



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

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## REPORT OF THE DIRECTOR

### 1 Introduction

1.1 This report covers the activities of the IOPC Fund since the 14th session of the Assembly. The report contains a review of some of the main issues relating to the IOPC Fund's activities during that period. It also deals with the finances of the IOPC Fund for the first eight months of 1992.

1.2 The IOPC Fund's Annual Report for the calendar year 1991 was published in February 1992. This Report attracted great interest from all those dealing with the IOPC Fund as well as from persons and bodies interested in environmental matters in general.

1.3 Since the 14th session of the Assembly, there have been only two new incidents involving the IOPC Fund. Several incidents which occurred in previous years still require a considerable amount of work by the IOPC Fund's Secretariat. One of these, the HAVEN incident which occurred in Italy in April 1991, has resulted in claims for compensation against the IOPC Fund which greatly exceed the total amount of compensation payable under the Civil Liability Convention and the Fund Convention. The IOPC Fund has become involved in litigation in the Court of Genoa concerning the maximum amount payable by the Fund in respect of this incident. Significant claims arising out of the VOLGONEFT 263 incident (Sweden, 1990), the RIO ORINOCO incident (Canada, 1990) and the AGIP ABRUZZO incident (Italy, 1991) have been settled.

### 2 Membership

2.1 At the time of the entry into force of the Fund Convention in October 1978, the IOPC Fund had 14 Member States. By the time of the 14th session of the Assembly in October 1991, 45 States were Members of the IOPC Fund.

2.2 Three States – the Gambia, Malta and Venezuela – have become Parties to the Fund Convention and thus Members of the IOPC Fund since the 14th session of the Assembly. The Fund Convention entered into force for Malta on 26 December 1991, for the Gambia on 30 January 1992 and for Venezuela on 20 April 1992.

2.3 The Secretary-General of the International Maritime Organization (IMO) was informed by a note verbale dated 26 December 1991 by the Russian Federation that the membership of the Union of Soviet Socialist Republics (USSR) in all conventions concluded within the framework of IMO would be continued by the Russian Federation. It has not yet been established whether any of the other independent States which previously formed part of the USSR would continue to be or would become parties to the Fund Convention.

2.4 By letter dated 27 July 1992, the Secretary-General of IMO was informed that the Republic of Croatia had decided to succeed to certain conventions deposited with IMO to which the Socialist Federal Republic of Yugoslavia was a Party at the time of Croatia's independence, including the Fund Convention, and that the succession would take effect from 8 October 1991.

2.5 As a result of this development, the IOPC Fund will have 49 Member States at the time of the 15th session of the Assembly.

2.6 On the basis of the information available to the IOPC Fund's Secretariat, it is expected that several States will join the IOPC Fund in the near future. It is anticipated that Australia, Ireland, Kenya, Morocco, New Zealand and the Republic of Korea will soon deposit their instruments of accession to the Fund Convention. Legislation implementing the Fund Convention is in an advanced stage in Belgium, Brazil, Chile, Colombia, Malaysia, Panama, Saudi Arabia, Senegal and Singapore. Many other States, eg Argentina, Bahrain, Barbados, China, Costa Rica, Democratic People's Republic of Korea, Egypt, Jamaica, Marshall Islands, Mexico, Saint Kitts and Nevis and Trinidad and Tobago, are also examining the question of accession to the Fund Convention.

### **3 Contacts with Governments**

3.1 A major reason for the smooth functioning of the system of compensation established by the Civil Liability Convention and the Fund Convention is the strong support that Governments of Member States have given the IOPC Fund and its Secretariat over the years.

3.2 In order to establish and maintain personal contacts between the IOPC Fund's Secretariat and officials within the national administrations dealing with Fund matters, the Director visits some Member States every year. Since the 14th session of the Assembly, the Director has visited nine Member States - Canada, France, the Gambia, Ghana, Italy, Malta, Netherlands, Spain and Sweden - for discussions with government officials on the Fund Convention and the operations of the IOPC Fund.

