

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

EXECUTIVE COMMITTEE -
7th session
Agenda item 3

FUND/EXC.7/2
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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 fourteen incidents with which the IOPC Fund is presently dealing are given in the Annex. Documents FUND/EXC.4/2, FUND/EXC.6/3, FUND/EXC.6/3/Add.1, Add.2 and Add.3 submitted to the fourth and sixth sessions of the Executive Committee contain the information available at those times; reference is made to these documents.

3 The latest developments regarding the incidents can be summarised as follows:

- (a) Regarding the TARPENBEK incident, the United Kingdom Government, local councils and the Nature Conservancy Council have served writs against the IOPC Fund in the Admiralty Court.
- (b) All claims arising out of the MEBARUZAKI MARU NO 5 and the SHOWA MARU incidents have been settled.

- (c) The settlements of the FURENÄS and the HOSEI MARU incidents have reached the final stages.
- (d) The claims that have arisen with respect to the UNSEI MARU incident are covered by the shipowner's liability. It is unlikely that any further claims exceeding the limit of the shipowner's liability will be made.
- (e) With respect to the TANIO incident, the IOPC Fund has, since the sixth session of the Executive Committee where detailed discussions were held (document FUND/EXC.6/4), received further claims with supporting documents from the French Government; the examination of these and the other claims is being continued.
- (f) Liability under the Fund Convention has been rejected with respect to the JUAN ANTONIO LAVALLEJA incident on the basis that the cargo was not persistent.
- (g) With regard to the JOSE MARTI and the SUMA MARU NO 11 incidents, no considerable progress can be reported as far as claim settlement is concerned.
- (h) There are four new incidents, namely the GLOBE ASIMI, the ONDINA, the SHIOTA MARU and the FUKUTOKU MARU NO 8, in respect of which claims may be made against the IOPC Fund.

ANNEX

SUMMARY OF INCIDENTS

(Equivalents of foreign currencies in £ sterling
are as at 5 July 1982)

1 TARPENBEK

(United Kingdom, 21 June 1979)

1.1 In June 1982, the Treasury Solicitor of the United Kingdom Government issued two writs seeking compensation from the IOPC Fund pursuant to Section 4 of the United Kingdom Merchant Shipping Act 1974, one on behalf of the Department of Trade and the Ministry of Defence and the other on behalf of the Nature Conservancy Council. Another writ has been issued against the IOPC Fund on behalf of the Isle of Wight County Council and the South Wight Borough Council.

1.2 Some time ago the United Kingdom Government informed the Director of a claim for pollution damage amounting to £1,175,256 plus interest which they had made against CRISTAL. No formal claim with a specification of the amount claimed has so far been made against the IOPC Fund. The Nature Conservancy Council, the Isle of Wight County Council and the South Wight Borough Council have not yet informed the IOPC Fund of the amount and details of their claims.

1.3 The owner of the TARPENBEK claimed from the IOPC Fund recovery of his expenses for preventive measures amounting to £453,877. The claim, as presented by the owner, did not indicate that any of the expenses were incurred after a spill of persistent oil in order to prevent a further spill. The IOPC Fund therefore rejected the owner's claim on the basis that under the CLC and the Fund Convention, as implemented by the United Kingdom Merchant Shipping Acts of 1971 and 1974, the IOPC Fund would accept liability only for expenses incurred for preventive measures taken after the actual discharge or escape of persistent oil from the ship. No writ has so far been served against the IOPC Fund on behalf of the owner.

1.4 According to the information available to the Director, no damage resulting from the TARPENBEK incident occurred after July 1979; therefore the limitation period of Article 6.1 of the Fund Convention expired in July 1982.

