INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
28th session
Agenda item 3

FUND/EXC.28/7
18 September 1991

Original: ENGLISH

INCIDENTS INVOLVING THE IOPC FUND

Reports on Developments in respect of Certain Incidents of Particular Interest

TOLMIROS, AMAZZONE, PORTFIELD AND VISTABELLA

Note by the Director

1 Introduction

This document sets out the developments since the 25th session of the Executive Committee in respect of certain incidents which may be of special interest to delegations although they do not require any decisions by the Committee.

2 TOLMIROS

(Sweden, 11 September 1987)

The Incident

2.1 On 11 September 1987 a Swedish passenger ferry sighted an oil slick which was two nautical miles long and one mile wide off the Skaw, the northern point of Jutland (Denmark), and reported its observations to the Swedish authorities which immediately commenced air reconnaissance flights. The prevailing winds and currents caused the oil to drift rapidly towards the west coast of Sweden. As the slick spread over a large area of the sea, no effective measures could be taken to prevent the oil from reaching the coast.

2.2 The oil started reaching the Swedish coast in the evening of 11 September 1987. It is estimated that 200 tonnes of oil came ashore. Extensive pollution was caused to a long stretch of coast, north of Gothenburg. The affected region consists of numerous small islands and a rocky mainland coast. The area is of great importance to tourism and some fishing activities are carried out there.

2.3 The clean-up operations at sea were carried out by the Swedish Coast Guard, whereas the onshore clean-up was the responsibility of the municipalities concerned. Extensive operations to clean the shoreline were carried out during the period September 1987 to December 1988 and also during the summer of 1989. The Swedish Government has reimbursed the municipalities for the costs incurred by them as a result of the incident.

The Legal Action

2.4 In August 1990, the Swedish Government took legal action in the Court of Gothenburg against the owner of the Greek vessel TOLMIROS (48 914 GRT) and his P & I insurer, Assuranceforeningen Gard (the Gard Club), claiming compensation for pollution damage. The Swedish Government's claim totals SKr100 639 999 (£9.5 million). The IOPC Fund was notified of the action, in accordance with Article 7.6 of the Fund Convention. The Fund availed itself of its right to intervene as a party to the legal proceedings, pursuant to Article 7.4. It should be noted that the claims arising out of this incident would have been time-barred on or shortly after 11 September 1990, ie on the expiry of the three-year periods laid down in the Civil Liability Convention and the Fund Convention.

2.5 The limitation amount applicable to the TOLMIROS under the Civil Liability Convention is approximately SKr50 million (£4.7 million).

2.6 The Court held a pre-trial hearing on 11 September 1991. The main hearing is scheduled for November/December of this year.

Position of the Swedish Government

2.7 The Swedish Government has alleged that the oil causing the pollution emanated from the TOLMIROS and that the TOLMIROS at the time of the incident was carrying oil in bulk as cargo. The Swedish Government's pleadings to the Court in support of its claim can be summarised as follows:

> The oil which polluted the coast was a Venezuelan crude oil with high asphalt content and special characteristics. The Swedish authorities investigated which ships, during the relevant period, had transported oil of the type in question in northern European waters. This investigation showed that only two vessels could have been involved, viz the French tanker CHRISTINA and the above-mentioned Greek tanker TOLMIROS. With regard to the CHRISTINA, an investigation was made of her journey, the quantities of oil in her tanks on departure from the previous port and the quantities remaining on arrival at the next port. The results of this investigation showed that the CHRISTINA could not have been the source of the spill. Samples of the oil taken from the cargo discharged by the TOLMIROS in Gothenburg were compared with samples of the oil which had polluted the coast, and this comparison showed that the samples corresponded very closely. When the TOLMIROS was discharging its cargo in Gothenburg, certain problems arose as the storage tank in the port became over-full. For this reason, it was not possible to discharge the entire cargo. In addition, it was not possible to dispose of the cargo oil remaining in the vessel's pump and pipe system and in the lines ashore by the method normally used (so-called "blowing"). The exact quantity of the cargo oil remaining in the TOLMIROS on leaving Gothenburg cannot be indicated, but the quantity which had not been discharged was substantial.

2.8 The Swedish Government has taken the position that "oil carried as cargo" is a concept intended to be distinguished from oil as bunkers or lubricating oil and that oil taken on board as cargo, ie taken into the tanks and the loading/discharging systems of the vessel, remains "cargo" under the Conventions until removed from the vessel.

