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REPORT OF THE DIRECTOR

Summary:

The number of 1992 Fund and Supplementary Fund Member States has continued to increase. Since the October 2005 sessions of the governing bodies the 1992 Fund has become involved in one new oil pollution incident. Since the Supplementary Fund Protocol entered into force on 3 March 2005, there have been no incidents which will involve the Supplementary Fund. Progress has been made towards the winding up of the 1971 Fund.

An intersessional Working Group was established by the 1992 Fund Assembly at its February/March 2006 session to consider non-technical measures to promote quality shipping for the carriage of oil by sea. The Working Group held its first meeting in May 2006.

The IOPC Funds have given higher priority to the preparations for the entry into force of the HNS Convention.

Mr Willem Oosterveen, the Director-Elect, joined the Secretariat on 1 September 2006 and will take up office on 1 November 2006, with the current Director, Mr Måns Jacobsson, retaining full responsibility for the Organisations up to 31 October 2006 and continuing to be available until his retirement on 31 December 2006.

Action to be taken: Information to be noted.

1 Introduction

- 1.1 This is the 22nd Report on the activities of the IOPC Funds submitted by the present Director and, since he will leave the post of Director on 31 October 2006, also his last report. In view of this he has felt it appropriate to make some comments on the development of the international compensation regime created by the Civil Liability Conventions and the Fund Conventions over the years.
- 1.2 The Report also contains a review of some of the main issues relating to the activities of the 1992 Fund, the 1971 Fund and the Supplementary Fund since the October 2005 sessions of their respective governing bodies. It also deals with the finances of the Funds for the first eight months of 2006.

2 Developments over the years

- 2.1 The framework for the international compensation regime was originally the 1969 Civil Liability Convention and the 1971 Fund Convention.
- 2.2 The 1971 Fund was set up when the 1971 Fund Convention entered into force on 16 October 1978. Early on in the operations of the 1971 Fund it became apparent in the light of experiences of major oil spills that the 1969 Civil Liability Convention and the 1971 Fund Convention had shortcomings, in particular as regards the amounts available for compensation. A Diplomatic Conference held in 1992 adopted two Protocols amending the Conventions which provided higher levels of compensation and a wider scope of application than the original Conventions. These Conventions, as revised by the Protocols (the 1992 Civil Liability Convention and the 1992 Fund Convention), entered into force in 1996.
- 2.3 The 1992 Fund was established when the 1992 Fund Convention entered into force on 30 May 1996, with the intention that after a transitional period it would replace the 1971 Fund. The two Fund Conventions coexisted until 24 May 2002 when the 1971 Fund Convention ceased to be in force. However the 1971 Fund itself will remain in existence until all claims have been settled and all other issues which have arisen from incidents occurring before that date have been resolved.
- 2.4 The adequacy of the 1992 Conventions came under the spotlight again following the *Nakhodka* (1997), *Erika* (1999) and *Prestige* (2002) incidents in Japan, France and Spain respectively. This led to a further review of the regime which resulted in the adoption in 2003 of a Protocol establishing a Supplementary Fund which entered into force in 2005.
- 2.5 When the 1971 Fund was set up in 1978 it had 14 Member States. On 1 January 1985, when the present Director took up office, the 1971 Fund had 30 Member States. The 1971 Fund grew steadily to a maximum of 76 Member States. When it was set up in 1996 the 1992 Fund had nine Member States, and at the time of the issue of this document there were 98 States Parties to the 1992 Fund Convention. The Supplementary Fund, which was set up in 2005 with eight Member States, has increased its membership to 19.
- 2.6 As the 1971 Fund Convention ceased to be in force on 24 May 2002, there are no longer any 1971 Fund Member States. Most of the 1971 Fund's former Member States have ratified the 1992 Fund Convention. It is hoped that the remaining eight former Member States (Benin, Côte d'Ivoire, Gambia, Guyana, Indonesia, Kuwait, Mauritania and the Syrian Arab Republic) will soon do so.
- 2.7 It is likely that a number of other States will also become Members of the 1992 Fund in the near future. It is expected that the Czech Republic, Hungary, Lebanon, the Libyan Arab Jamahiriya and Slovakia will soon ratify the 1992 Fund Convention.
- 2.8 It is expected that a number of States will ratify the Supplementary Fund Protocol in the near future increasing the number of Supplementary Fund Member States beyond the current 19.
- 2.9 The status of the 1992 Fund Convention and the Supplementary Fund Protocol is set out in document 92FUND/A.11/4 and SUPPFUND/A.2/3.
- 2.10 The 1971 and 1992 Funds have over the years been involved in some 135 incidents and have paid compensation totalling £543 million. Most claims have been settled without claimants having to take court action. In fact, such actions have only been taken in respect of a small number of incidents.

