INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
28th session
Agenda item 3

FUND/EXC.28/8
10 September 1991

Original: ENGLISH

INCIDENTS INVOLVING THE IOPC FUND

Report on Incidents with Developments of Lesser Importance

Note by the Director

1 Introduction

This document deals with certain incidents involving the IOPC Fund in respect of which the developments since the 25th session of the Executive Committee, in the Director's view, are of lesser importance. These incidents do not call for any decision by the Executive Committee at this stage (cf document FUND/EXC.28/2).

2 THUNTANK 5

(Sweden, 21 December 1986)

2.1 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.

2.2 The Swedish Government claimed compensation at an aggregate amount of SKr25 107 833 (£2.4 million) for the operations of the Coast Guard and the onshore operations by the municipalities concerned. After negotiations, this claim was settled at SKr21 931 232 (£2.1 million) plus interest. In 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).

2.3 Claims submitted by seven fishermen and two other private claimants were accepted at an aggregate amount of SKr49 361 (£4 925). These claims were paid during the period December 1987 – August 1988.

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

2.5 The Swedish authorities feared that oil from the THUNTANK 5 which sank to the bottom of the sea might resurface and come ashore, necessitating further clean-up operations in subsequent years. In the Settlement Agreement with the IOPC Fund, 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).

2.6 In September 1990 and August 1991, there were reports of further pollution on the coast caused by oil from the THUNTANK 5. This pollution was very limited, however, and no further claims for compensation have been submitted so far.

3 AKARI

(United Arab Emirates, 25 August 1987)

3.1 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.

3.2 It is estimated that 30–40 kilometres of the coast were polluted as a result of the incident. Clean-up operations were undertaken at sea and on the shore.

3.3 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.

3.4 As a result of these contacts, in August 1990, just before the expiry of a period of three years from the date when the damage occurred, six claimants brought legal action against the owner of the AKARI in the Court of Dubai for an aggregate amount corresponding to approximately £350 000. The claimants notified the IOPC Fund of the actions under Article 7.6 of the Fund Convention.

3.5 Under Article VIII.1 of the Civil Liability 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. At the time of the incident the AKARI was carrying only 1 899 tonnes and was therefore not under any obligation to maintain insurance in accordance with the Convention.

3.6 The AKARI was entered with the Shipowners' Mutual Protection and Indemnity Association Ltd (Shipowners' Club). During 1989 and 1990 the Director held several meetings with those representing the Shipowners' Club and the shipowner to discuss the legal problems involved. It was apparent that the shipowner had no assets 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 consistently refused to confirm that the AKARI was insured with the Club in respect of matters flowing from this incident and subsequently stated that the vessel was not insured for such matters. The Club argued that the right of direct action against the insurer 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 discussions, the Club offered to make an ex gratia payment of US$160 000 (£99 070) to the IOPC Fund, recognising its potential liabilities to third parties but without any admission on this issue.

3.7 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 US$160 000, without in any way conceding the validity of the Club's 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.

3.8 At its 24th session, the Executive Committee noted with satisfaction the Director's initiative to make the persons who had suffered pollution damage aware of their right to obtain compensation from the IOPC Fund. It agreed with the position taken by the Director in respect of what steps the claimants should be requested to take in order to establish that the shipowner should be treated as financially incapable of meeting his obligations (Article 4.1 of the Fund Convention). As regards the question of whether there was a right of direct action against the insurer in cases where the vessel carried less than 2 000 tonnes of oil in bulk as cargo, the Committee did not consider it necessary to take any position as to the interpretation of the Civil Liability Convention on this point, in view of the solution arrived at by means of the agreement with the P & I insurer under which the latter would make an ex gratia payment to the IOPC Fund (document FUND/EXC.24/6, paragraph 3.4.5).

3.9 The claims were examined by the IOPC Fund Secretariat, which raised various queries and requested further documentation in support of the claims.

3.10 A claim submitted by Dubai Petroleum Company for US$148 740 was settled and paid in April 1991 at US$146 565 (£83 181).

3.11 Agreements have in principle been reached to settle the following claims at the amounts given below, but the settlements have not yet been formalized:

	Amount Claimed Dhs	*Amount Agreed* Dhs	*Pound Sterling* (estimate)
Coast Guard of the United Arab Emirates	296 300	296 300	49 800
Dubai Municipality	256 006	153 589	25 810
Dubai Electricity Company	50 514	50 514	8 490
Dubai Aluminium Company	401 455	363 890	61 200
	1 004 275	864 293	145 300

3.12 The remaining claim has been submitted by Smit Tak International for US$176 941 (£109 560) which partly covers operations which in the Director's view relate to salvage operations. Discussions are at present being held with this claimant, and the Director hopes that the claim can be settled in the near future.

