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REPORT OF THE DIRECTOR

1 Introduction

1.1 This Report contains a review of some of the main issues relating to the activities of the IOPC Fund since the 16th session of the Assembly. It also deals with the finances of the IOPC Fund for the first eight months of 1994. Since at the end of 1994 the present Director will have held office for ten years, he has thought it appropriate to include in the Report some comments on the developments during his terms of office.

1.2 The IOPC Fund's Annual Report for the calendar year 1993 was published in February 1994. This Report, in a new format, attracted great interest from all those dealing with the IOPC Fund as well as from persons and bodies interested in environmental matters in general.

1.3 Since the 16th session of the Assembly, there have been three new incidents involving the IOPC Fund. Several incidents which occurred in previous years still require a considerable amount of work by the IOPC Fund Secretariat.

2 Membership

2.1 At the time of the entry into force of the Fund Convention in October 1978, the IOPC Fund had 14 Member States. By the time of the 16th session of the Assembly in October 1993, 56 States were Members of the IOPC Fund.

2.2 Since the 16th session of the Assembly, four States – Albania, Barbados, Mexico and Sierra Leone – have become Parties to the Fund Convention and thus Members of the IOPC Fund. The Fund Convention entered into force for Sierra Leone on 11 November 1993, for Albania on 5 July 1994, for Barbados on 4 August 1994 and for Mexico on 11 August 1994. As a result of this development, the IOPC Fund will have 60 Member States at the time of the 17th session of the Assembly.

2.3 In addition, Saint Kitts and Nevis deposited its instrument of accession to the Fund Convention on 14 September 1994, and the Convention will enter into force for that State on 13 December 1994, bringing the number of Member States to 61.

2.4 On the basis of the information available to the IOPC Fund Secretariat, it is expected that several States will join the IOPC Fund in the near future. It is anticipated that Australia, Belgium, Chile, Malaysia and Mozambique will soon deposit their instruments of accession to the Fund Convention. Legislation implementing the Fund Convention is in an advanced stage in Colombia, New Zealand and Saudi Arabia. Many other States, eg Argentina, Bahrain, Brazil, China, Colombia, Costa Rica, Democratic People's Republic of Korea, Ecuador, Egypt, Islamic Republic of Iran, Jamaica, Kazakhstan, Latvia, Lithuania, Marshall Islands, Panama, Pakistan, Saint Lucia, Senegal, Singapore and Trinidad and Tobago, are also examining the question of accession to the Fund Convention.

3 Contacts with Governments

3.1 A major reason for the smooth functioning of the system of compensation established by the Civil Liability Convention and the Fund Convention is the strong support that Governments of Member States have given the IOPC Fund and its Secretariat over the years.

3.2 In order to establish and maintain personal contacts between the IOPC Fund Secretariat and officials within the national administrations dealing with Fund matters, the Director visits some Member States every year. Since the 16th session of the Assembly, the Director has visited five Member States – France, Italy, Malta, Spain and Sweden – for discussions with government officials on the Fund Convention and the operations of the IOPC Fund.

3.3 The IOPC Fund Secretariat has continued its efforts to increase the number of Member States. One important way of promoting membership is to convey information on the functioning of the compensation system created by the Civil Liability Convention and the Fund Convention. For this purpose, the Director went to Belgium, Ecuador and Israel for discussions with government officials and interested circles in these States on the Conventions and the operations of the IOPC Fund, and he will visit Australia, Malaysia and Singapore in early October 1994 for that purpose.

3.4 The Director and other members of the IOPC Fund Secretariat also had discussions with government representatives of both Member and non-Member States in connection with meetings within IMO, in particular during the sessions of the IMO Assembly in October/November 1993 and during the sessions of the IMO Council in October 1993 and June 1994.

3.5 The IOPC Fund Secretariat has, on request, assisted some non-Member States in the elaboration of the national legislation necessary for the implementation of the Civil Liability Convention and the Fund Convention.

