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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 DAINICHI MARU N°5, DAITO MARU N°3, KAZUEI MARU N°10, FUJI MARU N°3, VOLGONEFT 263 and HATO MARU N°2 incidents. The IOPC Fund has also been notified of legal proceedings in respect of the CZANTORIA incident.

3 Details of these new incidents and the incidents reported to previous sessions of the Executive Committee, other than the PATMOS and ANTONIO GRAMSCI incidents, with which the IOPC Fund has been dealing since the 23rd 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, FUND/EXC.20/4/Add.1, FUND/EXC.22/3, FUND/EXC.22/3/Add.1 and FUND/EXC.22/3/Add.2, submitted to the Executive Committee's 14th, 16th, 18th, 20th and 22nd sessions, contain the information available at the time; reference is made to these documents. The PATMOS incident is dealt with in document FUND/EXC.24/2 and the ANTONIO GRAMSCI incident in document FUND/EXC.24/3.

4 The Director has been informed that claims will be presented to the IOPC Fund by the Swedish Government in respect of an oil pollution incident which occurred in September 1987 on the west coast of Sweden, north of Gothenburg. According to the Swedish Government it has finally been established that the oil polluting the coast had escaped from the Greek tanker TOLMIROS. The costs incurred by the Swedish authorities for clean-up operations have been estimated at approximately SKr97 million (£9.2 million). The limitation amount applicable to the TOLMIROS is approximately SKr55 million (£5.2 million). Further information in respect of this incident will be given in a separate document (document FUND/EXC.24/5).

5 Developments regarding the settlement of claims since the 23rd session of the Executive Committee can be summarised as follows:

(a) With respect to the KOSHUN MARU N°1 incident, all claims have been settled. The recourse claim by the IOPC Fund against the owner of the other vessel has also been settled.

(b) As for the PATMOS incident, most claims have been settled and paid. However, the IOPC Fund is involved in complex legal proceedings in Italy concerning some claims, and some important legal issues have arisen (cf document FUND/EXC.24/2).

(c) All claims arising out of the BRADY MARIA incident have been settled and paid. It has now been established that it will not be possible for the IOPC Fund to be reimbursed for the amounts paid in VAT.

(d) With regard to the OUED GUETERINI and THUNTANK 5 incidents, all claims have been settled and paid.

(e) As for the ANTONIO GRAMSCI incident, all claims – both the Finnish Government's claim and the claims submitted by USSR claimants – have been settled. The limitation fund established in the USSR has been distributed and the IOPC Fund has paid its share of the Finnish Government's claim (cf document FUND/EXC.24/3).

(f) In respect of the AKARI incident, the claims are being examined by the IOPC Fund.

(g) All claims arising out of the HINODE MARU N°1 incident have been settled and paid.

(h) As for the AMAZZONE incident, negotiations are being held concerning the claims submitted by the French Government and the French local authorities. Some claims submitted by French private claimants and the claim by the authorities of Jersey have been settled and paid.

(i) All claims arising out of the TAIYO MARU N°13 incident have been settled and paid.

(j) The Director has taken the position that the Fund Convention does not apply to the CZANTORIA incident.

(k) As for the KASUGA MARU N°1 incident, all claims for compensation submitted so far have been settled and paid, whereas indemnification of the shipowner has not yet been paid.

(l) With respect to the FUKKOL MARU N°12, TSUBAME MARU N°16, and KIFUKU MARU N°103 incidents, all claims have been settled and paid.

(m) Concerning the TSUBAME MARU N°58 and DAINICHI MARU N°5 incidents, all claims for compensation have been paid, whereas indemnification of the shipowner has not yet been paid.

(n) It has been established that the IOPC Fund will not be called upon to make any payments in respect of the NANCY ORR GAUCHER incident.

(o) With regard to the DAITO MARU N°3, KAZUEI MARU N°10 and FUJI MARU N°3 incidents, the claims are being examined.

(p) In respect of the VOLGONEFT 263 incident, a claim has been presented by a fisherman whereas the Swedish authorities have not yet submitted their claims.

(q) No claims have so far been submitted in respect of the HATO MARU N°2 incident.

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ANNEX

(The conversion of figures from national currencies into Pound Sterling is made at the rate of exchange on 2 July 1990, 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 N°1 in Tokyo Bay. According to the findings of the Yokohama Marine Court, part of the blame for the collision fell on the RYOZAN MARU N°1. After difficult negotiations, which also covered personal injury claims, agreement has now been reached between the RYOZAN MARU N°1 interests and the KOSHUN MARU N°1 interests, including the IOPC Fund, on an apportionment of liability of 1/3:2/3 in favour of the RYOZAN MARU N°1. An amount of ¥9 340 302 was recovered from the owner of the RYOZAN MARU N°1 for pollution damage, of which the IOPC Fund will receive ¥8 866 222 (£33 240). It is expected that the IOPC Fund's share of the recovered amount will be paid during September 1990.

1.3 Indemnification of the shipowner amounting to ¥474 080 (£1 777) was paid by the IOPC Fund in August 1990.

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

	Total	Shipowner's Share	IOPC Fund's Share
	¥	¥	¥
Compensation	28 020 909	1 896 320	26 124 589
Surveyor's fees	2 174 390	147 512	2 027 238
Lawyer's fees	1 747 890	118 289	1 629 601
Indemnification		– 474 080	474 080
Total payments	31 943 189	1 688 041	30 255 508
Recovery from RYOZAN MARU N°1	– 9 340 302	– 474 080	– 8 866 222
Total costs	22 602 887	1 213 610	21 389 286

2 BRADY MARIA

(Federal Republic of Germany, 3 January 1986)

2.1 At its 22nd session, the Executive Committee noted that all claims and expenses arising out of this incident had been paid. The total cost to the IOPC Fund arising out of this incident is as follows:

	DM	£
Total claims as settled	3 545 140.14	
Minus		
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		84 704
Interest paid to General Fund from BRADY MARIA Major Claims Fund		24 992
		1 215 985
Less		
Recovery from WAYLINK limitation fund		- 105 355
Total cost to IOPC Fund		1 110 630

2.2 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 £352 315 has been paid from the BRADY MARIA major claims fund.

