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INCIDENTS INVOLVING THE IOPC FUND

Reports on Developments in respect of Certain Incidents of Particular Interest

PATMOS, VISTABELLA, AGIP ABRUZZO, TAIKO MARU, ILIAD and SEKI

Note by the Director

1 Introduction

This document sets out the developments since the 36th session of the Executive Committee in respect of certain incidents which may be of special interest to delegations.

2 PATMOS

(Italy, 21 March 1985)

The Incident

2.1 The Greek tanker PATMOS (51 627 GRT), carrying 83 689 tonnes of crude oil, collided with the Spanish tanker CASTILLO DE MONTEARAGON (92 289 GRT), which was in ballast, off the coast of Calabria in the Straits of Messina (Italy). Approximately 700 tonnes of oil escaped from the PATMOS. Most of the spilt oil drifted on the surface of the sea and dispersed naturally. Only a few tonnes of oil came ashore on the Sicilian coast. The Italian authorities undertook extensive operations in order to contain the spilt oil and to prevent it from polluting the Sicilian and Calabrian coasts.

2.2 The owner of the PATMOS and the owner's insurer, the United Kingdom Steamship Assurance Association (Bermuda) Ltd (UK Club), established a limitation fund with the Court of Messina. The Court fixed the limitation amount at Llt 13 263 703 650 (£5.4 million).

The Claims

2.3 Claims were lodged against the limitation fund, totalling Llt 76 112 040 216 (£31.2 million). Most of the claims were settled out of court. The aggregate amount of the claims accepted by the

courts during the limitation proceedings and in the appeal proceedings is Llt 9 436 318 650 (£3.9 million). These claims have been paid by the UK Club.

Proceedings in the Court of Appeal

2.4 A claim of Llt 20 000 million (£8.2 million), later reduced to Llt 5 000 million (£2.1 million), was submitted by the Italian Government for alleged damage to the marine environment. The Italian Government did not provide any documentation indicating the kind of damage which had allegedly been caused or the basis on which the amount claimed had been calculated. The IOPC Fund Assembly had in 1980 unanimously adopted a Resolution stating that "the assessment of compensation to be paid by the IOPC Fund is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models". In view of this Resolution, the IOPC Fund rejected this claim. The Court of first instance rejected this claim stating that the State had not suffered any economic loss.

2.5 The Italian Government appealed against the decision of the Court of first instance. In the appeal proceedings the Italian Government has taken the position that this claim relates to actual damage to the marine environment and to actual economic loss suffered by the tourist industry and fishermen. For this reason, the Italian Government has maintained that the claim is not in contravention of the interpretation of the definition of "pollution damage" adopted by the Assembly in that Resolution.

2.6 The Italian Government's claim was dealt with by the Court of Appeal in a non-final judgement, rendered in 1989. In that judgement the Court stated that the owner of the PATMOS, the UK Club and the IOPC Fund were liable for the damage covered by the claim made by the Italian Government. As for the reasons given by the Court of Appeal, reference is made to document FUND/EXC.28/3, paragraph 3.7. The Director decided to reserve the IOPC Fund's right to appeal before the Supreme Court.

2.7 The Court appointed three experts with the task of ascertaining the existence, if any, of damage to the marine resources off the coasts of Sicily and Calabria consequent on the oil pollution; if such damage existed, they should determine the amount thereof or, in any case, supply any useful element suitable for the equitable assessment of the damage. As for the report of the Court experts and the pleadings presented by the IOPC Fund, reference is made to paragraphs 2.7-2.9 of document FUND/EXC.40/7.

2.8 The Court of Appeal rendered its judgement in January 1994. As regards the Italian Government's claim relating to damage to the marine environment, the Court granted the State of Italy compensation in the amount of Llt 2 100 million (£861 100). It appears that the Court of Appeal has assessed the amount of compensation on the basis of a certain quantity of fish which was not brought into existence as a result of the pollution, at a price of Llt 8 000 per kg. The Court may also have taken into account damage to plankton and benthos. There is, however, no indication in the judgement how the amount awarded in compensation has been calculated, and the judgement does not set out the extent of reduction of the compensation due to contributory negligence.

2.9 The Italian Government had also appealed in respect of an item of its claim for Llt 46 980 000 (£19 260) relating to certain activities of the fire brigade of Messina. This claim had been rejected by the Court of first instance on the grounds that the activities carried out were part of the task for which the fire brigade had been set up and would therefore not give any right to compensation; in addition, these activities had been carried out after the state of local emergency had ceased.