3.3 The IOPC Fund's Secretariat has continued its efforts to increase the number of Member States. One important way of promoting membership is to convey information on the functioning of the compensation system created by the Civil Liability Convention and the Fund Convention. For this purpose, the Director went to Brazil, Colombia, Malaysia, Mexico, Morocco and Panama for discussions on these Conventions and the operations of the IOPC Fund with government officials and interested circles in these States. The Legal Officer held similar discussions in Kenya.

3.4 The Director and the Legal Officer also had discussions with government representatives of both Member and non-Member States in connection with meetings within IMO, in particular during the sessions of the IMO Assembly in October/November 1991 and the IMO Council in October 1991 and June 1992.

3.5 The IOPC Fund's Secretariat has, on request, assisted some non-Member States in the elaboration of the national legislation necessary for the implementation of the Civil Liability Convention and the Fund Convention.

#### **4 Relationship with International Organisations and Interested Circles**

4.1 The support given to the IOPC Fund by IMO is of great importance in a number of ways. The Director would like to express his profound gratitude to the Secretary-General of IMO and his staff for the assistance they have given the IOPC Fund.

4.2 The operation of the IOPC Fund depends on close co-operation with a number of international non-governmental organisations and other non-governmental bodies. In the great majority of incidents involving the IOPC Fund, the monitoring of the clean-up operations and the claims assessment is made in close co-operation between the Fund and the P & I Club concerned. The technical assistance required by the IOPC Fund with regard to oil pollution incidents is usually given by the International Tanker Owners Pollution Federation Limited (ITOPF). There is also close co-operation between the IOPC Fund and oil industry interests represented by the Oil Companies International Marine Forum (OCIMF) and Cristal Limited.

#### **5 Conferences and Seminars**

5.1 Since the 14th session of the Assembly, the Director and the Legal Officer have given a number of lectures at seminars, conferences and workshops on the activities of the IOPC Fund.

5.2 The IOPC Fund participated as an observer in the United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro (Brazil) in June 1992. The IOPC Fund was represented at the Conference by the Director, whereas the Legal Officer took part in the final session of the Preparatory Committee held in New York (United States of America) in March 1992.

5.3 The Director took part in the sixth African Port Symposium in Accra (Ghana) and he participated in a Conference, PANAMA MARITIME 91, in Panama City (Panama), organised by the Government of Panama. He made presentations on the IOPC Fund's activities at a seminar organised by IMO in Panama City for senior staff of maritime administrations in Latin America and at a National Seminar on Casualty Management in Penang (Malaysia). He participated in a seminar on oil pollution liability and compensation in Madrid (Spain), organised jointly by the Spanish Government, the Spanish oil industry and the IOPC Fund. He also took part in a meeting of Heads of Legal Departments of Maritime Authorities in Latin America in Cartagena (Colombia). The Director gave lectures on liability and compensation for oil pollution damage to students at the World Maritime University in Malmö (Sweden) and to students at the IMO International Maritime Law Institute in Valletta (Malta). In addition, he gave a presentation on the IOPC Fund to the Panel of External Auditors of the United Nations, the specialised agencies and the International Atomic Energy Agency, at a session held in London.

5.4 The Legal Officer represented the IOPC Fund at a meeting of Senior Advisors to the Executive Director of the United Nations Environment Programme (UNEP) on an International Fund for Immediate Response Action and for Compensation for Damage Resulting from the Transboundary Movement of Hazardous Wastes and their Disposal.

5.5 In September 1992 the Claims Officer will participate in a meeting of focal points of the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), to be held in Valletta (Malta).

#### **6 Future Development of the Intergovernmental Oil Pollution Liability and Compensation System**

6.1 In 1984, a Diplomatic Conference held in London under the auspices of IMO adopted two Protocols to amend the Civil Liability Convention and the Fund Convention, respectively. These Protocols provide higher limits of compensation and a wider scope of application than the Conventions in their original versions. The 1984 Protocols have not entered into force, due to the fact that the required number of ratifications has not been obtained. It is unlikely that they will come into force in the foreseeable future.