- 2.11 The Funds have acquired considerable experience in claims handling and have, through their governing bodies, developed criteria for the admissibility of various types of claims which are published in the form of a Claims Manual.

3 Information on Fund activities and promotion of 1992 Fund membership

- 3.1 The IOPC Funds published a joint Annual Report in English, French and Spanish for the calendar year 2005. This Report continues to attract great interest from all those dealing with the Funds as well as from persons and bodies interested in oil pollution matters in general.
- 3.2 In order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters, the Director and other members of the Secretariat have since the governing bodies' sessions in October 2005 visited 21 1992 Fund Member States. On the occasion of these visits discussions have been held with Ministers and senior officials on matters relating to the international compensation regime.
- 3.3 The Secretariat has continued its efforts to increase the number of 1992 Fund Member States. To this end, the Director and other members of the Secretariat have also visited three non-Member States. They have participated in seminars, conferences and workshops in a number of countries and given lectures on liability and compensation for oil pollution damage and on the operation of the IOPC Funds. As in previous years, Fund staff have lectured to students at the World Maritime University in Malmö (Sweden) and the IMO International Maritime Law Institute (IMLI) in Malta, providing the opportunity to disseminate information on the international compensation regime to students who eventually return to their administrations throughout the world. Lectures have also been given at Shanghai Maritime University (People's Republic of China), and at the University of Edinburgh, the University of Southampton and the University of Wales, Swansea (United Kingdom).
- 3.4 The Secretariat has developed a training package on the submission of claims for compensation. Workshops using this package have been held in Israel, Kazakhstan, Namibia, Nigeria, Tunisia and Turkey and further workshops will be held later in 2006 in Equatorial Guinea and South Africa.
- 3.5 The Director and other staff members have met with government representatives of a number of States during IMO meetings which has given them the possibility to promote the international compensation regime.
- 3.6 In March 2006 the IOPC Funds participated in Interspill 2006, an international conference and exhibition held in London on spill prevention and response at sea and on inland waters. This was the first such conference supported by the IOPC Funds through representation on the organising and programme committees. It was also the first occasion on which the IOPC Funds had their own stand at the exhibition along with 140 other exhibitors. Some 1 300 participants from 71 countries attended the conference and exhibition.
- 3.7 Interspill 2006 ran parallel sessions covering marine transportation, exploration and production, inland spills and waste management as well as scientific developments. The Deputy Director chaired a session on legislation and policy in the maritime transportation sector and the Director presented a paper on compensation regime developments. Prior to the conference and exhibition the IOPC Funds ran a one-day claims workshop, which was attended by participants from the public and private sector.

4 Relationships with international organisations and interested parties

- 4.1 The IOPC Funds co-operate closely with many intergovernmental and international non-governmental organisations, as well as with private organisations involved in the maritime transport of oil. The Funds have particularly close links with International Maritime Organization (IMO), with which a co-operation agreement exists.
- 4.2 In the majority of incidents involving the IOPC Funds, clean-up operations are monitored and claims are assessed by the Funds and the shipowner's liability insurer, working closely together. The International Tanker Owners Pollution Federation Limited (ITOPF), supported by a world-wide network of surveyors and experts, provides technical assistance relating to oil spills.

