INTERNATIONAL OIL POLLUTION COMPENSATION FUND

FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES
DUS A LA POLLUTION PAR LES HYDROCARBURES

EXECUTIVE COMMITTEE -
4th session
Agenda item 3

FUND/EXC.4/2
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INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS

Note by the Director

1. Article 26.1(b)(ii) of the Fund Convention provides that the Executive Committee shall approve settlements of claims against the IOPC Fund and take all other steps envisaged in relation to such claims in accordance with Article 18.7 of the Fund Convention.

2. To enable the Executive Committee to fulfil these functions, details of the eleven incidents in respect of which the IOPC Fund has been, or may be, held liable are given in the Annex. Documents FUND/EXC.2/5, FUND/EXC.2/5/Add.1 and FUND/EXC.3/2, submitted to the Executive Committee's second and third sessions, contained the information available at those times; reference is made to these documents.

3. The developments regarding all claims the Fund has been dealing with since the Executive Committee's last meeting in October 1980 can be summarized as follows:

(a) All claims relating to the *ANTONIO GRAMSCI and* the MIYA MARU NO.8 incidents have been settled.

(b) Regarding the TARPENBEK incident, a claim made by the owner of the tanker against the Fund was rejected on the basis that the expenses claimed were not with respect to measures taken after a spill of persistent oil.

(c) The settlement of the claims arising out of the MEBARUZAKI MARU NO.5, the SHOWA MARU, the FURENÄS and the HOSEI MARU incidents have reached the very final stage.

(d) With respect to the TANIO incident, some claims have been filed against the IOPC Fund. However, the largest claim by far, to be presented by the French Government, has not yet been made.

(e) Regarding the UNSEI MARU incident, no further development has taken place since the third session of the Executive Committee in October 1980.

(f) In respect of two new incidents, i.e. the JUAN ANTONIO LAVALLEJA and the JOSE MARTI, claims may be made against the IOPC Fund.

4. The Executive Committee is invited to take note of the information given and to consider measures with regard to these incidents.

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ANNEX

SUMMARY OF INCIDENTS

(Equivalents of foreign currencies in £ sterling, if not stated otherwise, are as at 1 July 1981)

A. ANTONIO GRAMSCI

1. The IOPC Fund, in accordance with the agreement of 6 March 1980 between the IOPC Fund and the Kingdom of Sweden, had to pay to Sweden an amount of S.Kr.93 million minus the Swedish portion of the shipowner's limitation fund plus interest on S.Kr.90 million, at a rate of 4% above the official Swedish Discount Rate, from 5 April 1980 to the date of payment (see document FUND/EXC.2/5/Add.1, Annex II). In appreciation of the rapid settlement of the claims arising out of the incident, and following a request expressed by the Executive Committee at its second session, the Government of Sweden waived its claim for interest for the period from 5 April 1980 to 30 June 1980.

2. An amount of S.Kr.3,942,282.75 was paid by the shipowner of the ANTONIO GRAMSCI (the Latvian Shipping Company) to Sweden on 16 July 1980.

3. The first extraordinary session of the Fund's Assembly in October 1980 decided that, in accordance with Article 12.2(b) of the Fund Convention, an amount of £9.2 million be levied to satisfy the settlement of the ANTONIO GRAMSCI incident. From this major claims fund and the interest accrued thereon, together with the equivalent of 15 million (gold) francs levied as part of the general fund (Article 12.2(a)), an amount of S.Kr.95,707,157 (£9,247,068.31 at the date of payment) calculated as below, was paid to the Kingdom of Sweden on 15 January 1981.

Calculation of payment	Swedish Crowns
(a) Claim	
Claim agreed upon	93,000,000.00
Less amount paid by the shipowner on 16.7.80	3,942,282.75
	89,057,717.25
(b) Interest	
(i) From 5.4.80 to 15.7.80: 90,000,000 x 14% x 101 days (5.4.80 - 15.7.80)	3,535,000.00
(ii) From 16.7.80 to 15.1.81: (90,000,000 - 3,942,282.75) x 14% x 183 days (16.7.80 - 15.1.81)	6,124,440.00
	9,659,440.00
Total (a) + (b)	98,717,157.25
(c) Interest waived	
90,000,000 x 14% x 86 days (5.4.80 - 30.6.80)	3,010,000.00
NET PAYMENT TO SWEDEN	95,707,157.00

In addition, legal fees for the lawyers employed in Sweden and in the USSR amounted to S.Kr.48,945(£4,769 at the date of payment) and Rbls.901 (£577 at the date of payment) respectively.

