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Agenda item 3

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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 40th session of the Executive Committee, in the Director's view, are of lesser importance.

#### 2 PORTFIELD

(United Kingdom, 5 November 1990)

2.1 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. Approximately 110 tonnes of the medium fuel oil was spilled as a result of the sinking. Most of the spilt oil could be contained in the berth by booms deployed by the port authority. This oil was recovered by skimmers and vacuum trucks and disposed of at a local refinery. A relatively small proportion of the spilt oil escaped from the berth on the first day and affected numerous pleasure craft moored in the estuary. The ship was refloated after the cargo tanks had been emptied, and the main clean-up operations were terminated soon thereafter. The local authorities carried out shoreline cleaning on a small scale at a few key locations.

2.2 Claims were presented relating to clean-up operations and preventive measures and to damage to small craft and fishing equipment. These claims were settled and paid in 1991 for £303 438. A claim for £19 063 submitted by the Ministry of Defence for costs incurred in connection with this incident was settled in full in March 1993. In June 1993, the IOPC Fund paid £12 709, representing two thirds of the settled amount in respect of the Ministry's claim, and the shipowner's hull underwriters paid the remaining one third.

2.3 A claim for £287 298 was presented by the owner of the fish farm. The fish farm had been contaminated by oil, but no fish were being cultivated there at the time of the spill. This claim was settled and paid in April 1994 for £12 511.

2.4 The limitation amount applicable to the *Portfield* is £50 884 plus interest of £18 257, or a total of £69 141.

2.5 In total, the IOPC Fund and the shipowner's P & I insurer have paid £259 518 and £69 141 in compensation, respectively.

2.6 In March 1995, the IOPC Fund paid indemnification to the shipowner which, including interest, amounted to £17 155.

2.7 The IOPC Fund has incurred fees and expenses totalling £82 988.

2.8 The total costs to the IOPC Fund in respect of this incident is £359 660.

### 3 KUMI MARU N°12

(Japan, 27 December 1991)

3.1 The Japanese tanker *Kumi Maru N°12* (113 GRT) collided with a container ship in Tokyo Bay (Japan). The *Kumi Maru N°12* sustained damage to her starboard shell plating and N°4 tank, allowing some five tonnes of her cargo of heavy fuel oil to spill into the sea. To prevent further pollution, the remaining cargo was transferred to another vessel. The Japan Maritime Disaster Prevention Centre began clean-up operations immediately.

3.2 Claims in respect of clean-up operations were submitted for a total amount of ¥6 211 309 (£45 990). These claims were settled at ¥4 115 079 (£21 919). In November 1992, the IOPC Fund paid ¥1 056 519 (£5 629) representing the settlement amount minus the limitation amount applicable to the *Kumi Maru N°12*, ¥3 058 560 (£16 290). Indemnification of the shipowner was paid in the amount of ¥764 640 (£5 635).

3.3 The shipowner's P & I insurer (the Japan Ship Owners' Mutual Protection and Indemnity Association, JPIA) requested that the IOPC Fund should waive the requirement to establish the limitation fund. 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 34th session, that the IOPC Fund could, as an exception, pay compensation in this case without the limitation fund being established (document FUND/EXC.34/9, paragraph 4.2).

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

	<u>Total</u> ¥	<u>Shipowner's share</u> ¥	<u>IOPC Fund's share</u> ¥
Compensation	4 115 079	3 058 560	1 056 519
Surveyor's fees	1 352 513	1 005 264	347 249
Indemnification	-	<u>- 764 640</u>	<u>764 640</u>
Total Cost	<u>5 467 592</u>	<u>3 299 184</u>	<u>2 168 408</u>

#### 4 RYOYO MARU

(Japan, 23 July 1993)

4.1 The Japanese coastal tanker *Ryoyo Maru* (699 GRT), laden with 2 081 tonnes of heavy gas oil, collided with a car carrier off Shimoda, Izu peninsula, Shizuoka (Japan). Two tanks of the *Ryoyo Maru* were damaged, and approximately 500 tonnes of oil leaked out. The *Ryoyo Maru* was towed to a shipyard after the remaining oil had been transferred to another ship.

4.2 Most of the spilled oil appeared to have drifted out to sea as a result of the bad weather. On 24 July, however, oil came ashore on the southern part of the Izu peninsula. The clean-up operations were carried out by the Japan Maritime Disaster Prevention Centre and its subcontractors.

4.3 It was established through chemical analysis that the heavy gas oil carried by the *Ryoyo Maru* was a "persistent oil" for the purpose of the Civil Liability Convention.

4.4 Seven entities which took part in the clean-up operations procedures presented claims totalling ¥67 564 892 (£500 230). These claims were settled at ¥36 538 921 (£262 602). In September 1994, the IOPC Fund paid ¥8 433 001 (£54 512), representing the total amount of the agreed claims minus the shipowner's limitation amount of ¥28 105 920 (£208 090).

4.5 In a judgement rendered on 18 January 1995, the competent Marine Court held that the collision was caused by improper navigation of the two vessels in clear visibility, and that this resulted from the two masters not giving proper instructions to the respective crew members.

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

4.7 Indemnification of the shipowner, ¥7 026 480 (£51 979), was paid in July 1995.

4.8 The Director is taking the necessary steps to initiate recourse action against the owner of the other ship involved in the collision.

#### 5 DAITO MARU N°5

(Japan, 11 June 1994)

5.1 While the Japanese tanker *Daito Maru N°5* (116 GRT) was loading heavy fuel-oil as cargo at the private berth of a refinery in the Port of Yokohama (Japan), half a tonne of oil flowed from the cargo tank and spilled into the sea. Clean-up operations were immediately undertaken by the refinery and four contractors. These operations were completed on 13 June 1994.

