



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

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Agenda item 4

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## REPORT OF THE DIRECTOR

**Summary:**

On 15 May 1998, the 1971 Fund had 76 Member States. Twenty-four States ceased to be members of the Organisation in May 1998, and a further eight States have since denounced the 1971 Fund Convention. Consideration is being given to the winding up of the 1971 Fund as soon as possible. The joint Secretariat of the 1971 and 1992 Funds was transferred from the 1971 Fund to the 1992 Fund in May 1998. The Assembly's decisions on a new structure of the Secretariat and new working methods are being implemented progressively. Since the Assembly's 20th session, the 1971 Fund has been notified of three incidents which may give rise to claims against the Fund.

**Action to be taken:** Information to be noted.

### 1 Introduction

1.1 This Report contains a review of some of the main issues relating to the activities of the 1971 Fund since the 20th session of the Assembly. It also deals with the finances of the 1971 Fund for the first six months of 1998.

1.2 Since the entry into force in May 1996 of the 1992 Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention, two intergovernmental Organisations have co-existed, one established under the 1971 Fund Convention (1971 Fund) and another set up under that Convention as modified by the 1992 Protocol thereto (1992 Fund). A review of the 1992 Fund's activities is presented separately to the 3rd session of that Organisation's Assembly.

1.3 In April 1998 a joint Annual Report of the 1971 and 1992 Funds for the calendar year 1997 was published. This Report attracted great interest from all those dealing with the Funds as well as from persons and bodies interested in environmental matters in general.

1.4 Since the 20th session of the Assembly, the Secretariat has been notified of three new incidents which will or may involve the 1971 Fund. Several incidents which occurred in previous years still require a considerable amount of work by the Fund Secretariat.

## **2 Membership of the 1971 Fund and external relations**

### **2.1 1971 Fund Membership**

2.1.1 At the time of the entry into force of the 1971 Fund Convention in October 1978, 14 States were Parties to the Convention and thus Members of the 1971 Fund. By the time of the 20th session of the Assembly in October 1997, there were 75 Member States.

2.1.2 Guyana deposited an instrument of accession on 10 December 1997, and the 1971 Fund Convention entered into force for Guyana on 10 March 1998, bringing the number of 1971 Fund Member States to 76.

2.1.3 Since then, instruments of denunciation in respect of 24 States have taken effect, resulting in 52 States being Parties to the 1971 Fund Convention as at 12 October 1998. Eight of these 52 States have denounced the 1971 Fund Convention, reducing the number of 1971 Fund Member States to 44 by the time of the Assembly's session in October 1999, as set out below:

<i>States Parties to 1971 Fund Convention</i>		
Albania	Guyana	Poland
Antigua and Barbuda	Iceland	Portugal
Belgium	India	Qatar
Benin	Italy	Russian Federation
Brunei Darussalam	Kenya	Saint Kitts and Nevis
Cameroon	Kuwait	Seychelles
China (Hong Kong Special Administrative Region)	Malaysia	Sierra Leone
Colombia	Maldives	Slovenia
Côte d'Ivoire	Malta	Sri Lanka
Djibouti	Mauritania	Syrian Arab Republic
Estonia	Mauritius	Tonga
Fiji	Morocco	Tuvalu
Gabon	Mozambique	United Arab Emirates
Gambia	Nigeria	Vanuatu
Ghana	Papua New Guinea	Yugoslavia
<i>States Parties to 1971 Fund Convention which have deposited instruments of denunciation which will take effect on date indicated</i>		
Canada		29 May 1999
New Zealand		25 June 1999
Indonesia		26 June 1999
Barbados		7 July 1999
Venezuela		22 July 1999
Croatia		30 July 1999
Algeria		3 August 1999
Belgium		6 October 1999

2.1.4 It is interesting to note that, by the time of the Assembly's session in October 1999, the 1992 Fund will have nearly as many Member States as the 1971 Fund (37, as compared to 44).