6.2 At its 13th session, the Assembly decided to set up an Intersessional Working Group to consider the future development of the intergovernmental oil pollution liability and compensation system based on the Civil Liability Convention and the Fund Convention. The report of the Working Group was examined by the Assembly at its 14th session.

6.3 As a result of a request made by the Assembly at its 14th session, an international conference has been convened by the Secretary-General of IMO to consider draft Protocols modifying the 1969 Civil Liability Convention and the 1971 Fund Convention, which contain the same substantive and administrative provisions as the 1984 Protocols but differing provisions for their entry into force. The Conference will also consider whether there should be introduced in the Fund Convention a system setting a cap on contributions payable by oil receivers in any given State. A document containing information on the International Conference has been submitted to the Assembly for consideration (document FUND/A.15/15).

## **7 Contributions**

7.1 The Assembly decided at its 14th session to raise 1991 annual contributions in the amount of £5 million for the general fund, £6.7 million for the RIO ORINOCO major claims fund and £15 million for the HAVEN major claims fund. The amount payable by each contributor per tonne of contributing oil received was £0.0053225 in respect of the general fund, based on the quantities of oil received in 1990, £0.0074113 in respect of the RIO ORINOCO major claims fund, based on the quantities received in 1989 (the year before the incident), and £0.0159675 in respect of the HAVEN major claims fund, based on the quantities received in 1990 (the year before the incident). The payments were due by 1 February 1992. As at 10 September 1992, 97% of these contributions were paid.

7.2 In respect of contributions levied for previous years, the situation is very satisfactory, as only very small amounts are in arrears. On 10 September 1992, only an amount of £14 500 was outstanding.

7.3 The levy of contributions to the IOPC Fund is based on reports of contributing oil receipts submitted by Governments of Member States. In October 1988, at its 11th session, the Assembly discussed the system for reporting oil receipts to the IOPC Fund, since the existing system did not function entirely satisfactorily. The main problem was that a number of States did not submit their reports in time. The Assembly adopted a Resolution in which Member States were urged, inter alia, to submit their reports on contributing oil receipts at the time and in the manner prescribed in the IOPC Fund's Internal Regulations.

7.4 The Director regrets to inform the Assembly that the non-submission of the reports on contributing oil receipts by some Member States still constitutes a considerable problem. On 31 March 1992, the last date for Member States to submit their reports of oil received in 1991 in accordance with the IOPC Fund's Internal Regulations, only 12 reports had been received by the Director. By 10 September 1992, 28 reports had been submitted. In addition, a few States have still not submitted their reports on contributing oil receipts in previous years (see Annexes II and III of document FUND/A.15/4). It should again be emphasized that it is of decisive importance for the operation of the IOPC Fund that these reports are actually submitted by Governments. If the reports on contributing oil receipts are not submitted to the IOPC Fund, the Director is unable to issue invoices for the contributions in respect of the States concerned. The system of levying contributions will then not function in an equitable manner.

7.5 The dissolution of the USSR has given rise to certain problems with regard to the levying of contributions. In addition, some Dutch companies have challenged the interpretation applied by the IOPC Fund of an important provision relating to the obligation to pay contributions. These questions will be addressed by the Assembly at this session.

## **8 Investment of Funds**

8.1 During 1991 and 1992, funds which were not required for the short-term operation of the IOPC Fund were placed on term deposits with several leading London banks, discount houses and building societies. Apart from investments placed overnight till the next business day, the average rate of interest on the investments in 1991 was 12.5%.

8.2 The base rate in London, which stood at 10.5% at the time of the 14th session of the Assembly, was reduced to 10% on 5 May 1992. It is estimated that the average rate of interest on the IOPC Fund's investments in 1992 will be approximately 10.3%.

8.3 Interest earned during the first eight months of the year is £500 000, with about £800 000 due during the remaining four months, on an estimated average capital of £22 million. A substantial part of the IOPC Fund's portfolio of investments has been spread beyond December 1992. Consequently, the investment income in 1992 will not be significant in relation to the average capital during the year.

