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REPORT OF THE DIRECTOR

1 Introduction

1.1 This Report contains a review of some of the main issues relating to the activities of the 1971 Fund since the 19th session of the Assembly. It also deals with the finances of the 1971 Fund for the first six months of 1997.

1.2 Following the entry into force on 30 May 1996 of the 1992 Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention, two intergovernmental Organisations have co-existed, one established under the 1971 Fund Convention (1971 Fund) and another set up under that Convention as modified by the 1992 Protocol thereto (1992 Fund). Since then, the 1971 Fund Secretariat has administered also the 1992 Fund. A review of the 1992 Fund's activities is presented separately to the 2nd session of that Organisation's Assembly.

1.3 In April 1997 a joint Annual Report of the 1971 and 1992 Funds for the calendar year 1996 was published. This Report attracted great interest from all those dealing with the Funds as well as from persons and bodies interested in environmental matters in general.

1.4 Since the 19th session of the Assembly, there have been nine new incidents involving the 1971 Fund. Several incidents which occurred in previous years still require a considerable amount of work by the Fund Secretariat.

2 Membership of the 1971 Fund and external relations

2.1 1971 Fund Membership

2.1.1 At the time of the entry into force of the 1971 Fund Convention in October 1978, 14 States were Parties to the Convention and thus Members of the 1971 Fund. By the time of the 19th session of the Assembly in October 1996, there were 70 Member States.

2.1.2 Four States have acceded to the 1971 Fund Convention since the 19th session of the Assembly. The 1971 Fund Convention entered into force for New Zealand on 20 February 1997, for Mozambique on 23 March 1997, for Colombia on 11 June 1997 and for Antigua and Barbuda on 21 September 1997. As a result of these developments, the 1971 Fund will have 74 Member States at the time of the 20th session of the Assembly.

2.1.3 Three States (Jamaica, Philippines and Uruguay) have deposited instruments of accession to the 1992 Fund Convention in recent months, without having previously been Parties to the 1971 Fund Convention. It appears that many other States which were preparing legislation implementing the 1971 Fund Convention will instead adopt legislation to implement the 1992 Fund Convention and become Members of the 1992 Fund.

2.1.4 A major reason for the smooth functioning of the system of compensation established by the 1969 and 1971 Conventions is the strong support extended by Governments of Member States to the 1971 Fund and its Secretariat. In order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters, the Director visits some Member States each year. Since the 19th session of the Assembly, the Director and other officers have visited twelve States which are Members of the 1971 Fund for discussions with government officials on the Fund Conventions and the operations of the IOPC Funds.

2.2 Compulsory denunciation of the 1971 Fund Convention

2.2.1 The 1992 Fund Convention provided a mechanism for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention, when the total quantity of contributing oil received in States which were Parties to the 1992 Protocol to the Fund Convention (or which had deposited instruments of ratification, acceptance, approval or accession in respect of that Protocol) reached 750 million tonnes.

2.2.2 On 15 November 1996 the Netherlands deposited an instrument of accession to the 1992 Fund Protocol. With the deposit of this instrument, the requirements in the 1992 Fund Protocol for the compulsory denunciation of the 1969 Civil Liability Convention and 1971 Fund Convention were fulfilled. As a result, the States which had deposited instruments of ratification, acceptance, approval or accession in respect of the 1992 Fund Protocol (whether or not the Protocol was in force for the State in question), were obliged to deposit instruments of denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention by 15 May 1997. These denunciations will take effect twelve months after that date. Those States will then cease to be Parties to the 1971 Fund Convention.

2.2.3 By 15 May 1997, all 24 States which had deposited instruments of accession to the 1992 Fund Protocol had deposited instruments of denunciation of the 1969 Civil Liability Convention and of the 1971 Fund Convention. Twenty-four of the current 74 States Parties to the 1971 Fund Convention will therefore cease to be Parties to the Convention on 15 May 1998, thereby reducing the number of 1971 Fund Member States to 50.

2.3 Relations with non-Member States

2.3.1 The joint Secretariat has continued its efforts to increase the number of Member States. The Director and other Officers have participated in a number of seminars, conferences and workshops on liability and compensation for oil pollution damage and on the activities of the IOPC Funds.

