INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
18th session
Agenda item 21

FUND/A.18/18
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POSITION VIS-A-VIS THE FUND CONVENTION OF CERTAIN STATES WHICH WERE FORMERLY PART OF THE UNION OF SOVIET SOCIALIST REPUBLICS

Note by the Director

Introduction

1 At its 15th, 16th and 17th sessions, the Assembly considered certain issues relating to the position vis-à-vis the Fund Convention of certain States (other than the Russian Federation) which were formerly part of the Union of Soviet Socialist Republics (USSR). The discussions were based on documents submitted by the Director (documents FUND/A.15/19, FUND/A.16/27 and FUND/A.17/26).

2 The Fund Convention entered into force in respect of the USSR on 15 September 1987. In a note verbale dated 26 December 1991 to the Secretary-General of the International Maritime Organization (IMO), the Russian Federation stated that the membership of the USSR in all conventions concluded within the framework of IMO would be continued by the Russian Federation and that the Russian Federation would maintain all rights and obligations of the USSR in IMO, including financial obligations.

3 Estonia deposited its instrument of accession to the Fund Convention on 1 December 1992.

4 Latvia was granted observer status with the IOPC Fund by the Assembly at its 17th session, in October 1994 (document FUND/A.17/35, paragraph 4.5).

Consideration by the Assembly at its 15th session

5 In document FUND/A.15/19 submitted to the 15th session of the Assembly, the Director made an analysis of the legal situation in respect of the obligation to pay contributions for oil receivers who were previously located in the USSR but who were then situated in independent States other than the Russian Federation.

6 Most delegations agreed with the analysis made by the Director. It was pointed out, however, that there was also another important aspect to be considered, ie whether, if an oil pollution incident occurred, compensation would be granted for pollution damage in the States (other than the Russian Federation) which were formerly part of the USSR. The Assembly noted the legal uncertainties that existed as to the position of these States in relation to the Civil Liability Convention and the Fund Convention, and consequently as to the applicability of these Conventions in respect of these States both as regards the obligation to pay contributions and as regards the right to compensation, although it was pointed out that any obligation to pay contributions which existed at the time of the dissolution of the USSR remained unaffected. For this reason, the Assembly considered it inappropriate to draw any firm conclusions as to the above-mentioned obligations of the oil receivers in some of these States or to give the Director instructions as regards the issuing of invoices to those oil receivers.

7 The Assembly instructed the Director to approach the Governments of the States (other than the Russian Federation) which were formerly part of the USSR, in consultation with the Secretary-General of IMO, in order to establish the respective positions of the Governments of those States vis-à-vis the Fund Convention, and to report the results of these enquiries to the Assembly at its 16th session (document FUND/A.15/28, paragraph 22.4).

Consideration by the Assembly at its 16th session

8 At its 16th session, the Assembly was informed that, after consultation with the Secretary-General of IMO, the Director had sent letters in July 1993 requesting clarification concerning the position of the respective Governments vis-à-vis the Fund Convention to the States (other than the Russian Federation and Estonia) which were formerly part of the USSR and which had a coast, ie Azerbaijan, Georgia, Kazakhstan, Latvia, Lithuania, Turkmenistan and Ukraine. It was reported to the 16th session that a reply had been received only from Lithuania, requesting the IOPC Fund to provide the Lithuanian Government with certain documentation in order to facilitate its review of the Civil Liability Convention and the Fund Convention.

9 The Assembly instructed the Director to pursue his efforts to establish the position of the States concerned vis-à-vis the Fund Convention and to give those States considering accession to the Convention any assistance which they might require in drafting the legislation needed to implement the Civil Liability Convention and the Fund Convention, and to report any developments to the Assembly at its 17th session (document FUND/A.16/32, paragraph 30.5).

Consideration by the Assembly at its 17th session

10 At its 17th session, in October 1994, the Assembly noted that Kazakhstan and Georgia had deposited instruments of accession to the Civil Liability Convention and that that Convention had entered into force in respect of these States on 5 June 1994 and 18 July 1994, respectively. These States had not, however, acceded to the Fund Convention. The Assembly also noted that Latvia, in respect of which the Civil Liability Convention had entered into force on 8 October 1992 following the deposit of an instrument of accession, had been granted observer status with the IOPC Fund.

11 The Assembly instructed the Director to continue his efforts to clarify the situation of the States concerned vis-à-vis the Fund Convention (document FUND/A.17/35, paragraph 29.2).

Present situation

12 Of the States which formerly were part of the USSR, nine have a coastline, namely Azerbaijan, Estonia, Georgia, Kazakhstan, Latvia, Lithuania, Russian Federation, Turkmenistan and the Ukraine.

13 The Russian Federation and Estonia are undoubtedly Parties to the Fund Convention.

14 In view of the fact that Georgia, Kazakhstan and Latvia have acceded to the Civil Liability Convention, the Director assumes these States do not consider themselves Party to the Fund Convention.

15 Representatives of Lithuania and Ukraine have informed the Director that their respective States do not consider themselves Parties by virtue of succession to Conventions to which the USSR was a Party, but will examine each such Convention in order to establish whether their State should become Party to it. The Director concludes, therefore, that these States are not Parties to the Fund Convention.

16 The Director has not received any clarification of the situation in respect of Azerbaijan and Turkmenistan. Further letters requesting clarification were sent to these States in June 1995, but replies have not yet been received.

17 Letters were also sent in June 1995 to Georgia, Latvia, Lithuania, Kazakhstan and Ukraine, inviting the Governments of those States to examine whether to accede to the Fund Convention.

Action to be taken by the Assembly

18 The Assembly is invited to:

(a) consider the information contained in this document; and

(b) give the Director such further instructions as it may deem appropriate in respect of the respective positions of the States which were formerly part of the USSR (other than the Russian Federation and Estonia) vis-à-vis the Fund Convention.