4 CZANTORIA

(Canada, 8 May 1988)

4.1 The Canadian tanker CZANTORIA (81 197 GRT) struck a berth in St Romuald, Quebec (Canada). As a result of the incident, some of the oil cargo was spilled into the St Lawrence River. It has been alleged that the spilt oil caused some pollution damage.

4.2 The owners of the cargo of the CZANTORIA and the charterers of the vessel brought legal action in the Federal Court of Canada against the owner of the CZANTORIA claiming compensation for any loss they had suffered as a result of the incident, estimated at Can$1.8 million (£974 800) including costs for pollution damage. The IOPC Fund was notified of the legal action in May 1990.

4.3 The Director informed the plaintiffs that as the Fund Convention only entered into force for Canada on 24 April 1989, ie after the incident, the IOPC Fund was not liable to pay any compensation in respect of this incident. In response, the plaintiffs stated that the transitional provisions of the 1989 amendments to the Canada Shipping Act provided that the new legislation applied 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 applied to such damage.

4.4 The question of the interpretation of the Conventions on this point was considered by the Executive Committee at its 24th session. The Committee took the position that the Civil Liability Convention and the Fund Convention did not apply to damage sustained in a given State after the entry into force of the respective Conventions for that State resulting from an incident which occurred before the entry into force; consequently, there was no right of compensation from the IOPC Fund in this case (document FUND/EXC.24/6, paragraph 3.4.6).

4.5 The plaintiffs were informed of the position taken by the Executive Committee. As no response was received, the Director instructed a lawyer in Canada to represent the IOPC Fund in the court proceedings.

4.6 In March 1991, the plaintiffs informed the Director that they did not intend to pursue their claims against the IOPC Fund provided that the Canadian Ship-Source Oil Pollution Fund agreed that such a waiver was without prejudice to the rights of the claimants against that Fund. The Director considered this statement to be insufficient, and informed the plaintiffs that the IOPC Fund would continue to take the necessary steps to enable it to intervene in the proceedings until such time as it received an unconditional and irrevocable undertaking by the plaintiffs not to make any claim against the IOPC Fund.

4.7 In July 1991, the Director received an unconditional undertaking by the plaintiffs not to pursue any claims against the IOPC Fund.

5 KASUGA MARU N°1

(Japan, 10 December 1988)

5.1 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). 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.

5.2 All claims for compensation presented so far were settled at a total amount of ¥442 380 207 (£2 million). The claims were paid during the period October - December 1989. The IOPC Fund paid ¥425 365 167 (£1 887 819), representing the aggregate amount of the agreed claims minus the shipowner's liability of ¥17 015 040.

5.3 Indemnification of the shipowner, ¥4 253 760 (£16 813), was paid by the IOPC Fund in March 1991.

5.4 There is no reliable estimate of the quantity of oil remaining in the sunken vessel. In the Settlement Agreements concluded with the claimants, the claimants 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 very unlikely that such claims will be presented.

5.5 Subject to the possibility of further claims being presented, the 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	442 380 207	17 015 040	425 365 167
Surveyor's fees	16 494 505	634 420	15 860 085
Lawyer's fees	4 182 109	160 854	4 021 255
Indemnification		- 4 253 760	4 253 760
Total cost	463 056 821	13 556 554	449 500 267

6 NESTUCCA

(Canada, 23 December 1988)

6.1 While manoeuvring to reconnect a broken line, a tug struck the barge NESTUCCA (1 612 GRT) off Grays Harbour on the Pacific coast of the State of Washington (United States of America). The barge was fully-laden with heavy fuel oil, and a tank containing about 800 tonnes was holed as a result of the impact. In order to minimise the pollution, the barge was towed out to sea until a temporary patch could be fitted. Initially, the shoreline immediately north of Grays Harbour was oiled. Early in 1989 shoreline impacts further north were reported, as isolated and scattered patches went ashore along the Pacific coast of Vancouver Island in British Columbia (Canada).

6.2 In December 1990, claims totalling Can$10 475 (£5 670) were submitted to the IOPC Fund by 12 voluntary workers who participated in the clean-up of the shore of Vancouver Island. As this incident took place before the entry into force of the Fund Convention in respect of Canada, the Director rejected these claims, in accordance with the position taken by the Executive Committee in the CZANTORIA case (see paragraph 4.4 above). So far, the claims have not been pursued.

