



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
20th session
Agenda item 29

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STATUS OF HONG KONG

Note by the Director

Introduction

1 On 30 June 1997 Hong Kong ceased to be a dependent territory of the United Kingdom. In accordance with a Joint Declaration signed between the Governments of the People's Republic of China and the United Kingdom, the People's Republic of China resumed the exercise of sovereignty over Hong Kong with effect from 1 July 1997. From that date Hong Kong became a Special Administrative Region of the People's Republic of China.

2 The 1971 Fund Convention entered into force for the United Kingdom on 16 October 1978. When depositing its instrument of ratification with the Secretary-General of IMO (at that time IMCO) on 2 April 1976, the Government of the United Kingdom declared that its ratification was effective in respect of certain dependent territories, including Hong Kong.

3 The People's Republic of China has not acceded to the 1971 Fund Convention.

4 The Joint Declaration provides that international agreements to which the People's Republic of China is not a Party, but which are implemented in Hong Kong, may continue to be implemented in the Hong Kong Special Administrative Region.

5 The Director submits to the Assembly for consideration the question of whether the 1971 Fund Convention would apply to pollution damage caused after 30 June 1997 in the Hong Kong Special Administrative Region. The Assembly is also invited to consider whether contributions are payable to the 1971 Fund in respect of oil received in the Hong Kong Special Administrative Region after 30 June 1997.

6 It should be noted that these questions do not arise in respect of the 1992 Fund Convention, since the Government of the United Kingdom did not declare its ratification of the 1992 Fund Protocol to be effective in respect of Hong Kong.

Position of the Chinese and United Kingdom Governments on the effects of the Joint Declaration

7 In June 1997 the Ambassador of the People's Republic of China presented a communication to the Secretary-General of IMO which reads (in English translation):

In accordance with the Joint Declaration of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong signed on 19 December 1984 (hereinafter referred to as the Joint Declaration.), the People's Republic of China will resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997. Hong Kong will, with effect from that date, become a Special Administrative Region of the People's Republic of China and will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government of the People's Republic of China.

It is provided both in Section XI of Annex I to the Joint Declaration, .Elaboration by the Government of the People's Republic of China of its Basic Policies Regarding Hong Kong., and Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, which was adopted on 4 April 1990 by the National People's Congress of the People's Republic of China, that international agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region.

In accordance with the above provisions, I am instructed by the Minister of Foreign Affairs of the People's Republic of China to make the following notification:

The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage adopted on 18 December 1971 (FUND 1971) and the Protocol to this Convention adopted on 19 November 1976 (FUND 1976), which applies to Hong Kong at present, will continue to apply to Hong Kong Special Administrative Region with effect from 1 July 1997.

Within the above ambit, the responsibility for the international rights and obligations of a party to the Convention and the Protocol will be assumed by the Government of the People's Republic of China.

It would be appreciated if the contents of this Note could be placed formally on record and brought to the attention of the other parties to the Convention and the Protocol.

8 The United Kingdom Government presented a communication to the Secretary-General of IMO in June 1997 confirming the restoration of Hong Kong to the People's Republic of China with effect from 1 July 1997. It was stated in that communication that "from that date the Government of the United Kingdom will cease to be responsible for the international rights and obligations" arising from the application to Hong Kong of the 1971 Fund Convention and 1976 Protocol thereto. The United Kingdom Government also requested that the content of the communication be placed formally on record and brought to the attention of the other Parties to the Convention and the Protocol.

9 The communications referred to in paragraphs 6 and 7 were circulated by the Secretary-General of IMO to Member States. No observations on the communications have been received by the Secretary-General.

10 Communications similar to the one referred to in paragraph 6 above have been presented by the Government of the People's Republic of China to IMO in respect of a number of Conventions other than the 1971 Fund Convention, two of which have not been ratified by the People's Republic of China. Similar communications have also been received by intergovernmental organisations other than IMO in respect of the application of various international treaties. It appears that these communications have not resulted in any discussions in the governing bodies of the organisations concerned.

11 At the 54th session of the 1971 Fund Executive Committee, the observer delegation of the People's Republic of China quoted the communication referred in paragraph 6 above and the United Kingdom delegation drew the Committee's attention to the communication referred to in paragraph 7 above. The Executive Committee noted that the Director would refer the question of the position of Hong Kong to the 1971 Fund Assembly for consideration at its 20th session (document 71FUND/EXC.54/10, paragraphs 4.2.1-4.2.4).