2 MEBARUZAKI MARU NO 5

(Japan, 8 December 1979)

2.1 All claims arising out of the MEBARUZAKI MARU NO 5 incident have been paid. The final amounts of the claims paid by the IOPC Fund and the shipowner are as follows:

	<u>Yen</u>	
Third party claims		
shipowner's clean-up	7,141,350	
MSA clean-up	956,646	
fishery damage	2,935,819	
Total third party claims	<u>11,033,815</u>	(£24,795)
Legal fees (including fees for limitation proceedings)	1,309,040	
Surveyor's fees	1,396,635	
TOTAL PAYMENTS	<u>13,739,490</u>	(£30,875)

2.2 The shipowner's liability under the CLC amounts to ¥845,480 and the indemnification payable by the IOPC Fund to the owner is ¥211,370. The total payment is, therefore, shared between the shipowner and the IOPC Fund as follows:

	<u>IOPC Fund's share Yen</u>	<u>Shipowner's share Yen</u>	<u>Total Yen</u>
Total third party claim	10,188,335	845,480	11,033,815
Legal fees	656,371	652,669	1,309,040
Surveyor's fees	1,289,616	107,019	1,396,635
Indemnification to shipowner	211,370	-211,370	-
TOTAL	<u>12,345,692</u>	<u>1,393,798</u>	<u>13,739,490</u>
	(£27,743)	(£3,132)	(£30,875)

3 SHOWA MARU

(Japan, 9 January 1980)

3.1 All claims arising out of this incident have been paid. The final amounts of the claims paid by the IOPC Fund and the shipowner are as follows:

	<u>Yen</u>	
Third party claims		
shipowner's clean-up	518,670	
MSA's clean-up	1,330,886	
JMDPC's clean-up	9,378,458	
fishery damage	100,000,000	
Total third party claims	111,228,014	(€249,951)
Legal fees (including fees for limitation proceedings)	4,401,516	
Surveyor's fees	2,464,990	
Total payments	118,094,520	(€265,381)
<u>LESS</u> recovery from CHEMICARRY NO 18	-10,672,629	(€23,983)
TOTAL	107,421,891	(€241,398)

3.2 The shipowner's liability under the CLC amounts to ¥8,123,140 and the indemnification payable by the IOPC Fund to the owner is ¥2,030,785. The total payment is, therefore, shared between the shipowner and the IOPC Fund as follows:

	<u>IOPC Fund's share</u> <u>Yen</u>	<u>Shipowner's share</u> <u>Yen</u>	<u>Total</u> <u>Yen</u>
Total third party claim	103,104,874	8,123,140	111,228,014
Legal fees	3,279,760	1,121,756	4,401,516
Surveyor's fees	2,284,969	180,021	2,464,990
	108,669,603	9,424,917	118,094,520
<u>LESS</u> recovery from CHEMICARRY NO 18	-9,893,196	-779,433	-10,672,629
	98,776,407	8,645,484	107,421,891
Indemnification to shipowner	2,030,785	-2,030,785	-
TOTAL	100,807,192	6,614,699	107,421,891
	(€226,533)	(€14,865)	(€241,398)

4 UNSEI MARU

(Japan, 9 January 1980)

4.1 A spill of oil occurred as a result of the collision of the Japanese tanker UNSEI MARU (99 GRT) with the SUN EDELWEISS (4,816 GRT) and the subsequent sinking of the UNSEI MARU. It was ascertained by divers that most of the cargo on board the sunken tanker had leaked out. Therefore, the Maritime Safety Agency (MSA) did not, as originally requested, insist on the removal of the remaining oil and the wreck of the sunken tanker.

4.2 The clean-up costs incurred by the owner of the UNSEI MARU were estimated by the IOPC Fund's surveyor at ¥6,903,451 (£15,513), most of which was spent on diving operations and diving boat charges. No third party claims have so far been made against the shipowner or the IOPC Fund. Since the Japanese law does not allow the constitution of the shipowner's limitation fund if the owner alone has a claim for pollution damage, the limitation fund has not been established.