2.10 The Court of Appeal stated that the activities of the fire brigade were carried out for the purpose of preventing fire during the transshipment of the crude oil from the PATMOS to other vessels. The Court considered that since the activities related to the removal of the crude oil, they should be considered as anti pollution measures. The Court of Appeal also stated that the fact that the measures were taken after the state of emergency had ceased was irrelevant. For this reason, this item of the claim was accepted.

2.11 The other three claims subject to appeal proceedings were rejected by the Court of Appeal.

2.12 As a result of the judgement of the Court of Appeal, the total amount of the accepted claims is Lit 11 583 298 650 (£4 749 200), which is below the limitation amount applicable to the PATMOS (Lit 13 263 703 650). Since the PATMOS was flying the flag of a State (Greece) which at the time of the incident was not party to the Fund Convention, the shipowner is not entitled to indemnification under Article 5.1 of the Fund Convention. If the judgement of the Court of Appeal stands, the IOPC Fund will therefore not be called upon to make any payments of compensation or indemnification. Consequently, the IOPC Fund is not entitled to appeal against the judgement.

3 VISTABELLA

(Caribbean, 7 March 1991)

3.1 The sea-going barge VISTABELLA (1 090 GRT), registered in Trinidad and Tobago and 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. An unknown quantity of oil was spilled as a result of the incident, and the quantity remaining in the barge is not known.

3.2 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. Off-shore clean-up operations 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. Manual clean-up of the oiled shoreline was also carried out by French army personnel on St Barthélemy.

3.3 The 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. Oil also came ashore on the British Virgin Islands, the United States Virgin Islands and Puerto Rico (United States).

3.4 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 qualified for compensation from the IOPC Fund. Neither the independent State of Saint Kitts and Nevis nor Puerto Rico and the United States Virgin Islands are 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 that area.

3.5 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 IOPC Fund has so far been unable to establish the extent of this cover. The limitation amount applicable to the ship is not known. Attempts have been made 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. The financial position of the shipowner is being investigated. 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.

3.6 Claims totalling FFr189 202 (£22 520) were submitted by some 30 owners of yachts and fishing vessels in St Barthélemy. In July and August 1991, the IOPC Fund settled and paid these claims for an aggregate amount of FFr110 010 (£11 040).

3.7 A claim for US$6 099 (£3 198) in respect of clean-up operations was submitted by the owner of a hotel on Peter Island, British Virgin Islands. The Authorities of the British Virgin Islands submitted a claim in the amount of US$1 969 (£1 033) in respect of onshore clean-up operations. Both claims were accepted in full by the Director and were paid by the IOPC Fund in April 1992 and June 1992, respectively.

3.8 In November 1992, the French Government submitted its claim for compensation in the amount of FFr8 711 275 (£1 036 506). This claim was settled in June 1994 at FFr7 000 000 plus interest in the amount of FFr1 127 519. The amount of FFr8 127 519 (£986 948) was paid by the IOPC Fund to the French Government in July 1994.

3.9 The French Government brought legal action against the owner of the VISTABELLA and his insurer in the Court in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The IOPC Fund has intervened in the proceedings and has acquired by subrogation the French Government's claim. The French Government will withdraw from the proceedings.

4 AGIP ABRUZZO

(Italy, 10 April 1991)

The Incident

4.1 Whilst lying at anchor two miles off the port of Livorno (Italy), the Italian tanker AGIP ABRUZZO (98 544 GRT) was struck at night by the Italian ro-ro ferry MOBY PRINCE. Both vessels caught fire. All passengers and all crew members but one on board the ferry (143 persons in all) died, and the ferry was totally burned out. There were no fatalities on board the tanker, although some crew members were injured.

4.2 The AGIP ABRUZZO was carrying about 80 000 tonnes of Iranian light crude oil. As a result of the collision, a cargo tank was damaged and about 2 000 tonnes of cargo oil were lost, part of which was consumed by fire. The fire on board the tanker lasted seven days and destroyed the accommodation area and engine room. Explosions in a bunker tank three days after the incident caused extensive structural damage to the ship and a subsequent loss of an unknown quantity of bunkers.