2.9 As a subsidiary ground for its action, the Swedish Government has based its claim on the Swedish legislation relating to oil pollution damage caused by ships not covered by the Civil Liability Convention, should it be considered that the TOLMIROS was not carrying oil in bulk as cargo. It should be noted that such liability would not result in the IOPC Fund being called upon to pay any supplementary compensation.

2.10 The Swedish Government has not yet submitted any documents relating to the quantum of its claim.

Position of the Shipowner and the Gard Club

2.11 In their pleadings to the Court, the owner of the TOLMIROS and the Gard Club have rejected any liability for the damage caused by this oil spill, and have taken the position that the oil which polluted the coast did not come from the TOLMIROS. According to a "dry certificate after discharging" issued by an independent inspector in Gothenburg, all the tanks of the TOLMIROS were empty and dry on completion of the discharge. The shipowner and the Club have not taken any position as to whether the TOLMIROS should be considered as actually carrying oil in bulk as cargo.

2.12 The shipowner and the Gard Club have pointed out that a thorough investigation undertaken by the Greek authorities at the request of the Swedish Government acquitted the TOLMIROS of the allegation of having caused the spill. The master and the chief engineer were prosecuted in Greece for pollution offences but were acquitted by the Court of first instance in September 1991.

Position of the IOPC Fund

2.13 The Swedish Government has presented documentation indicating that the oil may emanate from the TOLMIROS. In the opinion of the Director, the documentation presented so far does not in any way exclude other sources. In the Court proceedings the IOPC Fund has taken the position that the oil did not emanate from the TOLMIROS.

2.14 Under Article 4.2(b) of the Fund Convention, the IOPC Fund shall incur no obligation to pay compensation for pollution damage if the claimant cannot prove that the damage resulted from an incident involving one or more ships. A "ship" is defined in the Civil Liability Convention and the Fund Convention as "any sea-going vessel and any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo".

2.15 The IOPC Fund has taken the position that the TOLMIROS was not actually carrying oil in bulk as cargo and that therefore the Conventions would not apply even if it were proved that the oil which polluted the coast came from the TOLMIROS. Consequently the IOPC Fund has rejected any liability to pay compensation.

2.16 The Director engaged an English barrister with a wealth of experience in maritime matters, Mr G Brice, QC, to study the question as to whether the TOLMIROS should be considered as having "actually carried oil in bulk as cargo". In an extensive reasoned opinion the barrister reaches the conclusion that residual oil (slops) not intended to be discharged to the owner/receiver is neither "cargo" nor "carried as cargo" in the ordinary sense of the words or as these words should be construed in the Conventions.

3 AMAZZONE

(France, 31 January 1988)

The Incident

3.1 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 holes which formed the access points for tank washing of two cargo tanks and, as a result, approximately 2 100 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 coast, affecting four different Departments in France (Finistère, Côtes-d'Armor, Manche and Calvados) and the Channel Islands (Jersey and Guernsey).

3.2 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.

3.3 In order to cope with the widespread pollution on shore, the French national oil spill contingency plan, "PLAN POLMAR", was activated in Finistère, in Côtes-d'Armor 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.

3.4 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.

Constitution of Limitation Fund

3.5 The limitation amount of the shipowner's liability was provisionally fixed by the Court in Brest at FFr13 612 749 (£1 366 055). The limitation fund was constituted in February 1988 by the shipowner's insurer (the Standard Steamship Owners' Protection and Indemnity Association Ltd, "Standard Club") by payment of that amount into Court. After the instruments on the tonnage measurement had been examined, it was established that the limitation amount should be increased to FFr13 860 369 (£1 390 905). 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 as requested.

3.6 In the Italian registration document the vessel was registered in the name of two persons, indicated as "proprietario" and "armatore". The limitation fund was therefore constituted on behalf of these two persons. The IOPC Fund 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.

3.7 At its 24th session, the Executive Committee agreed with the Director's position that only one person, ie the registered owner, could benefit from the right of limitation of liability under the Civil Liability Convention (document FUND/EXC.24/6, paragraph 3.4.4).

The Claims

3.8 In 1990, the French Government submitted a claim in an aggregate amount of FFr22 255 375 (£2.2 million), covering the operations carried out by the Ministries concerned. The claimed amount was later reduced to FFr20 960 056 (£2.1 million).