2.1.5 It is expected that a number of 1971 Fund Member States will soon ratify the 1992 Fund Convention and denounce the 1971 Fund Convention, eg Estonia, Ghana, Iceland, Italy, Malta, Morocco, Nigeria, Poland and Sri Lanka.

2.1.6 One State has acceded to the 1992 Fund Convention but has not yet denounced the 1971 Fund Convention. It is hoped, however, that this State will soon submit its instrument of denunciation.

2.1.7 Governments of Member States have extended strong support to both the 1971 Fund and the 1992 Fund as well as to their joint Secretariat.

## 2.2 Winding up of the 1971 Fund

2.2.1 The majority of the present contributors to the 1971 Fund are located in States which have denounced the 1971 Fund Convention or which are expected to do so in the near future. As a result, the financial burden which may fall on those contributors in States which remain Members of the 1971 Fund after further States have denounced the 1971 Fund Convention will be increased by a factor of 10 to 20. As long as the 1971 Fund remains in existence, it may attract additional liabilities arising out of new incidents in 1971 Fund Member States, thus further complicating matters.

2.2.2 The 1971 Fund Convention will cease to be in force when the number of Contracting States is reduced to two. Before the 1971 Fund can be wound up, however, the 1971 Fund would have to meet its obligations in respect of all incidents which occurred before the Convention ceased to be in force.

2.2.3 At its 4th extraordinary session, the Assembly recognised that, as a consequence of many States leaving the 1971 Fund, the situation might arise that, despite considerable efforts to be made by the Director, the Assembly of the Organisation would no longer be able to achieve a quorum, with the result that the 1971 Fund would be unable to operate in a normal way.

2.2.4 The Assembly considered that one means of minimising the time during which the problems referred to above would exist was for the 1971 Fund Member States which had not yet done so to accede to the 1992 Protocols at the earliest opportunity and denounce the 1971 Fund Convention. The Assembly therefore adopted a Resolution (Resolution N°12) to the effect that Governments of 1971 Fund Member States were urged to consider, as a matter of great urgency, accession to the 1992 Protocols and were reminded of the need, when depositing instruments of accession to the 1992 Protocols, to deposit simultaneously instruments of denunciation of the 1969 Civil Liability Convention and 1971 Fund Convention.

2.2.5 In view of the significant problems which continuing membership of the 1971 Fund would cause, the Director wrote in May 1998 to the Ambassadors and High Commissioners in London of all 1971 Fund Member States, drawing governments' attention to the great urgency of acceding to the 1992 Protocols and of denouncing the 1969 Civil Liability Convention and 1971 Fund Convention.

## 2.3 Information on Fund activities

2.3.1 During discussions at the Assembly's 4th extraordinary session of the review of the Secretariat's working methods, it was generally considered that the IOPC Funds should strengthen their activities in the field of information and public relations. With this in mind, and in order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters, the Director and other Officers have visited eight 1971 Fund Member States since the

20th session of the Assembly for discussions with government officials on the Fund Conventions and the operations of the IOPC Funds.

2.3.2 The Director is pursuing as many avenues as possible in order to encourage 1971 Fund Member States to accede to the 1992 Protocols and denounce the 1971 Fund Convention. For example, members of the Secretariat have participated in regional seminars on maritime matters in Tobago, the Seychelles and Trinidad. The Director and other Officers have given lectures and participated in seminars, conferences and workshops in six other countries on liability and compensation for oil pollution damage and on the operation of the IOPC Funds. The Director has valued the opportunity to lecture to students of the World Maritime University in Malmö (Sweden), where information on the IOPC Funds and their activities will be spread throughout the world when the students return to their national maritime administrations.

2.3.3 The Director and other members of the joint Secretariat have also had discussions with government representatives of non-Member States in connection with meetings within the International Maritime Organization (IMO), in particular during the sessions of the IMO Assembly, Council and Legal Committee.