Clean-up Operations and Salvage

4.3 Initially it was envisaged that the water from the flooded engine room and other spaces of the AGIP ABRUZZO would be pumped so as to reduce her draught sufficiently to make it possible to bring her into the port of Livorno to discharge the remainder of her cargo. However, due to difficulties that arose in preventing the engine room from flooding again, it was decided to conduct a ship-to-ship transfer of the cargo at the anchorage. The cargo transfer was carried out from 12 to 17 May, with several interruptions due to bad weather and operating difficulties. The AGIP ABRUZZO remained at the anchorage until 22 October 1991 when she was towed away, having been sold for scrap.

4.4 Attempts to recover the oil at sea were partially successful, but difficulties were experienced due to the high viscosity of the burnt oil residue and because the spilt fuel oil was distributed over a wide area. The spilt oil eventually stranded over some 130 kilometres of shoreline, mostly north of Livorno, although the pollution was intermittent and for the most part consisted of a light scattering of tar balls.

4.5 Shoreline cleaning in the Livorno area was undertaken by local contractors. While most of these operations were completed by early June 1991, before the beginning of the main tourist season, two areas required work to be continued through the summer.

Claims for Compensation

4.6 A number of claims for compensation were presented to the shipowner and the IOPC Fund. Negotiations were held concerning these claims and most of them were settled out-of-court. Claims settled as at 1 September 1994 total Lit 17 917 500 000 (£7.3 million). With the exception of a claim presented by the shipowner himself, these claims were paid by the shipowner.

4.7 In February 1993, the Italian Government submitted a claim for Llt 1 333 300 000 (£546 900) relating to costs incurred in connection with the use of military aircraft and ships. The Government informed the IOPC Fund that it had not yet been able to decide whether to submit a claim relating to damage to the marine environment, since the investigation into the effects of the spill on the environment had not been completed.

4.8 The owner of a number of pleasure boats has submitted a claim for Llt 65 335 000 (£26 800) relating to contamination of his boats.

IOPC Fund's Involvement in the Payment of Claims

4.9 The total amount of the settled claims (Llt 17 917 500 000 or £7.3 million) and the pending claims (Llt 1 398 635 000 or £574 000), ie Llt 19 316 135 000 (£7.9 million) falls below the limitation amount applicable to the vessel (approximately Llt 21 900 million or £9.0 million). The IOPC Fund will therefore not be called upon to pay compensation as a result of the incident. It should be noted that claims became time-barred on or shortly after 10 April 1994, unless the relevant provisions in the Civil Liability Convention (Article VIII) and the Fund Convention (Article 6.1) had been complied with. Since the IOPC Fund will not in any event be under an obligation to pay compensation to victims, the Fund does not have to consider whether any of the pending claims are time-barred.

4.10 The IOPC Fund will have to indemnify the shipowner under Article 5.1 of the Fund Convention to the extent that the total amount paid by the shipowner or his insurer exceeds 7 192 000 SDR which corresponds to approximately Llt 16 500 million or £6.8 million. The exact amount of the indemnification payable can be established only when the total amount of the shipowner's payment of compensation to claimants is known. At present the indemnification stands at some Llt 2 816 135 000 (£1.2 million).

4.11 In March 1994, the Skuld Club instituted legal proceedings against the IOPC Fund before the Court of Livorno is respect of the IOPC Fund's obligation to pay indemnification under Article 5.1 of the Fund Convention.

Limitation Proceedings

4.12 On 28 July 1993, the owner of the AGIP ABRUZZO (SNAM, a company belonging to the state owned ENI group) made an application to the Court of first instance in Livorno to open limitation proceedings. The Court has not yet taken any decision on this application.

4.13 It is estimated that the limitation amount applicable to the AGIP ABRUZZO under the Civil Liability Convention is approximately Llt 21 900 million (£9.0 million) (calculated on the basis of the rates of exchange as at 30 June 1994).

4.14 The shipowner's P & I insurer (the Skuld Club) has requested that the IOPC Fund should, in this case, waive the requirement to establish the limitation fund in view of the high legal cost.

4.15 The Executive Committee has in several previous cases decided that the IOPC Fund normally required the establishment of the limitation fund in order to be able to pay compensation and that this requirement could be waived only in exceptional cases. In several cases in Japan, the Executive Committee has, however, waived this requirement, in view of the disproportionately high legal costs that would be incurred in establishing the limitation fund compared with the low limitation amounts under the Civil Liability Convention in these cases.