2.3 As reported to the Executive Committee, the Director was investigating whether it would be possible to get reimbursement from the Federal Ministry of Finance of the amount of DM307 753 (£105 215) paid by the IOPC Fund in respect of expenses incurred by the local German authorities relating to VAT. After lengthy discussions with the competent Federal Ministries it was made clear that no such reimbursement could be made in this case.

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 (Algeria), 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, approximately 15 tonnes of bitumen 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 As reported at the 22nd session of the Executive Committee (documents FUND/EXC.22/3, Annex, paragraph 3.8 and FUND/EXC.22/3/Add.1, paragraph 2.2), the claim by the power station was settled in June 1989 at US$1 133 plus FFr708 824 plus Din2 706 480. On 21 September 1989, the IOPC Fund paid compensation to the owner of the power station for US$1 133 (£720) plus FFr708 824 (£68 343) plus £126 120, or a total of £195 183, representing the amounts of the agreed claim minus the shipowner's limitation amount, Din1 175 064.

3.4 A claim by the owner of the OUED GUETERINI in the amount of $5 650 (£3 753) in respect of costs for clean-up operations was accepted in its entirety.

3.5 The shipowner paid its share of compensation to the owner of the power station on 30 January 1990. Indemnification of the shipowner, Din293 766 (£24 193), was paid by the IOPC Fund on 2 April 1990.

3.6 The total expenses incurred by the IOPC Fund in respect of this incident are as follows:

	£
Power station	195 183
Shipowner	3 753
Total amount paid by IOPC Fund to claimants	198 936
Indemnification of shipowner	24 193
Fees and other expenses	32 022
Total cost to IOPC Fund	255 151

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. It was estimated that 150–200 tonnes of oil escaped as a result of the incident. The oil affected various areas along a 150 kilometre stretch of coast around Gävle, including a number of small islands. The pollution necessitated extensive clean-up operations which were undertaken by the Swedish Coast Guard and the five municipalities affected by the spill.

4.2 The Swedish Government claimed compensation at an aggregate amount of SKr25 107 833 (£2.4 million). This claim covered the operations of the Swedish Coast Guard and the on-shore operations by the municipalities concerned.

4.3 The Swedish Government's claim gave rise to some important issues, viz questions relating 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 (cf document FUND/EXC.22/3/Add.1, paragraph 3.2 – 3.5). After negotiations between the Swedish Government and the Director, the claim was settled at a total amount of SKr21 931 232 (£2.1 million) plus interest. This settlement was approved by the Executive Committee at its 22nd session, on 24 October 1989 (document FUND/EXC. 22/5, paragraph 3.2.3).

4.4 On 2 November 1989, the IOPC Fund paid SKr23 168 271 (£2 291 257) to the Swedish Government, representing the accepted amount of the claim minus the shipowner's limitation amount (SKr2 741 746) plus interest (SKr3 978 785).

4.5 Claims totalling SKr51 469 (£4 860) were submitted by seven fishermen and two other private claimants. They related to compensation for destroyed equipment, costs of cleaning polluted equipment and loss of earnings due to polluted catches. These claims were accepted at an aggregate amount of SKr49 369 (£4 925). Seven of the claims were paid in December 1987, one in February 1988 and one in August 1988.

4.6 Indemnification of the shipowner, SKr685 437 (£68 393), was paid by the IOPC Fund in December 1989.

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

	SKr	£
Swedish Government (Including interest)	25 910 017	
Private claimants	49 369	
Total claims	25 959 386	
Minus		
Shipowner's limitation amount	-2 741 746	
Total amount paid by IOPC Fund to claimants	23 217 640	2 296 182
Indemnification of shipowner	685 437	68 393
Fees and other expenses		48 242
Interest paid to General Fund from THUNTANK 5 Major Claims Fund		36 891
Total cost to IOPC Fund		2 449 708

4.8 The amount paid from the general fund in respect of this incident, 15 million (gold) francs, corresponds to £839 338. Consequently, an amount of £1 610 370 has been paid from the THUNTANK 5 Major Claims Fund.

4.9 The Swedish authorities feared that oil from the THUNTANK 5 which sank to the bottom of the sea may resurface and come ashore, necessitating further clean-up operations in subsequent years. In the Settlement Agreement the Swedish Government reserved its right to claim supplementary compensation in respect of such operations, subject to the provisions on prescription in the Civil Liability Convention and the Fund Convention (document FUND/EXC.22/3/Add.1, paragraph 3.12 and Annex, paragraph 7). So far there have been no reports on further pollution resulting from this incident.

5 AKARI

(United Arab Emirates, 25 August 1987)

5.1 While outside Dubai (United Arab Emirates), the Panamanian coastal tanker AKARI (1 345 GRT) had a switchboard fire on 24 August 1987 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 on 25 and 26 August 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.

5.2 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.

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

5.4 At the time of the incident the AKARI was entered with the Shipowners' Mutual Protection and Indemnity Association Ltd (the Shipowners' Club). Claims for clean-up costs, totalling approximately £435 000, were at an early stage submitted to the Club by several private claimants and public bodies.

5.5 The limitation amount applicable to the AKARI under the Civil Liability Convention is estimated at 121 500 Special Drawing Rights (£92 080).

5.6 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 indicated that it could in fact not be ruled out that claims would be actively pursued against the shipowner and the insurer, and consequently also against the IOPC Fund.

5.7 Any claims would become time barred after the expiry of a period of three years from the date when the damage occurred (ie on or shortly after 25 August 1990), in accordance with Article VIII of the Civil Liability Convention and Article 6.1 of the Fund Convention. For this reason, in June 1990 the Director, through the IOPC Fund's lawyers in Dubai, made contact with the persons whom the Fund had reason to believe had suffered damage as a result of the incident and drew their attention to their right of compensation from the IOPC Fund and the necessity of bringing legal action against the shipowner before 25 August 1990, so as to prevent the claims from being time barred. Although the Director considered that the shipowner was financially incapable of meeting his obligations, he nevertheless requested that the claimants should bring legal action against the shipowner, in order to avoid the claims being time barred. He informed the claimants that as soon as such actions had been brought, he would enter into negotiations with them for the purpose of arriving at an out-of-court settlement.

