



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
54th session  
Agenda item 3

71FUND/EXC.54/5/Add.1  
13 June 1997

Original: ENGLISH

## INCIDENTS INVOLVING THE 1971 FUND

### NAKHODKA

Note by the Director

#### **1 Interest on loans made by JMDPC to claimants**

1.1 As mentioned in paragraph 7.4 of document 71FUND/EXC.54/5, the Government of Japan has made funds available to the Japan Marine Disaster Prevention Centre (JMDPC), thereby enabling JMDPC to make loans to those who have participated in the clean-up operations, pending payments from the shipowner/UK Club and the 1971/1992 Funds. It is understood that such loans have been made.

1.2 In a letter to the IOPC Funds, the Maritime Safety Agency (MSA) has informed the Funds that JMDPC will have to pay interest on this loan to the Government and that JMDPC intends to include such interest in its claim against the Funds. MSA has expressed the view that the amount thus paid in interest by JMDPC would be admissible for compensation and has requested that the IOPC Funds should inform MSA of its position on this issue.

1.3 The question of whether interest on agreed claims should be paid by the 1971 Fund was discussed at the 5th Intersessional Working Group in 1980. Most participating delegations expressed the opinion that interest was in principle an acceptable item of a claim. Whilst there was a strong wish for a harmonised approach to the issue, the Working Group took the view that, if interest was admissible under national law, the 1971 Fund would be obliged to follow the applicable national law, although the rate and period of interest could be agreed between claimants and the Fund during negotiations. At its 4th session, the Assembly generally endorsed the results of the Working Group's discussions.

1.4 The policy set out in 1.3 above was reaffirmed by the Assembly at its 17th session (document 71FUND/A.17/35, paragraph 2.6.8), when the latter endorsed the report of the 7th Intersessional Working Group (document 71FUND/A.17/23, paragraph 7.2.4) which had, in the document which formed the basis of its deliberations, referred to the position taken at the 5th Intersessional Working Group (document FUND/WGR.7/3, paragraph 4.5).

1.5 The 1971 Fund's Japanese lawyer has informed the Director that under Japanese law a claimant is in principle entitled to interest on the amount of compensation from the date when he suffered the loss or damage. The Director has also been informed that JMDPC will have to pay interest to the Government on the loan at 0.625% per annum.

1.6 As JMDPC has not actually paid the claimants, it has not acquired their claims by subrogation and is therefore, in the Director's view, not a claimant vis-à-vis the IOPC Funds as regards the amounts of the loans. It should be recognised, however, that the loans are providing claimants with funds at an early stage. Since, under Japanese law, claimants are in principle entitled to interest on their established claims, the Director takes the view that JMDPC would be entitled to compensation for the amount paid by it in interest to the Japanese Government at 0.625% per annum on the amounts of the respective loans from the date when each amount was paid to the claimant in question until the date when the corresponding amount is paid by the 1971 Fund to the claimant for refunding to JMDPC.

## 2 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
  - (b) to decide whether the 1971 Fund should pay interest to JMDPC on the amounts loaned by JMDPC to claimants.
-