4.16 As set out above, the IOPC Fund's involvement in this case is limited to the payment of indemnification. The establishment of a limitation fund appears to give rise to difficult legal problems. As stated above, the application to open limitation proceedings was presented to the Court in July 1993, but the Court has not yet taken any decision on the application. For this reason, the Director supports the request made by the Skuld Club that the IOPC Fund should, as an exception, waive the

requirement to establish the limitation fund. If this proposal were accepted, the Director takes the view that the point of the Fund's intervention should be calculated on the basis of the rate of the Italian lire vis-à-vis the SDR on a given date, say on 1 October 1994.

Enquiry into the Cause of the Incident

4.17 At its 28th session, the Executive Committee instructed the Director to follow the investigations into the cause of the incident so as to enable him to submit to the Committee at a later session a proposal as to whether the IOPC Fund should bring recourse action against the owner of the MOBY PRINCE or take any other legal action (document FUND/EXC.28/9, paragraph 3.4.3).

4.18 An administrative enquiry into the cause of the incident has been carried out by a special Board appointed by the Ministry of Merchant Marine. The Board issued a report on its findings in January 1994. A criminal investigation has also been carried out by the public prosecutor but this investigation has not been completed. The public prosecutor has requested the criminal judge not to institute proceedings against the owner of the MOBY PRINCE but only against the port officer on duty and the third mate of the AGIP ABRUZZO. The relatives of the victims have opposed the position of the public prosecutor and requested that also the master of the AGIP ABRUZZO and the owner of the MOBY PRINCE should be prosecuted. As instructed by the Executive Committee, the Director has followed the administrative enquiry and the criminal investigation, through the IOPC Fund's Italian lawyer.

4.19 The conclusions of the report of the Administrative Enquiry Commissions are as follows. The most likely cause of the collisions is to be found in the negligence of the "MOBY PRINCE" Master/crew for having sailed at excessive speed (about 15-18 knots) notwithstanding the relevant number of vessels at anchors at Livorno roads and the poor visibility due to the time (after 22.00 hrs) and the weather (foggy). As for the AGIP ABRUZZO, her third mate (on duty on the bridge at the relevant time) has been found negligent in having failed (or delayed) to make the acoustic signals provided for vessels at anchor in restricted visibility conditions by the COLREG. Apparently no negligence has been found in the tanker anchorage position.

Limitation of Liability and Recourse Action

4.20 At its 32nd session, the Executive Committee noted the Director's view that there were so far no indications that there was any fault or privity on the part of the owner of the AGIP ABRUZZO and that it would therefore not be possible to deprive the shipowner of the right to limit his liability (document FUND/EXC.32/8, paragraph 3.2.3).

4.21 The owner of the MOBY PRINCE is entitled, under Italian law, to limit his liability unless it can be shown that the incident was a result of the wilful misconduct or the recklessness of the owner himself. In view of the jurisprudence of the Italian Constitutional Court relating to the liability of air carriers in accordance with the 1929 Convention for the Unification of Certain Rules relating to International Carriage by Air (Warsaw Convention), however, it is generally considered that a shipowner would not be entitled to limit his liability for loss of life or personal injury. In fact, the owner of the MOBY PRINCE has agreed to settle all claims for loss of life or personal injury without invoking the right of limitation.

4.22 At the 32nd session of the Executive Committee, the Director reported that the information available indicated that the collision between the AGIP ABRUZZO and the MOBY PRINCE resulted from the negligence of the crew of the latter vessel. The Committee therefore authorised the Director to take recourse action against the owner of the MOBY PRINCE to recover any amount paid by the IOPC Fund as a result of the incident, unless the findings of the Board of Enquiry were to show that there were no grounds for such an action. Noting the Director's view that, given the information currently available, it would not be possible for the IOPC Fund to break the limit of liability of the MOBY PRINCE, the Committee instructed him to re-examine this issue in the light of the findings of the Board of

Enquiry. The Director was also instructed to submit to the Executive Committee for consideration the question of whether recourse action should be pursued, even if he were to find that the amount which the IOPC Fund might recover would be comparatively low (document FUND/EXC.32/8, paragraph 3.2.4).