5.8 As a result of these contacts, the following claimants brought legal action against the owner of the AKARI in the Court of Dubai and notified the IOPC Fund of the action under Article 7.6 of the Fund Convention:

	Amount Claimed	Pound Sterling (estimate)
Coast Guard of the United Arab Emirates	Dhs204 050	31 700
Dubai Petroleum Company	US$148 740	84 300
Dubai Aluminium Company	Dhs401 455	62 300
Dubai Municipality	Dhs256 006	39 700
Dubai Electricity Company	Dhs50 514	7 800
Smit Tak International	US$176 941	100 000
		325 800

5.9 The claims are being examined by the IOPC Fund Secretariat, which has requested further documentation in support of the claims.

5.10 Under Article 4.1.b of the Fund Convention, the IOPC Fund is liable to pay compensation if the owner liable for the damage under the Civil Liability Convention is financially incapable of meeting his obligations in full and any insurance provided under Article VII of the Civil Liability Convention does not cover or is insufficient to satisfy the claims for compensation for the damage. The shipowner is, under the Fund Convention, treated as financially incapable of meeting his obligations, if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the Civil Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him.

5.11 From the technical information obtained, the Director has reason to believe that the ship was in a bad condition at the time of the incident and that it was in fact not seaworthy. The Director has, therefore, considered whether the IOPC Fund ought to challenge the shipowner's right of limitation. However, although it might be possible to establish unseaworthiness, it would probably be difficult to prove that the unseaworthiness was in fact causative of the loss, and even more difficult to prove fault or privity on the part of the shipowner in that regard, so as to deprive him of the right of limitation of liability.

5.12 The owner of the AKARI is a company incorporated in Liberia. It became evident that the shipowner would not set up any limitation fund. In view of the information obtained by the IOPC Fund Secretariat, the Director is of the opinion that the shipowner is financially incapable of meeting his obligations under the Civil Liability Convention. The Director carried out a search of the company register in Liberia and made extensive enquiries in the United Arab Emirates. Despite these enquiries, it was not possible to identify any funds that could be used to satisfy any judgement against the shipowner. The only asset appears to have been the AKARI, which was sold as scrap after the incident.

5.13 The AKARI was registered in Panama, which is Party to the Civil Liability Convention, and was therefore in principle subject to the insurance requirements laid down in that Convention. Under Article VIII.1 of the Convention, the owner is required to maintain insurance in respect of any ship registered in a Contracting State and carrying more than 2 000 tonnes of oil in bulk as cargo. The AKARI was at the time of the incident carrying 1 899 tonnes and was in fact not capable of carrying 2 000 tonnes. For this reason, the owner was not under any obligation to maintain insurance in accordance with the Civil Liability Convention.

5.14 The Director held several meetings with those representing the Shipowners' Club and the shipowner to discuss the legal problems involved. From the discussions with the shipowner's solicitors, and from other independent inquiries, it was apparent that the shipowner had no funds and would not, without the Club's support, establish a limitation fund. The Club made it clear that it would not constitute any such fund. The Club throughout consistently refused to confirm that the AKARI was insured with the Club in respect of matters flowing from this incident and has subsequently stated that the vessel was not insured for such matters. The Club argued that the right of direct action under Article VII.8 of the Civil Liability Convention did not apply in this case, since the ship was carrying less than 2 000 tonnes of oil. This argument was not accepted by the Director who maintained that a right of direct action against the Club as the shipowner's liability insurer did exist. Finally, after protracted discussion, the Club offered to make an ex gratia payment of US$160 000 to the Fund, recognising its potential liabilities to third parties but without any admission on this issue.

5.15 In view of the financial situation of the shipowner, the uncertainty surrounding the outcome of any direct action against the Club and the likely high costs of litigation, the Director considered that the best course of action was to accept the Club's offer of an ex gratia payment of $160 000 (£90 730), without in any way conceding the validity of its contention that no right of direct action existed. In consideration of this payment, he gave an undertaking, on behalf of the IOPC Fund, not to pursue any claims against the owner of the AKARI or against the Club and to hold the owner and the Club harmless for any claim for compensation for pollution damage arising out of this incident. An agreement to this effect was signed by the IOPC Fund and the Club on 20 August 1990. Under the agreement, the payment by the Club to the IOPC Fund will be made when the Fund has paid the claimants. If the total amount paid by the IOPC Fund were to fall below $160 000, the amount to paid by the Club would be reduced according to a formula set out in the agreement.

6 HINODE MARU N°1

(Japan, 18 December 1987)

6.1 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.

6.2 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 (£12 376), were submitted to the shipowner and paid in full by him.

6.3 The limitation amount of the HINODE MARU N°1 is ¥608 000 (£2 280).

6.4 The Director approved the claims for a total amount of ¥2 455 225 (£9 200). 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 shipowner's liability of ¥608 000.

6.5 In view of the disproportionately high legal costs that would be incurred in establishing the limitation fund compared with the low limitation amount under the Civil Liability Convention, the Executive Committee decided, at its 22nd session, that the IOPC Fund could, as an exception, pay compensation in this case without the limitation fund being established (document FUND/EXC.22/5, paragraph 3.2.8). The Executive Committee took into account the Memorandum of Understanding signed on 25 November 1985 by the P & I insurer of this vessel, the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) and the IOPC Fund, under which JPIA undertakes to repay in full any amount paid by the IOPC Fund in compensation, if it is held by the competent court that the shipowner is not entitled to limit his liability under the Civil Liability Convention.