3.9 The Government's claim gave rise to several questions of principle, viz, the reasonableness of certain operations, the tariffs applied in respect of certain vessels used for oil combatting operations owned by public authorities and the rates of personnel of Government agencies used for such operations. After negotiations, an agreement of principle was reached in May 1991 between the French Government, on the one side, and the IOPC Fund, the Standard Club and shipowner, on the other side, to settle the Government's claim at FFr17 150 000 (£1 721 000) plus interest from 1 January 1991. The agreement has not yet been formalised.

3.10 A claim was submitted by the Department of Côtes-d'Armor for an amount of FFr141 326 (£14 180) plus interest. This claim was accepted in full in December 1990. In addition, 25 communes in Côtes-d'Armor claimed a total amount of FFr914 464 (£91 770) plus interest. The claims were settled in December 1990 at an aggregate amount of FFr814 964 (£81 780) plus interest. The claims of the Department and the communes have been paid by the IOPC Fund.

3.11 The Department of Calvados has claimed compensation in respect of clean-up operations, in the amount of FFr74 250 (£7 450). This claim is being examined by the IOPC Fund and the Standard Club. It is possible that the Department will, in addition, present a claim relating to the cost of the disposal of collected oily waste.

3.12 15 communes in Calvados have claimed compensation for clean-up costs, totalling FFr146 138 (£14 665). After an examination of the claim documents, the IOPC Fund has requested further information on a number of points.

3.13 Claims for clean-up costs were submitted by the authorities in Jersey and in Guernsey in the amounts of £11 380 and £13 396, respectively. These claims were accepted in full and were paid by the IOPC Fund in July and November 1990.

3.14 Claims submitted by five French fishermen for a total amount of FFr249 102 (£25 000) were settled at an aggregate amount of FFr145 850 (£14 640). The claims were paid by the Standard Club during the period October 1988 - September 1990. A private organisation submitted a claim relating to the cost of cleaning oiled sea-birds in the amount of FFr50 949 (£5 190). This claim, which was accepted in full, was paid by the Club in May 1990.

Investigations into the Cause of the Incident

3.15 In Antwerp (Belgium), where the vessel called after the incident, the Commercial Court appointed a legal expert with the task of establishing the cause of the incident. This expert issued a preliminary report stating that the excessive diameter of the holes forming the access points to the tanks was the main cause of the incident.

3.16 In the context of a criminal investigation, an investigating judge ("juge d'instruction") in Paris appointed two technical experts to investigate the cause of the incident. The French Government and the IOPC Fund employed their own experts for the same purpose and the findings of these experts were presented to the investigating judge. On 22 January 1991, the judge decided that, in spite of the fact that investigations had shown that the vessel was not properly maintained, there were no legal grounds for criminal proceedings against anyone, as the relevant provisions of French criminal law apply to a foreign vessel only if the incident occurs within French territorial waters. Following this decision, the public prosecutor authorised the release of the findings of the judge and the report of the court experts for use in civil proceedings.

3.17 As mentioned above, the AMAZZONE was equipped with deck openings which made it possible to clean the cargo tanks by using pressurised water (the so-called "Butterworth" system). Many tankers had this system before it was gradually replaced, from the 1980s, by cleaning facilities integrated in the tanks themselves which use the cargo as a cleaning fluid (crude oil washing). A description of the Butterworth system is given in document FUND/EXC.26/3, paragraph 4.4.

3.18 During the storm on 30 and 31 January, probably on the evening of 31 January, the Butterworth deck covers on several tanks became unfastened, perhaps under the effect of shocks caused by broken power cables, and fell in the sea. Heavy waves washing the deck then penetrated into the tanks through the Butterworth openings and ejected the oil.

3.19 The findings of the experts appointed by the investigating judge are summarized in document FUND/EXC.26/3, paragraphs 4.6 - 4.9.

Legal Action against the Shipowner, Charterer and P & I Insurer

3.20 After having examined the results of the various investigations, the French Government and the Director came to the following conclusions. The AMAZZONE was not seaworthy at the time of the incident, as a result of inadequate maintenance of the Butterworth system. As emphasised by the experts appointed by the investigating judge in Paris, the shipowner and the charterer had not taken any measures to examine the condition of the Butterworth holes, neither when the ship was acquired

in 1987 nor thereafter, not even by taking samples of the thickness of the steel plates. Immediately after the incident, during the night in the port of Antwerp, the charterer of the AMAZZONE cut the edges of certain Butterworth openings, disregarding the most elementary safety rules. He then replaced the system for tightening the deck covers which had vanished in the storm with covers tightened by a conventional mechanism, ie using nuts for tightening. The experts interpreted this act as a clumsy attempt to "eliminate the trace of the most flagrant corrosion". The action taken by the charterer shows that he must have been aware of the bad condition of the ship in this regard. In addition, the shipowner and the charterer had not given their personnel the necessary training and proper instructions so as to ensure that the Butterworth deck covers remained fastened in bad weather. The shipowner was responsible for the proper maintenance of the vessel and the training of the crew, and he could not escape this responsibility by chartering out the vessel.