4.23 The Skuld Club has started recourse action against the owner of the MOBY PRINCE. The IOPC Fund has intervened in the proceedings to protect its interest.

4.24 So far claims totalling Llt 81 800 million (£34 million) have been presented against the owner of the MOBY PRINCE by the AGIP ABRUZZO's hull underwriters, by the owner of the AGIP ABRUZZO and by the Skuld Club.

4.25 It is estimated that the limitation amount applicable to the MOBY PRINCE in this case will be between Llt 3 200 million (£1.3 million) and Llt 4 000 million (£1.6 million).

4.26 As stated above, the IOPC Fund will only be called upon to pay indemnification to the shipowner. The amount of indemnification cannot be established at this stage but will be in the region of £1.2 – 1.5 million. The IOPC Fund's share of the limitation amount applicable to the MOBY PRINCE would be approximately 3%. The IOPC Fund may therefore recover less than £50 000. For this reason, the Director questions whether the IOPC Fund should pursue the recourse action.

4.27 A hearing was held in the Court of Livorno on 24 June 1993 at which the owner of the MOBY PRINCE rejected any liability for the collision and requested the adjournment of the case pending the results of the administrative enquiry and the outcome of the criminal investigation. The case has been adjourned until 10 November 1994.

5 TAIKO MARU

(Japan, 31 May 1993)

The Incident

5.1 The Japanese coastal tanker TAIKO MARU (699 GRT), carrying 2 062 tonnes of heavy fuel oil as cargo, collided with the Japanese cargo ship KENSHO MARU N°3 (499 GRT) some five kilometres off Shioyazaki, Fukushima (Japan). As a result, two cargo tanks of the TAIKO MARU were ruptured and some 520 tonnes of oil escaped into the sea. The oil remaining on board the TAIKO MARU was transferred to another vessel.

Clean-up Operations

5.2 The shipowner and his P & I insurer, the Japan Shipowners' Mutual Protection and Indemnity Association (JPIA), engaged the services of the Japan Maritime Disaster Prevention Center (JMDPC) to carry out clean-up operations in accordance with the directives given by the Maritime Safety Agency. JMDPC engaged contractors to carry out these operations. The shipowner set up a response centre, and he also engaged contractors to respond to the spill. The operations were monitored by a surveyor employed jointly by JPIA and the IOPC Fund.

5.3 A number of boats were involved in the clean-up operations, but these operations were not effective due to dense fog. The oil from the TAIKO MARU spread over a large area and affected some 70 kilometres of coast from Hisanohama to Hitachi. The popular tourist beaches along this part of the coast between Obama and Otsu were polluted and were closed for swimming during the period of 20–30 July 1993. Some 5 000m^3 of oily sand had to be removed from these beaches. The fishing ports of Ena and Nakanosaku and their piers and breakwaters were heavily contaminated. The cleaning of the piers and breakwaters was carried out mainly by the use of chemicals. The sea off these two ports is used for collecting abalone and sea urchins, and this area was severely affected by the spill.

5.4 On shore clean-up operations were carried out by local contractors and fishermen under contract with the JMDPC. The operations consisted of the manual and mechanical removal of stranded oil and contaminated beach sediments. Collected oil and oily waste was transported to a disposal factory for incineration. Most on shore clean-up was completed by mid June 1993.

5.5 Considerable quantities of oil sank to the bottom of the sea. Removal of the submerged oil was carried out by a vessel specially equipped for this purpose. On 27 August 1993, a typhoon caused some of the sunken oil to resurface at various places, and this oil threatened to cause further contamination of the coast. Since clean-up operations were undertaken immediately, however, the pollution damage caused by this oil was minimal.

Impact on Fishing Activities

5.6 The fishermen in the area are members of fishery co-operative associations which represent their members. There are also Federations of Fishery Co-operative Associations for the two Prefectures affected by the spill, which represent all the member associations. Fishing activities in certain areas, including the farming and gathering of seabed products, may be carried out only on the basis of fishing rights registered by the individual fishermen at the competent office in the Prefecture. Under Japanese law, fishing rights are deemed to be a property right and the law relating to land is to be applied to such rights. The fishermen who hold fishing rights are entitled to carry out specific types of fishing activities within a certain area, as specified in the registry.

5.7 A number of fishermen carry out boat fishing in the affected area. The oil caused damage to fishing nets and led to the disruption of fishing activities. Four fixed fishing nets, varying between 200 and 800 metres in length, were contaminated, and the fishermen were prevented from fishing until 25 June when the nets had been cleaned.