2.3.2 The Director and other members of the joint Secretariat also had discussions with government representatives of non-Member States in connection with meetings within the International Maritime Organization (IMO), in particular during the sessions of the IMO Council and IMO Legal Committee.

2.3.3 The Secretariat has, on request, assisted some non-Member States in the elaboration of the national legislation necessary for the implementation of the Conventions.

2.4 Relationship with international organisations and interested circles

2.4.1 The IOPC Funds benefit from close co-operation with many intergovernmental and international non-governmental organisations, as well as with bodies set up by private interests involved in the maritime transport of oil.

2.4.2 The IOPC Funds have particularly close links with IMO, and co-operation agreements have been concluded between each Fund and IMO. The Secretariat has represented the IOPC Funds at meetings of the IMO Council and various IMO Committees. 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 Funds during the last twelve months.

2.4.3 In the majority of incidents involving the Funds, clean-up operations are monitored and claims are assessed in close co-operation between the Funds and the shipowner's liability insurer, which in most cases is one of the 'P & I Clubs'. The technical assistance required by the IOPC Funds with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF). The IOPC Funds co-operate closely with the oil industry, represented by the Oil Companies International Marine Forum (OCIMF) and Cristal Limited.

2.4.4 The voluntary industry compensation schemes, TOVALOP and CRISTAL, ceased to apply to incidents occurring after 20 February 1997. The Boards of ITOPF (which administers TOVALOP) and Cristal Ltd (which administers CRISTAL) believed that the relevance of the interim TOVALOP and CRISTAL agreements had eroded over the years, as more States had become Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention. Their decision to discontinue TOVALOP and CRISTAL reflected the rapid growth in the acceptance by maritime States of these two Conventions and of the 1992 Protocols thereto, which offer significant advantages over the voluntary agreements for those claiming compensation for oil pollution damage. The Boards considered that the continued existence of the voluntary agreements could slow progress by acting as a disincentive to States which had not yet ratified these Protocols.

3 Administration of the 1971 Fund

3.1 Secretariat

3.1.1 The 1971 Fund and 1992 Fund have a joint Secretariat. Until 15 May 1998, the 1971 Fund Secretariat will administer also the 1992 Fund. On 16 May 1998, a 1992 Fund Secretariat will be created, and it will thereafter administer both the 1971 Fund and the 1992 Fund. The staff of the 1971 Fund Secretariat will be transferred to the 1992 Fund Secretariat. The joint Secretariat of the IOPC Funds is at present composed of the Director and 17 other staff members.

3.1.2 At its 18th session, the Assembly authorised the Director to recruit a successor to the Finance Officer, Mr Sampson Nte, to work for some time with the present incumbent until his retirement. The Director appointed Mr Ranjit Pillai to succeed the present Finance Officer. Mr Pillai joined the Secretariat on 18 November 1996.

3.1.3 Mr Hideo Osuga, who held the post of Legal Officer since June 1993, left the Fund Secretariat on 31 May 1997. He was succeeded in this post by Mr Satoru Osanai.

3.1.4 The IOPC Funds use external consultants to provide legal or technical advice. In a number of cases the 1971 Fund and the P & I insurer involved have jointly established local claims offices to facilitate an efficient handling of the great numbers of claims submitted.

3.1.5 During the last twelve months the Fund Secretariat has continued to face a very heavy workload, which has put considerable pressure on staff members. The strong commitment of the staff to their work, as well as their knowledge and expertise, are a great asset to the IOPC Funds, and these factors are crucial to the efficient functioning of the Secretariat.

3.1.6 In the light of the changing nature of the work of the Secretariat, the need to administer two Funds, and the workload on staff members, the 1971 Fund Assembly instructed the Director, in October 1996, to undertake a review of the working methods within the Secretariat, possibly with the help of an external consultant, in order to obtain the most efficient and cost effective way of managing the IOPC Funds. This review is now being undertaken (cf document 71FUND/A.20/12). Pending the outcome of this review, the Director has postponed proposals to upgrade certain posts where he considers that the incumbent has taken on more responsibilities.

3.2 Accounts of the 1971 Fund

3.2.1 The expenditure for the joint administration of the 1971 Fund and 1992 Funds in 1996 was £1 147 086, compared with the budgetary appropriation of £1 435 930. Details of the accounts of the 1971 Fund for the financial year 1996 are given in the Financial Statements (document 71FUND/A.20/6, Annex IV).