4 Relationship with International Organisations and Interested Circles

4.1 The support given by IMO to the IOPC Fund is of great importance in a number of ways. The Director would like to express his profound gratitude to the Secretary-General of IMO and his staff for the assistance they have given the IOPC Fund during the last 12 months.

4.2 The operation of the IOPC Fund depends on close co-operation with a number of international non-governmental organisations and other non-governmental bodies. In the great majority of incidents involving the IOPC Fund, the monitoring of the clean-up operations and the claims assessment is made in close co-operation between the Fund and the P & I Club concerned. The excellent working relationship with the International Group of P & I Clubs is therefore of great value. The technical assistance required by the IOPC Fund with regard to oil pollution incidents is usually given by the International Tanker Owners Pollution Federation Limited (ITOPF). There is also close co-operation between the IOPC Fund and oil industry interests represented by the Oil Companies International Marine Forum (OCIMF) and Cristal Limited.

5 Conferences and Seminars

5.1 Since the 16th session of the Assembly, the Director, the Legal Officer and the Claims Officer have given a number of lectures at seminars, conferences and workshops on the activities of the IOPC Fund.

5.2 The Director made presentations on the system of compensation established by the Civil Liability Convention and the Fund Convention to Government representatives, government agencies and interested circles in Guayaquil (Ecuador) and to a similar audience in Haifa (Israel). In addition, the Director gave a lecture to students at the World Maritime University in Malmö (Sweden) on liability and compensation for oil pollution damage, and a lecture on the same subject to students at the IMO International Maritime Law Institute in Malta.

6 Future Development of the Intergovernmental Oil Pollution Liability and Compensation System

6.1 A Diplomatic Conference held in London in November 1992 under the auspices of IMO adopted two Protocols amending the Civil Liability Convention and the Fund Convention, in order to ensure the viability in the future of the system of compensation established by these Conventions. The Conference based its activities on two draft Protocols elaborated within the IOPC Fund. The 1992 Protocols retain the substantive provisions of the 1984 Protocols but with lower entry into force provisions. The 1992 Protocol to the Fund Convention also introduces provisions which, for a certain period of time, set a cap on contributions to the IOPC Fund payable by oil receivers in any given State.

6.2 So far three States, namely Japan, Mexico and Oman, have become Parties to the 1992 Protocols. It is expected that Australia, France, Germany and the United Kingdom will ratify the Protocols during the autumn of 1994. In addition, the legislation required for the implementation of the Protocols will be presented to Parliament in the near future in Denmark, Finland, Norway and Sweden, and it is expected that these four States will ratify the Protocols during the first half of 1995. The preparation of such legislation is also under way in Canada and the Netherlands. The issue of ratification is also being studied in a number of other States.

6.3 In the light of the information available, the Director expects that the requirements for the entry into force of the 1992 Protocols to the Civil Liability Convention and the Fund Convention will be fulfilled during the first half of 1995 and that these Protocols will hence enter into force during the first half of 1996 (cf document FUND/A.17/11).

6.4 The 1992 Conference also adopted a Resolution which invited the Assembly of the IOPC Fund to instruct the Director to make the necessary preparations for the entry into force of the 1992 Protocol to the Fund Convention. In a document on this issue submitted by the Director (document FUND/A.17/12), the Assembly will be invited to give the Director instructions in respect of these preparations.

7 Intersessional Working Group on the Admissibility of Claims for Compensation

7.1 In view of the experience of certain recent incidents, the Assembly decided, at its 16th session, to set up a Working Group to study the criteria for admissibility of claims for compensation with the following mandate:

- (a) to examine the general criteria for the admissibility of claims for compensation for "pollution damage" and "preventive measures" within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and the 1992 Protocols thereto;
- (b) to study in particular problems relating to claims in respect of so-called "pure economic loss" and "preventive measures" taken to prevent or minimise pure economic loss;

- (c) to consider problems relating to the admissibility of claims for environmental damage within the scope of the definition of "pollution damage" referred to above;
- (d) to study the procedures to be applied by the IOPC Fund in the assessment and settlement of claims.

