

**INTERNATIONAL OIL POLLUTION
COMPENSATION FUND**

**REPORT
ON THE ACTIVITIES OF THE
INTERNATIONAL OIL POLLUTION
COMPENSATION FUND
DURING 1981**

Report on the Activities of the International Oil Pollution Compensation Fund during 1981

A. GENERAL

1. Membership

In 1981 the Fund Convention entered into force for three more States: Finland became a Member on 8 January; Maldives on 14 June; Kuwait on 1 July. On 31 December the IOPC Fund had 23 Members. The Convention entered into force for Spain on 6 January 1982. It is expected that in 1982 further instruments of ratification or accession will be deposited.

The Director continued to visit Contracting States to make Governments familiar with the administration of the Fund Convention and the interpretation of its provisions. At visits to conferences and seminars, the Director had talks with representatives of non-Contracting States on the advantages of membership of the IOPC Fund and on the possibility of these States joining the IOPC Fund.

2. Assembly and Executive Committee

In 1981 the Assembly, under the chairmanship of Mr. J. Bredholt (Denmark), held its fourth session from 29 September to 2 October. The Executive Committee, under its Chairman Professor H. Tanikawa (Japan), met from 28 to 29 September for its fourth session; the fifth session of the Executive Committee, composed of the new members elected by the Assembly at its fourth session and under its newly-elected Chairman Mr. P. Novia (Italy), met on 2 October. The following significant decisions were taken at these meetings.

Fourth session of the Assembly

1. The Assembly decided to grant observer status to the International Institute for the Unification of Private Law (UNIDROIT). In addition to the UN agencies co-operating with the Fund, there are now two inter-governmental and eight international non-governmental organisations enjoying observer status with the Fund.

2. The Assembly took note of the information given by the Secretary-General of IMCO that the new IMCO Headquarters building will be completed in autumn 1982 and authorised the Director to negotiate and sign a lease agreement with IMCO with regard to the IOPC Fund's offices in the new IMCO Headquarters building.

3. The Assembly adopted the Fund's budget for the financial period for 1982 with an expenditure of £222,282 for administrative expenses, excluding appropriations for claims from pollution incidents.

4. The Assembly decided that the total amount of annual contributions to be levied in 1981 should be £500,000.

5. The Assembly elected the members of the Executive Committee who will hold office until the end of the fifth regular session of the Assembly. The members are: France, Federal Republic of Germany, Italy and United Kingdom, elected under Article 22.2(b) of the Fund Convention; Ghana, Indonesia, Norway and Yugoslavia, elected under Article 22.2(a) of the Fund Convention.

6. The Assembly decided to reappoint the present members and substitute members of the Appeals Board.

7. The Assembly took note of the information discussed at the fifth Intersessional Working Group, held in February 1981 to consider the Fund's general policy on the admissibility and payment of claims with particular regard to their expeditious settlement, and endorsed generally the

results of the Working Group's discussions.

8. The Assembly adopted, as a result of the discussions of the Working Group mentioned in (7) above, several amendments to the Fund's Internal Regulations and Financial Regulations. Most of these amendments aim at a speedier settlement of claims for pollution damage.

9. The Assembly adopted a resolution requesting IMCO to bear in mind, when elaborating amendments to the Civil Liability Convention and the Fund Convention, the need to ensure that the cover for preventive measures provided for in the two Conventions clearly includes cover for measures taken before an actual spill of oil, if any, has occurred.

10. The Assembly agreed that a non-technical guide to the nature and definition of persistent oil, which was compiled by an expert and revised following comments made during the discussions at the Assembly, should serve as a guideline to the Director when dealing with claims made against the Fund.

11. The Assembly decided, in accordance with Article 5.4 of the Fund Convention, to replace the 1974 SOLAS Convention by the 1978 SOLAS Protocol, to the extent that the Protocol contains amendments to the 1974 SOLAS Convention. This replacement shall take effect on 1 May 1982.