7 TSUBAME MARU N°58

(Japan, 18 May 1989)

7.1 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.

7.2 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 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).

7.3 Claims were submitted totalling ¥33 349 310 (£149 200) 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 at ¥22 131 425 (£99 020). 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.

7.4 Indemnification of the shipowner, amounting to ¥742 880 (£3 121), was paid by the IOPC Fund in May 1991.

7.5 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	22 131 425	2 971 520	19 159 905
Surveyor's fees	372 345	49 994	322 351
Lawyer's fees	1 150 000	154 407	995 593
Indemnification		- 742 880	742 880
Total cost	23 653 770	2 433 041	21 220 729

8 DAINICHI MARU N°5

(Japan, 28 October 1989)

8.1 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.

8.2 In this case the question arose of whether the cost of cleaning the cargo hold should be considered as being covered by the definition of "pollution damage" laid down in the Civil Liability Convention. In view of the position taken in respect of the TSUBAME MARU N°58 incident, the Director accepted that also the damage caused to the cargo in the DAINICHI MARU N°5 case should be considered as falling within that definition.

8.3 This incident resulted in claims totalling ¥7 444 722 (£33 310). In March 1990, the IOPC Fund approved the claims for a total of ¥6 360 290 (£28 460), out of which ¥5 255 028 related to loss of earnings for the owner of the fishing boat and ¥1 105 262 related to compensation for damage to that boat. In June 1990, the IOPC Fund paid ¥2 160 610 (£8 123), representing the total amount of the accepted claim minus the shipowner's limitation amount, ¥4 199 680 (£15 788).

8.4 Indemnification of the shipowner, amounting to ¥1 049 920 (£4 625), was paid by the IOPC Fund in July 1991.

8.5 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	6 360 290	4 199 680	2 160 610
Surveyor's fees	129 317	85 388	43 929
Lawyer's fees	1 210 000	798 959	411 041
Indemnification		- 1 049 920	1 049 920
Total cost	7 699 607	4 034 107	3 665 500

9 DAITO MARU N°3

(Japan, 5 April 1990)

9.1 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.

9.2 *Claims relating to the cost of the clean-up operations were submitted for a* total amount of ¥10 021 996 (£44 840). The claims were approved for ¥7 985 930 (£35 730).

9.3 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 24th session, that the IOPC Fund could, as an exception, pay compensation in this case without the limitation fund being established (document FUND/EXC.24/6, paragraph 3.4.7).

9.4 In December 1990, the IOPC Fund paid ¥5 490 570 (£21 414), representing the total amount of the agreed claim minus the shipowner's liability (¥2 495 360) as well as indemnification of the shipowner, ¥623 840 (£2 433).

9.5 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	7 985 930	2 495 360	5 490 570
Surveyor's fees	687 158	214 716	472 442
Indemnification		– 623 840	623 840
Total cost	8 673 088	2 086 236	6 586 852

10 KAZUEI MARU N°10

(Japan, 11 April 1990)

10.1 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, the SUMRYU MARU. As a result of the collision, a cargo tank of the KAZUEI MARU N°10 was damaged, and some 30 tonnes of the cargo oil escaped into the sea. The spilt oil spread over the port area, and some oil drifted outside the port. The clean-up operations lasted five days.

10.2 Claims totalling ¥61 181 038 (£273 740) were submitted in December 1990 in respect of the clean-up operations. In addition, a fishery association presented a claim for ¥691 364 (£3 090) relating to contamination of fishing nets and loss of earnings. The claims were approved for a total amount of £52 919 786 (£236 780).

10.3 In February 1991, the IOPC Fund paid ¥49 443 626 (£191 724), representing the total amount of the agreed claims, minus the shipowner's liability, ¥3 476 160 (13 470).

10.4 Indemnification of the shipowner, amounting to ¥869 040 (£3 890), has not yet been paid.

10.5 In the view of the IOPC Fund's lawyer in Japan, the incident was entirely due to negligent navigation on the part of the SUMRYU MARU. The Director has taken the necessary steps to initiate *a recourse action against the owner of that vessel. The SUMRYU MARU will be entitled to limit her*

liability under the 1976 Convention on Limitation of Liability for Maritime Claims. The limitation amount of the vessel is approximately ¥61 200 000 (£273 825). The IOPC Fund will compete with other claimants, mainly the hull underwriters, for the distribution of that amount.