5 Finances of the 1992 Fund, the 1971 Fund and the Supplementary Fund

5.1 Expenditure of the Funds

- 5.1.1 The expenditure for the joint administration of the 1992 Fund and the 1971 Fund during 2005 was £2 859 699, compared with the budgetary appropriation of £3 372 600. Details of the accounts of the 1992 Fund, the 1971 Fund and the Supplementary Fund for the financial year 2005 are given in the Financial Statements^{<1>} (documents 92FUND/A.11/10, Annex V, 71FUND/AC.20/4, Annex IV and SUPPFUND/A.2/6, Annex IV).
- 5.1.2 The expenditure for the joint administration of the 1992, 1971 and Supplementary Funds during the first eight months of 2006 amounts to approximately £1.9 million. The budget appropriation for the whole of 2006 for the three Organisations is £3 601 900. It is expected that there will be a budgetary surplus at the end of the year.

5.2 Co-operation with the External Auditor

Excellent co-operation with the External Auditor, the Comptroller and Auditor General of the United Kingdom, has facilitated the administration of the IOPC Funds and the operation of the joint Secretariat.

5.3 Audit Body

- 5.3.1 The IOPC Funds have a joint Audit Body which has met three times since October 2005, on 25 November 2005 and on 10 March and 16 June 2006. The report of the Audit Body is contained in document 92FUND/A.11/11, 71FUND/AC.20/6 and SUPPFUND/A.2/7.
- 5.3.2 After hearing a presentation by the External Auditor on the IOPC Funds 2005 financial statements at its June 2006 meeting, the Audit Body expressed its appreciation to the Secretariat for the way it had been operating, which had resulted in an outstanding audit report.

5.4 Investment Advisory Body

The IOPC Funds have a joint Investment Advisory Body composed of external experts with special knowledge in investment matters, to advise the Director in general terms on such matters. The report of the Investment Advisory Body is contained in document 92FUND/A.11/9, 71FUND/AC.20/4 and SUPPFUND/A.2/5.

<1> At its March 2005 session, the Supplementary Fund Assembly decided that the first financial period of the Supplementary Fund should be 3 March – 31 December 2005.

5.5 Investment of funds

- 5.5.1 During 2005 and 2006 funds which were not required for the short-term operation of the 1992 and 1971 Funds were placed on term deposits with a number of leading financial institutions. When making investments, the IOPC Funds' objectives are security, liquidity and yield, in that order. The average rate of interest received on the investments maturing in 2005 was 4.8%.
- 5.5.2 During the period since the October 2005 sessions of the governing bodies, the London clearing bank base rate remained at 4.50% until 3 August 2006, when it was increased to 4.75%.
- 5.5.3 Interest earned by the 1992 Fund on investment maturities during the first eight months of 2006 amounted to approximately £3.4 million and by the 1971 Fund to approximately £268 000.
- 5.5.4 As at 4 October 2006, the 1992 Fund's investments totalled some £98 million and the 1971 Fund's investments some £11 million. Since no contributions have been levied to the Supplementary Fund (cf paragraph 7.3 below) there have been no investments made in respect of that Fund.
- 5.5.5 Details of the investments placed during the period 1 July 2005 to 30 June 2006 are given in documents 92FUND/A.11/8, 92FUND/A.11/8/Corr.1 and 71FUND/AC.20/3.

6 Corporate governance

- 6.1 The Director has continued to address the issue of risk management. Risks in various areas have been identified and assessed in terms of their likelihood and impact on the Funds' operations and credibility. The considerations of risks have been completed to a satisfactory level in three risk areas, and work on risk assessment in the remaining area are well advanced.
- 6.2 The Director has issued a Code of Conduct setting out the standards of expected behaviour and conduct of staff members. He has introduced a Register of Interests and a Register of Gifts and Hospitality. The Director has also issued a document on 'whistleblowing' setting out procedures to ensure that staff members are able to disclose any actions by those who work for the Funds that fall seriously short of the Organisations' standards.