4. The Director investigated the possibility of a recourse action against persons other than the shipowner and his servants or agents. Since the incident was caused because the ship left her correct route, the questions of whether this was due to wrong advice having been given by the radar station guiding the ship and of whether the USSR Government would be liable for damages resulting from such wrong advice had to be investigated.

5. It appeared that very little information was available with respect to the factual question of what was the reason for the master leaving the correct route. Neither the Fund's Swedish lawyer, enquiring in Riga (USSR) where the limitation proceedings in this case were held, nor the Fund's lawyers in the USSR, were in a position to establish any facts on the basis of which the possibility of a recourse action could have been pursued. In addition, the Fund was advised by its USSR lawyers that the law of the USSR does not allow for such claims against the USSR Government as envisaged by the Fund. This legal opinion was supported by other lawyers familiar with the USSR legal system. The Director has therefore given up pursuing the possibility of taking recourse against a third party.

B. MIYA MARU NO.8

1. All claims arising out of the incident have been finalised.

The final amounts of the claims paid by the IOPC Fund and the shipowner are as follows:

(a) Third Party Claims		IOPC Fund's Share	Shipowner's Share
	Yen	Yen	Yen
Shipowner's clean-up costs	27,645,081		
Maritime Safety Agency's clean-up costs	10,673,267		
Japan Maritime Disaster Prevention Centre's clean-up costs	99,502,574		
Fishery damage	40,000,000		
	177,820,922	140,110,582	37,710,340
(Recovery from the DAIKOKO MARU NO.18	- 6,902,773	- 5,438,909	- 1,463,864)
(b) Legal Fees	11,976,233	8,727,486	3,248,747
(c) Surveyor's Fees	5,260,010	4,144,525	1,115,485
(d) Indemnification to Shipowner	9,427,585	9,427,585	
TOTAL	197,581,977	156,971,269	40,610,708
	(£455,258)	(£361,685)	(£93,573)

2. The legal fees and surveyor's fees were paid by the IOPC Fund and the shipowner in accordance with the proportion of the amounts for which each party was ultimately liable. These fees are relatively high because this incident, being the first in Japan under the Fund Convention, required extensive factual and legal investigations.

3. The indemnification to the shipowner under Article 5 of the Fund Convention was paid in the amount of ¥9,427,585, when the Court accepted the shipowner's application, with the consent of all parties concerned, to cancel the limitation proceedings.

C. <u>TARPENBEK</u>

1. The tanker TARPENBEK, loaded with about 1,600 tonnes of lubricating oil, collided on 21 June 1979 with the British Royal Fleet Auxiliary ship SIR GERAINT off the English coast. The cargo tanks of the TARPENBEK remained undamaged; no cargo was spilled. Only some light diesel oil from the damaged bunker tanks spilled into the sea. The TARPENBEK was towed to a sheltered bay and the cargo was successfully pumped out.

2. There is a disagreement over whether insignificant quantities of cargo oil were spilled during these pumping operations or whether no oil at all was spilled. A meeting held in April 1981 between the owner, his insurer, the U.K. Department of Trade and the IOPC Fund, plus several surveyors, came to the conclusion that an insignificant spill of persistent oil may have occurred either at the time when, after the pumping of the oil, the parbuckling operations started, or during the parbuckling operations. There was not sufficient evidence available to consider these possible spills as proven nor was there agreement between the experts on the exact date and cause of spills.

3. The owner of the TARPENBEK and the United Kingdom Government incurred expenses in order to prevent the spill of cargo and the pollution of the English coast. The owner claimed recovery of his expenses from the IOPC Fund. The United Kingdom Government made a claim against CRISTAL.