8.4 Details of the investments from 1 July 1991 to 30 June 1992 are given in document FUND/A.15/3.

8.5 At its 14th session, the Assembly invited the Director to examine the IOPC Fund's investment policy, in consultation with the External Auditor. The Assembly will be invited to examine a document on this issue (document FUND/A.15/12).

## **9 Accounts of the IOPC Fund**

9.1 The expenditure for the administration of the IOPC Fund in 1991 was £517 583, compared with the budgetary appropriation of £530 390. Details of the accounts of the IOPC Fund for the financial year 1991 are given in the Financial Statements (document FUND/A.15/4, Annex IV).

9.2 Following the changes in the format of the Financial Statements for the financial year 1990, the presentation of the Balance Sheet for 1991 has been changed after consultation with the External Auditor. The changes are intended to facilitate the interpretation of the Balance Sheet.

9.3 The External Auditor has amended the structure and content of his Report on the Financial Statements for 1991 to bring the format and text into line with the most recent recommendations of the Panel of External Auditors of the United Nations, the specialized agencies and the International Atomic Energy Agency. The changes to the Report are designed to assist the readers' understanding of the External Auditor's objectives and approach.

9.4 The expenditure for the administration during the first eight months of 1992 amounts to approximately £370 000. The budget appropriation for the whole of 1992 is £648 100. It is expected that there will be a budgetary surplus at the end of the year.

9.5 As in previous years, excellent co-operation with the External Auditor, the Comptroller and Auditor General of the United Kingdom, has facilitated the administration of the IOPC Fund.

## **10 Administration of the IOPC Fund**

10.1 The Secretariat has at present nine staff members: the Director, the Legal Officer, the Finance/Personnel Officer, the Claims Officer, the Director's Secretary/Administrative Officer, three Secretaries and a Messenger.

10.2 In June 1991, at its 27th session, the Executive Committee established a new post of Claims Officer, due mainly to the heavy increase in workload resulting from two major incidents which occurred in Italy in April 1991. Mrs Sally Broadley (United Kingdom) was appointed to this post from 11 November 1991.

10.3 During the last twelve months the IOPC Fund Secretariat has again faced a heavy workload, which has put considerable pressure on the staff. The strong commitment of all the staff members to their work, and their knowledge and expertise, are a great asset to the Organisation and these factors are crucial to the efficient functioning of the Secretariat.

10.4 The present lease of the IOPC Fund's offices in the IMO building expires on 31 October 1992. The Director is pleased to inform the Assembly that an agreement in principle has been reached with the Secretary-General of IMO for an extension of the lease for a period of ten years. This issue is dealt with in document FUND/A.15/8.

## 11 Incidents Involving the IOPC Fund

11.1 Since its establishment in October 1979 the IOPC Fund has, up to 10 September 1992, been involved in the settlement of claims arising out of 61 incidents. 33 of these incidents occurred in Japan, whereas 19 incidents, leading in general to much larger claims, took place in European waters, one in Algeria, four in Canada, one in the Caribbean, one in Indonesia and two in the Persian Gulf. However, some of these incidents did not result in any payment of compensation by the IOPC Fund. The total amount of compensation and indemnification paid by the IOPC Fund as at 10 September 1992 is £47 million.

11.2 For details regarding the various incidents with which the IOPC Fund has dealt over the years, reference is made to the 1991 Annual Report and to the updated statistics (1992) distributed during this session of the Assembly.

11.3 Since the 14th session of the Assembly, only two incidents have occurred which will give rise to claims against the IOPC Fund, namely the KUMI MARU N°12 and FUKKOL MARU N°12 incidents which took place in Japan.

11.4 In addition to the new incidents mentioned above, there are, as at 10 September 1992, six incidents in respect of which final settlements of third party claims have not yet been reached, namely the PATMOS, BONITO, PORTFIELD, VISTABELLA, AGIP ABRUZZO and HAVEN incidents.

