the owner of that vessel with a view to recovering part of the amount paid in compensation by the IOPC Fund.

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

2 BRADY MARIA

(Federal Republic of Germany, 3 January 1986)

2.1 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. 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. Approximately 200 tonnes of cargo oil escaped into the river as a result of the collision. The oil 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.

2.2 As reported to the 18th session of the Executive Committee, all claims arising out of this incident have been settled and paid. The IOPC Fund paid DM3 220 510.67 (£1 106 289) to claimants.

2.3 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.

2.4 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 (£144 700).

2.5 The IOPC Fund claimed in subrogation against the WAYLINK limitation fund the amount paid by it to victims plus costs. As reported at the 20th session of the Executive Committee (document FUND/EXC.20/4, paragraph 4.8), the liquidator of the limitation fund accepted the IOPC Fund's subrogated claim for an amount of DM3 244 422.12 (£1 066 370). Other claims were accepted by the liquidator for a total amount of DM1 185 559.02 (£389 670). The position taken by the liquidator in respect of the claims was endorsed by the Court. The WAYLINK limitation fund was distributed in November 1988, and the IOPC Fund recovered DM333 027 (£105 355).

2.6 The IOPC Fund has incurred expenses for surveyor's fees, lawyer's fees and travelling costs in respect of this incident, totalling £84 435.

2.7 The total costs incurred by the IOPC Fund in respect of this incident can be summarised as follows:

	DM	£
Total claims as settled	3 545 140.14	
<u>Minus</u>		
Shipowner's limitation amount	- 324 629.47	
Total amount paid by IOPC Fund		
to claimants	3 220 510.67	1 106 289
Fees and other expenses		84 435
Interest paid to General		
Fund from BRADY MARIA		
Major Claims Fund		24 992
		<u>1 215 716</u>
<u>Less</u>		
Recovery from WAYLINK limitation fund		<u>105 355</u>
Total Cost to IOPC Fund		<u>1 110 361</u>

2.8 The amount paid from the general fund in respect of this incident, ie 15 million (gold) francs, corresponds to £758 315. Consequently, an amount of £352 046 has been paid from the BRADY MARIA major claims fund.

2.9 The IOPC Fund is investigating whether it would be possible to get reimbursement from the Federal Ministry of Finance of the amount of DM307 753 (£101 150) paid by the IOPC Fund in respect of the expenses incurred by the German authorities relating to VAT.

### 3 OUED GUETERINI

(Algeria, 18 December 1986)

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

3.2 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 or replaced.

3.3 In September 1987, the owner of the power station (Société Nationale de l'Electricité et du Gaz, SONEGGAZ) brought legal action in the Court of Algiers against the shipowner's P & I insurer (United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited, the UK Club) and the IOPC Fund. The Court fixed the limitation amount of the shipowner's liability at 1 175 064 Algerian Dinars (£98 000). 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.

3.4 SONEGGAZ submitted a claim totalling 5 278 525 Algerian Dinars (£440 280) relating to damage to equipment in the power station, costs of cleaning or replacing some equipment and loss of profit as a result of the closure of the station. The main part of this claim (Din4 088 000) related to such loss of profit.

3.5 From the outset, the IOPC Fund and the UK Club were represented by the same Algerian lawyer, in accordance with 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). In June 1988, however, it became clear that there was a certain conflict of interest between the IOPC Fund and the Club. The Director decided, therefore, to retain a separate lawyer for the IOPC Fund.

3.6 In the court proceedings, the UK Club maintained that the shipowner should be exonerated from liability in respect of this incident, in accordance with Article III.2(b) of the Civil Liability Convention. The Club argued that the damage was wholly caused by an act or omission done with intent to cause damage by a third party, ie the operator of the oil terminal where the unloading took place, since the operator had continued to discharge oil 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 rejected this defence on the ground that the circumstances in this case could not be considered as being covered by Article III.2(b).

3.7 The IOPC Fund and the UK Club engaged external experts to assess the claim made by SONEGGAZ, in particular as regards loss of profit. This assessment raised many difficult questions, eg the quantification of the loss of production resulting from the closure of the power plant, and the establishment of the price per KWh to be applied for the calculation of the loss of profit. After lengthy negotiations, the claim submitted by SONEGGAZ was settled in June 1989.

