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COMPENSATION
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INCREASE OF THE WORKING CAPITAL

Note by the Director

Introduction

1 Under Financial Regulation 5.1(a) and (c), the IOPC Fund shall have a General Fund which shall be used:

- (a) for the satisfaction of claims arising from smaller incidents, ie incidents where the aggregate amount to be paid by the IOPC Fund does not exceed 15 million (gold) francs (1 million SDR);
- (b) for the payment of the first 15 million (gold) francs in respect of larger incidents;
- (c) to meet the administrative costs and expenses of the IOPC Fund;
- (d) to make provisional payments pursuant to Internal Regulation 8.6; and
- (e) to make loans to a major claims fund for the satisfaction of claims to the extent that sufficient money is not available in that major claims fund.

2 The General Fund shall be maintained at such a level as the Assembly may decide from time to time (Financial Regulation 5.1(b)).

3 Separate major claims funds shall be established in respect of each larger incident, ie each incident where the aggregate amount of the payments by the IOPC Fund exceeds 15 million (gold) francs. Such a major claims fund shall be used for the payment of claims arising from the relevant incident, provided that the first 15 million (gold) francs in respect of each incident are to be paid from the General Fund (Financial Regulation 5.2(a) and (d)).

4 In 1979, at its 2nd session, the Assembly decided that the IOPC Fund should maintain a working capital of £2 million. The working capital should include the initial contributions and annual contributions raised to meet claims in respect of smaller incidents, and it would be available to meet such claims and the necessary administrative expenses of the IOPC Fund. If the working capital were to fall below an amount reasonably required to meet the administrative expenses and anticipated claims, annual contributions should be raised to restore the working capital to the level of £2 million (document FUND/A.2/16/1, paragraph 9).

5 It should be noted that during the period 1984 – 1988, there was available, in addition to the working capital of £2 million, an amount of £3–4 million in the TANIO Major Claims Fund. The Director was able to use all the money available in the General Fund for payments of accepted claims with the knowledge that the money in the TANIO Major Claims Fund could be used for the payment of further claims in respect of incidents other than the TANIO, if the need were to arise. The balance on the TANIO Major Claims Fund was distributed to the contributors on 1 February 1989.

6 At its 11th session, in October 1988, the Assembly decided to increase the working capital from £2 million to £4 million (document FUND/A.11/20, paragraph 14). This increase, which came into effect on 1 February 1989, compensated for the loss of the availability of the balance on the TANIO Major Claims Fund.

7 In view of the increased membership and the experience of recent incidents, the Director feels that it is appropriate to submit for consideration by the Assembly the question as to whether the working capital should be increased further.

Director's Authority to Settle Claims

8 Under Internal Regulation 8.4.1, the Director may make final settlement of any claim for compensation without the prior approval of the Executive Committee, if he estimates that the total cost to the IOPC Fund of satisfying all such claims arising out of the relevant incident is not likely to exceed 25 million (gold) francs (1.67 million SDR), which corresponds to approximately £1.4 million. The same limit applies in respect of the Director's authority to settle claims for indemnification of the shipowner (Internal Regulation 9.5). The Executive Committee may authorise the Director to settle claims beyond this limit in respect of a particular incident (Internal Regulations 8.4.2 and 9.6, respectively). The Director has submitted a document in which he invites the Assembly to consider whether the Internal Regulations governing his authority to make final settlements should be amended (document FUND/A.14/8).

Experience Regarding the Payment of Claims

9 Since its establishment, it has been the policy of the IOPC Fund that victims of oil pollution incidents should be compensated as soon as possible. This has been the policy underlying the decisions of the Assembly and the Executive Committee in respect of claim settlements, and it has guided the Director in his negotiations with claimants. The IOPC Fund has also gained a reputation for the rapid payment of claims. In respect of minor and medium-sized incidents, payments are normally made within a short period of time, provided that claims are submitted rapidly and that they are accompanied by sufficient supporting documentation. However, rapid payments can only be guaranteed if the IOPC Fund's working capital is maintained at an appropriate level.