4. The question of whether the IOPC Fund was liable for preventive measures taken by the owner either before an actual spill of oil had occurred or if no spill occurred at all was discussed at length with the owner. The owner maintained that the IOPC Fund was liable for his expenses under the U.K. Merchant Shipping Acts of 1971 and 1974 implementing the CLC and the Fund Convention, irrespective of whether there was any spill of persistent oil. The Director obtained a legal opinion from Mr. M. Saville, Queen's Counsel, and was advised by him that the U.K. legislation implementing the CLC and the Fund Convention does not give the owner a right to claim from the IOPC Fund expenses incurred before an actual spill of oil. The legal opinion came to the conclusion that the U.K. Merchant Shipping Acts allowed claims against the IOPC Fund only for expenses incurred after the discharge or escape of persistent oil.

5. In view of the legal and factual situation, the claim made by the owner against the IOPC Fund was rejected. The Director informed the owner that under the CLC and the Fund Convention, as implemented by the U.K. Merchant Shipping Acts of 1971 and 1974, the Fund would accept liability only for expenses incurred for preventive measures taken after the actual discharge or escape of persistent oil from the ship. The claim, as presented by the owner, did not show that any of the expenses claimed were incurred after a spill of persistent oil in order to prevent a further spill. The owner has not yet indicated whether he accepts the Fund's legal position.

D. MEBARUZAKI MARU NO.5

1. The settlement of the third party claims arising out of this incident, which occurred on 8 December 1979 in Japan, has been finalised.

The agreed amounts of the third party claims are as follows:

		Yen
(a)	Shipowner's clean-up	7,141,350
(b)	Maritime Safety Agency's clean-up	956,646
(c)	Fishery damage to "nori" seaweed	2,935,819
		11,033,815
		(£25,424)

Out of this total the IOPC Fund has paid ¥10,188,335 and the shipowner ¥845,480, this amount being his liability according to Article V of the CLC.

2. The shipowner has established the limitation fund. With the consent of all parties concerned he will soon make an application to cancel the limitation proceedings. After the acceptance of this application by the Court, indemnification amounting to ¥211,370 will be paid to the shipowner under Article 5 of the Fund Convention.

3. The surveyor's fees amount to ¥1,396,635; the legal fees are not yet known. These expenses will be paid by the IOPC Fund and the shipowner in proportion to the amounts for which each party is ultimately liable.

4. There is no possibility of taking recourse action against any third party.

E. SHOWA MARU

1. All third party claims arising out of this incident, which occurred on 9 January 1980 in Japan, have been settled as follows:

		Yen
(a)	Shipowner's clean-up	518,670
(b)	Maritime Safety Agency's clean-up	1,330,886
(c)	Japan Maritime Disaster Prevention Centre's clean-up	9,378,458
(d)	Fishery damage	100,000,000
		111,228,014
		(£256,286)

The IOPC Fund and the shipowner paid ¥103,104,874 and ¥8,123,140 respectively in settlement of these third party claims, the latter figure being the owner's limitation fund under the CLC.

2. In the investigation into the collision between the SHOWA MARU and the CHEMICARRY NO.18, the Kobe Marine Court concluded that the CHEMICARRY NO.18 alone was to blame for the collision. The Court held that the collision was solely caused by improper navigational manoeuvres on the part of the CHEMICARRY NO.18 and not by any fault or privity of the owner of the CHEMICARRY NO.18. The IOPC Fund therefore agreed to the proposal made by the owner of the CHEMICARRY NO.18 that a settlement be made on the basis that the owner accepts liability but is entitled to limit his liability. The limitation fund amounts to ¥12,427,130.

3. The indemnification to the shipowner under Article 5 of the Fund Convention amounts to ¥2,030,785; it has not yet been paid.

4. The surveyor's fees amount to ¥2,464,990; the legal fees are not yet known. These expenses will be paid by the IOPC Fund and the shipowner in proportion to the amounts for which each party is ultimately liable.

F. <u>UNSEI MARU</u>

1. On 9 January 1980 the Japanese tanker UNSEI MARU (99 GRT), carrying 140 tons of heavy fuel oil, collided with the SUN EDELWEISS (4,816 GRT). As a result, the UNSEI MARU sank and some oil was spilled.The Maritime Safety Agency (MSA) and local fishermen undertook clean-up operations.