12. The proposal for an increase of the Fund's upper limit from 675 million (gold) francs at present to 900 million (gold) francs was rejected as the required three-fourths majority of Members present was not obtained. Eleven States voted in favour of this proposal, five States abstained and three States voted against it.

13. The Assembly requested the Director to discuss with shipowners and insurers the possibility of concluding an agreement following which the shipowners would not claim indemnification under Article 5 of the Fund Convention and would accept a minimum liability for small ships and by that ease the cargo industry's heavy burden under the Fund Convention.

Fourth session of the Executive Committee

The Executive Committee took note of the information on the pollution incidents with which the Fund is at present dealing and discussed several aspects of the settlement of claims arising out of these incidents. With particular regard to the "Tanio" incident, the Executive Committee agreed that all possible legal remedies should be pursued to either break the owner's limitation or take recourse action against other persons.

Fifth session of the Executive Committee

The Executive Committee elected Mr. P. Novia (Italy) as its Chairman. It endorsed the decision taken at its fourth session to hold another meeting at an appropriate time in spring 1982 to discuss the claims made with respect to the "Tanio" incident and legal actions that may have to be taken by the Fund.

3. Accounts of the IOPC Fund

The financial statements for the financial period 1 January to 31 December 1980 were submitted to the External Auditor for his certification and for his Report thereon. The External Auditor certified that the financial statements were correct. The statements showed for 1980 administrative expenses of £150,605 and payments for

pollution claims amounting to £848,432 with respect to the general fund and £8,617,783 with respect to the "Antonio Gramsci" major claims fund. The payment to the Swedish Government in settlement of their claim arising out of the "Antonio Gramsci" incident (£9,247,068) was made on 15 January 1981.

The Balance Sheet of the IOPC Fund as at 31 December 1980 is at the Annex.

4. Contributions

In accordance with the decision of the Assembly at its fourth session that a total of £500,000 for 1981 annual contributions should be collected, invoices were sent out in October for payment by 15 December 1981. The assessment of these contributions was based on estimates of £511,548 and £400,000 for the settlement of the "Hosei Maru" and "Jose Marti" incidents, the 1982 budget of £222,282 and the need for a working capital of £2 million, taking into account an estimated surplus of £2,499,182 as at 31 December 1981. In addition to levying contributions, the Fund credited a total of £750,000, being the surplus in the "Antonio Gramsci" major claims fund, to the accounts of those contributors having contributed to that fund in 1980. This resulted for most contributors in a credit on their accounts with the Fund. To the extent that actual payments had to be made by contributors, a total of 68.4% had been paid as at 31 December 1981.

5. General

As in previous years, the IOPC Fund enjoyed close and friendly co-operation with the host Government. The Assembly gratefully took note of the UK Government's decision to continue contributing 80% of the rent payable by the IOPC Fund and to raise the amount available in their budget to £50,000 for this purpose. The co-operation with IMCO was close and extensive as usual. Both Organisations attended most of the meetings of the other Organisation and contributed to the work of the respective Committees. The administrative work carried out by IMCO for the Fund, against remuneration, considerably facilitated the Fund's administration and allowed the Director to keep the Secretariat as small as in previous years (six staff members including the Director). The Director continued to maintain a regular and co-operative exchange of information and views with observer organisations, especially with CRISTAL, ITOFF, OCIMF and the P & I Clubs. These contacts contributed a great deal to the IOPC Fund's ability to respond quickly and effectively to pollution incidents.

6. Revision of the Civil Liability Convention and the Fund Convention

In the Legal Committee of IMCO and in two informal Working Groups held in June in Washington (USA) and in December in Stockholm (Sweden) discussions were held on the revision of the 1969 Civil Liability Convention and the 1971 Fund Convention. The Fund participated in all these meetings and made available to governmental representatives the experience with the administration of the Fund during the last three years. Most delegates at these meetings have the impression that it should be possible to agree at a diplomatic conference to be held in 1983 or 1984 on a revision of the two Conventions which constitutes considerable improvements on the present texts.