7 Contributions

7.1 1992 Fund

- 7.1.1 The 1992 Fund Assembly decided in October 2005 that there should be no levy of contributions to the General Fund in 2005. The Assembly decided to raise contributions in 2005 to the *Erika* and *Prestige* Major Claims Funds of £2.0 million and £3.5 million respectively, but that the entire levies should be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levies for payment during the second half of 2006, if and to the extent required. The Director decided in July 2006 not to invoice any deferred levy as part of the 2005 annual contributions.
- 7.1.2 A report on the payment of contributions to the 1992 Fund is given in document 92FUND/A.11/13.

7.2 1971 Fund

- 7.2.1 Since the 1971 Fund Convention has ceased to be in force it is not possible to levy further contributions to the General Fund.

7.2.2 The 1971 Fund Administrative Council decided in October 2005 that there should be no levy of contributions in 2005 in respect of the three remaining Major Claims Funds, ie the *Vistabella*, *Nissos Amorgos* and *Pontoon 300*.

7.2.3 A report on the payment of contributions to the 1971 Fund is given in document 71FUND/AC.20/8.

7.3 Supplementary Fund

The Supplementary Fund Assembly decided in March 2005 that contributions to the Supplementary Fund should be levied each year and that they should be levied at the same time as contributions are levied to the 1992 Fund and/or to the 1971 Fund. In October 2005, the 1992 Fund Assembly agreed to continue to provide the Supplementary Fund with loans, repayable with interest, to cover its administrative costs. The Supplementary Fund Assembly therefore decided to postpone the first levy of contributions to the General Fund until the autumn of 2006. The Supplementary Fund Assembly also decided that, since there had been no incidents which would require the Supplementary Fund to pay compensation, there was no need for contributions to be levied to any Claims Fund.

8 Submission of oil reports

8.1 The non-submission of reports on contributing oil receipts has been a recurring problem for both the 1971 Fund and the 1992 Fund. However in recent years the situation has improved considerably. Four States with reports outstanding for many years have submitted their reports, namely Gabon (17 years), Nigeria (8 years), and Sierra Leone (13 years). This issue is examined further in document 92FUND/A.11/14, 71FUND/AC.20/9 and SUPPFUND/A.2/9.

8.2 The Director considers nevertheless that the failure of a number of 1992 Fund Member States and a number of former 1971 Fund Member States to submit reports on contributing oil receipts continues to give rise to considerable concern. By 4 October 2006, oil reports were outstanding for 29 1992 Fund Member States and seven former 1971 Fund Member States. A number of these States have reports outstanding for several years.

8.3 When the Supplementary Fund Protocol was drafted, it was decided to insert provisions under which compensation would be denied temporarily or permanently in respect of States that failed to fulfil their obligation to submit oil reports. In March 2005 the Supplementary Fund Assembly considered the procedures to be followed in order to establish whether a Supplementary Fund Member State affected by an incident had complied with its obligations in this regard. It was considered that it would be for the Supplementary Fund Assembly to decide whether or not a State had fulfilled its obligations.

8.4 The Director is pleased to report that all Supplementary Fund Member States have submitted their oil reports.

9 Incidents involving the IOPC Funds

9.1 The 1992 Fund

9.1.1 Since its establishment in May 1996 the 1992 Fund has been involved in 30 oil pollution incidents and has paid compensation totalling £214 million.

9.1.2 Since the 1992 Fund Assembly's session in October 2005, the 1992 Fund has been notified of one new oil pollution incident which will involve the Fund, namely the *Solar I* which sank on 11 August 2006 in 630 metres of water some 10 nautical miles south of Guimaras Island (Republic of the Philippines). An unknown, but significant, quantity of oil was spilled from the

vessel, most of which stranded on the south coast of Guimaras Island. The incident affected the livelihood of a large number of subsistence fishermen and small tourism businesses. For this reason the 1992 Fund and the shipowner's insurer took a proactive approach by organising in September 2006 workshops for the purpose of informing various groups of claimants on the international compensation regime, thereby facilitating the presentation of claims and contributing to rapid claims assessments and payments of compensation.

