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OIL POLLUTION
COMPENSATION
FUND

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REVIEW OF THE WORKING CAPITAL

Note by the Director

Introduction

- 1 The IOPC Fund maintains a working capital, the level of which is decided by the Assembly.
- 2 At its 16th session, the Assembly decided to increase the IOPC Fund's working capital from £6 million to £11 million. It was also decided that the level of the working capital should be kept under review (document FUND/A.16/32, paragraph 16.3).

Financial Regulations

- 3 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.

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

5 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 (approximately £940 000). 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)).

6 The Financial Regulations do not mention the notion of working capital, nor does the Fund Convention.

Previous Decisions Regarding the Working Capital

7 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).

8 The working capital was increased to £4 million by the Assembly at its 11th session (October 1988), to £6 million at its 14th session (October 1991) and to £11 million at its 16th session (October 1993).

Discussions at the Assembly's 16th Session

9 At its 16th session, the Assembly considered a proposal by the Director to increase the working capital from £6 million to £20 million, for the reasons set out in document FUND/A.16/13.

10 It was generally agreed that, in view of the experience gained from recent incidents, it was necessary to increase the IOPC Fund's working capital. All delegations emphasised, however, the importance of not placing too heavy a burden on contributors, especially in view of the fact that significant levies had to be made to pay compensation in connection with the AEGEAN SEA, BRAER, TAIKO MARU and KEUMDONG N°5 incidents. For this reason, the Assembly decided to increase the working capital to £11 million.

IOPC Fund's Policy Regarding the Payment of Claims

11 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 37.5 million (gold) francs (2.5 million SDR), which corresponds to approximately £2.4 million. The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of 10 million (gold) francs (£626 000) in respect of each incident. The Director's authority to settle claims for indemnification of the shipowner is subject to a limit of 25 million (gold) francs (£1.6 million) (Internal Regulation 9.5). The Executive Committee may authorise the Director to settle claims beyond these limits in respect of a particular incident (Internal Regulations 8.4.2 and 9.6, respectively).

12 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 prompt payment of claims. In respect of small and medium-sized incidents, payments are normally made within a short period of time, provided that claims are submitted promptly and that they are accompanied by sufficient supporting documentation. Claims arising out of major incidents have also been paid promptly in many cases.

13 When the level of the working capital was considered at its 14th session, the Assembly agreed with the Director that the IOPC Fund should have a working capital at a sufficient level so as to enable it to make prompt payments of compensation to victims of oil pollution. It also agreed with the Director that it would not be appropriate for the IOPC Fund to rely on the possibility of raising money by way of bank loans, at least not in normal circumstances (document FUND/A.14/23, paragraph 15.2).

Director's Analysis

14 Four States have joined the IOPC Fund since the 16th session of the Assembly, bringing the number of Member States to 60. 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.

15 There is a considerable element of uncertainty in the estimates that form the basis of the Assembly's decision to levy annual contributions. This is due partly to the comparatively long period of time involved. It has been the policy of the Director to include in his estimates which form the basis of the Assembly's decision 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 are reviewed immediately before the session of the Assembly. The decision to levy contributions is usually taken by the Assembly in October, say in October 1994, and the contributions are then due by 1 February 1995. No further contributions will be payable until the 1995 contributions, to be fixed by the Assembly in October 1995, are due on 1 February 1996.

16 It would be possible to keep the working capital at a comparatively low level if the Director's estimates for the assessment of contributions included figures based on the worst possible outcome from the IOPC Fund's point of view 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. In any event, such an approach would not take into account incidents which take place after the Assembly's decision.

17 In the Director's view, the prompt payment of compensation is of crucial importance. The Executive Committee may hold meetings early in the year (as was the case in March and June 1991, in May 1992, in March and June 1993 and in February and May 1994) and either approve claims for significant amounts or authorise the Director to do so. The IOPC Fund should, in the Director's view, hold sufficient liquid funds to enable it to pay such claims without having to wait for the payment of contributions in February the following year. In addition, the Director considers that the working capital should be sufficiently large so that bank loans are not required for the prompt payment of accepted claims, at least not in normal circumstances.

18 In recent years there have been several incidents involving the IOPC Fund in which there was no P & I insurer who could make payments promptly to individual claimants and small businesses,

such as fishermen, boat owners and hoteliers. 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. This is particularly important in respect of individuals and small businesses, and generally in respect of victims in developing countries.

19 The IOPC Fund is at present holding a considerable amount in the HAVEN Major Claims Fund. As was done in 1993, it would be possible to take loans from the HAVEN Major Claims Fund for the satisfaction of claims arising out of other incidents, to the extent that the assets in this Major Claims Fund would not, for the time being, be used for the payment of claims arising out of the HAVEN incident.

Director's Proposal

20 In the light of experience gained from the IOPC Fund's involvement in the AEGEAN SEA, BRAER, TAIKO MARU and KEUMDONG N°5 incidents, the IOPC Fund would need a working capital larger than £11 million in order to ensure prompt payments. To be able to deal speedily with claims arising out of major incidents which occur shortly after the session of the Assembly held in September or October of a given year, the IOPC Fund would need a working capital in the region of £30 million to £40 million. In document FUND/A.17/18 concerning the assessment of 1994 annual contributions the Director has not proposed any levy of annual contributions to the VISTABELLA and AGIP ABRUZZO Major Claims Fund, nor any further levy to the BRAER Major Claims Fund. He has also been conservative in his proposal for the levy to the AEGEAN SEA and KEUMDONG N°5 Major Claims Funds. This approach is possible only if the IOPC Fund has a substantial working capital. The Director is aware, nevertheless, of the importance of limiting the financial burden on contributors, and considers it inappropriate to increase the working capital to that level at present. The working capital should therefore, in his view, be increased in stages. For this reason, he proposes that at this stage the working capital be increased to £20 million.

21 The Assembly may wish to instruct the Director to submit to the Assembly for renewed consideration at its 18th session the question of the level of working capital.

Action to be Taken by the Assembly

22 The Assembly is invited to consider the Director's proposal that the working capital of the IOPC Fund should be increased to £20 million.