5.8 Most of the fishermen affected by the spill collect abalone, sea urchins and hokkigai shellfish. These species are cultivated under controlled conditions before being placed on the seabed by the fishery associations. Abalone and sea urchins are harvested by divers, whereas the hokkigai shellfish are harvested from small boats using metal rakes.

5.9 Soon after the incident a committee composed of representatives of the fishery associations, the local authorities and the health authorities decided to suspend the catching of young sardines and abalone and the gathering of sea urchins and shellfish in the affected area. These fishing activities were partly resumed by the end of June or early in July 1993. The lifting of the suspension in respect of hokkigai shellfish was not approved by the respective local health authorities until 6 and 12 August 1993, after analysis of samples showed that there was no remaining contamination of shellfish which previously had been tainted.

Claims for Compensation

5.10 At its 36th session, the Executive Committee authorised the Director to make final settlements of the claims set out below, except to the extent questions of principle arose in respect of which the Committee had not previously taken decisions (document FUND/EXC.36/10, paragraph 3.5.7).

5.11 A claim in respect of clean-up operations was presented by the Maritime Safety Agency for ¥4 552 431 (£28 996). This claim was accepted in full by the Director.

5.12 Claims relating to clean-up operations and preventive measures were presented by 25 entities, totalling ¥860 million (£5.7 million), including the costs of the participation of the fishery associations in the clean-up operations (¥172 million). These claims were settled in March 1994 at ¥734 523 078 (£4.8 million) by the Director.

5.13 The operator of a power station submitted a claim for ¥3 706 328 (£24 200) in respect of the cost of cleaning water intakes which had been contaminated. This claim was accepted in full by the Director. Claims in respect of clean-up costs were presented by Fukushima Prefecture for ¥50 557 550 (£330 030) and by Iwaki Municipality for ¥6 326 194 (£41 702). The claim by Fukushima Prefecture was settled at ¥25 278 775 (£166 636), whereas the claim by Iwaki Municipality was accepted in full by the Director. A claim in respect of cleaning of oil stained yachts, totalling ¥2 611 860 (£16 636), was also accepted in full by the Director.

5.14 Claims for loss of income were presented by ten fishery co-operative associations on behalf of their members for a total amount of ¥1 086 million (£7.1 million). These claims related mainly to loss of income allegedly resulting from the suspension of fishing and to future loss of income due to the fact that the oil spill allegedly destroyed a proportion of the abalone, sea urchins and hokkigai shellfish. After lengthy negotiations, these claims were settled in March 1994 at ¥345 391 509 (£2 284 335), mainly for loss of income due to the suspension of fishing. The assessment of these claims was made on the basis of a comparison between the actual income during 1993 and the average of the catches during the years 1990–1992, as evidenced by catch records and accounting books produced by the claimants. The Director did not accept any item relating to future loss of income due to allegedly destroyed products.

5.15 All claims presented so far were settled and paid by 6 April 1994 for a total amount of ¥1 122 390 175 (£7 565 299). It is very unlikely that there will be any further claims for compensation arising out of this incident.

5.16 The settlements can be summarised as follows:

	Amount Claimed ¥	Amount Settled ¥
Maritime Safety Agency	4 552 431	4 552 431
25 entities (JMDPC, shipowner and their contractors)	859 968 725	734 523 078
Power station	3 706 328	3 706 328
Fukushima Prefecture	50 557 550	25 278 775
Iwaki Municipality	6 326 194	6 326 194
Stained yachts	2 611 860	2 611 860
Fishery claims	1 086 019 949	345 391 509
Total	2 013 743 037	1 122 390 175
	(£13.3 million)	(£7.6 million)

5.17 The limitation amount applicable to the TAIKO MARU is estimated at ¥29 205 120 (£192 400). The limitation proceedings have not yet been commenced.

Investigation into the Cause of the Incident

5.18 In a judgment rendered on 24 March 1994, the competent Marine Court found that the collision was caused by improper navigation on the part of both vessels in the restricted visibility, and that this was a result of the two masters not having given proper instructions to the respective crew.

5.19 The Director has carried out an investigation, through a Japanese lawyer, into whether the incident had been caused by the fault or privity on the part of the owner of the TAIKO MARU, which would deprive him of the right to limit his liability. This investigation showed that there was no such fault or privity.

