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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 28th 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.32/2).

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 A claim by the Swedish Government in respect of the operations carried out by the Coast Guard and the on-shore operations carried out by the municipalities concerned 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 plus interest (SKr3 978 785), minus the shipowner's limitation amount of SKr2 741 746.

2.3 Claims submitted by seven fishermen and two other private claimants were accepted at an aggregate amount of SKr49 361 (£4 719). These claims were paid during the period of 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 had sunk 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 and the shipowner, 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). In September 1990 and August 1991, there were reports of further pollution on the coast caused by oil from the THUNTANK 5. However, this pollution was very limited. The Swedish Government informed the IOPC Fund that it would not present any claim for compensation in respect of the pollution which occurred in 1990 and 1991.

2.6 Any claims for compensation in respect of this incident will become time-barred in December 1992.

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 resulting in a loss of electrical power and of the use of the main engines. The ship took in water and was towed towards the port of Jebel Ali, where she was refused entry. The AKARI was then towed along the coast. Since the vessel was listing badly, she was beached to the east of the port of Jebel Ali with tug assistance. Approximately 1 000 tonnes of her cargo of heavy fuel oil escaped before the AKARI was refloated. The remaining cargo was then transferred to another vessel, and the AKARI was towed back to the port of Jebel Ali. 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.

3.2 The limitation amount applicable to the AKARI under the Civil Liability Convention is estimated at 121 500 Special Drawing Rights (£91 400).

3.3 Under Article VII.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.

3.4 The AKARI was entered with the Shipowners' Mutual Protection and Indemnity Association (the Shipowners' Club). 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 arising 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 to the IOPC Fund when the claims were settled, recognising its potential liabilities to third parties but without any admission on this issue.

3.5 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 cost of litigation, the Director considered that the best course of action was to accept the Club's offer to make 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 thereof, 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 (see paragraph 3.12 below).

3.6 At its 24th session, the Executive Committee discussed 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).

3.7 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 IOPC Fund, through its 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 to obtain 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. The claimants were informed that as soon as such actions had been brought, the Fund would enter into negotiations with them for the purpose of arriving at an out-of-court settlement.

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. The Committee agreed with the position taken by the Director in respect of what steps a claimant should be requested to take in order to establish that the shipowner should be treated as financially incapable of meeting his obligations (document FUND/EXC.24/6, paragraph 3.4.5)

3.9 As a result of these contacts, six claimants brought legal actions against the owner of the AKARI in the Court of Dubai for an aggregate amount of £320 000. The claimants notified the IOPC Fund of the actions under Article 7.6 of the Fund Convention.

3.10 By the time of the 28th session of the Executive Committee, agreements had been reached to settle five of the six claims, the only outstanding claim being that of Smit Tak International. That claim, in the amount of US\$ 176 941, partly covered operations which in the Director's view related to salvage operations. In February 1992 this claim was settled at US\$40 600.

3.11 The settlements were as follows:

	<u>Amount Claimed</u> Dhs	<u>Amount Agreed</u> Dhs	<u>Amount Paid</u> £
Coast Guard of the United Arab Emirates	296 300	296 300	46 023
Dubai Municipality	256 006	153 589	24 495
Dubai Electricity Company	50 514	50 514	7 846
Dubai Aluminium Company	401 455	363 890	55 983
	<u>1 004 275</u>	<u>864 293</u>	<u>134 347</u>
	US\$	US\$	£
Dubai Petroleum Company	148 740	146 565	83 181
Smit Tak International	176 941	40 600	22 518
	<u>325 681</u>	<u>187 165</u>	<u>105 699</u>
Total			<u>240 046</u>

3.12 In April 1992, after all claims arising out of this incident had been settled and paid, the IOPC Fund received payment of US\$160 000 (£90 129) from the Shipowners' Club.

3.13 The IOPC Fund has so far paid £82 484 in fees and expenses in connection with this incident.

4 KASUGA MARU N°1

(Japan, 10 December 1988)

4.1 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.

4.2 All claims for compensation presented so far were settled at a total amount of ¥442 380 207 (£1.9 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 (£75 515). Indemnification of the shipowner, ¥4 253 760 (£16 813), was paid by the IOPC Fund in March 1991.

4.3 There is no reliable estimate of the quantity of oil remaining in the sunken vessel. In the Settlement Agreements concluded with the claimants, they reserved their right to claim further compensation in respect of pollution damage caused by further leakage of oil after the date of the respective agreement (document FUND/EXC.24/4 Annex, paragraph 10.15). For this reason, further claims against the IOPC Fund cannot be ruled out, although it is very unlikely that such claims will be presented.