10 As set out in more detail in document FUND/A.14/8, there have been two cases in recent years (the VOLGONEFT 263 and VISTABELLA incidents) in which there was no P & I insurer who could make payments rapidly to individual claimants and small businesses, such as fishermen, boat owners and hoteliers. In another recent case (the AKARI incident), the P & I insurer maintained that the insurance did not cover damage arising out of this incident. In such cases, it is imperative that the IOPC Fund is in a position to act promptly in order to mitigate undue financial hardship to the victims. The rapid payment of compensation is particularly important in respect of individuals and small businesses, and generally in respect of victims in developing countries.

11 At its 26th and 27th sessions, in March and June 1991 respectively, the Executive Committee authorised the Director to approve certain claims in respect of the RIO ORINOCO incident, and on the basis of this authority the Director will soon make a payment of £200 000. The Canadian Government

has submitted a claim for Can\$6 864 996 (£3.7 million), and the Director hopes to be able to submit this claim to the Executive Committee at its 28th session for consideration and approval. As the RIO ORINOCO incident occurred in October 1990, shortly after the 13th session of the Assembly, this incident was not taken into account for the assessment of the 1990 annual contributions. If the Executive Committee were to approve the Canadian Government's claim (or a major part of it), the IOPC Fund should endeavour to pay a significant amount to the Government as soon as possible after the Committee meeting in October 1991. This payment may use a considerable part of the working capital.

12 The total assets invested by the IOPC Fund in recent years have usually been in the region of £6 million. It has been possible, therefore, to spread the maturity dates of the investments over the year, thus ensuring that amounts of £500 000 to £1 million would always be available at short notice. This has considerably facilitated the settlement negotiations with claimants and the rapid payment of accepted claims.

Assessment of Contributions

13 It is obvious that there is considerable uncertainty in the estimates that form the basis of the Assembly's decision to levy annual contributions. This is partly due to the comparatively long time period involved. It has been the policy of the Director to include in his estimates only those incidents in respect of which the IOPC Fund's payments can be assessed with a reasonable degree of accuracy. These estimates are normally made in July or August, and additional estimates are made immediately before the session of the Assembly. The decision to levy contributions is usually taken by the Assembly in October, say in October 1991, and the contributions are then due by 1 February 1992. The contributions decided by the Assembly the following year (ie in October 1992) are not due until 1 February 1993, ie more than 15 months after the decision on the 1991 contributions was taken.

14 It would be possible to keep the working capital at the present low level if the Director's estimates included figures based on a pessimistic evaluation of the amounts to be paid by the IOPC Fund in respect of incidents where there is a large degree of uncertainty as to the level at which the claims will finally be established. However, this would be at variance with the method of assessment applied so far, and the Director is not in favour of a change in this direction. As an illustration of this point, reference is made to the Director's estimates in document FUND/A.14/13 in respect of the PATMOS, VOLGONEFT 263, VISTABELLA and AGIP ABRUZZO incidents (paragraphs 3.1, 3.2, 3.4 and 3.5.1).

Director's Proposal

15 When the Assembly fixed the working capital at £2 million, the IOPC Fund had 15 Member States. In October 1988, when the working capital was increased to £4 million, there were 40 Member States. In October 1991, there will be 45 Member States, and it is expected that a number of other States will join the IOPC Fund in the near future. The larger the number of Member States, the greater the risk that the IOPC Fund will be called upon to pay compensation for oil pollution incidents.

16 The Director considers that the working capital should always be kept at a level which is sufficiently high to enable the IOPC Fund to make rapid payments of compensation and indemnification in respect of accepted claims. The existing level of £4 million may be insufficient if the Director wishes to make rapid settlements in respect of several incidents where the aggregate amount of compensation to be paid by the IOPC Fund is near the present limit of his authority, and if, in addition, the Assembly were to authorise him to settle claims in excess of the limit laid down in the Internal Regulations in respect of one or more incidents. The Director is of the opinion that the working capital should be kept at a level which would enable the IOPC Fund to make payments rapidly up to approximately

£1 million each in respect of at least five incidents which were not taken into account when annual contributions were assessed by the Assembly the previous year (either because the incident had not yet occurred or, in respect of incidents that had already occurred, because it was not yet possible to make any accurate assessment of the amount to be paid by the IOPC Fund). The IOPC Fund should also be able to make payments of £2-3 million in respect of one incident which was not taken into account for the purpose of the Assembly's assessment of contributions. Finally, the working capital should allow the IOPC Fund to make payments in respect of some new small incidents and some payments of indemnification to shipowners.