B. SETTLEMENT OF CLAIMS

(The conversion of foreign currency into £ Sterling is as at 31 December 1981 except for the "Antonio Gramsci" incident in respect of which the conversion on the date of payment is used.)

1. Antonio Gramsci

On 15 January 1981 the IOPC Fund paid to the Kingdom of Sweden an amount of SKr 95,707,157 (£9,247,068) in accordance with the Agreement of 6 March 1980 between the IOPC Fund and the Kingdom of Sweden. With this payment, all claims against the IOPC Fund arising out of this incident were finalised. No payment of indemnification under Article 5 of the Fund Convention was due since the ship causing the pollution was flying the flag of a non-Contracting State.

2. Miya Maru No. 8

All claims arising out of the "Miya Maru No. 8" incident have been finalised. The final amounts of the third party claims were as follows:

	Yen	£
(a) Shipowner's clean-up costs	27,645,081	65,979
(b) Maritime Safety Agency's clean-up costs	10,673,267	25,473
(c) Japan Maritime Disaster Prevention Centre's clean-up costs	99,502,574	237,476
(d) Fishery damage	40,000,000	95,465
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	177,820,922	424,393

Out of this amount, the IOPC Fund and the shipowner paid Yen140,110,582 (£334,393) and Yen37,710,340 (£90,000) respectively, the latter amount being the shipowner's liability under Article V of the CLC.

The indemnification to the shipowner under Article 5 of the Fund Convention in the amount of Yen9,427,585 (£22,500) was paid after the finalisation of the limitation proceedings. Recourse action against the other ship liable for the collision was taken and an amount of Yen6,902,773 (£16,474) has been recovered.

3. Tarpenbek

The tanker "Tarpenbek", loaded with about 1,600 tonnes of lubricating oil, collided on 21 June 1979 with the 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 bunker tanks spilled into the sea. The "Tarpenbek" was towed to a sheltered bay and the cargo was successfully pumped out. There is disagreement over whether or not any quantities of cargo oil were spilled during the pumping operations.

Both 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 under the Civil Liability Convention and from the IOPC Fund. The United Kingdom Government claimed under TOVALOP and CRISTAL.

The IOPC Fund rejected the owner's claim on the basis that under the CLC and the Fund Convention, as implemented by the UK 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. This view was supported by a legal opinion obtained by the Fund.

4. Mebaruzaki Maru No. 5

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 were as follows:

	Yen	£
(a) Shipowner's clean-up costs	7,141,350	17,044
(b) Maritime Safety Agency's clean-up costs	956,646	2,283
(c) Fishery damage	2,935,819	7,007
	<u>11,033,815</u>	<u>26,334</u>

For the above third party claims, the IOPC Fund and the shipowner paid Yen10,188,335 (£24,316) and Yen845,480 (£2,018) respectively, the latter amount being the shipowner's liability according to Article V of the CLC. Indemnification under Article 5 of the Fund Convention amounting to Yen211,370 (£504) was paid after the finalisation of the limitation proceedings.

5. Showa Maru

All third party claims arising out of the "Showa Maru" incident, which occurred on 9 January 1980 in Japan, were settled as follows:

	Yen	£
(a) Shipowner's clean-up costs	518,670	1,238
(b) Maritime Safety Agency's clean-up costs	1,330,886	3,176
(c) Japan Maritime Disaster Prevention Centre's clean-up costs	9,378,458	22,383
(d) Fishery damage	100,000,000	238,663
	<u>111,228,014</u>	<u>265,460</u>

The IOPC Fund and the shipowner paid Yen103,104,874 (£246,074) and Yen8,123,140 (£19,387) respectively in settlement of these third party claims, the latter figure being the owner's limitation fund under the CLC. The indemnification to the shipowner under Article 5 of the Fund Convention amounts to Yen2,030,785 (£4,847) which was paid very early in January 1982.