4.3 According to the investigation into the collision, it is possible that the SUN EDELWEISS alone will be held to blame for the collision. Negotiations between the insurers representing both ships have taken place and it is likely that the clean-up costs incurred by the owner of the UNSEI MARU will either be fully recovered from the SUN EDELWEISS or, at least, not exceed the owner's liability if they are not fully recovered. No claims are therefore expected to be made against the IOPC Fund.

5 TANIO

(France, 7 March 1980)

5.1 Documents FUND/EXC.3/2, EXC.4/2, EXC.6/3, Add.1, Add.2, Add.2/Corr.1 and Add.3 contained the information on the TANIO incident available at those times; reference to these documents is made. The sixth session of the Executive Committee discussed the incident in depth and the results of these discussions are contained in document FUND/EXC.6/4.

5.2 Since the sixth session of the Executive Committee, the French Government has submitted further claims with supporting documents which can be summarised as follows:

	<u>French Francs</u>
(a) <u>Ministry of the Sea</u>	
(i) Seamen & General Administration Division	714,222.74
(ii) Lighthouses, Buoys & Navigation Division	4,419,057.41
(iii) Ports & Maritime Navigation Division	5,203,854.70
(b) <u>Ministry of Town Planning and Housing</u>	
(i) Departmental Equipment Division	5,955,039.15
(ii) Intervention Fund - Cotes du Nord 1981	40,400,525.88
Total	56,692,699.88
Previous claim (see document FUND/EXC.6/3/Add.3)	427,956,160.03
TOTAL FRENCH GOVERNMENT CLAIM	484,648,859.91
	<u>(£40,795,359)</u>

Further claims from the French Government are expected.

5.3 The French Government has supplied the IOPC Fund with information and documents on the pumping operations which are being investigated by the experts employed by the IOPC Fund and the P & I Club.

5.4 As suggested at the sixth session of the Executive Committee, the IOPC Fund employed a lawyer to obtain independent legal advice on the question of how to proceed in pursuing the possibility of breaking the owner's limitation and of taking recourse action against a third party. This lawyer's advice and the findings of the other experts employed by the IOPC Fund will be reported to the Executive Committee as soon as they are available.

6 FURENÄS

(Sweden, 3 June 1980)

6.1 All third party claims arising out of the FURENÄS incident, amounting to SKr3,800,131 (£358,165) and DKr418,589.80 (£28,307), have been paid.

6.2 The recourse action against the "KÄRNAN", the other ship involved in the collision, has been completed and the owner of the "KÄRNAN" has accepted full liability for the collision. This liability, as limited pursuant to the 1957 Limitation of Liability Convention, amounting to SKr540,295 (£50,923) (including interest) has been paid and has to be distributed to the IOPC Fund, the owner of the "FURENÄS" and the hull and the cargo interests according to the respective amount of damage paid by these parties. The IOPC Fund expects to receive a share of SKr425,614.38 (£40,114). The amount of the legal fees incurred because of the recourse action is not yet known, but is not expected to be high. Indemnification to the shipowner of the "FURENÄS", amounting to SKr153,110.92 (£14,431), will be paid soon.

7 HOSEI MARU

(Japan, 21 August 1980)

7.1 All third party claims arising out of this incident have been settled. The following payments have been made:

	<u>Yen</u>
Japan Maritime Disaster Prevention Centre's clean-up costs	176,275,547
Maritime Safety Agency's clean-up costs	7,509,481
Costs of clean-up by HOSEI MARU's crew	130,000
Sub-contractors' clean-up costs	6,474,620
Fishery damage	58,700,000
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	249,089,648
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	(£559,752)

7.2 The shipowner established the limitation fund in the District Court of Sendai in accordance with Article V.3 of the Civil Liability Convention and the corresponding provisions of Japanese national law. These limitation proceedings were postponed with the consent of the IOPC Fund and the P & I Club in order to allow the IOPC Fund to intervene in these proceedings.