- 9.1.3 The limitation amount applicable to the *Solar I* under the 1992 Civil Liability Convention is £3.6 million. However, the incident is the first involving a vessel entered in the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) under which the shipowner/insurer has voluntarily agreed to increase the limitation amount applicable to the vessel to 20 million Special Drawing Rights (£15.8 million).
- 9.1.4 Further information on the above incident and those which occurred previously is contained in the documents submitted to the 34th session of the 1992 Fund Executive Committee.

9.2 The 1971 Fund

- 9.2.1 Since its establishment in October 1978, the 1971 Fund has been involved in 107 oil pollution incidents and has paid compensation totalling £329 million. As the 1971 Fund Convention ceased to be in force on 24 May 2002, it does not apply to incidents occurring after that date.
- 9.2.2 As at 4 October 2006, there were outstanding third party claims in respect of five incidents. Recourse actions taken by the 1971 Fund in respect of three incidents were pending.
- 9.2.3 The various documents submitted to the 1971 Fund Administrative Council under agenda item 15 give details of all the incidents dealt with by the 1971 Fund during the last twelve months.

9.3 The Supplementary Fund

Since the Supplementary Fund Protocol entered into force on 3 March 2005, there have as at 4 October 2006 been no incidents which will or may involve the Supplementary Fund.

10 Winding up of the 1971 Fund

- 10.1 Before the 1971 Fund can be wound up, all pending claims will have to be settled and paid and any remaining assets will have to be distributed in an equitable manner between contributors. A course of action must be decided upon in respect of contributors in arrears and the problem caused by a number of States not having fulfilled their treaty obligations under the 1971 Fund Convention to submit reports on contributing oil receipts (cf document 71FUND/AC.20/9).
- 10.2 Since the October 2005 session of the Administrative Council, progress has been made towards the winding up of the 1971 Fund. Further details in respect of the issues involved are given in document 71FUND/AC.20/14.

11 Development of the international compensation regime

- 11.1 In April 2000, the 1992 Fund Assembly established an intersessional Working Group to discuss the need to improve the compensation regime provided by the 1992 Civil Liability Convention and the 1992 Fund Convention.
- 11.2 The initial task of the Working Group was the elaboration of a Protocol with the aim of establishing an optional third tier of compensation by means of a Supplementary Fund to provide compensation over and above the compensation available under the 1992 Fund Convention for

pollution damage in States which became Parties to the Protocol. The Protocol was adopted by an International Conference in 2003. The Protocol entered into force on 3 March 2005.

- 11.3 The Working Group pursued its work under the mandate which had been decided by the Assembly in October 2001, ie to continue an exchange of views concerning the need for and the possibilities of further improving the compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention, including certain issues which had already been identified by the Working Group but not yet resolved. At its October 2005 session the Assembly acknowledged, however, that there was insufficient support to move forward with even a limited revision of the Conventions and therefore decided that the Working Group should be disbanded and that the revision of the Conventions should be removed from its agenda.
- 11.4 At its February/March 2006 session, the 1992 Fund Assembly established a new working group to develop proposals in respect of non-technical measures and guidelines for States and industry to promote quality shipping for carriage of oil by sea. The Working Group held its first meeting in May 2006. The Working Group's report will be considered by the Assembly (document 92FUND/A.11/28).

12 Co-operation with P&I Clubs

- 12.1 The IOPC Funds have over the years co-operated closely with the shipowners' insurers, normally one of the Protection and Indemnity Associations (P&I Clubs), in claims settlement procedures. The monitoring of the response to an incident and the assessment of the damage caused are normally carried out jointly by the P&I Club and the Fund involved in the incident.
- 12.2 Co-operation between the 1971 Fund and Clubs belonging to the International Group of P&I Clubs was governed by a Memorandum of Understanding (MOU) which was signed in November 1980 and subsequently extended in 1996 to cover also the 1992 Fund.
- 12.3 A new MOU, which was signed by the Director on behalf of the 1992 and Supplementary Funds on 19 April 2006, emphasises the importance of compensating victims of oil pollution damage as promptly as possible. In view of the importance of the uniform application of the 1992 Conventions and the Supplementary Fund Protocol, the P&I Clubs agree in the MOU to endeavour to ensure that, in respect of incidents falling within the 1992 Conventions where the 1992 Fund is not involved, the concept of 'pollution damage' is given the same interpretation as if the 1992 Fund had been involved. The MOU also includes the undertakings by the Clubs in respect of the new voluntary arrangements of STOPIA 2006 and TOPIA 2006 (see section 13).