2.3.4 The Secretariat has, on request, assisted some 1971 Fund Member States and some non-Member States in the elaboration of the national legislation necessary for the implementation of the 1992 Conventions. The Director has had to inform a number of States, however, that while the Secretariat can provide model legislation and examine draft legislation prepared by States, if so requested, it is not possible for the Secretariat to elaborate specific legislation for an individual State, as the Secretariat would not be acquainted with the details of the legislative tradition of the State in question.

## 2.4 Relationship with international organisations and interested circles

2.4.1 The 1971 Fund benefits from close co-operation with many intergovernmental and international non-governmental organisations, as well as with bodies set up by private interests involved in the maritime transport of oil.

2.4.2 The 1971 Fund has particularly close links with IMO, and co-operation agreements have been concluded between the Fund and IMO. 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 1971 Fund during the last twelve months.

2.4.3 In the majority of incidents involving the 1971 Fund, clean-up operations are monitored and claims are assessed in close co-operation between the Funds and the shipowner's liability insurer, which in most cases is one of the 'P & I Clubs'. The technical assistance required by the 1971 Fund with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF). The Fund co-operates closely with the oil industry, represented by the Oil Companies International Marine Forum (OCIMF) and Cristal Limited.

## 3 Administration of the 1971 Fund

### 3.1 Secretariat

3.1.1 The 1971 Fund and 1992 Fund have a joint Secretariat. Until 15 May 1998, the 1971 Fund Secretariat administered also the 1992 Fund. On 16 May 1998, a 1992 Fund Secretariat was created, and since then it has administered both the 1971 Fund and the 1992 Fund. The staff of the 1971 Fund Secretariat were transferred to the 1992 Fund Secretariat on that date.

3.1.2 The Finance Officer, Mr Sampson Nte, who had joined the Secretariat in 1979, retired on 31 December 1997. Mr Nte had served the Organisation for over 18 years and had established and developed the financial operation of the Funds.

3.1.3 During the last twelve months the Secretariat has continued to face a very heavy workload, which has put considerable pressure on staff members. The strong commitment of the staff to their work, as well as their knowledge and expertise, are a great asset to the IOPC Funds, and these factors are crucial to the efficient functioning of the Secretariat.

3.1.4 In the light of the changing nature of the work of the Secretariat, the need to administer two Funds, and the workload on staff members, the Director was instructed in October 1996 to undertake a review of the working methods within the Secretariat, with the help of an external consultant, in order to obtain the most efficient and cost-effective way of managing the IOPC Funds.

3.1.5 The final report of the consultants was considered by the Assemblies of the 1971 and 1992 Funds in April 1998. The consultants emphasised the great increase in the Secretariat's workload in recent years and the need to restructure the Organisation to facilitate the working of the IOPC Funds in the future. The consultants recommended a new structure for the Organisation and the creation of new posts.

3.1.6 On the basis of proposals submitted by the Director, the Assemblies approved a new structure for the Secretariat, with the establishment of three departments (a Claims Department, a Finance and Administration Department and an External Relations and Conference Department). The Director, the Legal Counsel and the Heads of the three Departments would form a Management Team which would lead the operation of the Secretariat. The Assemblies approved an increase in the size of the Secretariat from 18 to 25 staff members. It was emphasised that the Director's role should be to concentrate on strategy and policy issues, that the Secretariat should be strengthened with a staff member with a scientific background, that the Director should be able to delegate considerable authority to the Head of the Claims Department in respect of the settlement of claims, that the Secretariat should make the maximum use of information technology (IT) and that activities in the field of information and public relations should be strengthened.

3.1.7 The Director has commenced the implementation of the decisions of the Assemblies, following the step-by-step approach favoured by a number of delegations. In particular, the departmental structure has been established, and a Head of the Claims Department with a scientific background has been appointed. A report of the progress made so far is contained in document 71FUND/A.21/13. Of particular concern to the Director is the question of office accommodation, since a number of the recommendations of the Assemblies cannot be implemented without sufficient office space. Unfortunately, however, the Secretary-General of IMO has informed the Director that the additional space required by the IOPC Funds is not available within the IMO building. This matter is dealt with in more detail in document 71FUND/A.21/13/1.