7.3 From the investigation into the incident it appeared possible that the incident may have been the result of the shipowner's personal fault or privity, because

- (a) the collision may have been caused by the failure of the HOSEI MARU's boatswain to comply with the navigation rules because the boatswain was not sufficiently qualified, and
- (b) the HOSEI MARU carried only five seamen on board to keep watch instead of six seamen as required by Article 70 of the Japanese Seamen's Law.

An independent Japanese lawyer was employed by the IOPC Fund to investigate these questions. He concluded that in appreciation of the boatswain's experience at sea it was not against the Japanese Seamen's Law for the Master to assign the boatswain as a responsible watchman to be included in the ratings. He concluded that there was not sufficient evidence to prove that the collision had occurred as a result of the owner's personal fault or privity. After this report, the Director informed the P & I Club that the IOPC Fund would not seek to break the owner's limitation and he requested the P & I Club to resume the limitation proceedings.

7.4 The fees paid to the lawyer amounted to ¥455,800 (£1,024). Indemnification according to Article 5 of the Fund Convention (¥8,941,480 (£20,093)) will be paid to the shipowner after the limitation proceedings have been finalised.

8 JUAN ANTONIO LAVALLEJA

(Algeria, 28 December 1980)

8.1 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. Some 40,000 tonnes of her cargo of LNG condensate were spilled into the port and the sea.

8.2 An analysis of the nature of the cargo oil sent by the Algerian authorities to the IOPC Fund was examined in the light of the "Guide to the Nature and Definition of Persistent Oil" as adopted by the

IOPC Fund's Assembly at its fourth session. It appeared that the cargo oil could not be considered "persistent" as defined in the Guide. The Director informed the Algerian authorities that the IOPC Fund would not accept liability for the pollution damage that might have been caused by the JUAN ANTONIO LAVALLEJA incident.

9 JOSE MARTI

(Sweden, 7 January 1981)

9.1 The claims for pollution damage resulting from the grounding of the USSR flag tanker JOSE MARTI in the Swedish Archipelago have been specified by the Swedish Government as follows:

	<u>Swedish Crowns</u>
Swedish Coast Guard	5,658,879.99
Haninge Fire Department	2,502,117.00
Värmdö Fire Department	1,186,150.05
Värmdö Health Department	9,949,030.00
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	19,296,177.04
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	(£1,818,678)

9.2 On 7 October 1981 the Swedish Government issued a claim in the Stockholm City Court against the Latvian Shipping Company, as the owner of the JOSE MARTI, for an amount of SKr18,122,000 in order to allow the owner to establish the CLC limitation fund. To date, the limitation fund has not been established. The owner's liability under the CLC is approximately SKr17 million (£1,602,262).

9.3 The IOPC Fund has been notified of the Swedish claim in accordance with Article 7.6 of the Fund Convention. A claim specifying in detail the expenses incurred has not yet been made against the IOPC Fund. However, the documents supporting the claims have been examined by a surveyor employed by the insurer. The surveyor concluded that the claim for pollution damage appeared to be justified with the exception of one amount of SKr50,000, this being the time value of a specially made container which was still usable.

9.4 The shipowner claims that he is not liable for the incident under the CLC since the rock on which the ship ran aground was not marked in the charts recommended for navigational use (Article III.2(c) of the CLC). The Swedish Government, however, is of the opinion that the incident was wholly caused through the pilot's fault. The official Swedish report on the incident supports the Swedish Government's view.

9.5 The report on the incident and the statements of the maritime declaration say clearly that there is no possibility of breaking the shipowner's liability. The ship, built in 1978 in Rijeka, Yugoslavia, and the equipment (including the radar) were in good condition. All necessary certificates were available and in order.

10 SUMA MARU NO 11

(Japan, 21 November 1981)

10.1 On 21 November 1981 the Japanese tanker SUMA MARU NO 11 (199.41 GRT), carrying 530 tonnes of heavy oil, grounded in shallow water off Karatsu, Kyushu, in the south of Japan. Some oil was discharged immediately and later, after refloating under her own power, more oil leaked. In total, approximately ten tonnes of oil polluted a six kilometre stretch of coast in the vicinity of a large "nori" seaweed farm.

