INTERNATIONAL
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COMPENSATION
FUND

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ANY OTHER BUSINESS

INSURANCE OF CONTRIBUTIONS

Note by the Director

Introduction

1 The question has arisen whether the IOPC Fund should consider taking out insurance to cover the levying of contributions by the IOPC Fund.

Contribution System

2 The IOPC Fund is financed by contributions levied on any person who has received crude oil and heavy fuel oil (contributing oil) after sea transport. The contributions to the IOPC Fund are based on the quantities of contributing oil carried by sea which are received in ports or terminal installations in the territory of the State concerned.

3 In accordance with Article 12.1(i) of the Fund Convention, contributions are levied to cover:

(a) costs and expenses of the administration of the Fund in the relevant year and any deficit from operations in preceding years;

(b) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4 or 5, including repayment on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident does not exceed 15 million francs;

(c) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4 or 5, including repayments on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident is in excess of 15 million francs.

4 The levy of annual contributions is decided each year by the Assembly at its ordinary session, which is normally held in October. Each contributor will pay a specified amount per tonne of contributing oil received. Immediately after the Assembly's decision, the IOPC Fund Secretariat issues an invoice to each contributor. Unless otherwise decided by the Assembly, annual contributions are due on 1 February of the year following that in which the Assembly decides to levy contributions.

5 The level of annual contributions depends on the payments to be made by the IOPC Fund and has in the past varied greatly from one year to another, as can be seen in the table below. It is likely that there will be variations also in the future. The table also shows the amounts that would have been paid by a person who received a total quantity of one million tonnes of contributing oil in the relevant years (extreme right hand column).

Year	*Total Contribution*	*Contribution per Tonne*	*Contribution for 1 million Tonnes*
	£	£	£
1979	750 000	0.0008455	845
1980	10 000 000	0.0126100	12 610
1981	500 000	0.0005690	569
1982	860 000	0.0010357	1 036
1983	24 106 000	0.0260786	26 079
1984	0	0.0000000	0
1985	1 500 000	0.0018306	1 831
1986	1 800 000	0.0023360	2 336
1987	1 200 000	0.0015347	1 535
1988	2 990 000	0.0037599	3 760
1989	4 800 000	0.0060256	6 026
1990	500 000	0.0005563	556
1991	26 700 000	0.0287013	28 701
1992	10 950 000	0.0116210	11 621
1993	78 000 000	0.0785397	78 540

6 The great variation in the level of contributions has understandably caused difficulties for contributors in terms of their budgetary planning. Furthermore, since the Assembly's decision to levy contributions is not taken until October each year, contributors have only a few months' notice of the amount which they are to pay the following February.

Consideration of the Problem in 1981

7 In 1981, in the light of the relatively high annual contributions levied in the previous year, several contributors contacted insurance brokers to enquire about the possibility of insuring their liability for contributions to the IOPC Fund. The brokers, in turn, approached the Director to collect the necessary information for their assessment of the situation. The Director held several meetings with different brokers on this subject, which included the question of whether there was a possibility of the IOPC Fund itself taking out insurance cover with respect to the Fund's liability (document FUND/A.4/3, paragraph 12). Enquiries were made by the brokers in question, but it appeared for various reasons that the cost of the insurance which the underwriting market could provide at that time was extremely high.

8 The matter was submitted by the Director to the Assembly for consideration at its 4th session in 1981. It was considered by the majority of - but not all - delegations that the IOPC Fund should not seek insurance for its liabilities under the Fund Convention, and that it should be left to individual contributors to decide whether they wished to insure their obligations towards the IOPC Fund. No objections were raised to the Director's proposal that the results of the discussions held between the Director and the insurance brokers be made known to contributors on a purely informative basis (document FUND/A.4/16, paragraph 5(c)).