3.2.2 The expenditure for the joint administration of the 1971 and 1992 Funds during the first six months of 1997 amounts to approximately £653 000. The budget appropriation for the whole of 1997 for both Organisations is £1 821 720. It is expected that there will be a budgetary surplus at the end of the year.

3.2.3 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 1971 Fund and the operation of the joint Secretariat.

3.3 Investment of funds

3.3.1 During 1996 and 1997, funds which were not required for the short-term operation of the 1971 Fund were placed on term deposits with several leading London banks and building societies. Apart from deposits placed overnight or for up to seven days fixed, the average rate of interest on the investments in 1996 was 5.9%.

3.3.2 The base rate in London, which stood at 5¼% at the time of the 19th session of the Assembly, was raised to 6% on 30 October 1996, to 6¼% on 6 May 1997, to 6½% on 6 June 1997, to 6¾% on 10 July 1997 and to 7% on 7 August 1997. It is estimated that the average rate of interest on the 1971 Fund's investments placed in 1997 will be approximately 6.7%.

3.3.3 Interest earned by the 1971 Fund during the first six months of 1997 amounted to some £3.4 million, with approximately another £4.6 million due during the remaining six months.

3.3.4 As at 30 September 1997, the 1971 Fund's investments totalled some £157 million. The reasons for the Fund's holding such a large amount are mainly that the settlement of claims arising out of the *Sea Prince* and *Sea Empress* incidents has proceeded much more slowly than expected, that it has been possible to make only very limited payments in respect of the *Haven* and *Aegean Sea* incidents due to on-going legal proceedings, and that significant contributions for the *Nakhodka* incident were received in September 1997.

3.3.5 Details of the investments from 1 July 1996 to 30 June 1997 are given in document 71FUND/A.20/4.

3.3.6 At its 17th session, the Assembly established an 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 71FUND/A.20/5.

4 Contributions

4.1 At its 2nd extraordinary session, held in June 1996 the Assembly introduced a system of deferred invoicing. Under this system the Assembly fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower amount should be invoiced for payment by 1 February in the following year, the remaining amount, or a part thereof, to be invoiced later in the year, if necessary.

4.2 At its 19th session, held in October 1996, the Assembly decided not to levy 1996 annual contributions to the General Fund. It was decided that £5 million should be credited to contributors following a decision to reduce the working capital of the 1971 Fund from £15 million to £10 million.

4.3 The Assembly also decided to levy 1996 annual contributions to three Major Claims Funds for a total amount of £85 million. The Assembly decided that £23 million should be due for payment by 1 February 1997 and that the balance should be deferred. In addition, the Assembly decided that reimbursements totalling £8.2 million should be made to the persons who paid contributions to two Major Claims Funds. It was decided that these reimbursements should be made on the date of payment of the deferred levy.

4.4 At its 3rd extraordinary session, held in April 1997, the Assembly decided to levy an additional £15 million to the *Nakhodka* Major Claims Fund as 1996 annual contributions for payment by 1 September 1997.

4.5 In accordance with the authority given to him by the Assembly at its 19th session, the Director decided to invoice a total of £31 million to two Major Claims Funds for payment by 1 September 1997, and to credit £8.2 million to contributors in respect of two other Major Claims Funds on that same date.

4.6 The Assembly's decisions, as well as the Director's action taken in accordance with the authority given to him by the Assembly, are summarised in the table below.

Fund	Total 1996 levy authorised by Assembly £	Amount levied for payment by 1 February 1997 £	Maximum deferred levy £	Amount levied for payment by 1 September 1997 £	Total amount actually levied £
<i>Keundong N°5</i>	5 000 000	0	5 000 000	0	0
<i>Sea Prince/Yeo Myung/Yuil N°1</i>	50 000 000	13 000 000	37 000 000	11 000 000	24 000 000
<i>Sea Empress</i>	30 000 000	10 000 000	20 000 000	20 000 000	30 000 000
Sub-total	85 000 000	23 000 000	62 000 000	31 000 000	
<i>Nakhodka</i>	15 000 000			15 000 000	15 000 000
Total levy	100 000 000	23 000 000		46 000 000	69 000 000
Fund	Total reimbursement authorised by Assembly £	Amount credited on 1 February 1997 £		Amount credited on 1 September 1997 £	Total amount actually credited £
General	5 000 000	5 000 000		0	5 000 000
<i>Taiko Maru</i>	3 500 000	0		3 500 000	3 500 000
<i>Toyotaka Maru</i>	4 700 000	0		4 700 000	4 700 000
Total reimbursement	13 200 000	5 000 000		8 200 000	13 200 000
Grand total	86 800 000	18 000 000		37 800 000	55 800 000