6.6 Indemnification of the shipowner amounting to ¥152 000 (£674) was paid in November 1989.

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

	Total	Shipowner's Share	IOPC Fund's Share
	¥	¥	¥
Compensation	2 455 225	608 000	1 847 225
Surveyor's fees	20 000	4 952	15 048
Indemnification		- 152 000	152 000
Total payments	2 475 225	460 952	2 014 273

7 AMAZZONE

(France, 31 January 1988)

7.1 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).

7.2 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.

7.3 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.

7.4 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. During the clean-up operations more than 3 000m^3 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.

7.5 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.

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

7.7 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. The findings of the Courts have not yet been published.

7.8 The limitation amount of the shipowner's liability was provisionally fixed by the Court in Brest at FFr13 612 749 (£1 387 640). 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.

7.9 After the instruments on the tonnage measurement had been examined, it was established that the limitation amount should be increased to FFr13 860 380 (£1 412 880). A request by the Standard Club for an adjustment of the limitation amount was rejected by the Court on formal grounds. The French Government appealed against this decision. In July 1990, the Court adjusted the limitation amount to FFr13 860 380.

7.10 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 "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". 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 appealed also against this decision. The appeal was allowed in July 1990.

7.11 The French Government has submitted a claim at an aggregate amount of FFr22 255 375 (£2.3 million). This claim covers the operations carried out by the Ministries of Defence, Interior, Transport and Environment. The supporting documents, which were received during the first half of 1990, are being examined by the IOPC Fund and the Standard Club.

7.12 A claim has been submitted by the Department of Côtes-du-Nord for an amount of FFr141 326 (£14 405). In addition, 25 municipalities in Côtes-du-Nord have claimed a total amount of FFr924 824 (£94 270). The IOPC Fund and the Standard Club are discussing these claims with the competent authorities.

7.13 The Department of Calvados claimed compensation for costs of disposal of collected oily waste, totalling FFr291 800 (£29 745). 15 Communes in Calvados claim compensation for clean-up costs, totalling FFr146 138 (£14 900). Negotiations will be held concerning these claims in the near future.

7.14 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. The claim by the authorities in Jersey was paid by the IOPC Fund in July 1990, as soon as a

preliminary examination of the French Government's claim had shown that the IOPC Fund would be called upon to pay compensation as a result of this incident. The claim by the authorities in Guernsey will be paid once discussions concerning interest on the claim have been concluded.

7.15 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 (£40 775) (document FUND/EXC.20/6, paragraph 3.3.4).

7.16 Claims submitted by four French fishermen for a total amount of FFr221 102 (£22 540) have been settled at an aggregate amount of FFr124 392 (£12 680). The claims have been paid by the Standard Club during the period October 1988–August 1990. A private organisation submitted a claim relating to the cost of cleaning oiled sea-birds in the amount for FFr50 949 (£5 190). This claim, which was accepted in full, was paid by the Club in May 1990. A further claim was submitted by a French fisherman, totalling FFr28 000 (£2 850). This claim has been settled at FFr21 400 (£2 180) but has not yet been paid.

8 TAIYO MARU N°13

(Japan, 12 March 1988)

8.1 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.

8.2 Claims for clean-up costs, totalling ¥10 212 210 (£38 280), 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 (£32 280). 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.

8.3 Indemnification of the shipowner, amounting to ¥619 200 (£2 745), was paid in November 1989.

8.4 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
	¥	¥	¥
Compensation	8 611 685	2 476 800	6 134 885
Lawyer's fees	1 210 600	348 180	862 420
Surveyor's fees	873 570	251 247	622 323
Indemnification		- 619 200	619 200
Total payments	10 695 855	2 457 027	8 238 828

9 CZANTORIA

(Canada, 8 May 1988)

9.1 The Canadian tanker CZANTORIA struck a berth in St Romuald, Quebec (Canada). As a result of the incident, some of the oil cargo was spilled into St Lawrence River. It has been alleged that the spilt oil caused some pollution damage.

9.2 The owners of the cargo of the CZANTORIA and the charterers of the vessel have brought legal action in the Federal Court of Canada against the owner of the CZANTORIA claiming compensation for any loss they have suffered as a result of the incident, estimated at not less than Can$2.5 million (£1.2 million), including costs for pollution damage. The IOPC Fund has been notified of the legal action in May 1990.

9.3 The Director informed the plaintiffs that as the Fund Convention only entered into force for Canada on 24 August 1989, ie after the incident, the IOPC Fund was not liable to pay any compensation in respect of this incident.

9.4 In response, the plaintiffs stated that the transitional provisions of the 1989 amendments to the Canada Shipping Act provide that the new legislation applies in respect of damage incurred after the coming into force of the amendments, regardless of the time of the occurrence that gave rise to the damage. The plaintiffs alleged that in the CZANTORIA case some damage was caused after 24 April 1989 and maintained that the new legislation applies to such damage.

9.5 The Director has taken the position that the Civil Liability Convention and the Fund Convention do not apply to incidents which occur before the entry into force of the Conventions for the State concerned, even if the damage resulting from such an incident was sustained after the entry into force. He has also stated that, in his view, the transitional provisions of the Canada Shipping Act did not settle this issue; the Fund Convention had been implemented in Canadian law by reference to the Convention, and the Canada Shipping Act could not give claimants more extensive rights against the IOPC Fund than those given by the Convention. For this reason, the Director has maintained that the Canada Shipping Act does not give any right to compensation from the IOPC Fund in respect of incidents occurring before 24 April 1989.

9.6 The Executive Committee may want to consider whether it agrees with the Director's interpretation of the Fund Convention on this point, ie that there is no right of compensation from the IOPC Fund in respect of damage in a given State resulting from incidents occurring before the entry into force of the Fund Convention for that State, even if the damage resulting from such an incident was sustained after the entry into force.

9.7 It should be noted that it appears very unlikely that the aggregate amount of the claims will exceed the limit of liability applicable to the shipowner.

10 KASUGA MARU N°1

(Japan, 10 December 1988)

10.1 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 (Japan).

