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Agenda item 16

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# INCIDENTS INVOLVING THE 1971 FUND

## SINGAPURA TIMUR

**Note by the Director**


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| ***Summary:*** | Following a collision with another tanker, the *Rowan*, the *Singapura Timur*, carrying some 1 500 tonnes of bitumen, sank in the Strait of Malacca off the coast of Malaysia, resulting in an escape of an unknown quantity of bunker fuel and bitumen cargo. Clean-up operations at sea were organised by the shipowner and the cargo owner. Subsequent underwater operations were conducted to remove the remaining bunkers from the wreck. A study by Malaysian experts has indicated that the cargo of bitumen does not pose a significant threat to marine and coastal resources. The Malaysian Department of Environment has decided not to pursue the issue of removal of the cargo of bitumen remaining in the wreck. All claims arising from this incident have been settled. The 1971 Fund's liabilities in respect of this incident are covered by insurance subject to a deductible of £221 283.<br><br>The 1971 Fund took legal action against the owner of the *Rowan* to prevent the right to recover amounts paid in compensation and costs in relation to this incident from becoming time barred. In July 2004, an out-of-court settlement was reached between the 1971 Fund and the *Rowan* interests resulting in a recovery of US$340 000. Since the Fund should in all events pay the deductible, the recovered amount was paid to the insurer. |
| ***Action to be taken:*** | Information to be noted. |


## 1 The incident

1.1 On 28 May 2001, the Panamanian chemical tanker *Singapura Timur* (1 369 GT), carrying some 1 550 tonnes of bitumen, collided with the unladen Bahamanian-registered tanker *Rowan* (24 731 GT) near Undan Island, in the Strait of Malacca, Malaysia. The collision caused several fractures to the shell plating of one of the *Singapura Timur*'s bunker fuel tanks. Damage to the forward and aft bulkheads of the tank is believed to have resulted in the ingress of cargo into the compartment and the flooding of the engine room. The vessel sank in some 47 metres of water later the same day.

1.2 A salvage company contracted by the *Singapura Timur*'s insurer, the Japan Ship Owners' Mutual Protection and Indemnity Association (Japan P&I Club), sealed all fractures and plugged the vents of the fuel oil tanks to prevent further escape of oil.

1.3 As regards the clean-up operations, reference is made to document 71FUND/A/ES.8/9.

1.4 Since bitumen is persistent oil, the *Singapura Timur* was actually carrying oil in bulk as cargo and the vessel therefore falls within the definition of 'ship' in Article I.1 of the 1969 Civil Liability Convention

## 2 Removal of the remaining bunker fuel from the wreck and study to determine the environmental risk posed by the bitumen cargo

2.1 The wreck of the *Singapura Timur* is lying at a depth of 47 metres in the middle of the northbound shipping lane of the traffic separation scheme in the Malacca Straits, some eight nautical miles from the nearest coast and close to sensitive coastal resources, including coral reefs, mangroves and mariculture facilities. In view of the temporary nature of the measures that were undertaken to prevent the escape of bunker fuel from the vessel, the Malaysian Department of Environment (DOE) considered that the remaining bunkers posed a threat to these resources. The DOE therefore decided to engage a contractor to remove the bunker fuel oil at the earliest opportunity. The 1971 Fund concurred with this decision by the DOE, and the Fund's expert in Singapore provided technical advice to the authorities during the planning of the bunker removal operation.

2.2 The DOE decided to undertake a study to ascertain whether the bitumen cargo remaining on board the wreck posed a threat to the environment, and if so, whether the cargo should be removed. Since this study required a detailed diving survey of the wreck and the collection of water and sediment samples, the DOE agreed with the 1971 Fund's suggestion of combining the field work associated with the study with the operation to remove the bunker fuel in order to reduce costs.

2.3 The operations to remove the bunker fuel, inspect the condition of the wreck and collect samples of water, sediment and bitumen were carried out from 20 October to 8 November 2002. Some 5 tonnes of heavy fuel oil was pumped from the No.1 port and starboard fuel tanks together with a quantity of oily water from the engine room. Dispersant chemical was added to these spaces after completion of the pumping operation. The DOE issued a completion certificate confirming that to the extent practicable all remaining bunkers had been removed from the wreck.

2.4 Based on the findings of the study, the 1971 Fund and the DOE concluded that the bitumen did not pose a threat to marine and coastal resources. For these reasons the Fund was of the view that the cargo of bitumen remaining in the wreck did not pose an environmental risk.

2.5 In July 2004, the DOE informed the Director that it had decided not to remove the cargo of bitumen remaining in the wreck.

## 3 Claims for compensation

3.1 The Japan P&I Club paid claims totalling US$150 000 (£94 000) in respect of clean-up and preventive measures.

3.2 It was agreed between the 1971 Fund and the Japan P&I Club that the limitation amount applicable to the ship under the 1969 Civil Liability Convention was 82 327 SDR which, on the basis of the exchange rate between SDR and the US dollar on the date of the incident (28 May 2001), was US$103 378 (£65 000). On the basis of this amount the Fund paid Japan P&I Club a total of US$47 000 being the amount the Club had paid in compensation above the shipowner's limit. The Fund also paid indemnification of US$25 000 to the Japan P&I Club in accordance with Article 5.1 of the 1971 Fund Convention.