In the investigation into the collision between the "Showa Maru" and the "Chemicarry No. 18" (the other ship involved in the collision), the Kobe Marine Court upheld that the collision was solely caused by improper navigational manoeuvres on the part of the "Chemicarry No. 18" itself and not by any fault or privity of the owner of the "Chemicarry No. 18". The IOPC Fund therefore accepted the offer made by the owner of the "Chemicarry No. 18" that the owner accepts liability but is entitled to limit his liability. The "Chemicarry No. 18" limitation fund amounts to Yen12,427,130 (£29,659), of which the IOPC Fund recovered a share of Yen9,893,196 (£23,611).

6. Unsei Maru

On 9 January 1980 the Japanese tanker "Unsei Maru" (99 GRT), carrying 140 tonnes 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.

The clean-up costs incurred by the owner of the "Unsei Maru" are estimated at Yen7 million (£16,706). No further claims have yet been made against the Fund. The owner's clean-up costs are covered by his liability under the CLC.

7. Tanio

The Madagascan tanker "Tanio" broke in two on 7

March 1980 off the Brittany coast, France. About 12,500 tonnes of heavy fuel oil were spilled and caused considerable pollution damage to the French territory. The stern section, with about 7,500 tonnes of cargo aboard, remained afloat and was towed to a safe port. The bow section, with about 6,000 tonnes of cargo aboard, sank to a depth of 90 metres.

Despite the considerable amount of oil polluting the tourist beaches of Brittany, the clean-up operations were carried out quickly and were completed by the beginning of the 1980 summer season. The pumping operations to remove the 6,000 tonnes of cargo oil remaining in the bow section of the sunken "Tanio" began in summer 1980. They were greatly hindered by adverse weather conditions during the autumn and winter months of 1980 and 1981 and were completed only on 18 August 1981.

The claims arising out of the "Tanio" incident are as follows:

	FFr	£
French Government (estimate)	466,000,000	42,870,285
Channel Islands:		
Jersey		9,000
Guernsey		15,000
Shipowner		200,000
French boatowners		4,700

Since the Fund's upper limit is exceeded, a method of settlement procedure which could expedite the assessment and settlement of the claims was considered with the claimants. No final assessment of these claims has yet been made. In view of the fact that the aggregate amount of claims considerably exceeds the Fund's upper limit of liability (approximately £23,000,000) and that the payments (claims) will have to be pro-rated, no payments have yet been made. It is hoped that the settlement of claims arising out of this incident will be made by the end of 1982.

8. Furenäs

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, 200 tonnes of fuel oil (No. 4) were released and polluted the Swedish coast and a small part of the Danish coast.

The total claims of SKr 3,800,131 (£360,887) and DKr 418,589.80 (£30,050) arising out of the "Furenäs" incident are made up as follows:

	SKr	£
<i>Swedish claims</i>		
(a) Swedish Coast Guard and Swedish State Fire Service Board	3,500,000	332,384
(b) Swedish boatowners	35,050	3,329
(c) Private clean-up company	241,000	22,887
(d) Helsingborg Port Authorities	24,081	2,287
	<u>3,800,131</u>	<u>360,887</u>
<i>Danish claims</i>	DKr	£
(a) Danish National Environment Agency	396,150.00	28,439
(b) Helsingør kommune	8,809.35	632
(c) Karlebo kommune	3,673.50	264
(d) Danish boatowners	7,800.00	560
(e) Danish fishermen	2,156.95	155
	<u>418,589.80</u>	<u>30,050</u>

All third party claims have been settled by the IOPC Fund and the shipowner, who paid his liability under the CLC amounting to SKr 612,443.66 (£58,160). Indemnification under Article 5 of the Fund Convention is SKr 153,110.92 (£14,540) which has not yet been paid.

9. Hosei Maru

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 in the northern part of Honshu, Japan. As a result 270 tons of heavy oil "C" were spilled from the "Hosei Maru". The spilt oil polluted fishing areas in small bays where culture fishery is extensively carried out.