4.4 Any claims for compensation in respect of this incident will become time-barred in December 1994.

5 KAZUEI MARU N°10

(Japan, 11 April 1990)

5.1 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.

5.2 Claims totalling ¥61 181 038 (£256 256) were submitted in December 1990 in respect of the clean-up operations. In addition, a fishery association presented a claim for ¥691 364 (£2 896) relating to contamination of fishing nets and loss of earnings. The claims were approved for a total amount of ¥52 919 786 (£221 650).

5.3 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). Indemnification of the shipowner, amounting to ¥869 040 (£3 730), was paid in September 1991.

5.4 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 IOPC Fund took the necessary steps to initiate a recourse action against the owner of that vessel. On the basis of an investigation carried out by the IOPC Fund's lawyer, the Director accepted that the owner of the SUMRYU MARU was entitled to limit his liability under the 1976 Convention on Limitation of Liability for Maritime Claims. The limitation amount applicable to that vessel was ¥60 574 645 (£253 720).

6.5 In a recourse action, the IOPC Fund would have competed with other claimants, mainly the hull underwriters, for the distribution of the limitation amount of the SUMRYU MARU. After negotiations with the other parties concerned, the IOPC Fund agreed in May 1992 that its share of the limitation amount would be ¥45 038 833 (£188 650). The IOPC Fund has not yet received that sum.

6 BONITO

(United Kingdom, 12 October 1990)

6.1 The Swedish registered tanker BONITO – previously the THUNTANK 5 – (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.

6.2 Claims totalling approximately £260 000 have been submitted to the shipowner. In the IOPC Fund's view, however, 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. Some claims relating to oiled boats have been settled at £1 969. Further claims may be submitted.

6.3 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.

7 PORTFIELD

(United Kingdom, 5 November 1990)

7.1 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. 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. After the cargo tanks had been emptied, the ship was refloated on 11 November 1990 and the main clean-up operations were terminated soon thereafter.

7.2 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.

7.3 Claims totalling £464 763 were submitted in respect of the clean-up operations. Some 70 individuals claimed compensation for damage to small craft and fishing equipment, totalling £57 492. The owner of the above-mentioned fish farming facility claimed compensation for damage to the facility and for loss of income for a total amount of £188 268.

7.4 Most of the claims were settled and paid during the period January 1991 – December 1991 as set out below:

	<u>Amount Claimed</u> £	<u>Amount Agreed</u> £
Shipowner	99 160	63 000
Milford Haven Standing Conference on Anti Oil Pollution	242 317	123 000
Oil Companies	90 471	28 934
Local Councils	10 088	9 192
Department of Transport (Marine Pollution Control Unit)	22 727	22 727
Private Claimants	<u>57 492</u>	<u>56 584</u>
Total	<u>522 255</u>	<u>303 437</u>

7.5 The IOPC Fund has so far paid £263 965 in compensation and the shipowner's P & I insurer has paid £39 472. The limitation amount applicable to the PORTFIELD is estimated at £39 970.

7.6 A claim in the amount of £19 063 submitted by the Ministry of Defence for costs incurred in connection with this incident is being discussed with the claimant. The claim presented by the owner of the fish farming facility is also pending.

7.7 The question of whether VAT should be paid in respect of certain invoices relating to the claim submitted by the Milford Haven Standing Conference on Anti Oil Pollution is being discussed with the tax authorities.

8 HOKUNAN MARU N°12

(Japan, 5 April 1991)

8.1 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.

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

8.3 A claim relating to clean-up operations for ¥4 020 889 (£16 840) was settled at ¥3 336 389 (£13 970). A claim for loss of income suffered by fishermen in the amount of ¥31 714 344 (£132 830) was settled at ¥6 331 960 (£26 520). In April 1992, the IOPC Fund paid ¥6 144 829 (£26 601), representing the aggregate amount of the agreed claims minus the shipowner's limitation amount of ¥3 523 520 (£15 253).

8.4 The indemnification of the shipowner, amounting to ¥880 880 (£3 690), has not yet been paid by the IOPC Fund, since the limitation proceedings have not been completed.

9 KAIKO MARU N°86

(Japan, 12 April 1991)

9.1 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.

9.2 Clean-up operations were immediately undertaken. The operations at sea were completed on 14 April. Due to strong winds, part of the oil reached some small islands. The clean-up operations

on shore lasted until 19 April. The area is of great importance for fishing and the cultivation of seaweed.