7.2 The Working Group held meetings in February and May 1994. The Assembly will be invited to consider the Report of the Working Group (document FUND/A.17/23).

8 Contributions

8.1 The Assembly decided at its 16th session to levy 1993 annual contributions to the General Fund and four Major Claims Funds for a total amount of £78 million as follows:

Fund	Date of Incident	Oil Receipts: Applicable Year	Total Levy £	Levy £ per Tonne
General Fund	-	1992	8 million	0.0075811
Aegean Sea Major Claims Fund	3.12.92	1991	20 million	0.0212284
Braer Major Claims Fund	5.1.93	1992	35 million	0.0357631
Taiko Maru Major Claims Fund	31.5.93	1992	10 million	0.0093114
Keumdong N°5 Major Claims Fund	27.9.93	1992	5 million	0.0046557

8.2 The payment of the 1993 annual contributions was due on 1 February 1994. As at 15 September 1994 99.53%, 98.90%, 99.49%, 99.53% and 99.54%, respectively, of the contributions assessed had been paid.

8.3 In respect of contributions levied for previous years, the situation must be regarded as satisfactory. As of 15 September 1994, an amount of £916 906 was outstanding, out of which £389 980 relates to contributors in the former Union of Soviet Socialist Republics, £329 598 to contributors in the former Socialist Federal Republic of Yugoslavia, and £159 321 to an Italian contributor in liquidation.

8.4 The levy of contributions to the IOPC Fund is based on reports of contributing oil receipts submitted by governments of Member States. In October 1988, at its 11th session, the Assembly discussed the system for reporting oil receipts to the IOPC Fund, since the existing system did not function entirely satisfactorily. The main problem was that a number of States did not submit their reports in time. The Assembly adopted a Resolution in which Member States were urged, inter alia, to submit their reports on contributing oil receipts at the time and in the manner prescribed in the IOPC Fund's Internal Regulations.

8.5 The Director regrets to inform the Assembly that the non-submission of the reports on contributing oil receipts by some Member States still constitutes a considerable problem. On 31 March 1994, the date by which Member States should submit their reports of oil received in 1993 in accordance with the IOPC Fund's Internal Regulations, only 13 reports had been received by the Director. By 15 September 1994, 34 reports had been submitted. In addition, some States have still not submitted their reports on contributing oil receipts in previous years (see Annexes VI and VII of document FUND/A.17/7). In his Report on the Financial Statements 1993, the External Auditor noted the problem and encouraged the IOPC Fund to persevere in its efforts to obtain all the oil reports due for previous periods (document FUND/A.17/5, Annex II, paragraphs 19-21). It should again be emphasised that it is of decisive importance for the operation of the IOPC Fund that these reports

are actually submitted by governments. If the reports on contributing oil receipts are not submitted to the IOPC Fund, the Director is unable to issue invoices for the contributions in respect of the States concerned. The system of levying contributions will then not function in an equitable manner.

9 Investment of Funds

9.1 During 1993 and 1994, funds which were not required for the short-term operation of the IOPC Fund were placed on term deposits with several leading London banks, discount houses and building societies. Apart from investments placed overnight till the next business day, the average rate of interest on the investments in 1993 was 6.5%.

9.2 The base rate in London, which stood at 6% at the time of the 16th session of the Assembly, was reduced to 5 1/2% on 23 November 1993 and to 5 1/4% on 8 February 1994. It was raised to 5 3/4% on 12 September 1994. As in previous years, the rates obtained by the IOPC Fund on its investments have been consistently higher than the base rate. It is estimated that the average rate of interest on the IOPC Fund's investments in 1994 will be approximately 5.4%.

9.3 Interest earned during the first eight months of 1994 amounted to £1.6 million, with another £1.6 million due during the remaining four months, on an estimated average capital of £63 million.