The final costs for the clean-up operations and the compensation for fishery damages are as follows:

	Yen	£
(a) Agencies' clean-up costs	183,785,028	438,628
(b) "Hosei Maru" crew's clean-up costs	130,000	310
(c) Contractors' clean-up costs	6,474,620	15,453
(d) Fishery damage	58,700,000	140,095
	<u>249,089,648</u>	<u>594,486</u>

Out of the above third party claims, the IOPC Fund paid Yen213,323,728 (£509,126) and the shipowner paid Yen35,765,920 (£85,360), this amount being the shipowner's liability under Article V of the CLC. The question as to whether or not the owner of the "Hoei Maru" can limit his liability is under investigation. Indemnification to the shipowner under Article 5 of the Fund Convention amounting to Yen8,941,480 (£21,340) has not yet been paid.

10. Jose Marti

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 quickly spread to the Archipelago islands in the north-east.

Immediately after the incident, off-shore clean-up operations were initiated by the Swedish Coast Guard. Extensive on-shore clean-up operations were commenced by the local communes and private contractors only in the spring when weather conditions improved.

The extent of the total damage for off-shore and on-shore clean-up operations is estimated at SKr 20 million (£1,899,335). The owner's liability under the CLC is about SKr 17 million (£1,614,435), so there may remain a liability for the IOPC Fund of approximately SKr 3 million (£284,900).

11. Suma Maru No. 11

On 21 November 1981 the Japanese tanker "Suma Maru No. 11" (199.41 GRT), carrying 530 tonnes of minas 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 10 tonnes of oil polluted a six kilometre stretch of coast in the vicinity of a large "nori" seaweed farm. Clean-up operations were undertaken by Kondo Kaiji Company, the Japan Maritime Disaster Prevention Centre and local fishermen. Expenses for clean-up measures are estimated at Yen13,000,000 (£31,026). The shipowner's limitation amount under the CLC is Yen7,396,340 (£17,652).

12. Globe Asimi

On 22 November 1981 the Gibraltar registered motor tanker "Globe Asimi" (19,945 dwt) ran aground and broke up near the port of Klaipeda, USSR, during gale force winds. Sharp rocks pierced the hull of the vessel which was carrying 16,493 tonnes of boiler fuel and a large oil slick developed covering the port area and later drifting out to sea. So far no oil has reached the territory of any Fund Member State and no claims for pollution damage have been made against the Fund. The Fund may be held liable for indemnification amounting to £285,000 under Articles 3.2 and 5 of the Fund Convention.

ANNEX BALANCE SHEET OF IOPC FUND AS AT 31 DECEMBER 1980

Liabilities	£	Assets	£
Surplus 1978/1979	£2,107,246	Cash at banks and in hand	11,563,123
1980	£1,178,396	Accounts receivable	
Due to Staff Provident Fund	28,294	Contributions:	
Accounts Payable	6,954	Gen Fund 1979	£ 26,946
Unliquidated Obligations	36,118	Gen Fund 1980	£110,012
Reserve for Major Claims Fund		Major Claims Fund 1980	£857,347
"Antonio Gramsci" (in accordance with Internal Regulation 4.3)	9,203,024	VAT recoverable	1,080
		Miscellaneous	530
		Interest on overdue contributions	
		Gen Fund	£651
		Major Claims Fund	£343
			994
	<u>12,560,032</u>		<u>12,560,032</u>

Note 1.: Arising from significant accounting policy (d), liabilities on the General Fund and Major Claims Fund as at 31 December 1980 in respect of claims agreed but not paid before that date amounted to £650,453 and £8,617,783 respectively. In addition, there is a contingent liability in respect of incidents which is estimated to amount to £24,461,389.

Note 2.: In addition to the assets shown in this statement, investment in equipment, furniture, office machines, supplies and library books as at 31 December 1980 amounted at cost price to £14,304 net of VAT.