3.21 For the reasons given above, the French Government and the Director considered that the incident occurred as a result of the actual fault or privity of the shipowner, and that the owner therefore was not entitled to limit his liability, as provided in Article V.2 of the Civil Liability Convention:

> "If the incident occurred as a result of the actual fault or privity of the owner, he shall not be entitled to avail himself of the limitation provided in paragraph 1 of this Article."

3.22 In addition, the French Government and the Director were of the opinion that the charterer was also liable for the oil pollution damage, as he was guilty of negligence in the maintenance of the vessel and the training of the crew. It should be noted that the charterer's right of limitation is not governed by the Civil Liability Convention but by the 1976 Convention on the Limitation of Liability for Maritime Claims. The French Government and the Director considered that the charterer's lack of care would deprive him of the right to limit his liability under Article 4 of the 1976 Convention which reads:

> "A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result."

3.23 Under Article VIII of the Civil Liability Convention, rights of compensation are extinguished unless legal action is brought within three years of the date when the damage occurred. As the AMAZZONE incident occurred during the night of 30 to 31 January 1988, the major part of the claims would have become time-barred on or shortly after 31 January 1991. It was therefore necessary that any action against the shipowner by the French Government and the IOPC Fund be brought by 31 January 1991. As regards claims against the charterer, the time bar period is ten years. It was nevertheless considered appropriate to bring legal actions against the shipowner and the charterer at the same time.

3.24 In view of these considerations, the Director, on behalf of the IOPC Fund, and the French Government decided to take legal action against the owner of the AMAZZONE (Spei Leasing) and the charterer of the vessel (Intersea), as well as against the Standard Club, in its capacity as third party liability insurer of the charterer. The actions were brought at the Court of Cherbourg (France) on 30 January 1991.

3.25 In respect of the action against the shipowner, the French Government and the IOPC Fund have invoked the strict liability laid down in the Civil Liability Convention and have maintained that the owner is not entitled to limit his liability. The action against the charterer is based on his fault as regards the lack of maintenance of the Butterworth system, and it has been argued that the charterer is not entitled to limit his liability under the 1976 Convention on Limitation of Liability for Maritime Claims. The arguments put forward by the French Government and the IOPC Fund in support of their actions are based mainly on the findings of the experts appointed by the investigating judge, as summarised in this document.

3.26 As the French Government's claim for compensation against the shipowner and the IOPC Fund had not been settled, the French Government claimed compensation from the three defendants for pollution damage for a total amount of FFr20 960 056 (£2.1 million) plus interest. The IOPC Fund claimed to be indemnified in respect of any amounts already paid or to be paid by it to claimants as

a result of the incident; the claims already settled and paid by the Fund (those in respect of the Department of Côtes-d'Armor and the Channel Islands) were specifically referred to.

3.27 At its 26th session the Executive Committee endorsed the measures taken by the Director to bring legal action against the shipowner, the charterer and the Standard Club for the purpose of recovering any amount paid by the IOPC Fund to claimants and for the purpose of preventing them from limiting their liability (document FUND/EXC.26/5, paragraph 4.2).

3.28 There have been no developments since the 26th session of the Executive Committee in respect of this court action.

4 PORTFIELD

(United Kingdom, 5 November 1990)

4.1 The British tanker PORTFIELD (481 GRT) sank at her berth in Pembroke Dock, Wales (United Kingdom) with a cargo of 80 tonnes of diesel oil and 220 tonnes of medium fuel oil. It is estimated that approximately 110 tonnes of the medium fuel oil was spilled as a result of the sinking.

4.2 Due to a favourable wind most of the spilt oil could be contained in the berth by booms deployed by the port authority. This oil was recovered with skimmers and vacuum suction trucks over a period of a week and disposed of at a local refinery. A relatively small proportion of the spilt oil escaped from the confines of the berth on the first day and affected numerous pleasure craft moored in the Milford Haven estuary. The local authorities carried out shoreline cleaning on a small scale at a few key locations. A nearby fish farming facility was also contaminated by oil, but fortunately no fish were being cultivated at the time. After the cargo tanks had been emptied, the ship was refloated on 11 November and the main clean-up operations were terminated soon thereafter.