9.4 As at 15 September 1994, the IOPC Fund had liquid assets of some £69 million. The reason for the Fund's holding such a large amount is mainly that the settlement of claims arising out of the AEGEAN SEA and KEUMDONG N°5 incidents has proceeded much more slowly than expected, and that no payments can be made as regards the HAVEN incident due to on-going legal proceedings.

9.5 Details of the investments from 1 July 1993 to 30 June 1994 are given in document FUND/A.17/4.

9.6 At its 15th, 16th and 17th sessions, the Assembly examined the IOPC Fund's investment policy and took a number of important decisions relating to the Fund's investments. The Assembly will be invited to decide whether to set up a body to advise the Director on investment matters (document FUND/A.17/20).

10 Accounts of the IOPC Fund

10.1 The expenditure for the administration of the IOPC Fund in 1993 was £807 554, compared with the budgetary appropriation of £896 200. Details of the accounts of the IOPC Fund for the financial year 1993 are given in the Financial Statements (document FUND/A.17/5, Annex IV).

10.2 The expenditure for the administration during the first eight months of 1994 amounts to approximately £532 528. The budget appropriation for the whole of 1994 is £1 172 730. It is expected that there will be a budgetary surplus at the end of the year.

10.3 As in previous years, excellent co-operation with the External Auditor, the Comptroller and Auditor General of the United Kingdom, has facilitated the administration of the IOPC Fund.

11 Administration of the IOPC Fund

11.1 The Secretariat has at present ten staff members: the Director, the Legal Officer, the Finance/Personnel Officer, the Claims Officer, the Director's Secretary/Administrative Officer, four Secretaries and a Messenger.

11.2 During the last twelve months the IOPC Fund Secretariat has faced a heavy workload, which has put considerable pressure on the staff. The strong commitment of all the staff members to their

work, and their knowledge and expertise, are a great asset to the Organisation and these factors are crucial to the efficient functioning of the Secretariat.

11.3 During the examination of the 1994 draft budget at the 16th session of the Assembly, a number of delegations emphasised the necessity of strengthening the resources of the IOPC Fund Secretariat. The Assembly allocated additional appropriations in the 1994 budget to be used by the Director to employ additional staff. As a result, the Director has recently made some changes to the structure of the Secretariat with effect from 1 October 1994, for the purpose of using the staff resources as effectively as possible, and has taken steps to employ two additional staff members in the General Service category. The Director has submitted a document setting out the developments on this issue (document FUND/A.17/14).

11.4 Two serious incidents involving the IOPC Fund, namely the AEGEAN SEA (Spain, 3 December 1992) and the BRAER incidents (United Kingdom, 5 January 1993), have given rise to significant claims from a large number of claimants. In order to enable the IOPC Fund to deal efficiently with these claims, local claims offices were set up jointly with the P & I insurer of the ship concerned in La Coruña (Spain) and on Shetland (United Kingdom). The latter office was relocated to Aberdeen on 1 June 1994. The staff at these offices have carried out their task in an excellent manner. These incidents have also necessitated extensive use of outside experts for the assessment of claims. These experts have rendered invaluable assistance to the IOPC Fund Secretariat and the local offices. A large number of claims for significant amounts have resulted also from the TAIKO MARU incident (Japan, 31 May 1993) and the KEUMDONG N°5 incident (Republic of Korea, 27 September 1993). The IOPC Fund Secretariat has been assisted very efficiently in the handling of these claims by local marine surveying firms.

12 Incidents Involving the IOPC Fund

12.1 Since its establishment in October 1979 up to 15 September 1994, the IOPC Fund has been involved in the settlement of claims arising out of 70 incidents. The IOPC Fund has paid or may be called upon to pay compensation in respect of 59 incidents. Thirty-four of these incidents occurred in Japan, whereas 18 incidents, leading in general to much larger claims, took place in European waters, one in Algeria, one in Canada, one in the Caribbean, two in the Republic of Korea and two in the Persian Gulf. The total amount of compensation and indemnification paid by the IOPC Fund as at 15 September 1994 is £91 million.