10.2 The sunken tanker, lying at a depth of approximately 270 metres, was leaking oil. Extensive fishing is carried out by local fishermen in the area around the site of the incident. The shipowner and his P & I insurer, the Japan Ship Owners' Mutual Protection & Indemnity Association (JPIA), engaged the services of the Japan 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.

10.3 When 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.

10.4 The Maritime Safety Agency also requested that an under-water inspection of the sunken vessel should be carried out with the use of a robot controlled video camera. It was first understood that the purpose of such an inspection would be to explore the possibility of taking measures to prevent further leakage of oil. As it was not technically feasible to prevent further leakage, the Director 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 maintained that the cost of an under-water inspection carried out 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. The inspection was not undertaken. At its 22nd session, the Executive Committee endorsed the position taken by the Director on this point (document FUND/EXC.22/5, paragraph 3.2.11).

10.5 The limitation amount of the KASUGA MARU N°1 is ¥17 015 040 (£63 790).

10.6 A claim submitted in August 1989 in the amount of ¥9 615 650 (£36 050) in respect of the expenses incurred by the Maritime Safety Agency was approved in full by the Executive Committee on 24 October 1989, at its 22nd session (document FUND/EXC.22/5, paragraph 3.2.12). The claim was paid by the IOPC Fund on 2 November 1989.

10.7 Claims relating to clean-up expenses incurred by the Japan Maritime Disaster Prevention Centre (JMDPC), the shipowner and 20 sub-contractors were submitted in July 1989 for a total amount of ¥429 197 213 (£1 608 990). After negotiations, these claims were reduced to an aggregate amount of ¥378 312 701 (£1 418 300). The Executive Committee approved these claims (document FUND/EXC.22/5, paragraph 3.2.12). These claims were also paid on 2 November 1989.

10.8 Claims were submitted in September 1989 by four fishery co-operative associations, totalling ¥129 842 781 (£486 760). These claims included an amount of ¥30 million (£112 460) relating to "expenses for the creation of a crab protection area by surrounding the sunken vessel with concrete blocks". The Director rejected this part of the claim, as the purpose of the creation of such an area would not be to prevent damage by contamination but to prevent physical damage to fishing nets; these expenses could therefore not be considered as falling within the definition of "pollution damage". The Executive Committee endorsed the Director's position (document FUND/EXC.22/5, paragraph 3.2.11).

10.9 At its 22nd session, the Executive Committee authorised the Director, under Internal Regulation 8.4.2, to settle claims which had been submitted by the fishery cooperative associations, except those parts of the claims which related to the creation of a crab protection area as mentioned above. In addition, the Committee authorised the Director to settle any claims arising out of this incident which may be submitted in the future up to an aggregate amount of ¥100 million (document FUND/EXC.22/5, paragraph 3.2.12).

10.10 The remaining parts of the claims submitted by the fishery co-operative associations (¥99 842 781) related mainly to loss of income due to the fact that oil which had escaped from the KASUGA MARU N°1 prevented the fishermen from fishing for a certain period of time. These claims were settled by the Director, pursuant to the authorization given to him by the Executive Committee, at ¥53 500 000 (£200 560), and they were paid in December 1989.

10.11 An additional claim by the shipowner for ¥951 856 (£3 570) was approved in full by the Director, as authorised by the Executive Committee. This claim was paid in December 1989.

10.12 As reported at the Executive Committee's 22nd session, JPIA had made certain advance payments to claimants (document FUND/EXC.22/3/Add.1, paragraph 7.10). The IOPC Fund has reimbursed JPIA for these payments, in accordance with paragraph 4 of the Memorandum of Understanding signed by JPIA and the IOPC Fund in 1985 (document FUND/EXC.16/6).

10.13 The settlements can be summarised as follows:

	Claimed ¥	Agreed ¥
Maritime Safety Agency	9 615 650	9 615 650
JMDPC and 13 sub-contractors	138 491 977	116 142 701
Shipowner and 7 sub-contractors	291 657 092	263 121 856
Fisheries co-operative associations	129 842 781	53 500 000
	569 607 500	442 380 207
	(£2.1 million)	(£1.7 million)

10.14 The payments made by the IOPC Fund in compensation total ¥425 365 167 (£1 887 819), representing the aggregate amount of the agreed claims minus the shipowner's liability of ¥17 015 040.

10.15 There is no reliable estimate of the quantity of oil remaining in the sunken vessel. Some oil is still leaking from the wreck. In the Settlement Agreements concluded with the claimants, the claimants have reserved their rights to claim further compensation in respect of pollution damage caused by further leakage of oil after the date of the respective agreement. For this reason, further claims against the IOPC Fund cannot be ruled out, although it is unlikely that such claims will be presented.

10.16 Indemnification of the shipowner, ¥4 253 760 (£15 950), has not yet been paid, since the limitation proceedings have not been completed.

10.17 The IOPC Fund has paid its share of the surveyor's fees, ¥15 860 085 (£12 880).

11 FUKKOL MARU N°12

(Japan, 15 May 1989)

11.1 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.

11.2 Claims were submitted relating to expenses for clean-up operations at sea, for washing polluted cars and for replacing polluted fishing nets, totalling ¥2 691 035 (£10 090). These claims were accepted by the Director in July 1989 in that amount.

11.3 The limitation amount applicable to the FUKKOL MARU N°12 is ¥2 198 400 (£8 240).

11.4 For reasons indicated in paragraph 6.5 above in respect of the HINODE MARU N°1 incident, the Executive Committee decided, at its 22nd session, to waive the requirement to establish the limitation fund in the FUKKOL MARU N°12 case (document FUND/EXC.22/5, paragraph 3.2.8).

11.5 In January 1990, the IOPC Fund paid ¥492 635 (£2 041) in compensation, representing the total amount of the agreed claims minus the shipowner's liability amount under the Civil Liability Convention, as well as indemnification of the shipowner, ¥549 600 (£2 277).