5.20 The Director is examining whether the IOPC Fund should take recourse action against the owner of the KENSHO MARU N°3.

6 ILIAD

(Greece, 9 October 1993)

6.1 The Greek tanker ILIAD (33 837 GRT) grounded on rocks close to Sfaktiria Island whilst leaving the port of Pylos. The ILIAD was carrying a cargo of about 80 000 tonnes of Syrian light crude, and some 200 tonnes were spilled. The National contingency plan of Greece was activated. The spill was soon brought under control and the vessel left the port, anchoring offshore to await inspection and temporary repairs.

6.2 Calm seas and light winds resulted in much of the spilled oil remaining within Pylos Bay, although some patches drifted out through the northern and southern approaches to the bay.

6.3 Shoreline oiling around Pylos Bay was widespread, but most of the sandy beaches were soon cleaned by local labour. Temporary stockpiles of bagged oily wastes accumulated around the bay. A specialist contractor was mobilised from Piraeus for the clean-up of floating oil in the bay, using two skimmers assisted by a number of fishing boats. The recovered oil was stored in a barge at Pylos.

6.4 A fish farm, rearing sea bass and sea bream in floating cages in the north-western corner of Pylos Bay, was contaminated by oil before defensive booms could be deployed, but the oiling was relatively light and only a few fish died as a result. The farm, which was subsequently protected by booms, was cleaned manually. A shallow lagoon, also used for mariculture, was very lightly oiled as tidal streams carried small patches of floating oil in through a narrow entrance. The mouth of the lagoon was protected from further oil by booms and the oil residues already inside were cleaned manually.

6.5 Outside the bay, relatively minor oiling of shorelines was observed. Most of the oil broke up, evaporated and dispersed naturally in the open sea. The sandy beaches north of the entrance to Pylos Bay on the outer coast became oiled and were cleaned manually. Patches of oil drifted some ten kilometres to the south of Pylos, but caused only very minor coastal contamination.

6.6 By 22 October only minor sheens and traces of oil residues remained on the water surface, and the recovery at sea was terminated. The removal of oil from sandy beaches was also completed. The cleaning of sea-walls and selected areas of rocky shoreline in Pylos Bay was completed by the middle of January 1994.

6.7 Although floating oil caused interruption of the fishing activities in Pylos Bay and along the outer coast for about two weeks, it is extremely unlikely that there will be any long lasting effects to wild fish stocks. The fish farm at Pylos lost a small part of its stock and it appears that the farm's normal selling pattern was interrupted. The stock is being tested to assess whether there is any residual contamination.

6.8 A number of lawyers have submitted documents to the Newcastle Club in support of claims for loss of income allegedly suffered by individuals and a large range of small businesses, such as hoteliers, restaurateurs and fishermen, as well as taxi drivers, shopkeepers, estate agents and hairdressers. The total amount of the claims presented so far is Drs 3 630 million (£9.8 million).

6.9 The supporting documents are being examined by lawyers and technical experts appointed by the shipowner, his P & I insurer (the Newcastle Protection & Indemnity Association, the "Newcastle Club") and the IOPC Fund.

6.10 The shipowner will submit a claim for costs incurred during for the clean-up operations.

6.11 The Newcastle Club established a limitation fund amounting to Drs1 496 533 000 (£4 032 480) in March 1994 with the competent court by the deposit of a bank guarantee.

6.12 The Court has appointed a liquidator to examine the claims when they have been submitted to the court in the limitation proceedings.

7 SEKI

(United Arab Emirates and Oman, 30 March 1994)

7.1 The tanker BAYNUNAH (34 240 GRT), registered in the United Arab Emirates, collided with the Panamanian registered tanker SEKI (153 506 GRT) some nine miles off the port of Fujairah, United Arab Emirates. BAYNUNAH was in ballast at the time, whilst SEKI was fully laden with some 153 000 tonnes of Iranian light crude oil. The N°1 port wing tank of the SEKI was ruptured resulting in the escape of approximately 16 000 tonnes of oil.