2. The surveyor employed by the IOPC Fund informed the Fund in August 1980 that the clean-up costs were estimated at ¥6,903,451, most of which was spent of diving operations and diver boat charges. It was ascertained by the divers that most of the cargo on board the sunken tanker had leaked out. This fact persuaded the Maritime Safety Agency to withdraw its strong request for the removal of the remaining oil and the wreck of the sunken tanker.

3. To date, the exact amount of the fishery damage is not known, but it is estimated at about ¥20 million (£46,083).

4. The investigations into the cause of the collision indicate that the SUN EDELWEISS, in overtaking the UNSEI MARU, did not have a sufficient look-out. Therefore, there is the possibility that the SUN EDELWEISS alone will be held to blame. Without prejudice to the defences and rights available to the owner of the SUN EDELWEISS, and subject to his and his servants' or agents' right to limit their liability, the owner has given to the owner of the UNSEI MARU, his insurers and the IOPC Fund a letter of guarantee amounting to ¥300,000,000.

G. TANIO

1. The Madagascan tanker TANIO broke in two on 7 March 1980, 35 miles off the Britanny coast, France. 5,000 - 6,000 tons of heavy fuel oil were spilled and caused considerable pollution damage to the French territory. The stern section, with about 13,000 tonnes of cargo aboard, remained afloat and was towed to a safe port. The bow section, with 10,000 tonnes of cargo aboard, sank to a depth of 90 metres.

2. Despite the considerable amount of oil polluting the tourist beaches of Britanny, the clean-up operations were carried out quickly and were completed by the beginning of the 1980 summer season.

3. The preparations for pumping the 10,000 tonnes of cargo oil remaining in the bow section of the TANIO began in summer 1980. However, the process was greatly hindered by adverse weather conditions during the autumn and winter months, and the pumping operations were not able to be resumed until spring 1981. By the end of June 1981, an estimated 2,750 tonnes of oil had been removed from the tanks of the TANIO.

4. In meetings with representatives of the French Government a method of claim presentation and settlement procedure which could expedite the assessment and settlement of the claims was considered. As yet, it has not been possible to come to a final agreement because such a procedure has to be agreed upon by all claimants. Since the Fund's upper limit will be exceeded,

it is envisaged that, after a checking of all claims by the Fund, an agreement will be negotiated between all claimants on the distribution of the compensation available under the Fund Convention.

5. The authorities of Jersey and Guernsey have filed claims of £9,799.63 and £14,439.62 respectively against the IOPC Fund for the cost of clean-up operations undertaken around the coasts of the Channel Islands. A claim of F.F.39,565.13 has been filed by French private boatowners. In addition, the shipowner will claim against the IOPC Fund for the cost of sealing the fissures in the sunken fore section of the TANIO, which was done as a provisional measure to prevent further pollution. The costs are estimated at about £200,000.

6. To date, the French Government has not presented a detailed claim. A final claim cannot be made until the pumping operations have been finalised. However, it is estimated that the total of this claim will be considerably more than the IOPC Fund's upper limit of 675 million (gold) francs.

7. Since the Fund's upper limit will be exceeded, the question arises as to the date on which this amount has to be converted into national currencies. The Fund Convention does not specify any date but as the amount of the CLC limitation fund has to be calculated on the basis of the conversion rate applicable on the date of the constitution of this fund (Article V.9 of the CLC), the Director believes that this would also be the most appropriate date for the calculation of the IOPC Fund's liability. Furthermore, the question arises as to whether the method of calculating the Fund's upper limit has to be the same for the French and for the Channel Islands' claimants. As can be seen from document FUND/A.4/13, paragraph 4, the method of converting (gold) francs into national currencies is not the same in France and in the United Kingdom. However, it is hoped that this problem can be overcome by agreement between the claimants.

H. FURENÄS

1. On 3 June 1980, the Swedish tanker FURENÄS (2,100 dwt) collided with the Danish ferry KÄRNAN in the Öresund between Sweden and Denmark. As a result of that collision, 200 tons of fuel oil (No.4) were released and polluted the Swedish coast and a small part of the Danish coast.