11.6 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
	¥	¥	¥
Compensation	2 691 035	2 198 400	492 635
Surveyor's fees	160 680	131 265	29 415
Indemnification		- 549 600	549 600
Total payments	2 851 715	1 780 065	1 071 650

12 TSUBAME MARU N°58

(Japan, 18 May 1989)

12.1 During a transfer of heavy fuel oil from the Japanese tanker TSUBAME MARU N°58 (74 GRT) to a fishing boat at Shiogama (Japan), 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 the incident.

12.2 In this case, the question arose as to whether the damage resulting from the incident fell within the definition of "pollution damage" laid down in Article I.6 of the Civil Liability Convention. The notion of "pollution damage" covers damage by contamination caused outside the ship carrying the oil which caused the damage. The IOPC Fund had, 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 those cases the oil had escaped into the sea and necessitated clean-up operations. The TSUBAME MARU N°58 case was different in that no oil escaped into the sea and no clean-up operations took place. However, the Executive Committee decided, at its 22nd session, that the damage in this case should also be considered as being covered by the definition of "pollution damage" (document FUND/EXC.22/5, paragraph 3.2.13).

12.3 Claims were submitted totalling ¥33 349 310 (£125 020) for damage to the fish cargo and for the cost of cleaning the tanks of the fishing vessel. The claims were settled in November 1989 by the Director at ¥22 131 425 (£82 970).

12.4 In May 1990, the IOPC Fund paid ¥19 159 905 (£74 134), representing the amount of the agreed claims minus the shipowner's limitation amount, ¥2 971 520.

12.5 Indemnification of the shipowner, ¥742 880 (£2 785), has not yet been paid since the limitation proceedings have not been completed.

13 TSUBAME MARU N°16

(Japan, 15 June 1989)

13.1 Heavy fuel oil was being supplied by the Japanese tanker TSUBAME MARU N°16 (56 GRT) 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.

13.2 Also in this case the question arose as to whether the damage resulting from the incident was covered by the definition of "pollution damage" in the Civil Liability Convention. The Executive Committee decided, at its 22nd session, that the damage fell within that definition (document FUND/EXC.22/5, paragraph 3.2.13).

13.3 A claim was submitted in respect of the damage to the unloaded fish in the amount of ¥1 886 700 (£7 070). This claim was accepted by the Director in November 1989.

13.4 The Executive Committee decided to waive the requirement to establish the limitation fund in the TSUBAME MARU N°16 case, for the same reasons as in the HINODE MARU N°1 case (document FUND/EXC.22/5, paragraph 3.2.8).

13.5 In May 1990, the IOPC Fund paid ¥273 580 (£1 032) in compensation, representing the amount of the agreed claims minus the amount of the shipowner's liability (¥1 613 120), and ¥403 280 (£1 538) representing the indemnification of the shipowner.

13.6 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
	¥	¥	¥
Compensation	1 886 700	1 613 120	273 580
Surveyor's fees	67 212	57 466	9 746
Indemnification		- 403 280	403 280
Total payments	1 953 912	1 267 306	686 606

14 KIFUKU MARU N°103

(Japan, 28 June 1989)

14.1 The Japanese tanker KIFUKU MARU N°103 (59 GRT) 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. 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.

14.2 Claims were submitted, totalling ¥12 100 640 (£45 360). The claims related to costs for cleaning the polluted nets (¥11 516 440) and costs for clean-up operations at sea (¥584 200). The claims were settled by the Director in November 1989 at an aggregate amount of ¥10 013 000 (£37 540).

14.3 The limitation amount applicable to the KIFUKU MARU N°103 was ¥1 727 040 (£6 475).

14.4 At its 22nd session, the Executive Committee decided to authorize the Director to waive the requirement to establish the limitation fund, for the reasons referred to above in respect of the HINODE MARU N°1 case if a request to this effect were to be made (document FUND/EXC.22/5, paragraph 3.2.8). After such a request had been made, the Director waived this requirement.

14.5 The shipowner's P & I insurer had asked whether the IOPC Fund considered that the case fell within the scope of application of the Civil Liability Convention and the Fund Convention. As reported to the Executive Committee at its 22nd session the Director had in this case taken the position that the damage resulting from this incident was covered by the definition of "pollution damage" (document FUND/EXC.22/3, Annex, paragraph 15.5).

14.6 In January 1990, the IOPC Fund paid ¥8 285 960 (£34 325) in compensation representing the amount of the agreed claims minus the shipowner's liability under the Civil Liability Convention, as well as indemnification of the shipowner, ¥431 760 (£1 789).

14.7 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
	¥	¥	¥
Compensation	10 013 000	1 727 040	8 285 960
Surveyor's fees	391 115	67 459	323 656
Indemnification		- 431 760	431 760
Total payments	10 404 115	1 362 739	9 041 376

15 NANCY ORR GAUCHER

(Canada, 25 July 1989 and 10 August 1989)

15.1 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) on 25 July 1989. The asphalt contaminated much of the vessel's deck, and a significant quantity of the asphalt sank to the harbour bed as a strip immediately around the vessel.

15.2 The Canadian authorities insisted on the sunken asphalt being retrieved, and a dredging operation was started on 11 August 1989. Between 250m^3 and 300m^3 of asphalt and sediments were recovered by these operations, which were completed within two weeks. The deck and hull of the vessel were cleaned.

15.3 The claims resulting from this incident totalled Can$648 743 (£316 920). More than half of the amount claimed (Can$356 000) related to the costs incurred by the shipowner for cleaning the deck and hull of the NANCY ORR GAUCHER. The Director took the position that the operations for cleaning the hull and deck of the vessel did not fall within the definitions of "pollution damage" and "preventive measures" as laid down in the Civil Liability Convention and the Fund Convention. The Director stressed that the notion of pollution damage covered damage by contamination outside the ship carrying the oil, and cost of preventive measures, ie measures to prevent or minimize pollution damage. He also drew attention to the physical properties of the substances in this case. Although the asphalt was fluid when released, it would have cooled and turned solid so that only a small portion could have flowed over board into the water. For this reason the Director was of the opinion that except during a short period after the incident the asphalt on the deck and the hull of the vessel did not present any danger of pollution. With the exception of the measures taken during the first few hours, the measures taken to clean the deck and hull could not, in his view, be considered as taken for the purpose of preventing or minimising pollution damage. He rejected therefore the parts of the claim relating to the costs for cleaning deck and hull but accepted 5% of these costs as the estimated expenses for the measures taken during the initial hours after the spill, ie Can$18 058. The Director's position was accepted by the shipowner.