3.3 The principal contractor involved in the operations to remove the bunker fuel, inspect the condition of the wreck and collect samples of water, sediment and bitumen for the purpose of the environmental risk assessment submitted a claim for US$1 130 000 in respect of the costs of this phase of the operation and for the costs of the analyses of the water, sediment and bitumen samples. This claim was settled at US$781 000.

3.4 The claim for the cost of the report on the environmental risk posed by the cargo of bitumen was settled for US$2 500.

3.5 There are no outstanding claims for compensation arising from this incident.

## 4 The 1971 Fund's insurance policy

4.1 The 1971 Fund's liabilities for incidents occurring between 25 October 2000 and 24 May 2002, the date when the 1971 Fund Convention ceased to be in force, is covered by insurance. The insurance policy covers the 1971 Fund's liabilities up to 60 million SDR (£51 million) per incident minus the amount actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention as well as all fees and costs including costs associated with recovery, subject to a deductible of 250 000 SDR for each incident. Under the policy, the insurer shall pay on behalf of the insured (the 1971 Fund) all compensation payments which the Fund determines are payable in respect of incidents covered by the insurance. The policy also stipulates that the Fund has the discretion to pay small claims and to seek indemnity in respect of such claims when the aggregate of such claims exceeds £100 000. The policy also provides that the insurer waives rights of subrogation unless the Fund decides to pursue recovery.

4.2 The Administrative Council decided at its October 2002 session that the relevant date for the conversion of this amount into Pounds Sterling should be the date of the incident (28 May 2001) (document 71FUND/AC.9/20 paragraph 15.14.4), giving a deductible of £221 283.

4.3 The total amount paid by the Fund in compensation and indemnification is US$846 500 (£538 600). The Fund also incurred costs totalling £147 775. The Fund's total payment arising from this incident including costs exceeded its deductible of £221 283 by some £465 000. The insurer has reimbursed the Fund for this excess amount.

4.4 The Fund will have to pay some additional minor legal fees which will be reimbursed by the insurer.

## 5 Recourse action

5.1 Any action by the 1971 Fund or the Fund's insurer against the *Rowan*'s interests to recover amounts paid in compensation would, as regards the right of limitation, be governed by the conventions dealing with this matter in general, namely the 1957 Convention relating to the Limitation of the Liability of Owners of Sea-going Ships or the 1976 Convention on Limitation of Liability for Maritime Claims. The limitation amount applicable to the *Rowan* under the 1976 Convention is estimated at £3.7 million whereas the limit under the 1957 Convention is estimated at £768 000. The test for breaking the shipowner's right to limitation is much stricter in the 1976 Convention than in the 1957 Convention.

5.2 The total costs incurred by the *Singapura Timur*'s interests (Japan P&I Club and the hull insurers) are in the region of US$4.8 million (£3 million), which is less than the limitation amount applicable to the *Rowan* under the 1976 Convention. In November 2003, the Japan P&I Club informed the Director that the *Singapura Timur* interests had reached an out-of-court settlement with the *Rowan* interests. The Fund has not been informed of the settlement amount.

5.3 The information available on the cause of the incident, ie the collision, gave no indication of facts which would make it possible to deprive the owner of the *Rowan* his right to limitation, neither under the 1957 Convention nor under the 1976 Convention.

5.4 Documentary evidence suggested that the owner of the *Rowan* resided in Belgium at the time of the incident. Malaysia is a party to the 1957 Convention, whereas Japan and Belgium are parties to the 1976 Convention. In order to prevent a recovery claim against the *Rowan*'s interests from becoming time barred, the 1971 Fund took legal action against the shipowner in Malaysia and Belgium. As mentioned above, all costs incurred in relation to recourse actions are payable by the Fund's insurer under the insurance policy. If a recourse action had been pursued, it would have been an action on behalf of the 1971 Fund only as regards the deductible and on behalf of the insurer as regards the more substantial excess amount.

5.5 In order to avoid a protracted litigation and in the absence of realistic prospects to breach the right of limitation of the owner of the *Rowan* and in the interests of making progress towards the winding up of the 1971 Fund, the Fund in co-operation with its insurer held discussions with the *Rowan* interests for the purpose of settling the issue of recovery out-of-court, and in July 2004, an out-of-court settlement was reached. Under the settlement agreement, the *Rowan* interests paid US$340 000 (£185 000) in settlement of the recovery claim. Under the insurance policy, the insurer acquired by subrogation the rights against the Rowan interests. The insurer was therefore entitled to any amount recovered up to the total amount of his payments (£465 000), and the 1971 Fund would only be entitled to retain a recovery in excess of that amount, if any. Since there was no such excess, the recovered amount was transferred to the insurer.

5.6 As a result of the out-of-court settlement, all legal actions commenced by the 1971 Fund against the *Rowan* interests in Malaysia and Belgium were terminated in August 2004.

## 6 Action to be taken by the Administrative Council

The Administrative Council is invited to take note of the information contained in this document