## 3.2 Accounts of the 1971 Fund

3.2.1 The expenditure for the joint administration of the 1971 Fund and 1992 Funds in 1997 was £1 547 390, compared with the budgetary appropriation of £1 821 720. Details of the accounts of the 1971 Fund for the financial year 1997 are given in the Financial Statements (document 71FUND/A.21/8, Annex IV).

3.2.2 The expenditure for the joint administration of the 1971 and 1992 Funds during the first six months of 1998 amounts to approximately £629 000. The budget appropriation for the whole of 1998 for both Organisations is £2 042 920. It is expected that there will be a budgetary surplus at the end of the year.

3.2.3 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 1971 Fund and the operation of the joint Secretariat.

### 3.3 Investment of funds

3.3.1 During 1997 and 1998, funds which were not required for the short-term operation of the 1971 Fund were placed on term deposits with a number of leading London banks and building societies. Apart from deposits placed overnight or for up to seven days fixed, the average rate of interest on the investments in 1997 was 6.9%.

3.3.2 The base rate in London, which stood at 7% at the time of the 20th session of the Assembly, was raised to 7.25% on 6 November 1997 and to 7.5% on 4 June 1998. Since 8 October 1998 the rate has been 7.25%.

3.3.3 Interest earned by the 1971 Fund during the first six months of 1998 amounted to some £4.5 million.

3.3.4 As at 14 October 1998, the 1971 Fund's investments totalled some £131 million. The reasons for the Fund's holding such a large amount are mainly that the settlement of claims arising out of the *Nakhodka* incident has proceeded much more slowly than expected, and that it has been possible to make only very limited payments in respect of the *Haven* and *Aegean Sea* incidents due to on-going legal proceedings.

3.3.5 Details of the investments from 1 July 1997 to 30 June 1998 are given in document 71FUND/A.21/4.

3.3.6 At its 17th session, the Assembly established an Investment Advisory Body, composed of external experts with special knowledge in investment matters, to advise the Director in general terms on such matters. The report of the Investment Advisory Body is contained in document 71FUND/A.21/7.

## 4 Contributions

4.1 At its 2nd extraordinary session, held in June 1996, the Assembly introduced a system of deferred invoicing. Under this system the Assembly fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower amount should be invoiced for payment by 1 February in the following year, the remaining amount, or a part thereof, to be invoiced later in the year, if necessary.

4.2 At its 20th session, the Assembly decided to credit contributors in respect of the 1997 General Fund for a total of £2 million on 1 February 1998.

4.3 The Assembly took note of the fact that all claims and expenses arising out of the *Senyo Maru* incident had been paid. Since the amount remaining in this Major Claims Fund was considered to be substantial, the Assembly decided that £2.8 million should be reimbursed to the contributors to that Major Claims Fund on 1 February 1998 and that the balance should be transferred to the General Fund.

4.4 The Assembly also decided to levy 1997 annual contributions to four Major Claims Funds for a total amount of £64 million. It was decided that part of the levies to each of the Major Claims Funds (£37 million) should be due for payment by 1 February 1998, and that the balance should be deferred. The Director was authorised by the Assembly to decide whether to invoice all or part of the amounts of the deferred levies for payment during the second half of 1998.

4.5 In accordance with the authority given to him by the Assembly at its 20th session, the Director decided that, in the light of the likely timetable for the settlement and payment of claims arising out of the *Sea Prince*, *Yuil N°1*, *Nakhodka*, *Nissos Amorgos* and *Osung N°3* incidents and the monies already available to the 1971 Funds for making payments, no deferred levy should be made in 1998 to those Major Claims Funds.

4.6 The Assembly's decisions, as well as the Director's action taken in accordance with the authority given to him by the Assembly, are summarised in the table opposite.