3.8 The damage to the equipment of the power station had resulted in certain expenses for SONEGGAZ in US dollars and French Francs, whereas the major part of the loss, in particular the part relating to loss of profit, had been sustained in Algerian Dinars. The claim by SONEGGAZ was settled at US\$1 133 plus FFr708 824 plus Din2 706 480. Under the settlement, the IOPC Fund would pay (a) the amounts agreed in US Dollars and French Francs as well as (b) the countervalue in Pounds Sterling of the amount agreed in Dinars (Din2 706 480) minus the shipowner's limitation amount (Din1 175 064), ie Din1 531 446, converted on the basis of the rate of exchange applicable on 5 June 1989 which gives £126 120. The amount payable by the IOPC Fund is thus US\$1 133 (£720) plus FFr708 824 (£68 600) plus £126 120, or a total of approximately £195 440.

3.9 Under the settlement agreement, the IOPC Fund's payment should be made within 15 days of the Court of Algiers approving the agreement. The agreement

was submitted to the Court in June 1989; however, the Court's approval was not given until 19 September 1989. The IOPC Fund's payment to SONEGGAZ will be made before the end of September 1989.

3.10 A claim was also submitted by the owner of the OUED GUETERINI (Société Nationale du Transport Maritime des Hydrocarbures et de Produits Chimiques, SNTM/HYPROC) in the amount of 5 650 Algerian Dinars (£470) in respect of costs for clean-up operations. This claim was accepted by the UK Club and the Director. The claim has been paid by the UK Club.

3.11 Indemnification of the shipowner, amounting to Din293 766 (£24 500), will be paid by the IOPC Fund when the shipowner has paid the limitation amount to SONEGGAZ.

3.12 The IOPC Fund has so far incurred expenses in respect of fees for lawyers and technical experts and in respect of travel costs totalling £8 396.

#### 4 THUNTANK 5

(Sweden, 21 December 1986)

4.1 The Swedish vessel THUNTANK 5 (2 866 GRT), carrying 5 024 tonnes of heavy fuel oil, ran aground in very bad weather outside Gävle, on the east coast of Sweden, 200 kilometres 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 was estimated that 150-200 tonnes of oil escaped as a result of the incident.

4.2 Due to the difficult weather conditions with ice and snow, clean-up operations were postponed until 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. The clean-up operations on the coast were mainly completed in late September 1987. However, in May 1989, oil from the THUNTANK 5 again polluted a few kilometres of coastline, necessitating further clean-up operations which lasted two weeks.

4.3 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. In view of the very high costs and the small quantities of oil collected, the Swedish authorities called off these operations. 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.

4.4 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.

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

4.6 In September 1987, the Swedish Government took legal action against the owner of the THUNTANK 5 in the City Court of Stockholm. The aggregate amount of the damage was provisionally indicated at SKr27 million (£2.6 million). The IOPC Fund was notified of the action in accordance with Article 7.6 of the Fund Convention.

4.7 The Court established the limit of the shipowner's liability at SKr2 741 746 (£264 840). Under Swedish Law, an extra amount should be added to cover interest and costs, and the Court fixed that additional amount at SKr700 000 (£67 620). The limitation fund was constituted in October 1987 by the Skuld Club by means of a letter of guarantee.

4.8 The Swedish Government submitted its claim in July 1988, at an aggregate amount of SKr24 992 884 (£2 414 190). This claim covered the operations of the Swedish Coast Guard and the on-shore operations undertaken by the municipalities concerned. An additional claim, in the amount of SKr114 949 (£11 100), relating to the clean-up operations carried out in May 1989 was presented in August 1989.

4.9 The Swedish Government's claim has given rise to some important questions, eg relating to tariffs applied in respect of oil combatting vessels owned by public authorities, rates for personnel of government agencies used for clean-up operations and general overheads. Preliminary discussions concerning the Government's claim were held in January 1989 between the Swedish Government on the one side, and the IOPC Fund and the Skuld Club, on the other side. In June 1989, agreement was reached on the majority of the items of the claim. Negotiations concerning the outstanding items were held in September 1989, and agreement was reached on a final settlement, the details of which are being worked out. The proposed settlement will be reported in an Addendum to this document.

4.10 The proposed settlement in respect of the Swedish Government's claim would result in payments by the IOPC Fund above the maximum amount of the Director's authority to make binding settlements, 25 million (gold) francs or 1.67 million SDR (SKr13 871 233), as laid down in Internal Regulation 8.4.1. The proposed settlement will therefore have to be submitted to the Executive Committee for consideration and approval. The Director has informed the Swedish Government that any acceptance of the claim on his part is subject to the approval of the Executive Committee.