11.5 The most serious case in which the IOPC Fund has been involved since its establishment is the HAVEN incident which occurred in Italy in April 1991. The incident caused extensive pollution damage in Italy, France and Monaco, and some 1 350 claims for compensation have been submitted for a total amount corresponding to approximately £750 million; however, a number of claims are duplications. The claims are being examined by the IOPC Fund Secretariat. The aggregate amount of the claims greatly exceeds the total amount of compensation available under the Civil Liability Convention, and the Fund Convention, viz 900 million (gold) francs, which in the IOPC Fund's view corresponds to 60 million Special Drawing Rights or Lit 102 643 800 000 (£47 million). However, a judge in the Court of Genoa has fixed the maximum amount payable by the IOPC Fund at Lit 771 397 947 400 (£353 million) calculated on the basis of the free market value of gold. The IOPC Fund has lodged opposition to the judge's decision.

11.6 Large claims have also been submitted to the IOPC Fund in respect of the AGIP ABRUZZO incident which took place in Italy in 1991. Claims have been settled for a total of £7.6 million. Claims totalling £4.7 million are being examined by the IOPC Fund. Further claims may be submitted.

11.7 Other important developments since the 14th session of the Assembly relate to the settlement of the Swedish Government's claim in respect of the VOLGONEFT 263 incident, of the remaining part of the Canadian Government's claim in respect of the RIO ORINOCO incident, of all remaining claims arising out of the AMAZZONE incident and of all claims arising out of the KAIKO MARU N°86 incident.

11.8 As for the PATMOS incident, which took place in Italy in 1985, the IOPC Fund has become involved in complex legal proceedings concerning a claim submitted by the Italian Government for compensation for damage to the marine environment which was rejected by the Court of first instance. The Court of Appeal rendered a non-final judgement in March 1989 concerning that claim. In that judgement the Court stated that the owner of the PATMOS, his P & I insurer and the IOPC Fund were liable for the damage covered by the claim made by the Italian Government. It is expected that the Court will render its judgement in 1993 on the quantum of the damage.

11.9 It is the established policy of the IOPC Fund to settle claims within a short period of the incident in question. The IOPC Fund Secretariat will do its utmost to continue this policy. The Director will also endeavour to ensure that the definition of "pollution damage" is given a uniform interpretation in IOPC Fund Member States.

11.10 For details of the new incidents and for recent developments regarding the settlement of claims arising out of earlier incidents, reference is made to various documents submitted to the 32nd session of the Executive Committee.

## **12 Final Remarks**

12.1 No major oil pollution incident has occurred in any IOPC Fund Member State since the 14th session of the Assembly. In non-Member States as well, there have been few serious incidents during this period.

12.2 The worldwide public debate concerning problems relating to oil pollution from ships which resulted from recent incidents, such as the HAVEN, focused on the need to enhance the safety of navigation, to study tanker design and construction, to improve contingency plans and to develop better equipment and materials for oil spill clean-up. This debate has also increased the awareness in all States, including States which are not Members of the IOPC Fund, of the importance of an effective system for compensating victims of oil pollution damage.

12.3 During the last five years, the number of IOPC Fund Member States has grown from 36 to 49, and there are reasons to believe that a number of States will join the IOPC Fund in the near future. This continuing expansion of membership demonstrates that the international community has found the system of compensation created by the Civil Liability Convention and the Fund Convention a viable one, providing rapid compensation to victims of oil pollution damage.

12.4 The assumption of an early entry into force of the 1984 Protocols to the Conventions will not be fulfilled. Therefore, although the system of compensation established by the Conventions is functioning well, the IOPC Fund considered, during 1991, the future development of this system. During the discussions in the Assembly at its 14th session, many Member States expressed their strong support of the system. A number of States stressed the importance that the 1984 Protocols to these Conventions should enter into force as soon as possible. In the view of these States, the best way of facilitating the entry into force of the 1984 Protocols to these Conventions would be to amend their entry into force provisions. As a result of the work carried out within the IOPC Fund on this matter, an International Conference will be held in November 1992 under the auspices of IMO to consider draft Protocols to modify the 1969 Civil Liability Convention and the 1971 Fund Convention which contain the same substantive and administrative provisions as the 1984 Protocols but differing entry into force provisions. The purpose of the proposed new Protocols is to ensure the viability of this system in the future.

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