4.7 A report on the payment of 1997 annual contributions as at 12 October 1998 is given in document 71FUND/A.21/11.

4.8 The Director regrets to report that the submission of the reports on contributing oil receipts by 1971 Member States continues to give rise to concern. On 31 March 1998, the date by which Member States should submit their reports of oil received in 1997 in accordance with the 1971 Fund's Internal Regulations, reports had been received from only 16 of the 76 States which were Members of the 1971 Fund at that time. By 12 October 1998, still only 24 of the present 52 Member States had submitted their reports.

Fund	Total 1997 levy authorised by Assembly £	Amount levied for payment by 1 February 1998 £	Maximum deferred levy £	Amount levied for payment by 1 September 1998 £	Total amount levied £
<i>Sea Prince/Yeo Myung/Yuil N°1</i>	14 000 000	3 000 000	11 000 000	0	3 000 000
<i>Nakhodka</i>	35 000 000	30 000 000	5 000 000	0	30 000 000
<i>Nissos Amorgos</i>	5 000 000	2 000 000	3 000 000	0	2 000 000
<i>Osung N°3</i>	10 000 000	2 000 000	8 000 000	0	2 000 000
Total levy	64 000 000	37 000 000		0	37 000 000
Fund	Total reimbursement authorised by Assembly £	Amount credited on 1 February 1998 £		Amount credited on 1 September 1998 £	Total amount credited £
General	2 000 000	2 000 000		0	2 000 000
<i>Senyo Maru</i>	2 800 000	2 800 000		0	2 800 000
Total reimbursement	4 800 000	4 800 000		0	4 800 000
Grand total	59 200 000	32 200 000		0	32 200 000

## 5 Incidents involving the 1971 Fund

5.1 Since its establishment in October 1978, the 1971 Fund has, up to 12 October 1998, been involved in 91 oil pollution incidents.

5.2 Since the 20th session of the Assembly, the Secretariat has been notified of three incidents which may give rise to claims against the 1971 Fund. In November 1997 the coastal tanker *Kyungnam N°1* ran aground in the Republic of Korea and the spilt oil affected some kilometres of rocky shoreline where aquaculture activities are carried out. In January 1998 oil was spilled from the *Pontoon N°300*, a barge under tow off the United Arab Emirates. The barge subsequently sank, and further spills occurred before the barge was successfully raised. In June 1998 gas oil escaped from a sub-sea flexible hose while the *Maritza Sayalero* was discharging cargo at a terminal in Venezuela.

5.3 In addition to the new incidents, there are, as at 12 October 1998, outstanding third party claims in respect of 20 incidents. It is likely, however, that several of these incidents will not result in any payments by the 1971 Fund.

5.4 The various documents submitted to the 59th session of the Executive Committee give details of all the incidents which have taken place or in which the 1971 Fund has become involved since the 20th session of the Assembly, as well as of the settlement of claims arising out of earlier incidents. For details regarding the various incidents with which the 1971 Fund has dealt in previous years, reference is made to the 1997 Annual Report.

## **6 Looking ahead**

6.1 Over the 20 years of the 1971 Fund's existence, the membership increased steadily, reaching 76 in March 1998. Since then, however, 32 States have denounced the 1971 Fund Convention and have joined or will be joining the 1992 Fund. In addition, States which wish to become part of the international system of liability and compensation are ratifying the 1992 Protocols directly. In May 1998 the 1971 Fund ceased to have its own Secretariat, and has been administered by the newly established Secretariat of the 1992 Fund.

6.2 With its decreasing membership, the 1971 Fund has entered a new phase. The 1971 Fund Convention will continue to be in force until the number of Member States is reduced to two. It is hoped that Governments of 1971 Fund Member States will, as a matter of great urgency, accede to the 1992 Protocols and denounce the 1971 Fund Convention. Before the 1971 Fund can be wound up, however, it will have to meet its obligations in respect of all incidents which occurred before the Convention ceased to be in force.

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