7.2 The split oil drifted northwards under the influence of wind and water currents and initially came ashore north of the port of Khorfakkan. Offshore winds resulted in much of this oil being refloated and driven away from the coast where it was largely dispersed by natural processes. However, some of the oil drifted further north along the coast, affecting the Emirates of Fujairah and Sharjah and polluting some 30 kilometres of shoreline between Khorfakkan and Diba. The coast of the Musandam peninsula in Oman was also polluted in a remote area, south of Limah.

7.3 Response to the oil spill was organised by the Fujairah Port Authority with assistance of experts from the International Tanker Owners Pollution Federation Ltd, acting as technical advisers on behalf of the shipowner, the P & I insurer (Britannia P & I Club) and the IOPC Fund.

7.4 Three skimming vessels operated by a local contractor were engaged in offshore recovery operations. Additional clean-up resources were provided by the Abu Dhabi National Oil Company and the Government of Oman. Vacuum trucks and skimmers were used from shore to collect oil pooled against the coast.

7.5 Shoreline clean-up was initially conducted by local contractors but these operations were abandoned when it became clear that the oil had penetrated deeply into the coarse sand beaches. Trials were conducted to identify the optimum clean-up methods. Meanwhile, a considerable degree of natural cleaning was observed as a result of wave and tidal action.

7.6 Contracts for operations to remove oil remaining trapped in the sand and pebble sediments along the coast were give to two companies, one French and one Saudi Arabian, the work being divided between them. The operations began during the last week of August and it is expected that they will last some six weeks.

7.7 The spill affected artisanal fisheries. Fishermen along the east coast of the United Arab Emirates were instructed by the authorities to suspend fishing activities. Amenity beaches used by tourists for swimming and diving were also affected. However, the main tourist season runs through the cooler winter months, from late September onwards. A desalination plant immediately south of Khorfakkan was temporarily shut down at night as a precautionary measure.

7.8 The Government of Fujairah has submitted nine claims totalling Dhr49 million (£8.7 million), including a claim for damage to fisheries of Dhr36.9 million (£6.5 million). The French and Saudi Arabian companies will under the contracts be paid a lump sum, for each of them Dhr4.65 million (£820 000). The local contractor who conducted offshore recovery operations during the initial stages of the incident has submitted a claim of US$6.0 million (£3.9 million). Additional claims are anticipated in respect of losses allegedly suffered in other sectors of the economy, notably in respect of tourism.

7.9 The Government of Oman has submitted a claim for OR 100 568 (£169 800) in respect of surveillance activities, costs incurred by placing dispersant spraying aircraft on standby and provision of offshore recovery equipment to the Government of Fujairah, together with a claim for OR 27 000 (£45 600) in respect of damage along the affected coastline of the Musandam peninsula.

7.10 The claims set out above total some £14.5 million.

7.11 The limitation amount applicable to the SEKI is approximately £12.9 million. The Britannia Club has established a limitation fund for the limitation amount in the Court of Fujairah by means of a letter of guarantee.

7.12 The authorities of the United Arab Emirates are investigating the cause of the incident. The Director is following these investigations.

7.13 The claims presented so far are being examined by the Britannia Club and the IOPC Fund, with the assistance of experts.

7.14 The owner of the SEKI has through its agent (World-Wide Shipping Agency Ltd) entered into a Memorandum of Agreement with the Government of Fujairah. Pursuant to this Memorandum, the owner has deposited an amount of US$19.6 million (£12.7 million) with a bank in the United Arab Emirates from which claims presented by the Government could be paid although they have been rejected by the Britannia Club and the IOPC Fund. If such a payment were to be made in respect of a rejected claim, the shipowner may take legal action in respect of that claim, against the Club and the IOPC Fund in the competent court in the United Arab Emirates. The Government will be under an obligation to refund to the shipowner the amount received in respect of any part of a claim not upheld by the court.

7.15 The Director has made it clear to the shipowner and the authorities of the United Arab Emirates that the IOPC Fund is not bound by any agreement in respect of a claim unless it has explicitly been approved by the Fund or has been established by a final judgement rendered by a competent court in legal proceedings brought under Article IX of the Civil Liability Convention or Article 7.1 of the Fund Convention.

8 Action to be Taken by the Executive Committee

The Executive Committee is invited to:

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

(b) take a decision on the Director's proposal that the requirement to establish the limitation fund should be waived in respect of the AGIP ABRUZZO incident (paragraph 4.16); and

(c) decide whether the IOPC Fund should pursue the recourse action against the MOBY PRINCE (paragraph 4).

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