4.11 Claims totalling SKr51 469 (£4 970) were submitted by seven fishermen and two other private claimants. They relate to compensation for destroyed equipment, the cost of cleaning polluted equipment and loss of earnings due to polluted catches. 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 (£38 640) (document FUND/EXC.18/5, paragraph 3.1.5). All these claims were accepted by the Director

and the Skuld Club, after some reductions, at an aggregate amount of SKr49 361 (£4 770). The claims were paid by the Skuld Club, seven of them in December 1987, one in February 1988 and one in August 1988.

## 5 ANTONIO GRAMSCI

(Finland, 6 February 1987)

5.1 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. It is estimated that 600-700 tonnes of the cargo escaped as a result of this incident.

5.2 Oil combating vessels were sent to the area on 9 February 1987. Under the prevailing icy weather conditions, it was extremely difficult to recover the spilt oil. Operations for this purpose were carried out by the Finnish authorities during February and March, but they had to be suspended several times, due to weather conditions. At the end of May, on-shore clean-up operations were carried out on the Finnish coast, east of the grounding site.

5.3 In May, a USSR 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 after a few days, 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.

5.4 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.

5.5 A limitation fund amounting to Rbls2 431 854 (£2 434 530) 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.

5.6 Since the USSR was not a Contracting Party to the Fund Convention on 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.

5.7 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.



5.8 In April 1988, a claim totalling Rbls2 312 864 (£2 315 410) was submitted to the owner of the ANTONIO GRAMSCI by the USSR authorities, whilst a claim amounting to FM22 124 415 (£3 224 760) was made by the Finnish authorities against the IOPC Fund as well as against the owner of the ANTONIO GRAMSCI; the Finnish claim was later adjusted to FM21 327 893 (£3 095 540). Claims from fishermen in Finland are expected.

5.9 The claims presented have been examined by the IOPC Fund in co-operation with the UK Club, with the assistance of external experts. In August 1988, the Director requested more information and documentation from the Finnish authorities, and a corresponding request was made by the UK Club to the USSR authorities. Replies to these requests were received early in 1989. Observations on the various items of the claims were made by the IOPC Fund and the UK Club in June and July 1989. Discussions concerning the Finnish claim were held in August 1989 and considerable progress made. Negotiations between all the parties will be held in early October 1989. The results of these negotiations will be reported in an Addendum to this document.

5.10 The claim by the Finnish authorities raises several questions of principle, viz the reasonableness of certain operations, the cost of equipment and material purchased for this incident but not actually used and tariffs applied in respect of oil combatting vessels owned by public authorities.

5.11 The claim submitted by the USSR authorities includes an amount of Rbls712 200 (£712 985) 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.

5.12 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).

5.13 In the first ANTONIO GRAMSCI case, the Executive Committee expressed its objection to the claim relating to environmental damage. The position of the IOPC Fund had already 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).

5.14 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 documents FUND/EXC.20/3, paragraphs 2.6-2.8 and 4.10, FUND/EXC.20/6, paragraph 3.2.3 and FUND/EXC.22/2, paragraphs 4.9.1-4.9.13.

5.15 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.

5.16 The part of the claim submitted by the USSR authorities relating to environmental damage in the present case was discussed by the Executive Committee at its 20th session, in October 1988. Referring to the above-mentioned Resolution on this subject, the Executive Committee expressed its objection to this claim. In the view of the Committee, claims of this kind were not admissible under the Civil Liability Convention, because the claimant had not suffered any quantifiable economic loss. The Executive Committee considered that it was likely that, since the adoption of that Resolution, some Member States had refrained from submitting claims relating to damage to the marine environment, in view of the interpretation of the notion of "pollution damage" adopted by the Assembly. The Executive Committee instructed the Director to negotiate with the USSR authorities on the basis of this Resolution. In addition, he was instructed to examine the legal possibilities for the IOPC Fund to intervene in court proceedings in the USSR relating to this case and, if this was legally possible, to consider whether it would be appropriate to make such intervention (document FUND/EXC.20/6, paragraph 3.3.3).

5.17 Since the 20th session of the Executive Committee, the Director has continued the discussions with the USSR authorities concerning the part of the claim relating to environmental damage, on the basis of the instructions given by the Executive Committee. However, no developments have taken place so far.