11 FUJI MARU N°3

(Japan, 12 April 1990)

11.1 Heavy fuel oil was being supplied by the Japanese tanker FUJI MARU N°3 (199 GRT) to an unladen tanker (the KAIEI MARU N°3) in the port of Yokohama (Japan), 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.

11.2 Claims for clean-up costs, totalling ¥6 567 037 (£29 380), were submitted by private contractors. The claims were approved by the Director in December 1990 at ¥5 448 431 (£24 380).

11.3 The shipowner's P & I insurer requested that the IOPC Fund should, in this case, waive the requirement to establish the limitation fund, as the legal costs that would be incurred in establishing the limitation fund would be disproportionately high (approximately ¥1 850 000), compared with the total of ¥1 434 431 which the shipowner would receive from the IOPC Fund in respect of compensation and indemnification.

11.4 At its 26th session, the Executive Committee noted that, although the limitation amount in the FUJI MARU N°3 case was not particularly low, the legal costs which would be incurred in establishing the limitation fund in this case would be disproportionately high compared with the amount payable by the IOPC Fund in compensation and indemnification; in fact, the legal costs would exceed that amount. For this reason, and in view of the Executive Committee's decisions at its 22nd and 24th sessions in respect of other requests to the same effect, the Executive Committee agreed that the requirement to establish the limitation fund should be waived in the FUJI MARU N°3 case, so that the IOPC Fund could, as an exception, pay compensation and indemnification without the limitation fund being established (document FUND/EXC.26/5, paragraph 4.4).

11.5 In March 1991, the IOPC Fund paid ¥96 431 (£393), representing the total amount of the agreed claims minus the shipowner's liability (¥5 352 000), as well as indemnification of the shipowner, ¥1 338 000 (£5 450).

11.6 An investigation into the cause of the incident showed that both vessels were to blame but that the main responsibility for the spill fell on the FUJI MARU N°3. An agreement was reached between the KAIEI MARU N°3 interests and the FUJI MARU N°3 interests, including the IOPC Fund, on an apportionment of liability of 30:70 in favour of the KAIEI MARU N°3. The FUJI MARU N°3 interests therefore recovered ¥1 634 529 from the owner of the KAIEI MARU N°3, of which the IOPC Fund received ¥430 329 (£1 753).

11.7 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	5 448 431	5 352 000	96 431
Surveyor's fees	353 599	347 341	6 258
Indemnification		-1 338 000	1 338 000
Total cost	5 802 030	4 361 341	1 440 689
Recovery from the KAEI MARU N°3	- 1 634 529	- 1 204 200	- 430 329
Total payable	4 167 501	3 157 141	1 010 360

12 VOLGONEFT 263

(Sweden, 14 May 1990)

12.1 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.

12.2 The coastal region north of 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 region. 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 each sent a combatting vessel, 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.

12.3 The Swedish Government has not yet submitted its claim for compensation. It is estimated that the Government's claim will be in the region of SKr20 million (£1.9 million). In addition, there will be claims in respect of certain clean-up operations on shore carried out by the local authorities.

12.4 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. The fisherman's claim for SKr530 239 (£49 157), which was accepted in full, was paid in stages during the period June - September 1990.

12.5 In October 1990, the Director approved and paid a claim for SKr6 250 (£573) relating to the cleaning of a polluted pier in a local fishing port.

12.6 The VOLGONEFT 263 is owned by a USSR company. The vessel 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.

12.7 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 shipowner has made a request to the Court for the constitution of a limitation fund in the amount of SKr3 123 585 (£295 025). So far the shipowner has not established the limitation fund. The IOPC Fund has been notified of the court action pursuant to Article 7.6 of the Fund Convention. The Court has been informed that the IOPC Fund intends to intervene in the proceedings pursuant to Article 7.4 of the Convention.

12.8 It was 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 maintained that the blame for the collision fell entirely on the VOLGONEFT 263, which had taken the wrong route, and during the police investigations he 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 did not give any conclusive evidence on this point. The limitation amount of the BETTY was estimated at SKr2 million (£188 902). After careful consideration of the matter the Director came to the conclusion that it would not be worthwhile to take recourse action against the owner 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. The position taken by the Director was reported to the Executive Committee at its 24th session.

13 HATO MARU N°2

(Japan, 27 July 1990)

13.1 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, the 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.

13.2 In this case the question arose 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. The Director informed the Executive Committee, at its 24th session, that in view of the position taken by the Committee in respect of the TSUBAME MARU N°58 incident (see paragraph 7.2 above), he was 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. The Executive Committee took note of the Director's position on this point.