12.2 For details regarding the various incidents with which the IOPC Fund has dealt over the years, reference is made to the 1993 Annual Report and to the updated statistics (1994) distributed during this session of the Assembly.

12.3 Since the 16th session of the Assembly, three incidents have occurred which have given rise to claims against the IOPC Fund, namely the ILIAD (Greece), SEKI (Oman and United Arab Emirates) and DAITO MARU N°5 (Japan) incidents.

12.4 The Greek tanker ILIAD grounded on 9 October 1993 off the Peloponnese peninsula (Greece), laden with 80 000 tonnes of crude oil. It is estimated that 200 tonnes escaped as a result of the grounding. The oil affected some 20 kilometres of coastline. Fishing and tourism are important industries in the affected area, and substantial claims for compensation have been submitted.

12.5 On 30 March 1994, the Panamanian tanker SEKI, laden with some 153 000 tonnes of crude oil, collided with an unladen tanker off the coast of the United Arab Emirates. It is estimated that some 16 000 tonnes of oil escaped and affected the coasts of the United Arab Emirates and Oman. Claims for compensation for significant amounts have been presented in respect of clean-up operations and economic loss suffered by fishermen.

12.6 While the Japanese tanker DAITO MARU N°5 was being loaded in the port of Yokohama (Japan) on 11 June 1994, there was an overflow of a small quantity of heavy fuel oil, which necessitated limited clean-up operations. This incident has only given rise to minor claims against the IOPC Fund.

12.7 In addition to the new incidents mentioned above, there are, as at 15 September 1994, six incidents in respect of which final settlements of third party claims have not yet been reached, namely the PATMOS, AGIP ABRUZZO, HAVEN, AEGEAN SEA, BRAER AND KEUMDONG N°5 incidents.

12.8 The HAVEN incident which occurred in Italy in April 1991, caused serious oil pollution in Italy and also affected France and Monaco. Some 1 350 claims for compensation have been submitted to the Court of first instance in Genoa for a total amount corresponding to approximately £690 million; however, a number of claims are duplications. The judge in charge of the proceedings has held hearings concerning the claims, but his decision on the various claims is not expected until 1995. The aggregate amount of the claims greatly exceeds the total amount of compensation available under the Civil Liability Convention and the Fund Convention, viz 900 million (gold) francs, which in the IOPC Fund's view corresponds to 60 million Special Drawing Rights or Lit 102 864 000 000 (£42 million). However, the Court in Genoa has fixed the maximum amount payable by the IOPC Fund at Lit 771 397 947 400 (£316 million), calculated on the basis of the free market value of gold. The IOPC Fund has appealed against the Court's judgement.

12.9 The AEGEAN SEA incident (Spain, 3 December 1992) has given rise to claims totalling some £125 million. These claims relate to the cost of clean-up operations, and to economic loss suffered by a large number of fishermen, by persons involved in various forms of aquaculture and by other persons affected by the incident in various ways. Most of the claims have not yet been settled, due mainly to the fact that most of the claimants have presented insufficient supporting documentation. As at 15 September 1994, a total amount of £2.3 million had been paid in respect of 699 claims.

12.10 The BRAER incident (United Kingdom, 5 January 1993) has also resulted in a large number of claims, relating mainly to economic loss suffered by salmon farmers, fishermen, persons involved in packing and processing fish, farmers and crofters whose grassland was contaminated and persons whose houses were contaminated. As at 20 September 1994, 1 126 claims have been settled and paid for a total amount of £34 million, but a number of claims for significant amounts are still pending.

12.11 The TAIKO MARU incident (Japan, 31 May 1993) resulted in a large number of claims, mainly from fishermen. All claims arising out of this incident have been settled and paid during 1994 for a total amount of £7.6 million.

12.12 The KEUMDONG N°5 incident (Republic of Korea, 27 September 1993) has also given rise to a large number of claims totalling some £150 million. All claims relating to the clean-up operations have been settled and paid for a total amount of £4.5 million. The remaining claims, which relate to economic loss suffered by fishermen and persons involved in aquaculture, are still pending.