13 STOPIA/TOPIA 2006

In February/March 2006 the Assemblies of the 1992 Fund and the Supplementary Fund took note of two voluntary agreements, the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006. Under these agreements the shipowner/P&I Club will reimburse the 1992 Fund and the Supplementary Fund a proportion of their liabilities under the 1992 Fund Convention and the Supplementary Fund Protocol. Discussions have been held with the International Group of P&I Clubs for the purpose of establishing procedures to implement STOPIA 2006 and TOPIA 2006. The Assemblies will be invited to consider this issue (cf document 92FUND/A.11/29 and SUPPFUND/A.2/9).

14 Preparations for the setting up of the HNS Fund

- 14.1 The 1992 Fund Assembly has instructed the Director to carry out the administrative tasks necessary for the setting up of the International Hazardous and Noxious Substances Fund (HNS Fund) to be established under the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996 (HNS Convention), as requested by the Diplomatic Conference which adopted the Convention.
- 14.2 At the March 2005 session of the 1992 Fund Assembly, a number of delegates stated that it was important for the IOPC Funds' Secretariat to take a higher profile in respect of the HNS Convention.
- 14.3 The Secretariat of the IOPC Funds organised a second Workshop on the HNS Convention in May 2006. A previous Workshop, held in June 2005, had focused on the uniform interpretation and application of the HNS Convention and was based on a 'Guide to the implementation of the Convention' that had been produced by the IOPC Funds Secretariat and subsequently published on the Funds' HNS website. The second Workshop, which was attended by some 150 participants, provided participants with an opportunity to learn about the shipping and chemical industries' perspectives on ratification and to consider some of the practical problems faced by States that were in the process of ratifying the Convention.
- 14.4 The IOPC Funds have also developed a dedicated website for the HNS Convention, which is available in English, French and Spanish.
- 14.5 The Secretariat has developed a system to assist in identifying and reporting contributing cargo under the HNS Convention which has now been distributed in the form of a CD-ROM. A website specifically for the HNS Convention Contributing Cargo Calculator has also been developed.

15 Looking ahead

- 15.1 The coming year will be a very important one for the IOPC Funds as the new Director, Mr Willem Oosterveen, who joined the Secretariat on 1 September 2006, will take up his duties on 1 November 2006. The present Director, Mr Måns Jacobsson, who has held the post for nearly 22 years and who will retain full responsibility for the Organisations up to 31 October 2006, will make every effort to ensure a smooth transition to his successor and will continue to be available up to 31 December 2006.
- 15.2 It is expected that the memberships of the 1992 Fund and the Supplementary Fund will continue to increase steadily during the coming years whilst, as regards the 1971 Fund, the Secretariat will continue to work towards a smooth and timely winding up. At the same time, the Secretariat will work actively on the preparations for the entry into force of the HNS Convention and the setting up of the HNS Fund, as requested by a number of Member States.
- 15.3 It is inevitable that the IOPC Funds will continue to face new challenges. The present Director is convinced that the new Director and the Secretariat as a whole will meet these challenges with their usual competence. He is also convinced that the Member States will, as in the past, follow the developments and take the necessary steps to ensure that the international compensation regime continues to provide an efficient structure to ensure the payment of compensation to victims of oil pollution damage.

16 **Expression of gratitude**

- 16.1 The Director would like to thank all staff members, present and past, for their professionalism, dedication and loyalty without which he would not have been able to fulfil his role of Director.
- 16.2 The Director would like to express his profound gratitude to Member States for the support they have given him over 22 years and to the contributors who finance the operation of the Funds. He would also like to thank the intergovernmental organisations and international non-governmental organisations with observer status for the excellent co-operation which he has enjoyed during this period.

17 **Action to be taken by the governing bodies**

The governing bodies are invited to take note of the information contained in this document.