4.7 A report on the payment of 1996 annual contributions as at 10 October 1997 is given in document 71FUND/A.20/9. In respect of contributions levied for previous years, the situation must be regarded as satisfactory.

4.8 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, although there have been some recent improvements in the situation. On 31 March 1997, the date by which Member States should submit their reports of oil received in 1996 in accordance with the 1971 Fund's Internal Regulations, only 15 reports had been received by the Director. By 10 October 1997, 51 reports had been submitted. In addition, some States have still not submitted their reports on contributing oil receipts in previous years (see Annex V of document 71FUND/A.20/9 and document 71FUND/A.20/10). In his Report on the Financial Statements for 1996, the External Auditor again commented on the problem of the timely submission of reports on contributing oil (document 71FUND/A.20/6, Annex II, paragraph 11). It should be emphasised that it is of crucial importance for the operation of the 1971 Fund that these reports are actually submitted without delay. If the reports on contributing oil receipts are not submitted to the 1971 Fund, the system of levying contributions does not function in an equitable manner, since the Director is unable to issue invoices for the contributions in respect of the States concerned.

5 Overview of incidents involving the 1971 Fund

5.1 Since its establishment in October 1978, the 1971 Fund has, up to 10 October 1997, been involved in the settlement of claims arising out of some 87 oil pollution incidents. The total compensation and indemnification paid by the 1971 Fund to date is some £136 million.

5.2 Since the 19th session of the Assembly, nine incidents have occurred which have given or will give rise to claims against the 1971 Fund, namely the *Nakhodka*, *Tsubame Maru N°31*, *Daiwa Maru N°18* and *Diamond Grace* incidents which occurred in Japan, the *Nissos Amorgos* and *Plate Princess* incidents which took place in Venezuela, the *Jeong Jin N°101* and *Osung N°3* incidents which occurred in the Republic of Korea, and the *Katja* incident which took place in France. In addition, since that session of the Assembly, the 1971 Fund has been notified of a legal action in the *Irving Whale* incident, the tanker having sunk in Canada in 1970 and been refloated in 1996. Brief information on some of these incidents is set out in paragraphs 5.3–5.7 below.

5.3 On 2 January 1997 the Russian tanker *Nakhodka* broke up in heavy seas some 100 kilometres north-east of the Oki Islands in the Sea of Japan. The tanker broke into two sections, spilling some 6 200 tonnes of medium fuel oil. The stern section sank and lies at a depth of 2 500 metres with an estimated 10 000 tonnes of cargo on board. The upturned bow section, possibly containing 2 800 tonnes of cargo, drifted towards the coast, grounded on rocks close to the shore and released a substantial quantity of oil, causing heavy contamination of the adjacent shoreline. Several hundred tonnes of oil emulsion came ashore over a 1 000 kilometre stretch of coast. Major clean-up operations were completed by May 1997, but final clean-up is continuing in some areas. The pollution had considerable impact on the fishing and tourism industries of the affected area. A claims handling office in Japan was established jointly by the 1971 and 1992 Funds and the P & I Club involved. This office has so far received claims for £162 million. The total amount of the claims arising out of the *Nakhodka* incident thus exceeds the amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR (approximately £50 million). Since the 1992 Fund Convention applies in the *Nakhodka* case, the total amount of compensation available to claimants in Japan is 135 million SDR (approximately £112 million).

5.4 The *Nissos Amorgos* ran aground in the Maracaibo Channel in the Gulf of Venezuela on 28 February 1997, spilling an estimated 3 600 tonnes of crude oil. So far claims totalling £1.4 million have been approved, and further claims are being examined. Claims for significant amounts have been presented in legal proceedings.