4.3 The shipowner submitted a claim totalling £99 160 relating to clean-up operations, salvage and preventive measures. In respect of this claim the question arose as to whether certain operations connected with the salvage of the vessel fall within the definition of "pollution damage" as laid down in the Civil Liability Convention, ie whether such operations could be considered as "preventive measures" as defined in the Convention.

4.4 The shipowner maintained that the primary purpose of the operations was to prevent oil pollution. If the operations had been carried out in order to salve the vessel, they would, in his view, have been completed within hours and at a much lower cost. A robust salvage operation using mobile cranes would have split the vessel open, causing the release of a large quantity of oil.

4.5 After discussions, the Director accepted that the salvage operations were carried out partly for the purpose of salving the vessel and partly for the purpose of preventing oil pollution, and that the risk of pollution had made the shipowner carry out the operations in a more expensive way than would have been necessary in order to salve the vessel. Agreement was reached to apportion the cost of these operations, with 2/3 for preventive measures and 1/3 for salvage.

4.6 The shipowner's claim was settled at £63 000. This claim was paid by the IOPC Fund in July 1991.

4.7 A number of other claims relating to pollution of boats and fishing equipment have been settled at a total amount of £39 472. These claims have been paid by the P & I insurer. In addition, further claims of the same kind and a claim for shore clean-up have been settled for an aggregate amount of £24 630. These claims have been paid by the IOPC Fund.

4.8 Further claims for £418 683 relating to clean-up operations and preventive measures have been received. These claims are at present being discussed between the claimants and the IOPC Fund.

4.9 It is expected that a claim will be submitted relating to damage to the above-mentioned fish farming facility.

5 VISTABELLA

(Caribbean, 7 March 1991)

5.1 The sea-going barge VISTABELLA (1 090 GRT) registered in Trinidad and Tobago, carrying approximately 2 000 tonnes of heavy fuel oil, was being towed by a tug, on a voyage from a storage facility in the Netherlands Antilles to Antigua. The tow line parted and the barge sank to a depth of over 600 metres, 15 miles south-east of Nevis. The quantity of oil spilt as a result of the incident and the quantity remaining in the barge are not known.

5.2 Under the influence of the current, the spilt oil spread northwards and some oil came ashore on St Barthélemy (Department of Guadeloupe, France), where a number of yachts and fishing boats were polluted.

5.3 Oil continued to seep from the wreck, and as a result of easterly winds the windward shores of Saint Kitts, Nevis, Saba and Sint Maarten were also polluted. The two former islands form the independent State of Saint Kitts and Nevis, whilst Saba and Sint Maarten are part of the Netherlands Antilles.

5.4 Clean-up operations offshore were carried out by the French navy applying dispersants in the sea area between the sinking site and St Barthélemy. This activity was terminated after a few days when it was confirmed that the dispersant treatment was having little effect because of the high viscosity of the spilt oil.

5.5 On 22 March, oil started coming ashore in the British Virgin Islands and the United States Virgin Islands. Within a week oil was also reported to have reached Puerto Rico (United States). Analysis of oil samples and studies of the prevailing winds and currents indicated that the oil which polluted the British Virgin Islands emanated from the VISTABELLA.

5.6 In total, five jurisdictions were affected as a result of this incident. However, only the pollution damage in the French Department of Guadeloupe and in the British Virgin Islands qualifies for compensation from the IOPC Fund. Neither the independent State of Saint Kitts and Nevis nor Puerto Rico is covered by the Fund Convention. Likewise, the Fund Convention does not cover damage in the Netherlands Antilles since the Kingdom of the Netherlands has not extended the application of the Convention to the area.

5.7 Under the joint initiative of the United States Coast Guard and the Saint Kitts and Nevis Coast Guard, attempts were made in early April by a United States contractor to collect oil at the point off Nevis where it was surfacing from the wreck. The operation was unsuccessful, partly because of high seas, and the attempts were abandoned after about ten days.