15.4 The total amount of the accepted claims relating to this spill was Can$292 110 (£142 700) As this amount falls well below the limitation amount of the shipowner (Can$473 766), the IOPC Fund will not be called upon to make any payments of compensation or indemnification as a result of the spill in Hamilton.

15.5 From Hamilton, the NANCY ORR GAUCHER proceeded to Montreal, Quebec (Canada) with the rest of her cargo. On 10 August 1989, there was a new eruption of asphalt which spilled on the deck and over the ships's side into the St Lawrence River. The vessel had to be cleaned, and certain operations were carried out for collecting the asphalt that had escaped into the water.

15.6 The claims in respect of the spill in Montreal totalled Can$289 123 (£141 240). As the limitation amount of the NANCY ORR GAUCHER in respect of this latter spill is Can$470 587, the IOPC Fund will not be called upon to make any payment as a result of that spill. In addition, the Director

informed the claimants that the major part of the claims which related to the cleaning of the hull and deck (approximately Can$251 000) did not fall within the definition of pollution damage, for the reasons given above in respect of the spill in Hamilton.

16 DAINICHI MARU N°5

(Japan, 28 October 1989)

16.1 During the transfer of heavy fuel oil from the Japanese tanker DAINICHI MARU N°5 (174 GRT) to a fishing boat in the port of Yaizu (Japan), a cargo hose was mishandled, resulting in a small quantity of oil flowing into a cargo hold. No oil spilled into the sea.

16.2 This incident resulted in claims totalling ¥7 444 722 (£27 909). The claims relate mainly to loss of earnings of the owner of the fishing boat for the two days during which the polluted hold was being cleaned.

16.3 As for the question of whether the costs of cleaning the cargo hold should be considered as being covered by the definition of "pollution damage" laid down in the Civil Liability Convention, reference is made to what is stated in paragraph 12.2 above concerning the similar situation in the TSUBAME MARU N°58 case. In view of the position taken by the Executive Committee in respect of the TSUBAME MARU N°58 incident, the Director has taken the position that also the damage caused to the cargo in the DAINICHI MARU N°5 case should be considered as falling within that definition.

16.4 In March 1990, the Director approved the claims for a total of ¥6 360 290 (£23 850), out of which ¥5 255 028 related to loss of earnings for the owner of the fishing boat and ¥1 105 262 compensation for damage to that boat. In June 1990, the IOPC Fund paid ¥2 120 610 (£8 123), representing the total amount of the accepted claim minus the shipowner's limitation amount, ¥4 199 680 (£15 790).

16.5 Indemnification of the shipowner, ¥1 049 920 (£3 940), has not yet been paid, as the limitation proceedings have not been completed.

17 DAITO MARU N°3

(Japan, 5 April 1990)

17.1 The Japanese tanker DAITO MARU N°3 (93 GRT) was transferring heavy fuel oil to a barge in the port of Yokohama (Japan). Due to mishandling of a hose, about three tonnes of the oil leaked into the sea and polluted other vessels and barges in the port. The clean-up operations were completed within two days.

17.2 Claims relating to costs of the clean-up operations have been submitted for a total amount of ¥10 021 996 (£37 570). The claims are being examined by the IOPC Fund's surveyor.

17.3 The limitation amount applicable to the DAITO MARU N°3 is estimated at ¥2 495 360 (£9 350).

18 KAZUEI MARU N°10

(Japan, 11 April 1990)

18.1 While the Japanese tanker KAZUEI MARU N°10 (121 GRT) was supplying heavy fuel oil to a ferry in the port of Osaka (Japan), it collided with a cargo vessel. As a result of the collision, a cargo tank of the KAZUEI MARU N°10 was damaged, and some 30 tonnes of the oil cargo escaped into the sea. The spilt oil spread over the port area, and some oil drifted outside the port. The clean-up operations lasted one week.

18.2 Claims totalling ¥58 584 547 (£219 620) were submitted in respect of the clean-up operations. In addition, a fishery association presented a claim for ¥691 364 (£2 590) relating to contamination of

its fishing nets. These claims are being examined by the IOPC Fund's surveyor. Further claims may be submitted.

18.3 The limitation amount applicable to the KAZUEI MARU N°10 is ¥3 474 880 (£13 030).

19 FUJI MARU N°3

(Japan, 12 April 1990)

19.1 Heavy fuel oil was being supplied by the Japanese tanker FUJI MARU N°3 (199 GRT) in the port of Yokohama (Japan) to an unladen tanker, when a small quantity of oil escaped into the sea due to oversupply. The spilt oil spread rapidly in the port area. The clean-up operations lasted three days.

19.2 Claims for clean-up costs, totalling ¥5 673 560 (£21 270), have been submitted by private contractors. The claims are being examined by the IOPC Fund's surveyor. Further claims may be presented.

19.3 The limitation amount applicable to the FUJI MARU N°3 is estimated at ¥5 094 400 (£19 100).

20 VOLGONEFT 263

(Sweden, 14 May 1990)

20.1 The USSR tanker VOLGONEFT 263 (3 566 GRT) collided in thick fog with the general cargo vessel BETTY (499 GRT) registered in the Federal Republic of Germany, 22 kilometres off the Swedish east coast, south of Karlskrona. The VOLGONEFT 263 which was carrying 4 546 tonnes of waste oil suffered damage to two cargo tanks and it is estimated that 800 tonnes of oil escaped into the sea.