2. The owner of the FURENÄS, in accordance with the provisions of the Civil Liability Convention, established a limitation fund at Malmö City Court amounting to S.Kr.612,443.66.

3. The Swedish Coast Guard and the Swedish State Fire Service Board claimed S.Kr.2,475,194 and S.Kr.929,944 respectively against the IOPC Fund and the P & I Club for clean-up expenses.

After negotiation with the Swedish Government, acting on behalf of the Coast Guard and the State Fire Service Board, it was agreed that the Kingdom of Sweden was entitled to compensation of S.Kr.3,500,000, including interest of S.Kr.153,193 from one month after the date of claiming up to the date of payment, i.e. from 20 November 1980 12 March 1981. This amount equals £359,712.

An amount of S.Kr.2,887,556.34 (S.Kr.3,500,000 minus the limitation fund of S.Kr.612,443.66) was paid by the IOPC Fund on 12 March 1981.

The amount of S.Kr.612,443.66, plus interest accrued thereon after 12 March 1981, will be paid to the Swedish Government by the P & I Club after the release of the limitation fund.

4. In addition to the above claim from the Swedish Government, the following claims from Sweden have been settled:

		Swedish Crowns
(a)	Boatowners	35,050
(b)	Private clean-up company (Sylvans)	241,000
(c)	Helsingborg Port Authorities	24,081
		300,131

5. The claims for compensation for clean-up operations made by the Danish Government amounted to D.Kr.382,443.57.

It was agreed with the Danish Government that the IOPC Fund had to pay an amount of D.Kr.396,150, including interest up to 31 March 1981, when the payment was made.

6. Furthermore, the following claims from Denmark were settled:

		Danish Crowns
(a)	Helsingør Kommune	8,809.35
(b)	Karlebo Kommune	3,673.50
(c)	Boatowners	7,800.00
(d)	Fishermen	2,156.95
		22,439.80

7. Thus, the total claims arising out of the FURENÅS incident amounted to S.Kr.3,800,131 (£390,558) and D.Kr.418,589.80 (£29,069). Except for the amount payable by the P & I Club to the Swedish Government, all third party claims have been settled.

8. The question of possible recourse actions against the KÄRNAN, the other ship involved in the collision, is under investigation. According to the maritime declarations made before the Swedish and Danish authorities, the collision occurred in the busy shipping route in the Öresund, during a period of reduced visibility. The FURENÅS, sailing southwards at a speed of almost eleven knots, could not be regarded under the given circumstances as sailing at a "safe speed". On the other hand, the KÄRNAN, although sailing at a proper speed, had not got a safe picture of the traffic situation by use of radar and echo plotting in the busy shipping route. For these reasons, there may be a 50:50 liability for the incident. Recourse actions are being pursued by the Fund, but in no case will they lead to recovery of a very substantial amount.

9. Indemnification under Article 5 of the Fund Convention is S.Kr.153,110.92, which has not yet been paid.

I. HOSEI MARU

1. On 21 August 1980 the Japanese tanker HOSEI MARU (983.05 GRT), carrying about 2,000 tons of heavy oil "C", collided with another Japanese tanker, the KINREI MARU (997.82 GRT), in dense fog off the Miyagi Prefecture in the northern part of Honshu, Japan. As a result of the collision, 270 tons of heavy oil "C" were spilled from the HOSEI MARU. The spilt oil polluted fishing areas in small bays where culture fishery, such a scallop, oyster, seaweed and tangle cultures etc. is extensively carried out.

2. Immediately after the incident, the Maritime Safety Agency (MSA) ordered the Japan Maritime Disaster Prevention Centre (JMDPC) to undertake the clean-up operations. These were effected mainly by utilising tugboats for spraying oil dispersants over oil-polluted waters; the operations lasted one week.