5.18 The Executive Committee may wish to give the Director further instructions as to the position to be taken by the IOPC Fund in the present ANTONIO GRAMSCI case concerning the part of the USSR claim relating to damage to the marine environment.

## 6 SOUTHERN EAGLE

(Japan, 15 June 1987)

6.1 The Panamanian tanker SOUTHERN EAGLE (4 461 GRT), carrying 3 000 tonnes of lubricating oil, collided with the Liberian vessel GOOD FAITH (9 187 GRT) off Sada Misaki on the western coast of Shikoku (Japan). As a result of the collision, the SOUTHERN EAGLE sustained damage in one of the fuel tanks and spilled approximately 15 tonnes of bunker oil into the sea. The IOPC Fund was notified of this incident by the shipowner's insurer in November 1988.

6.2 Claims were submitted for clean-up costs in the amount of ¥37 189 390 (£166 950) and for fishery damage in the amount of ¥94 800 000 (£425 590).

6.3 The limitation amount of the SOUTHERN EAGLE is ¥93 874 528 (£421 430).

6.4 The claims were settled in early 1989 at a total amount of ¥86 867 862 (£389 980), ie an amount lower than the limitation amount applicable to the vessel. Since the SOUTHERN EAGLE was registered in a State which was not Party to the Fund Convention, no indemnification is payable under Article 5 of the Fund Convention. Consequently, the IOPC Fund will not be called upon to make any payments in respect of this incident.

## 7 AKARI

(United Arab Emirates, 25 August 1987)

7.1 While outside Dubai (United Arab Emirates), 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.

7.2 It is estimated that 30-40 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.

7.3 Criminal proceedings were brought against the master of the AKARI and the shipowner's agent in a Court in Dubai. They were acquitted both by the Court of first instance and by the Court of Appeal.

7.4 Claims for clean-up costs, totalling approximately £304 440, have been submitted to the shipowner's P & I insurer (Shipowners' Mutual Protection and Indemnity Association Ltd) by several private claimants and local authorities. It is possible that further claims will be presented. No legal action has been taken against the shipowner or the P & I Club under the Civil Liability Convention.

7.5 The IOPC Fund has not received any claims from victims but has obtained certain claim documents from the P & I Club. The Director has requested further information from the Club on a number of points.

7.6 According to information given to the Director in the spring of 1989 by the lawyer acting for the shipowner, the claims for compensation would not be pursued. However, further investigations carried out by the Director indicate that it cannot in fact be ruled out that claims would be actively pursued against the shipowner and the insurer, and consequently also against the IOPC Fund.

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

7.8 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.

7.9 The investigations undertaken by the Director have shown that it is likely that the owner is financially incapable of meeting his obligations under the Civil Liability Convention.

## 8 HINODE MARU N°1

(Japan, 18 December 1987)

8.1 The Japanese coastal tanker HINODE MARU N°1 (19 GRT), carrying a cargo of heavy fuel oil, spilled approximately 25 tonnes of cargo oil into the sea in the port of Yawatahama on the western coast of Shikoku (Japan). The cause of the incident appears to be a mishandling of a cargo hose by the crew. The IOPC Fund was notified of this incident in November 1988.

8.2 Clean-up operations were carried out in the port by private contractors. As a result of this incident several fishing vessels were polluted and had to be cleaned. Claims for these operations totalling ¥3 301 225 (£14 820) were submitted to the shipowner and paid in full by him.

8.3 The limitation amount of the HINODE MARU N°1 is ¥608 000 (£2 730).

8.4 The Director approved the claims for a total amount of ¥2 455 225 (£11 020). In July 1989, the IOPC Fund paid an amount of ¥1 847 225 (£8 113), representing the total amount of the agreed claims minus the owner's liability of ¥608 000.

8.5 Indemnification of the shipowner amounting to ¥152 000 (£680) has not yet been paid.

8.6 In view of the very high legal costs that would be incurred in establishing the limitation fund, compared with the very low limitation amount of ¥608 000 (£2 730), the shipowner's P & I insurer has requested that the IOPC Fund should, in this case, waive the requirement to establish the limitation fund.