Consideration in 1994

9 In July 1994, the Director was approached by one of the insurance brokers who in 1981 had studied the question of obtaining cover for the IOPC Fund's and contributors' risks. This broker had reviewed the possibility of providing insurance cover for the IOPC Fund vis-à-vis major claims funds. The broker subsequently presented to the Director various options in respect of insurance cover for the IOPC Fund, rather than for individual contributors, since this, in the broker's view, would give lower premiums. The cover would relate to levies to major claims funds in respect of claims arising out of incidents occurring during the period of the insurance, probably with a maximum amount per year. A brief summary of these options is set out in paragraphs 10 - 12 below.

Conventional Market

10 The conventional insurance market would be able to provide cover for the IOPC Fund on a twelve-month basis. At the end of each twelve-month period, the premium charged would be re-assessed. Thus following a year such as 1993, in which the contributions levied increased seven-fold over the previous year, the premium which the IOPC Fund was charged would increase substantially. The premium, which would have to be passed on to contributors, could therefore vary considerably from one year to another. Also, the insurers would have the option to review their continued involvement.

Alternative Market

11 The so-called alternative market prefers to offer long-term contracts. The insurer would introduce a funding arrangement whereby the IOPC Fund would pay back losses over a number of years. This solution is basically a banking arrangement whereby the insurer would pay the claims and the IOPC Fund would have to reimburse the insurer over an agreed period. The advantage of the alternative market approach is that large yearly variations in premiums would be avoided. The alternative market approach would be similar in some respects to a loan being taken by the IOPC Fund.

Hybrid Market

12 The international insurance market would be able to offer a hybrid product combining conventional risk transfer with an element of funding. This would consist of, say, a three-year agreement with a pre-agreed premium, an aggregate limit of say £100 million over a three-year period and one mandatory reinstatement of one year at a pre-agreed premium with a limit of say £50 million. At the end of the three-year period, a proportion of any balance (ie any difference between the premiums paid and the payments made by the insurer during the period), would be repaid to the IOPC Fund or used for the purchase of cover for subsequent years. The advantages of this approach would be a long-term agreement, pre-agreed maximum premiums irrespective of the level of contributions, and a pre-agreed repayment to the IOPC Fund in the event of a satisfactory premium/claims ratio. This solution would reduce contributors' budgetary difficulties by evening out their payments to the IOPC Fund.

<u>Director's Analysis</u>

13 A fundamental question is whether there is a legal basis in the Fund Convention on which premiums paid by the IOPC Fund for insurance of the types referred to in paragraphs 9–12 above could be passed on to contributors. This appears to be doubtful. Insurance premiums in respect of major claims funds would, in the Director's view, fall outside the scope of Article 12.1(i) (cf paragraph 3 above), in that they would be neither "costs and expenses of the administration of the Fund" nor payments "for the satisfaction of claims".

14 It appears that it would be difficult to find a formula for passing on such premiums to contributors, since the contributors to each major claims fund differ. Furthermore, if no contributions were levied to any major claims fund in a given year, it would seem that contributors to the general fund might have to bear the burden of the major claims fund insurance for that year.

15 The alternative market approach would be similar in some respects to a loan being taken by the IOPC Fund. The question of loans is governed by Internal Regulation 10.1, which reads:

> Where annual contributions determined by the Assembly do not in fact produce sufficient and timely funds for the payments to be made by the Fund for the satisfaction of claims, provisional payments or other expenses incurred in the operation of the Fund, the Director may make arrangements for obtaining short-term credit facilities or loans meeting the cash-flow requirements of the Fund. If the Director is unable to arrange the required credit facilities or loans on terms which he feels are reasonable, he shall refer the matter to the Assembly.

It would appear that the funding arrangements offered by the alternative markets would be long-term in order to be effective, and would therefore fall outside the scope of Internal Regulation 10.1 as worded at present.

16 If the Assembly were to take the view that there is a legal basis for passing insurance cover on to contributors, the question is whether it would be appropriate to introduce such a system. Should the Assembly find that an insurance system could be of interest, the Director would study the various options in detail.

<u>Action to be Taken by the Assembly</u>

17 The Assembly is invited to take note of the information contained in this document and to give the Director such instructions in respect of this issue as it considers appropriate.