Relevant provisions of the 1971 Fund Convention

12 Pursuant to Article 3.1, the 1971 Fund Convention applies exclusively to pollution damage caused on the territory including the territorial sea of a Contracting State^{<1>}, and to measures taken to prevent or minimise such damage.

13 Under Article 10.1, contributions are payable in respect of contributing oil received after sea transport in ports or terminal installations in a Contracting State. Several entities in Hong Kong have over the years paid contributions to the 1971 Fund, since they have received contributing oil in sufficient quantities to make them subject to the obligation to pay contributions pursuant to Article 10 of the 1971 Fund Convention.

Consideration by the Director

14 Although the People's Republic of China is not a Party to the 1971 Fund Convention, it is recognised that the Governments of the United Kingdom and the People's Republic of China have agreed that the Convention should continue to apply to the Hong Kong Special Administrative Region. The Director considers that the question of the applicability of the 1971 Fund Convention to Hong Kong represents a unique situation which is unprecedented in international law.

15 The Assembly has consistently taken the view that efforts should be made to increase the number of Member States, as it is in the interests of the international community - in particular, in the light of the importance of the preservation of the marine environment - that the application of the compensation system established by the 1971 Fund Convention should be as global as possible. For these reasons, it would be beneficial to the compensation system, as well as to the 1971 Fund, if the 1971 Fund Convention were to continue to apply to oil pollution damage in Hong Kong and if contributions were to be payable in respect of contributing oil received in Hong Kong after 30 June 1997. Primarily, however, it would be especially important for Hong Kong if the protection offered by the 1971 Fund Convention were to continue to apply.

16 The Director has noted that no observations have been made to the Secretary-General of IMO in response to the communications referred to in paragraphs 6 and 7 which were circulated to the Governments of States Parties to the 1971 Fund Convention. Furthermore, the Director himself has received no reactions from the Governments of 1971 Fund Member States to the issues raised at the

<1> Within the 1971 Fund Convention, the term "Contracting State" means a State for which the Convention has entered into force.

Executive Committee's 54th session. It would appear that States did not immediately envisage any difficulties if the 1971 Fund Convention were to continue to apply to the Hong Kong Special Administrative Region.

17 If the 1971 Fund Convention were applicable to the Hong Kong Special Administrative Region after 30 June 1997, it would follow that all rights and obligations arising out of the provisions of the Convention would apply to the Region, eg rights to receive compensation and the obligation on entities in Hong Kong to pay contributions in respect of oil received within the Special Administrative Region.

18 If the Assembly were to decide that the 1971 Fund Convention applied in respect of the Hong Kong Special Administrative Region, it would follow from the Chinese Government's notification that representation at meetings of the 1971 Fund's bodies would be by the Government of the People's Republic of China in respect of the Region, with credentials issued by the Chinese Government.

19 The Director cannot see any disadvantages for the 1971 Fund if the 1971 Fund Convention were to apply to the Hong Kong Special Administrative Region, nor can he see that any insurmountable difficulties would arise in respect of the application of the Convention to Hong Kong. The Assembly may therefore wish to consider that the extension of the 1971 Fund Convention to Hong Kong, which was declared by the United Kingdom in 1976, should continue to apply. A decision by the Assembly to that effect would mean that:

- (a) pollution damage caused in the Hong Kong Special Administrative Region after 30 June 1997 and measures taken after that date to prevent or minimise pollution damage in the Region would fall within the scope of the 1971 Fund Convention; and
- (b) entities in the Hong Kong Special Administrative Region would be liable to pay contributions to the 1971 Fund in respect of contributing oil received in the Region as follows:
 - (i) general fund contributions in accordance with Article 12.2(a) for the period 1 July 1997 - 31 December 1997 and thereafter; and
 - (ii) major claims fund contributions in accordance with Article 12.2(b) where the incident in question occurred after 30 June 1997.

20 **Action to be taken by the Assembly**

The Assembly is invited:

- (a) to take note of the information contained in this document;
 - (b) to take a position as to whether the 1971 Fund Convention applies to the Hong Kong Special Administrative Region after 30 June 1997; and
 - (c) to give the Director such other instructions as it may consider appropriate in respect of the status of the Hong Kong Special Administrative Region vis-à-vis the 1971 Fund.
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