8.7 The Executive Committee has in previous cases decided that the IOPC Fund normally requires the establishment of the limitation fund in order to be able to pay compensation and that this requirement could be waived only in exceptional cases, such as the SHINKAI MARU N°3 case. In that case, the Executive Committee agreed that, in view of the disproportionately high legal costs that would be incurred in establishing the limitation fund compared with the limitation amount under the Civil Liability Convention, the IOPC Fund could, as an exception, pay compensation without the limitation fund being established (document FUND/EXC.10/5, paragraph 3.1.4).

8.8 For the reasons given by the P & I insurer, the Director supports this request. He proposes, therefore, that the requirement to establish the limitation fund should be waived in this case.

9 AMAZZONE

(France, 31 January 1988)

9.1 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 (France). 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).

9.2 It was not possible to combat the oil at sea due to severe weather conditions and the nature of the oil, which was not amenable to dispersants. After the weather had moderated, the Navy attempted to recover oil off the coast of Finistère, but these attempts were later abandoned as they proved to be ineffective.

9.3 In order to cope with the widespread pollution onshore, the French national oil spill contingency plan, "PLAN POLMAR", was activated in Finistère, in Côtes-du-Nord and on the Cherbourg Peninsula. 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. The clean-up operations were carried out by personnel drawn from the local fire brigades, the Army, the Civil Defence and the Ministry of Public Works supported by the local authorities.

9.4 In Finistère booms were deployed to protect the mouths of the three main rivers. For the most part, the shore was cleaned manually. In some areas 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 Côtes-du-Nord, the major river estuaries were boomed. The north and east coasts were affected by the oil, the length of patchily oiled coast totalling about 120 kilometres. The coast was cleaned over a period of approximately two weeks. As for the Cherbourg Peninsula, it is estimated that 200-300 tonnes of balls of oiled weed came ashore along approximately 60 kilometres of coast. Clean-up operations started on 12 February and continued until the beginning of March 1988. More than 3 000m<sup>3</sup> of oil mixed with sand, stones and weed were collected using a combination of manual and mechanical techniques. On the Calvados coast of Normandy, the oil was scattered along about 45 kilometres of the coast. Clean-up operations were finalised on 5 March 1988.

9.5 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.

9.6 As for the island of Guernsey, five to ten kilometres of coast were contaminated. About 500m<sup>3</sup> of oily debris were collected. In Jersey approximately 15 kilometres of coast were contaminated with weed mixed with oil. A total of 65m<sup>3</sup> of oily waste was collected.

9.7 The Commercial Court of Antwerp (Belgium) appointed a legal expert with the task of establishing the cause of the incident. An investigating judge (juge d'instruction) in Paris appointed two technical experts, for the same purpose.

9.8 The limitation amount of the shipowner's liability was provisionally fixed by the Court in Brest at FFr13 612 749 (£1 317 470). The limitation fund was constituted on 12 February 1988 in the Court by the shipowner's insurer (Standard Steamship Owners' Protection and Indemnity Association Ltd) by payment of the above-mentioned amount into the Court.

9.9 After the instruments on the tonnage measurement had been examined, it was established that the limitation amount should be increased to FFr13 860 380 (£1 341 435). A request by the Standard Club for an adjustment of the limitation amount was rejected by the Court on formal grounds. The French Government will appeal against this decision.

9.10 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 "proprietary" 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 "proprietary". A request by the Standard Club to the Court that the decision relating to the setting up of the limitation fund should be amended to this effect was rejected by the Court on formal grounds. The French Government will lodge an appeal also against this decision.

9.11 A claim has been submitted by the Department of Côtes-du-Nord for an amount of FFr978 853 (£94 735). This claim is being examined by the IOPC Fund and the Standard Club.

9.12 The French Government has not yet submitted its claim, although certain claim documents have been received in respect of the operations carried out by the navy. It is expected then that the Government's claim will total approximately FFr22 million (£2.1 million). Further claims are expected from local authorities in France.

9.13 Claims for clean-up costs were submitted by the authorities in Jersey and in Guernsey in the amounts of £11 380 and £10 013, respectively. These claims were accepted in full by the IOPC Fund and the Standard Club, but have not yet been paid.

9.14 At the 20th session of the Executive Committee, the Director was authorised, pursuant to Internal Regulation 8.4.2, to settle claims from private claimants up to an aggregate amount of FFr400 000 (£38 710) (document FUND/EXC.20/6, paragraph 3.3.4).

9.15 Claims submitted by two French fishermen were accepted by the IOPC Fund and the Standard Club, one of them in full (FFr55 576) and the other with a small reduction in amount (FFr3 816.70 out of FFr4 514.70 claimed). These claims were paid by the Club in October 1988 and June 1989, respectively.