5.2 Claims for clean-up costs presented by the refinery and the contractors were settled in September 1994 for the amount claimed, ie ¥4 573 864 (£28 857).

5.3 The shipowner's P & I insurer (JPIA) requested that the IOPC Fund should waive the requirement to establish the limitation fund. In view of the disproportionately high legal costs which 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 41st session, that the requirement to establish the limitation fund should be waived in the *Daito Maru N°5* case, so that the IOPC Fund could, as an exception, pay compensation and indemnification without the limitation fund being established (document FUND/EXC.41/2, paragraph 4.2.2.).

5.4 In January 1995, the IOPC Fund paid ¥2 033 944 (£12 832), representing the total amount of the settled claims minus the shipowner's limitation amount of ¥3 386 560 (£21 366) plus indemnification of the shipowner amounting to ¥846 640 (£5 342).

5.5 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:

	<u>Total</u> ¥	<u>Shipowner's share</u> ¥	<u>IOPC Fund's share</u> ¥
Compensation	4 573 864	3 386 560	1 187 304
Surveyor's fees	385 856	285 694	100 162
Indemnification	-	- 846 640	846 640
Total Cost	<u>4 959 720</u>	<u>2 825 614</u>	<u>2 134 106</u>

## 6 HOYU MARU N°53

(Japan, 31 October 1994)

6.1 While the Japanese-registered tanker *Hoyu Maru N°53* (43 GRT) was supplying bunkers to a fishing boat in the port of Monbetsu, Hokkaido Prefecture (Japan), heavy fuel oil was inadvertently pumped into a cargo hold. As a result, 36 tonnes of frozen fish were contaminated and had to be destroyed.

6.2 The owner of the fishing boat submitted a claim for the cost of repair of the hold and for the value of the destroyed fish in the amount of ¥5 330 933 (£39 470). The owner of *Hoyu Maru N°53* submitted a claim for the cost of cleaning the contaminated hold in the amount of ¥313 120 (£2 320). In September 1995, these claims were settled for ¥4 990 995 (£37 000) and ¥256 000 (£1 900) respectively, but they have not yet been paid.

6.3 The limitation amount applicable to the *Hoyu Maru N°53* is estimated at ¥1 075 200 (£7 960).

6.4 The shipowner's P & I insurer (JPIA) has requested that the IOPC Fund should in this case waive the requirement to establish the limitation fund.

6.5 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. The Committee has taken into account that under the Memorandum of Understanding, signed on 25 November 1985 by JPIA and the IOPC Fund, JPIA undertakes to repay in full any amount paid by the IOPC Fund in compensation if it is held by the competent court that the shipowner is not entitled to limit his liability under the Civil Liability Convention. In these cases, the Executive Committee agreed that the IOPC Fund could, as an exception, pay compensation without the limitation fund being established (document FUND/EXC.22/5, paragraph 3.2.8).

6.6 The Director supports JPIA's request and proposes that the requirement to establish the limitation fund should be waived in the *Hoyu Maru N°53* case.

## 7 DAE WOONG

(Republic of Korea, 27 June 1995)

7.1 The Korean tanker *Dae Woong* (642 GRT), laden with 1 500 tonnes of heavy fuel oil and 70 tonnes of diesel oil as cargo, ran aground off the port of Kojung some 150 kilometres south-west of Seoul (Republic of Korea). Two cargo tanks were damaged, and approximately one tonne of oil was spilled into the sea. After the damage to the hull had been provisionally repaired by divers and the oil remaining in the cargo tanks had been transferred to another vessel, the *Dae Woong* was towed to a nearby port for repair.

7.2 Some small islands and inlets near the site of the incident were contaminated by oil. Clean up operations were carried out by the Taean Marine Police and contractors applying dispersants and sorbents. The clean-up operations were terminated on 1 July 1995. Some mariculture facilities were also affected by the oil spill.

7.3 In August 1995, the IOPC Fund received claims from the Marine Police and a private clean-up contractor in respect of the clean-up operations for Won 31 020 762 (£25 720) and Won14 045 640 (£11 640), respectively. Several fishery co-operative associations have indicated that they will submit claims for compensation.

7.4 The limitation amount applicable to the *Dae Woong* is estimated at Won95 000 000 (£78 750). The ship was not entered into any P & I Club but had a financial security issued by a Korean bank corresponding to the limitation amount.

**8 SHINRYU MARU N°8**  
(Japan, 4 August 1995)

8.1 While the Japanese-registered tanker *Shinryu Maru N°8* was supplying bunkers to a bulk carrier through another tanker at the private berth of a factory in Chita, Aichi Prefecture (Japan), the hose used for transferring the oil from the *Shinryu Maru N°8* was not properly handled. As a result, approximately half a tonne of heavy fuel oil flowed onto the decks of the three vessels, contaminated the decks and hulls and spilled into the sea.

8.2 The clean-up operations at sea and the cleaning of the bulk carrier were carried out by the owner of the *Shinryu Maru* and contractors employed by him. The operations were completed on 5 August 1995.

8.3 The IOPC Fund has not yet received any claims arising out of this incident.

8.4 The limitation amount applicable to the *Shinryu Maru N°8* is estimated at ¥2 907 000 (£21 520).

**9 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 *Hoyu Maru N°53* (paragraph 6 above); and
  - (c) give the Director such instructions as it may deem appropriate in respect of the incidents dealt with in this document.
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