10.2 Clean-up operations were undertaken, at the request of and on behalf of the owner, by the Japanese Maritime Disaster Prevention Centre (JMDPC), local fishermen and sub-contractors. The final amounts of the clean-up operation costs are as follows:

	<u>Yen</u>
JMDPC's clean-up costs	2,940,107
Sub-contractors' clean-up costs	
Kondo Kaiji Co Ltd	2,500,000
Hakata-ko Kanri KK	454,000
Y K Nagahama Shipyard	180,000
Local fishermen's clean-up costs	7,500,000
Shipowner's own miscellaneous costs	249,090
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	13,823,197
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	(£31,063)

It is unlikely that fishermen will claim compensation for fishery damage. The clean-up operation costs have not yet been paid by the IOPC Fund.

10.3 The shipowner's liability under the CLC is ¥7,396,340 (£16,621) (the limitation tonnage is 160.79). The limitation fund under the CLC has not yet been set up since Japanese law does not allow the establishment of this fund if, as in this case, it is the owner alone who has a claim for pollution damage. The Director is considering, together with the Japanese P & I Club, how to overcome the problem that the IOPC Fund cannot normally make payments for compensation under Article 4.1(c) of the Fund Convention if the owner has not established his right to limit his liability. In this case the incident was attributable to the negligence on the part of the boatswain during his duty as the responsible watch officer of the vessel. His competence, however, was beyond doubt. According to a conclusion drawn by a lawyer investigating this question, there was no reason to believe that the grounding or the spill occurred as a result of the owner's personal fault or privity.

10.4 Surveyor's and legal fees amount to ¥1,705,990 (£3,834) and ¥300,000 (£674) respectively. The indemnification payable to the shipowner under Article 5 of the Fund Convention amounts to ¥1,849,085 (£4,155). Neither the fees nor the indemnification have yet been paid.

11 GLOBE ASIMI

(USSR, 22 November 1981)

11.1 The Gibraltar registered tanker GLOBE ASIMI (19,945 dwt) ran aground and broke up near the port of Klaipeda, USSR, in the Baltic Sea during gale force winds. Sharp rocks pierced the hull of the vessel which was carrying 16,000 tonnes of heavy fuel oil, and a large slick of oil spilled into the port of Klaipeda and later drifted out to sea. So far no oil has reached the territory of any IOPC Fund Member State and no claims for pollution damage have been made against the IOPC Fund.

11.2 Indemnification under Articles 3.2 and 5 of the Fund Convention may have to be paid to the owner of the GLOBE ASIMI, because damage was caused on the territory of the USSR which is a Contracting State to the CLC and the vessel was flying the flag of a Contracting State to the Fund Convention. The shipowner's liability under the CLC is Rbls 1,350,324 (£1,064,253). The limitation fund has been established in the People's Court of Klaipeda. The indemnification payable to the shipowner by the IOPC Fund would be Rbls 337,581 (£266,063).

11.3 Since the IOPC Fund considers that there may be reasons to believe that the owner of the GLOBE ASIMI had not complied with the requirements laid down in the conventions listed in Article 5.3(a)(i)-(iv) of the Fund Convention, the IOPC Fund employed a USSR lawyer to collect the information necessary for the IOPC Fund to decide on its obligation to pay indemnification. The information received so far shows that valid certificates with respect to the 1974 SOLAS Convention and the 1966 Load Lines Convention were available.

11.4 The amount of the claims filed in the People's Court of Klaipeda with regard to damage caused by oil pollution from the GLOBE ASIMI is Rbls 742,827,574 (£585,456,789). Further claims might be filed in the Court. From the information available to the IOPC Fund, it is not clear whether this figure includes a claim for the restoration of the polluted water. Such a claim was made by the USSR Government in the ANTONIO GRAMSCI incident.