9.16 Further claims have been submitted by three French fishermen, totalling FFr189 012 (£18 300), and by a private organisation for the cost of cleaning

oiled sea-birds in the amount for FFr50 949 (£4 930). These claims are being examined by the IOPC Fund and the Standard Club.

10 TAIYO MARU N°13

(Japan, 12 March 1988)

10.1 While heavy fuel oil was being transferred from one cargo tank of the Japanese tanker TAIYO MARU N°13 (86 GRT) to another in the Port of Yokohama (Japan), part of the cargo escaped into the sea, due to a mistake by the crew in handling the valves. It is estimated that about six 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 within four days of the incident.

10.2 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). In May 1989, the IOPC Fund paid ¥6 134 885 (£27 254), representing the amount of the agreed claims minus the shipowner's liability under the Civil Liability Convention, ¥2 476 800.

10.3 Indemnification of the shipowner, amounting to ¥619 200 (£2 780), has not yet been paid, since the limitation proceedings have not yet been completed.

11 KASUGA MARU N°1

(Japan, 10 December 1988)

11.1 While carrying approximately 1 100 tonnes of heavy fuel oil along the west coast of Japan, the Japanese coastal tanker KASUGA MARU N°1 (480 GRT) capsized and sank in stormy weather off Kyoga Misaki in the Kyoto prefecture.

11.2 The sunken tanker, lying at a depth of approximately 270 metres, was leaking. Extensive fishing is carried out by local fishermen in the area around the site of the incident. The shipowner and his P & I insurer, Japan Ship Owners' Mutual Protection & Indemnity Association (JPIA), engaged the services of the Maritime Disaster Prevention Centre to organise and implement oil spill clean-up in accordance with the directives given by the Maritime Safety Agency. The operations were supervised by a surveyor employed by JPIA and the IOPC Fund. At the height of the activities there were some 13 vessels and four helicopters involved. The purpose of the operations was to prevent surfacing oil from coming ashore by applying dispersants, mainly from helicopters. It is estimated that about 200 tonnes of dispersants were applied during the spraying operation. A reduction in the quantities of oil surfacing over the wreck was observed by the end of December 1988 and the operations were then scaled down. In March 1989 the response activities were reduced further to an occasional monitoring of the oil quantities surfacing over the site of the wreck.

11.3 In the course of considering possible ways of stopping the oil flow from the wreck and removing the remaining threat of oil pollution, the Maritime Safety Agency examined three options, viz lifting the wreck from the bottom of the sea, pumping the oil from the wreck and sealing the leakage points on the wreck. The Director maintained that none of these options were feasible in view of the fact that the wreck was located at a depth of 270 metres. Two major Japanese salvage

companies agreed that it was impracticable to carry out salvage work at such a depth, and it appears that this position was accepted by the authorities and the local fishery interests. A fourth option of applying explosive charges to the wreck in an attempt to release all remaining oil at once was dismissed by fishermen as posing too great a danger to a nearby crab sanctuary.

11.4 The Maritime Safety Agency also requested that an under-water inspection of the sunken vessel be carried out, eg by the use of a robot controlled video camera. It was first understood that the reason for the request was a wish to explore the possibilities of taking any measures to prevent further leakage of oil. As stated above it was not technically possible to prevent further leakage, and for this reason the IOPC Fund opposed the request. However, an additional reason behind the request was advanced, ie the desirability of establishing the exact location and condition of the wreck so as to make it possible for fishermen to avoid having their trawls damaged when fishing in the area. The Director considered that costs for an under-water inspection taken for such a purpose would not be covered by the definitions of "pollution damage" and "preventive measures", since the damage to be avoided was not damage by contamination but physical damage to the trawls. For this reason he informed the Japanese authorities that he could not give any undertaking on behalf of the IOPC Fund at that stage to pay compensation for the cost of the proposed under-water inspection. According to the information available to the Director, the inspection was not undertaken.

11.5 No reliable estimate of the oil quantities remaining in the sunken wreck has yet been advanced.

11.6 The limitation amount of the KASUGA MARU N°1 is estimated at ¥12.8 million (£57 460).

11.7 In July 1989, the IOPC Fund received claims relating to clean-up expenses totalling ¥429 197 231 (£1 926 810). A claim in respect of the expenses incurred by the Maritime Safety Agency was submitted in August 1989 in the amount of ¥9 615 650 (£43 170). Finally, claims from fishery cooperative associations totalling ¥129 842 781 (£582 910) were received in September 1989. The aggregate amount of these claims is ¥568 655 622 (£2 552 900). The claims are being examined by the IOPC Fund.