12.13 It is the established policy of the IOPC Fund to settle claims within a short period of the incident in question, wherever possible. The IOPC Fund Secretariat will do its utmost to continue this policy. The Director will also endeavour to ensure that the definition of "pollution damage" is given a uniform interpretation in IOPC Fund Member States.

12.14 For details of the new incidents and for recent developments regarding the settlement of claims arising out of earlier incidents, reference is made to the various documents submitted to the 40th session of the Executive Committee.

13 Observations on the Developments during the Ten Year Period 1985-1994

13.1 When the present Director took up office on 1 January 1985, the IOPC Fund had 30 Member States. The number of Member States has since grown continually to 61 at the end of 1994. As set

out in paragraph 2.4 above, it is anticipated that a number of States will ratify the Fund Convention in the near future. The IOPC Fund is thus becoming a truly worldwide organisation. This continuing expansion of membership demonstrates that the international community has found the system of compensation created by the Civil Liability Convention and the Fund Convention a viable one, providing prompt compensation to victims of oil pollution damage.

13.2 The worldwide public debate concerning problems relating to oil pollution from ships which resulted from major incidents in recent years focused on the need to enhance the safety of navigation, to study tanker design and construction, to improve contingency plans and to develop better equipment and materials for oil spill clean-up. This debate has also increased the awareness in all States, including States which are not Members of the IOPC Fund, of the importance of an effective system for compensating victims of oil pollution damage.

13.3 The role of the IOPC Fund in oil pollution incidents has evolved over the years. The Fund has in recent years been involved in several major incidents which have caused significant pollution damage and given rise to thousands of claims for compensation. This has necessitated a reassessment of the procedures applied by the IOPC Fund in the handling of claims. The Fund has relied heavily on the use of independent experts of various professions in the assessment of claims. Local claims offices have been set up jointly with the P & I insurer in two cases, and in other cases local surveyors have been entrusted to carry out tasks similar to those performed by such offices.

13.4 During recent years new types of claims have been submitted. The IOPC Fund has taken a number of important decisions in respect of the criteria to be applied for the admissibility of claims for compensation. This issue has been examined in particular as regards claims for pure economic loss, viz economic loss suffered by persons whose property has not been contaminated as a result of the incident in question. In this context reference is made to Article 235 of the United Nations Convention on the Law of the Sea, under which States are under an obligation to develop international law relating to liability and compensation. The Assembly has expressed the opinion that a uniform interpretation of the definition of "pollution damage" is essential for the functioning of the regime of compensation established by the Civil Liability Convention and the Fund Convention.

13.5 As a result of the IOPC Fund's involvement in a number of major incidents, the Fund has been required to levy significant amounts in contributions. The response by contributors in Member States has always been extremely good. As the IOPC Fund has been holding significant funds, the investment of the Fund assets has become increasingly important. The Assembly and the Director have, during recent years, paid great attention to investment matters.

13.6 The smooth operation of the IOPC Fund has only been possible due to the strong support which the Organisation has enjoyed over the years from the Governments of Member States. The close co-operation with the P & I Clubs has greatly facilitated the activities. The IOPC Fund has also had the benefit of important support from the shipping and oil industries. It is crucial for the IOPC Fund that it continues to enjoy this strong support from governments and public bodies as well as from the various private interests involved in oil spills.

13.7 As mentioned above, in 1992 Protocols were adopted to modify the 1969 Civil Liability Convention and the 1971 Fund Convention. On the basis of information available to the IOPC Fund Secretariat concerning the position of a number of States vis-à-vis the 1992 Protocols, it is expected that these Protocols will enter into force during the first half of 1996, thereby ensuring the viability of the system of compensation established by the Civil Liability Convention and the Fund Convention in the future. It will be an essential task for the new organisation to be established under the 1992 Protocol to the Fund Convention to develop further the international compensation system, so as to ensure that this system continues to meet the needs of society in respect of compensation for oil pollution damage.