12 ONDINA

(Federal Republic of Germany, 3 March 1982)

12.1 Whilst the Dutch tanker ONDINA (31,030 GRT) was discharging her cargo at the Shell storage tanks in the port of Hamburg, Federal Republic of Germany, on 3 March 1982, approximately 200-300 tonnes of Venezuelan Tia Juana Pesado crude escaped into the harbour, as a result of a mismanipulation of a valve. Strong winds drove the oil into different parts of the harbour, and over eight kilometres of quay-side were polluted.

12.2 The UK P & I Club undertook to clean the damaged areas, after having been so requested by an administrative order of 4 March 1982 of the State of Hamburg Authorities, Behoerde fuer Bezirksangelegenheiten, Naturschutz und Umweltgestaltung (Environmental Protection Office, BBNU). The clean-up work proved difficult because, although washing the surface oil from the stone embankments was effective, it was not possible to remove the oil lying between and underneath the rocks, since BBNU did not allow the use of dispersants. The experts employed by the P & I Club and the IOPC Fund were not given the chance of demonstrating the effectiveness of the dispersant in a field trial. A proposal for such a trial was dismissed without proper assessment of the biological consequences of the oil and the dispersant. This decision meant that the operations took longer (2½ months) and were less effective. Following an inspection of the affected areas on 7 May 1982, the work was accepted by BBNU as finalised, although considerable quantities of oil remained, as no further work without the use of chemicals would yield any substantial improvement. Further measures designed to help improve the water quality were suggested by BBNU but the IOPC Fund, on the advice of its experts, agreed with the UK P & I Club that the proposed measures were not reasonable.

12.3 No formal claim has yet been submitted by the P & I Club, BBNU or other claimants. The cost of the clean-up operations is estimated at DM20 million (£4,667,445), and the shipowner's limitation amount is estimated at £2 million. The limitation fund has not yet been established.

13 SHIOTA MARU

(Japan, 31 March 1982)

13.1 On 31 March 1982 the Japanese tanker SHIOTA MARU (161.27 GRT), carrying 300 tonnes of heavy oil 'C', went aground on Takashima Island in the Japanese Inland Sea. As a result of the grounding, NO1 starboard tank, which contained 23 tonnes of 'C' heavy oil, was damaged and the oil leaked out into the sea where it spread to the vicinity of fishing grounds.

Clean-up operations were carried out immediately after the incident and the costs of the operations are estimated at ¥35 million (£78,652).

It is likely that fishermen will claim compensation for fishery damage, but the amount cannot yet be estimated.

13.2 The limitation amount is not yet known, but is estimated at about ¥6 million (£13,483).

14 FUKUTOKU MARU NO 8

(Japan, 3 April 1982)

14.1 On 3 April 1982 the Japanese tanker FUKUTOKU MARU NO 8 (499.88 GRT), carrying 700 tonnes of heavy bunker 'C' oil as cargo, collided with the gravel carrier KOSU MARU (486 GRT) in Tachibana Bay, Tokushima Prefecture, Japan. Damage to N^o2 port tank caused over 100 tonnes of oil to escape into the sea. This was driven by northerly winds into coastal areas and neighbouring ports.

14.2 Clean-up operations were carried out on behalf of the owner by the Japan Maritime Disaster Prevention Centre, commercial clean-up operators and fishermen. The removal of the oil at sea and on the coast was completed on 22 April, and the estimated cost of these operations is ¥190 million (£426,966).

14.3 The costs of the clean-up operations carried out by the fishermen are estimated at ¥62 million (£139,326), of which ¥36 million (£80,899) are for personnel expenses. An advance payment of ¥10 million (£22,472) was made by the shipowner on 12 April to the fishermen involved. Considerable damage occurred to fishery areas, where fishing operations had to be suspended until 11 April. Claims for fishery damage may be substantial.

14.4 The shipowner's limitation amount is ¥20,844,440 (£46,841) (the limitation tonnage being 453.14 tonnes) and the indemnification to the shipowner amounts to ¥5,211,110 (£11,710).