11.8 Under Internal Regulation 8.6, the Director may, at his discretion, make provisional payments to victims before the claims have been settled, if this is necessary, in his view, to mitigate undue financial hardship to them. In any case, no person may be granted provisional payment in excess of 60% of the amount which he is likely to receive from the IOPC Fund. In addition, the total provisional payments in respect of any one incident may not exceed 90 million (gold) francs or 6 million SDR (which in this case corresponds to approximately ¥1 000 million).

11.9 Some of the companies involved in the clean-up operations have requested advance payments, maintaining that a delay in payment would cause them considerable financial difficulties. These requests are being considered by the Director, who has requested explanations from the individual claimants as to why a delay in payment would cause financial hardship.



**12     FUKKOL MARU N°12**

(Japan, 15 May 1989)

12.1 The Japanese tanker FUKKOL MARU N°12 (94 GRT) was supplying heavy fuel oil to a fishing boat at Shiogama (Japan) through a hose connected to a tank on board the fishing boat, when some oil overflowed and spread on the deck of that boat and partly flowed over into the sea and on to a pier. Some fishing nets on the pier as well as cars parked there became contaminated by the oil.

12.2 Claims have been submitted relating to expenses for clean-up operations at sea, for washing polluted cars and for replacing polluted fishing nets, totalling ¥2 691 035 (£12 080). These claims were accepted by the Director in July 1989 in that amount. The claims have not yet been paid.

12.3 The limitation amount applicable to the FUKKOL MARU N°12 is estimated at ¥2 198 400 (£9 870).

**13     TSUBAME MARU N°58**

(Japan, 18 May 1989)

13.1 The Japanese tanker TSUBAME MARU N°58 (74 GRT) was supplying heavy fuel oil to a fishing boat at Shiogama (Japan). When transferring the oil, a crew member erroneously put the nozzle of the supply line into a cargo hole instead of into the inlet to the bunker tank. As a result of this mistake about seven tonnes of oil entered into the cargo tank and polluted about 140 tonnes of fish which had been loaded as cargo in that tank. No oil escaped into the sea as a result of this incident.

13.2 The shipowner's P & I insurer (JPIA) presented the case to the IOPC Fund and asked whether the Civil Liability Convention and the Fund Convention were applicable in this case. After examining the facts presented to him, the Director informed JPIA that the circumstances in this case raised a question of interpretation of the Conventions as regards the scope of the definition of "pollution damage" which needed further consideration. He informed JPIA that he intended to submit this question to the Executive Committee at its 22nd session.

13.3 The definition of "pollution damage" is laid down in Article I.6 of the Civil Liability Convention, which reads as follows:

"Pollution damage" means loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and includes the costs of preventive measures and further loss or damage caused by preventive measures".

13.4 The notion of "pollution damage" thus covers damage by contamination caused outside the ship carrying the oil which caused the damage. In the present case, the damage was caused outside the TSUBAME MARU N°58. The damage was caused when the oil was discharged from the TSUBAME MARU N°58, due to a mistake by a member of the crew. The IOPC Fund has in previous cases in Japan paid compensation for damage caused by an overflow of oil during the transfer of oil from a tanker to another vessel, but in these cases the oil escaped into the sea and necessitated clean-up operations. The present case is different in that no oil escaped into the sea and no clean-up operations took place. Nevertheless, in the Director's

view, the damage should be considered as covered by the definition of "pollution damage" in this case. The Director proposes, therefore, that the claims should be accepted, if reasonable.

13.5 Claims have been submitted totalling ¥33 349 310 (£149 720) for damage to the fish cargo and for the cost of cleaning the tanks of the fishing vessel. The claims are being examined by the IOPC Fund Secretariat.

13.6 The limitation amount applicable to the TSUBAME MARU N°58 is estimated at ¥2 971 520 (£13 340).

14 TSUBAME MARU N°16

(Japan, 15 June 1989)

14.1 The Japanese tanker TSUBAME MARU N°16 (56 GRT) was supplying heavy fuel oil to the fuel tanks of a fishing boat at Kushiro (Japan), when the fuel oil spouted and spilled through a gap in the nozzle of the oil hose of the TSUBAME MARU N°16. The spilt oil polluted some fish which had already been unloaded from the fishing vessel on to the pier. No oil escaped into the water.