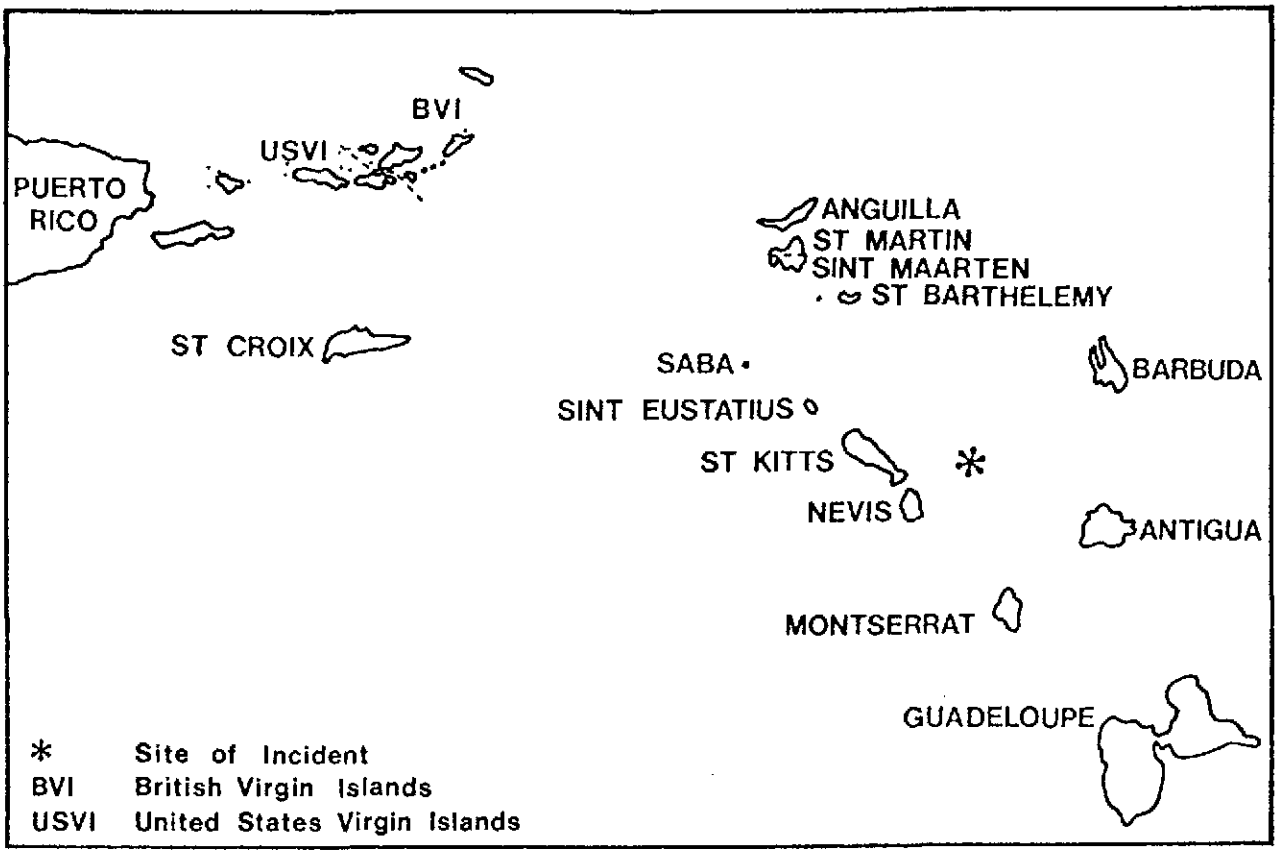
5.8 In the opinion of the surveyor engaged by the IOPC Fund, no benefit from this initiative for the Department of Guadeloupe or British Virgin Islands could be identified, either before or after the operation was carried out.

5.9 Claims totalling FFr189 202 (£18 990) were submitted by some 30 owners of yachts and fishing vessels in St Barthélemy. In July and August 1991, the Director settled and paid these claims for an aggregate amount of FFr110 010 (£11 040).

5.10 It is expected that the clean-up operations in the British Virgin Islands will give rise to some claims in relatively small amounts.

5.11 The VISTABELLA was not entered in any P & I Club. It appears that the vessel was covered by a third party liability insurance, but the Director has so far been unable to establish the extent of this cover.

5.12 The Director has tried to contact the shipowner and his insurer in order to get their co-operation in the settlement procedure. So far, these attempts have been without any results.



5.13 The Director is at present investigating the financial position of the shipowner. In the Director's view it is unlikely that the shipowner would be able to meet his obligations under the Civil Liability Convention unless there is an effective insurance cover.

6 Action to be taken by the Executive Committee

The Executive Committee is invited to:

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

(b) give the Director such instructions as it may deem appropriate in respect of the incidents dealt with in this document.