9.3 The following claims were submitted in respect of clean-up operations and fishery damage. The claims were settled in May 1992 as set out below:

	<u>Amount Claimed</u> ¥	<u>Amount Agreed</u> ¥
Maritime Safety Agency	25 066 624	18 007 792
Japan Maritime Disaster Prevention Centre	34 159 205	31 378 860
Oil Company Group	18 702 164	12 528 890
Fishery Co-operative Associations	<u>62 680 286</u>	<u>45 812 751</u>
Total	<u>140 608 279</u> (£588 940)	<u>107 728 293</u> (£451 220)

9.4 The limitation amount applicable to the KAIKO MARU N°86 is ¥14 660 480 (£61 400).

9.5 In August 1992, the IOPC Fund paid ¥93 067 813 (£374 368), representing the aggregate amount of the agreed claims minus the shipowner's limitation amount of ¥14 660 480 (£61 400).

9.6 The official investigation into the cause of the incident has not been completed. In the view of the IOPC Fund's lawyer, however, it is unlikely that the collision was caused by the actual fault or privity of the owner of the KAIKO MARU N°86. The IOPC Fund's lawyer was instructed to investigate the possibility of taking recourse action against the owners of the colliding barges. His investigation established that there was no P & I insurance in respect of the barges, nor any other insurance covering the collision damage to the KAIKO MARU N°86. The financial situation of the barge owners is very uncertain. For these reasons, it does not at this stage seem worth while taking such recourse action. Nevertheless, the Director has taken the necessary steps to prevent the IOPC Fund's right to bring action against the barge owners from becoming time-barred.

9.7 The indemnification of the shipowner, amounting to ¥3 665 120 (£15 530), has not been paid, since the limitation proceedings have not been completed.

10 KUMI MARU N°12

(Japan, 27 December 1991)

10.1 The Japanese tanker KUMI MARU N°12 (113 GRT) collided with a container ship in Tokyo Bay (Japan). As a result of the collision, the KUMI MARU N°12 sustained damage to her starboard shell plating and N°4 tank, allowing some five tonnes of heavy-fuel oil to spill into the sea. In order to prevent further pollution the remaining cargo was transferred to another vessel. Clean-up operations were begun immediately and were completed the following day. The operations involved 21 vessels.

10.2 Claims in respect of clean-up operations have been settled as set out below:

	<u>Amount Claimed</u> ¥	<u>Amount Agreed</u> ¥
Japan Maritime Disaster Prevention Centre	327 744	327 744
Sub-contractors	<u>5 883 565</u>	<u>3 787 335</u>
Total	<u>6 211 309</u> (£26 000)	<u>4 115 079</u> (£17 250)

10.3 It is unlikely that there will be any fishery claims.

10.4 The limitation amount applicable to the KUMI MARU N°12 is ¥3 058 560 (£12 810).

11 FUKKOL MARU N°12

(Japan, 9 June 1992)

11.1 While the Japanese tanker FUKKOL MARU N°12 (94 GRT) was supplying heavy fuel oil to a fishing boat in the port of Ishinomaki (Japan), a bunkering hose was mishandled, resulting in a small quantity of oil flowing into a cargo hold where about 50 tonnes of fish were being stored. Some 20 tonnes of fish were contaminated and had to be destroyed. The remaining part of the cargo was sold but at a lower price than usual.

11.2 In this case the question arose as to whether the damage to the fish and 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.

11.3 The notion of "pollution damage" covers damage by contamination caused outside the ship carrying the oil which caused the damage. The IOPC Fund has, in several cases in Japan, paid compensation for damage covered by an overflow of oil during the transfer of oil from a tanker to another vessel, but in these cases the oil had escaped into the sea and necessitated clean-up operations. The FUKKOL MARU N°12 case is different in that no oil escaped into the sea and no clean-up operations took place. However, in a previous case similar to the FUKKOL MARU N°12 incident (the TSUBAME MARU N°58 incident), the Executive Committee decided that the damage caused to a fish cargo in a nearly identical situation should be considered as being covered by the definition of "pollution damage" (document FUND/EXC.22/5, paragraph 3.2.13). The IOPC Fund took the same position in another similar case (the DAINICHI MARU N°5 incident) (document FUND/EXC.24/4, paragraph 16.3). In view of the IOPC Fund's position in these previous cases, the Director has taken the position that the damage in the FUKKOL MARU N°12 case should be considered as falling within that definition.

11.4 A claim for compensation in the amount of ¥6 442 397 (£27 000) has been presented by the owner of the fishing boat. This claim is being examined by the IOPC Fund's surveyor.

11.5 The limitation amount applicable to the FUKKOL MARU N°12 is estimated at ¥2 198 400 (£9 200).

12 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.
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