14.2 For the reasons set out in paragraph 13.2 above in respect of the TSUBAME MARU N°58 incident, the Director submits for consideration by the Executive Committee the question as to whether the damage caused in the TSUBAME MARU N°16 case is covered by the definition of "pollution damage" in the Civil Liability Convention.

14.3 In view of the Director's position in respect of the claims in the TSUBAME MARU N°58 incident set out in paragraph 13.4 above, the Director is of the opinion that the damage caused in the TSUBAME MARU N°16 case falls within the definition of "pollution damage". For this reason he proposes that the claims in the TSUBAME MARU N°16 case should be accepted, if reasonable.

14.4 A claim has been submitted in respect of the damage to the unloaded fish in the amount of ¥1 886 700 (£8 480). The amount claimed has been considered reasonable by the surveyor used by the IOPC Fund, and the Director has accepted this amount, subject to the decision by the Executive Committee as to the applicability of the Conventions.

14.5 The limitation amount applicable to the TSUBAME MARU N°16 is ¥1 613 120 (£7 240).

15 KIFUKU MARU N°13

(Japan, 30 June 1989)

15.1 The Japanese tanker KIFUKU MARU N°13 was supplying heavy fuel oil to a fishing boat, in the port of Otsuji, Iwate prefecture (Japan). Towards the end of the operations, the fuel oil was by mistake supplied into a fresh water tank instead of a fuel tank, and an overflow of oil onto the deck of the fishing boat took place. A small quantity of oil escaped into the sea.

15.2 Some fishing nets on board the fishing boat were polluted and had to be cleaned. A small scale clean-up operation at sea was undertaken.

15.3 Claims have been submitted, totalling ¥12 100 640 (£54 230). The claims relate to costs for cleaning the polluted nets (¥11 516 440) and costs for clean-up operations at sea (¥584 200). The claims are being examined by the Director.

15.4 The limitation amount applicable to the KIFUKU MARU N°13 is estimated at ¥1 727 040 (£7 750).

15.5 The shipowner's P & I insurer has, also in this case, asked whether the IOPC Fund considers that the case falls within the scope of application of the Civil Liability Convention and the Fund Convention. The Director has stated that he considers that the damage resulting from this incident is covered by the definition of "pollution damage". In the present case, some oil escaped into the sea and necessitated clean-up operations. As mentioned in paragraph 13.4 above, the IOPC Fund has in previous cases paid compensation for damage caused by an overflow of oil during the transfer of oil from a tanker to another vessel where the oil has escaped into the sea and clean-up operations had to be undertaken.

#### 16 NANCY ORR GAUCHER

(Canada, 25 July 1989)

16.1 The Liberian tanker Nancy Orr Gaucher (2 829 GRT) spilled about 250 tonnes of her cargo of asphalt during a violent tank overflow whilst discharging at an asphalt plant in Hamilton Harbour, Ontario (Canada). The asphalt contaminated much of the vessel's deck, and most of the asphalt sank to the harbour bed as a strip immediately around the vessel.

16.2 The deck and hull of the vessel were cleaned up by a local contractor for about Can\$450 000 (£238 850).

16.3 Both the harbour authority and the local government officials insisted on the sunken oil being retrieved, and a dredge operation was started on 11 August 1989. Between 250m<sup>3</sup> and 300m<sup>3</sup> of sediments and oil were recovered by dredging, which was completed within two weeks. The cost of the dredging operation is estimated at about Can\$200 000 (£106 160).

16.4 The question as to the appropriate method for disposal of the recovered material is being examined. Disposal at a local landfill may be feasible.

16.5 So far, no claims have been submitted to the IOPC Fund.

16.6 The limitation amount of the NANCY ORR GAUCHER is estimated at Can\$500 000 (£265 390).

#### 17 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 5.18 above;

- (c) to take a decision on the Director's proposal that the requirement to establish the limitation fund be waived in respect of the HINODE MARU N°1 incident (paragraph 8.8 above); and
  - (d) to take decisions on the interpretation of the notion of "pollution damage" in respect of the TSUBAME MARU N°58 and TSUBAME MARU N°16 incidents (paragraphs 13.2-13.4 and 14.2-14.3 above).
-