20.2 The coastal region north of the place where the collision occurred is an archipelago consisting of numerous small islands, inlets and very shallow water. Extensive fishing activities are carried out in the area. The spilt oil spread rapidly over a large area of the sea. The Swedish Coast Guard took extensive measures to combat the oil at sea. As the conditions for off-shore recovery were ideal, the Swedish authorities decided to request assistance from the neighbouring countries in accordance with the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention). In response Denmark, Finland, the Federal Republic of Germany and the USSR sent one combatting vessel each, and these units arrived at the site of the spill during the second and third day after the collision. Nine recovery vessels and fifteen support craft participated in the operations. Aircraft and helicopters were used for locating floating oil. As the threat of extensive shore pollution subsided the operations were gradually reduced and were terminated on 27 May 1990. The impact on the coast and islands was very limited as only small quantities of oil reached the shore.

20.3 The Swedish Government has not yet submitted any claim for compensation. It is estimated that the cost of the clean-up operations at sea is at least SKr15 million (£1.4 million). It is expected that there will also be claims in respect of certain clean-up operations on shore.

20.4 The Director appointed a local surveyor for the purpose of investigating claims of local fishermen alleging that they had suffered pollution damage.

20.5 A local fisherman suffered considerable damage, as 400 of his salmon nets became polluted and the deck of his fishing boat was damaged by the oil. On 15 June 1990 the Director received a request from this fisherman for provisional payment. Since the Director considered this necessary in order to mitigate undue financial hardship to the fisherman, he made a provisional payment of SKr70 000 (£6 747) on 18 June 1990, in accordance with Internal Regulation 8.6. Further provisional payments of SKr166 250 (£19 106) and SKr40 000 (£3 780) were made on 2 and 21 August 1990, respectively. After certain items of the fisherman's claim had been settled at SKr126 640 (SKr11 960), these items were paid on 21 August 1990. It is estimated that the aggregate amount of his claim will be in the region of SKr600 000 (£56 660).

20.6 The VOLGONEFT 263 is owned by a USSR company and did not have any P & I insurance but was covered by a State guarantee, in accordance with Article VII.12 of the Civil Liability Convention. The limitation amount is estimated at SKr3 million (£283 290).

20.7 The Swedish Government has taken legal action against the owner of the VOLGONEFT 263 in the Court of Kalmar, claiming compensation for oil pollution damage. The IOPC Fund has been notified of the court action pursuant to Article 7.6 of the Fund Convention. The Director has notified the Court that the IOPC Fund intends to intervene in the proceedings pursuant to Article 7.4 of the Convention. The limitation fund has not yet been constituted.

20.8 The master of the BETTY owns 90% of the vessel and 10% is owned by his uncle. The limitation amount of the BETTY is SKr3 123 585 (£294 960).

20.9 It has been alleged by the owner of the VOLGONEFT 263 that the collision was wholly caused by the BETTY, the main reason being that there was no proper watch-keeping on board and that the master of the BETTY was under the influence of alcohol at the time of the collision. However, the master of the BETTY has maintained that the blame for the collision fell entirely on the VOLGONEFT 263, which had taken the wrong route, and has during the police investigations claimed that he had not drunk any alcohol before the collision but that, as a result of the shock caused by the collision, he had drunk alcohol after the event. The Swedish police investigation does not give any conclusive evidence on this point.

20.10 The owner of the VOLGONEFT 263 took legal action against the master of the BETTY in the District Court of Kalmar claiming compensation for damage to the vessel, for loss of hire and for pollution damage. On 15 May 1990, the Court approved a request for arrest of the BETTY. A default judgement for SKr2 million (£188 850) was rendered against the master of the BETTY on 8 June 1990. After agreement had been reached between the two shipowners and related interest, the arrest was lifted in August 1990.

20.11 The Director investigated whether the IOPC Fund should take recourse action against the owners of the BETTY for the purpose of recovering the amount of compensation that the Fund will have to pay as a result of this incident. However, on the basis of the investigation carried out by the IOPC Fund's Swedish lawyer, the Director has come to the conclusion that it would not be meaningful, at least not for the time being, to take such recourse action. Firstly, under Swedish law the IOPC Fund may exercise recourse only if it can prove that there was gross negligence on the part of the BETTY. Secondly, it is doubtful whether it would be possible for the IOPC Fund to prove circumstances that would deprive the shipowner of his right to limitation of liability under the Swedish Maritime Code, which on this point is based on the 1976 Convention on Limitation of Liability for Maritime Claims. Thirdly, the owner of the VOLGONEFT 263 will under Swedish law have a maritime lien on the BETTY to cover any claim for compensation for damage to the former vessel and for loss of hire. Finally, in the view of the Director, it is unlikely that the owners of the BETTY have any personal assets that would be sufficient to satisfy any judgement rendered in a recourse action.

21 HATO MARU N°2

(Japan, 27 July 1990)

21.1 The Japanese tanker HATO MARU N°2 (31 GRT) was supplying heavy fuel oil to a dry cargo vessel in the port of Kobe (Japan) when, due to the mishandling of the valve of the hose, heavy fuel oil spread over the deck and onto the cargo of acrylic fibre in the hold of the cargo vessel. The cargo was contaminated. However, no oil escaped into the sea as a result of the incident.

21.2 As for the question of whether the damage caused to the cargo should be considered as being covered by the definition of "pollution damage" laid down in the Civil Liability Convention, reference is made to what is stated in paragraph 12.2 above concerning the similar situation in the TSUBAME MARU N°58 case. In view of the position taken by the Executive Committee in respect of the TSUBAME MARU N°58 incident, the Director is of the opinion that also the damage caused to the cargo of the HATO MARU N°2 should be considered as falling within that definition.

21.3 It is estimated that claims for compensation for pollution damage will amount to over ¥2 million (£7 500).

21.4 The limitation amount applicable to the HATO MARU N°2 is estimated at ¥793 600 (£2 975).

21.5 The HATO MARU N°2 incident was not taken into account for the purpose of the assessment of the 1990 annual contributions (document FUND/A.13/11).

22 Action to be Taken by the Executive Committee

The Executive Committee is invited:

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

(b) to give the Director such instructions as it considers appropriate in respect of the CZANTORIA incident concerning the issue set out in paragraph 9.6 above;