5.5 The *Osung N°3* ran aground on the island of Tunggado in the Pusan area (Republic of Korea), on 3 April 1997 and sank to a depth of 70 metres. The vessel was carrying about 1 700 tonnes of heavy fuel oil. The clean-up at sea was terminated on 13 April 1997. Although the shore of small islands close to the grounding location were oiled, there were no reports of the mainland coast having been polluted. Oil which, on the basis of chemical analysis, the 1971 Fund's experts consider to have originated from the *Osung N°3*,

reached the sea adjacent to Tsushima Island in Japan on 7 April 1997. Claims for clean-up costs and fishery damage in the Republic of Korea and Japan are being examined. Operations to remove the oil from the sunken tanker, as well as the wreck itself, are being considered by the Korean authorities. If the total amount of the claims arising out of the *Osung N°3* incident exceeds the maximum available under the 1969 Civil Liability Convention and the 1971 Fund Convention, additional compensation under the 1992 Fund Convention will be available to claimants in Japan, since at the time of the incident Japan was a Member of the 1992 Fund while the Republic of Korea was not.

5.6 On 7 August 1997 the *Katja* came into contact with a quay while manoeuvring into a berth at the Port of Le Havre (France), causing a hole in a fuel tank through which oil escaped. Beaches both to the north and south of Le Havre as well as some 15 kilometres of quay and other structures within the port area were contaminated. Oil also entered a marina in the port area and many boats were polluted. It is expected that clean-up work will be completed during October 1997. So far, very few quantified claims have been received.

5.7 In September 1970, the *Irving Whale* sank in approximately 67 metres of water in the Gulf of St Lawrence (Canada). Heavy fuel oil was released following the sinking, and over the years small quantities of oil continued to seep from the sunken vessel. In 1991, it was determined that there were still over 3 000 tonnes of oil on board, and the Canadian Government decided to raise the *Irving Whale*. The refloating operation was carried out in 1996, and a small quantity of oil was released during the operation. In 1997, the Canadian Government took legal action against the owners and operators of the *Irving Whale*, claiming compensation for the cost of the refloating operation in 1996 (including clean-up), as well as for the preparations undertaken in 1995, and notified the 1971 Fund of this action. The Director is of the view that the 1971 Fund Convention does not apply in this case, as Canada was not a Member of the 1971 Fund when the *Irving Whale* sank.

5.8 In addition to the new incidents, there are, as at 10 October 1997, outstanding third party claims in respect of 14 incidents, namely the *Haven*, *Aegean Sea*, *Braer*, *Keumdong N°5*, *Iliad*, *Dae Woong*, *Sea Prince*, *Yeo Myung*, *Shinryu Maru N°8*, *Yuil N°1*, *Honam Sapphire*, *Sea Empress*, *Kriti Sea* and *N°1 Yung Jung* incidents, as well as claims following pollution from an unknown source in Morocco.

5.9 The various documents submitted to the 55th session of the Executive Committee give details of all the incidents which have taken place or in which the 1971 Fund has become involved since the 19th session of the Assembly, as well as of the settlement of claims arising out of earlier incidents. For details regarding the various incidents with which the 1971 Fund has dealt in previous years, reference is made to the 1996 Annual Report.

6 Looking ahead

6.1 Over the last 19 years, the membership of the 1971 Fund has increased steadily, reaching 74 in September 1997. This will probably be the height of the Organisation's membership. In coming years there will be a steady reduction in the number of 1971 Fund Member States. A third of the Organisation's Members will be leaving the 1971 Fund on 15 May 1998, as required under the 1992 Fund Protocol. In addition, States which wish to become part of the international system of liability and compensation are likely in the future to ratify the 1992 Protocols directly.

6.2 Since June 1996 the 1971 Fund Secretariat has administered the 1992 Fund as well as the 1971 Fund. From 16 May 1998, however, the 1971 Fund will cease to have its own Secretariat, but will be administered by the newly established Secretariat of the 1992 Fund.

6.3 The joint Secretariat will pursue its efforts to bring the pollution cases which the 1971 Fund is now handling to satisfactory conclusions as soon as possible. Furthermore, the Secretariat will endeavour to deal efficiently with claims arising from future pollution incidents affecting States which remain Members of the 1971 Fund.