The final amounts of the clean-up operation costs and of compensation for fishery damages to seaweed, sea shells, etc., and for loss of earnings, are as follows:

		Yen
(a)	JMDPC's clean-up costs	176,275,547
(b)	MSA's clean-up costs	7,509,481
(c)	Costs of clean-up by HOSEI MARU's crew	130,000
(d)	Sub-contractors' clean-up costs	6,474,620
(e)	Fishery damage	58,700,000
		249,089,648
		(£573,939)

3. The shipowner's liability under the CLC is ¥35,765,920 (the limitation tonnage is 772.52 tons). The IOPC Fund and the shipowner have paid, for the above third party claims, ¥213,323,728 and ¥35,765,920 respectively.

Indemnification to the shipowner under Article 5 of the Fund Convention (¥8,941,480) has not yet been paid.

The Fund's total liability with respect to this incident is as follows:

	Yen
Third-party claims	249,089,648
minus shipowners liability	-35,765,920
Indemnification	8,941,480
Legal and surveyors fees (estimated)	15,000,000
TOTAL	237,265,208

This amount is below the limit of 15 million (gold) francs as set out in Article 12.1(i)(b) of the Fund Convention, the equivalent of which is ¥293,860,000 (calculated at the conversion rate of the date of the incident, see Internal Regulation 3.5).

4. Limitation proceedings were commenced in the District Court of Sendai. However, they have been postponed with the consent of the IOPC Fund and the P & I Club, to allow the IOPC Fund to intervene in these proceedings if the investigations into the collision should produce evidence that the incident occurred as a result of the actual fault or privity of the owner of the HOSEI MARU. These investigations have not been finalised. According to the lawyer acting on behalf of the IOPC Fund, it is likely that both vessels were equally at fault in failing to comply with the rule of conduct of vessels in restricted visibility.

J. *JUAN ANTONIO LAVALLEJA*

1. On 28 December 1980 the Uruguayan tanker JUAN ANTONIO LAVALLEJA (130,000 dwt) struck a breakwater in the port of Arzew, Algeria, and became stranded within the port area during an exceptionally heavy storm. As a result, some 40,000 tonnes of her cargo of LNG Condensate were spilled into the sea. The port of Arzew, where there are many LNG and LPG tanks, was subsequently closed because of the high risk of explosion. Since the cargo was of a highly volatile nature, it dissipated very rapidly. Clean-up operations were carried out by the Algerian Environmental Authorities.

2. The incident resulted in only little pollution. By far the greatest problem was the volatile nature of the cargo; this resulted in sections of the industrial zone being exposed to hazardous atmosphere, necessitating the closure of several installations, with the consequential loss of substantial revenue that these industries would have otherwise accrued. In addition, there may also have been some damage to fishery interests.

3. So far it has not been possible to ascertain whether the oil spilled was "persistent" as defined in Article I.5 of the CLC. Additional information on the nature of the oil, requested by the IOPC Fund from the Algerian Authorities, has not yet been provided. The shipowner has agreed with the Algerian Authorities that a guarantee be provided according to the limits of the 1957 Limitation Convention and not to those of the CLC. The owner's liability under the CLC would be about £4 million.

4. Should the owner eventually be held liable under the CLC, he may invoke the exemption of Article III.2(a) of the CLC ("natural phenomenon of inevitable and irresistible character").

K. JOSE MARTI

1. On 7 January 1981 the USSR tanker JOSE MARTI (27,706 GRT) grounded in a narrow channel near Dalaro, Sweden, in the southern part of the Stockholm Archipelago. More than 1,000 tonnes of fuel oil (No.4) were spilled, and soon spread to the Archipelago islands in the north east.

2. Immediately after the incident, off-shore clean-up operations were initiated by the Swedish Coast Guard. Extensive on-shore clean-up operations were commenced only in the spring when weather conditions improved and the great extent of the damage became apparent. The on-shore operations are being carried out by the local communes mainly by using their own fire brigades, but also by use of private contractors.

3. The extent of the total damage can be estimated at an amount of S.Kr. 17 million. The owner's liability under the CLC is about S.Kr. 15.5 million so that there may remain a liability for the Fund of approximately S.Kr.1.5 million (£154,162). No indemnification is payable by the Fund. The owner is considering whether he has the possibility of invoking the defence of Article III.2(c) of the CLC on the ground that the vessel grounded on a rock not marked in the charts.