13.3 For the reason indicated in respect of the DAITO MARU N°3 case (paragraph 9.3 above), the Executive Committee decided, at its 24th session, as an exception, to waive the requirement to establish the limitation fund in the HATO MARU N°2 case (document FUND/EXC.24/6, paragraph 3.4.7).

13.4 A claim for ¥1 890 900 (£8 460) was submitted by the owner of the cargo vessel in respect of damage to the cargo. The Director accepted this claim in full.

13.5 In March 1991, the IOPC Fund paid ¥1 087 700 (£4 299), representing the amount of the agreed claim minus the shipowner's liability (¥803 200), as well as indemnification of the shipowner, ¥200 800 (£794).

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	1 890 900	803 200	1 087 700
Surveyor's fees	292 323	124 170	168 153
Indemnification		- 200 800	200 800
Total cost	2 183 223	726 570	1 456 653

14 BONITO

(United Kingdom, 12 October 1990)

14.1 The Swedish registered tanker BONITO (2 866 GRT) spilled about 20 tonnes of heavy fuel oil into the River Thames whilst loading at the Mobil terminal at Coryton (United Kingdom). Most of the oil was confined within the Coryton industrial area where it adhered to the sea walls. Some sheens and scattered tar balls extended into the Thames Estuary. Bulk oil held against the sea walls was collected using vacuum tankers where access was possible. Clean-up of the sea walls themselves was undertaken manually. It was not necessary to achieve a high level of clean-up of these walls, as they were already treated with bitumen, a product which looks and behaves rather like heavy fuel oil, to protect them from sea erosion.

14.2 Claims totalling approximately £260 000 have been submitted to the shipowner. However, in the Director's view, a considerable part of this amount relates to operations which do not fall within the definition of "pollution damage" laid down in the Civil Liability Convention. Further claims may be submitted.

14.3 Some claims relating to clean-up operations have been settled at £4 318.

14.4 The limitation amount applicable to the BONITO is approximately £241 000. After allowing for indemnification of the shipowner (£60 250), the IOPC Fund would be called upon to make payments if the aggregate amount of the accepted claims were to exceed around £181 000. It appears unlikely that the IOPC Fund will be called upon to pay compensation or indemnification as a result of this incident, although this possibility cannot be ruled out.

15 HOKUNAN MARU N°12

(Japan, 5 April 1991)

15.1 The Japanese tanker HOKUNAN MARU N°12 (209 GRT), laden with 230 tonnes of heavy fuel oil, ran aground near Okushiri Island in Hokkaido prefecture (Japan). As a result of the incident, a small quantity of the cargo escaped into the sea. The tanker was safely refloated later the same day. Clean-up operations were immediately undertaken and were completed on 6 April.

15.2 The area around the grounding site is of great importance for cultivation of seaweed, abalone and sea urchin.

15.3 Claims for clean-up operations and for loss of income suffered by fishermen have been submitted in the amounts of ¥2 932 899 (£13 120) and ¥10 429 002 (£46 660), respectively. These claims are being examined by the IOPC Fund's surveyors.

15.4 The limitation amount applicable to the HOKUNAN MARU N°12 is approximately ¥3 523 520 (£15 765).

16 KAIKO MARU N°86

(Japan, 12 April 1991)

16.1 The Japanese tanker KAIKO MARU N°86 (499 GRT), laden with 1 000 tonnes of heavy fuel oil, collided in dense fog with two coastal barges off Nomazaki in Aichi prefecture (Japan). As a result of the collision, approximately 25 tonnes of cargo oil escaped into the sea. The tanker was safely refloated later the same day.

16.2 Clean-up operations were immediately undertaken. The operations at sea were completed on 14 April. Due to the strong wind, part of the oil arrived at some small islands. The clean-up operations on shore lasted until 19 April.

16.3 The area is of great importance for fishing and cultivation of seaweed.

16.4 The following claims have been submitted in respect of clean-up operations and fishery damage, and these claims are being examined by the IOPC Fund's surveyors:

	Amount Claimed ¥
Maritime Safety Agency	25 066 624
Japan Maritime Disaster Prevention Centre	34 159 205
Oil Company Group	18 702 164
Fishery Cooperative Associations	62 680 286
Total	140 608 279
	(£629 120)

16.5 The limitation amount applicable to the KAIKO MARU N°86 is ¥14 660 480 (£65 600).

16.6 The Director is following the investigation into the cause of the collision.

17 **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.