17 The working capital may be used for loans to a major claims fund for the satisfaction of claims to the extent that sufficient money is not available in that major claims fund. In this respect, reference is made to document FUND/A.14/13 on the assessment of contributions in respect of the PATMOS, VOLGONEFT 263, RIO ORINOCO, VISTABELLA and AGIP ABRUZZO incidents (paragraphs 3.1, 3.2, 3.3.2, 3.4 and 3.5.1).

18 It should be noted that the Executive Committee may hold meetings early in the year, as was the case in March and June 1991, and either approve claims for significant amounts or authorise the Director to do so. The IOPC Fund should hold sufficient liquid funds to enable it to pay such claims without having to wait for the receipts of contributions in February of the following year.

19 One alternative solution would be for the IOPC Fund to rely on the possibility of taking bank loans. Internal Regulation 10.1 deals with the situation where the annual contributions determined by the Assembly do not in fact provide sufficient and timely funds for payments to be made for the satisfaction of claims, provisional payments or other expenses incurred in the operation of the IOPC Fund. In such an event, the Director may make arrangements to obtain short-term credit facilities or loans to meet the cash-flow requirements of the IOPC Fund. However, bank loans are comparatively expensive. In addition, in the view of the Director, it would not be appropriate for the IOPC Fund to rely on the possibility of raising money by way of bank loans. The Director considers, therefore, that the working capital should be sufficiently large so that bank loans are not required for the rapid payment of accepted claims, at least not in normal circumstances.

20 As mentioned in paragraph 12 above, in recent years the total assets of the IOPC Fund which could have been used for payments have usually been in the region of £6 million. The Director considers that a working capital of at least £10 million would be desirable. However, he acknowledges the importance of limiting the financial burden on contributors and is of the opinion that it would be possible to operate the IOPC Fund in a satisfactory manner with a working capital of £8 million. For this reason, the Director proposes that the working capital of the IOPC Fund be increased from £4 million to £8 million.

21 If experience were to show that, as a result of growing membership or other factors, a working capital of £8 million (or such other amount as the Assembly may determine) was insufficient, the Director would bring the matter to the attention of the Assembly.

Financial Consequences for Contributors of the Proposed Increase of the Working Capital

22 Any increase of the working capital decided at the 14th session of the Assembly would have to be financed by a levy of 1991 annual contributions to the General Fund (payable by 1 February 1992) beyond the level which would normally be assessed firstly for the restoration of the working capital to its present level of £4 million, secondly for the payment in 1992 of such claims arising out of incidents for which a reasonably accurate estimate can be made at the time of the Assembly and thirdly for the administrative expenses for that year. This would lead to an increased financial burden

on contributors. However, the additional amounts involved would not be unduly high. An increase of the working capital from £4 million to £8 million would result in an extra contribution of approximately £2 220 for a contributor who received 500 000 tonnes of contributing oil in 1990 and £4 440 for a contributor who received one million tonnes.

23 It should be noted that an increase of the working capital would result in an increase in the yield in interest on the General Fund. The interest from the investments of the IOPC Fund is taken into consideration when the annual contributions are assessed (cf document FUND/A.14/13, paragraphs 2.1.2 and 2.4.2). A larger working capital and the consequent increase in the return on the IOPC Fund's investments would lead to a corresponding reduction in the need for annual contributions to the General Fund in the future.

Action to be Taken by the Assembly

24 The Assembly is invited to consider the Director's proposal that the working capital of the IOPC Fund be increased from £4 million to £8 million.
