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FUND 1971

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REPORT OF THE DIRECTOR

Summary:

The Director has taken a number of steps to draw the attention of the Governments of the remaining 1971 Fund Member States to the significant problems which continuing membership of the 1971 Fund will cause. A Diplomatic Conference held from 25 to 27 September 2000 adopted a Protocol amending the 1971 Fund Convention to the effect that the Convention will probably cease to be in force by the end of 2001 or by June 2002 at the latest. The failure of a number of States to submit oil reports continues to give rise to serious concern. The 1971 Fund has been notified of one new incident during the last 12 months. There are outstanding third party claims in respect of 18 incidents.

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 October 1999 sessions of the governing bodies. It also deals with the finances of the 1971 Fund for the first six months of 2000.
- 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). The 1971 Fund and the

1992 Fund have a joint Secretariat. A review of the 1992 Fund's activities is presented separately to the 5th session of that Organisation's Assembly.

- 1.3 In March 2000 a joint Annual Report of the 1971 and 1992 Funds for the calendar year 1999 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 October 1999 sessions of the governing bodies, the Secretariat has been notified of one new incident which may involve the 1971 Fund. In addition, 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 March 1998, there were 76 Member States.
- 2.1.2 Since then many instruments of denunciation have taken effect, resulting in 40 States being Parties to the 1971 Fund Convention as at 29 September 2000. Twelve of these 40 States have denounced the 1971 Fund Convention, reducing the number of Member States to 28 by the time of the Assembly's session in October 2001, as set out below:

<i>28 States Parties to the 1971 Fund Convention</i>		
Albania	Ghana	Papua New Guinea
Benin	Guyana	Portugal
Brunei Darussalam	Kuwait	Qatar
Cameroon	Malaysia	Saint Kitts and Nevis
Colombia	Maldives	Sierra Leone
Côte d'Ivoire	Mauritania	Syrian Arab Republic
Djibouti	Morocco	Tuvalu
Estonia	Mozambique	United Arab Emirates
Gabon	Nigeria	Yugoslavia
Gambia		
<i>12 States Parties to the 1971 Fund Convention which have deposited instruments of denunciation which will take effect on date indicated</i>		
Italy		8 October 2000
Fiji		30 November 2000
Mauritius		6 December 2000
Tonga		10 December 2000
Poland		21 December 2000
Malta		6 January 2001
Iceland		10 February 2001
Russian Federation		20 March 2001
Antigua and Barbuda		14 June 2001
India		21 June 2001
Kenya		7 July 2001
Slovenia		19 July 2001

- 2.1.3 It is expected that a number of the remaining 1971 Fund Member States will soon ratify the 1992 Fund Convention and denounce the 1971 Fund Convention, eg Estonia, Ghana, Kuwait, Malaysia, Nigeria and Portugal.
- 2.1.4 Two States have acceded to the 1992 Fund Convention but have not yet denounced the 1971 Fund Convention. It is hoped, however, that these States will soon submit instruments of denunciation.

- 2.1.5 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 1971 Fund faces significant problems as a result of the rapidly decreasing membership. It has been noted that in the near future the 1971 Fund will no longer be financially viable, since the contribution base will fall to only 48 million tonnes by September 2001 and the 1971 Fund will be unable to pay compensation to victims of a major incident which might occur in a remaining Member State. Under Article 43.1 of the 1971 Fund Convention that Convention ceases to be in force when the number of States Parties falls below three. It is unlikely that this will happen in the near future. For this reason the governing bodies of the 1971 Fund considered whether there are ways in which the 1971 Fund Convention could be terminated more rapidly, making it possible to wind up the 1971 Fund.

- 2.2.2 At its session in April 2000 the Director was instructed to study all aspects of the winding up and liquidation of the 1971 Fund. The Assembly will be invited to examine the Director's study on this subject (document 71FUND/A.23/4).

- 2.2.3 At the request of the 1971 Fund, a Diplomatic Conference was held from 25 to 27 September 2000 under the auspices of IMO. The Conference adopted a Protocol amending Article 43.1 of the 1971 Fund Convention. Under the revised text the 1971 Fund Convention will cease to be in force when the number of Member States falls below 25 or one year after the total quantity of contributing oil received in the remaining Member States falls below 100 million tonnes, whichever is the earlier. The Protocol will enter into force on 27 June 2001, unless more than one third of the remaining Member States lodge opposition to the Protocol by 27 March 2001. As a result, the Convention will probably cease to be in force by the end of 2001 or by June 2002 at the latest. Further information on the outcome of the Diplomatic Conference is contained in document 71FUND/A.23/4/Add.1.

2.3 Information on Fund activities

- 2.3.1 The Assembly has 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 three 1971 Fund Member States since the October 1999 sessions of the governing bodies for discussions with government officials on the Fund Conventions and the operations of the IOPC Funds.
- 2.3.2 Members of the Secretariat have participated in seminars on maritime matters in Bahrain, Curaçao, Lebanon, Republic of Korea, Romania and the United Arab Emirates. The Director and other Officers have participated in seminars, conferences and workshops in a number of other countries and given lectures 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. Lectures have also been given at the IMO International Maritime Law Institute (IMLI) in Malta and at the IMO International Maritime Academy in Trieste (Italy).
- 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, and during the Diplomatic Conference held from 25 to 27 September 2000.

- 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 a co-operation agreement has been concluded between the 1971 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. The IOPC Funds have also benefited from the support given by IMO during the 22 years in which the Funds' Secretariat was located in the IMO Headquarters.
- 2.4.3 In the majority of incidents involving the IOPC Funds, 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 IOPC Funds with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF). The IOPC Funds co-operate closely with the oil industry, represented by the Oil Companies International Marine Forum (OCIMF).

3 Administration of the 1971 Fund

3.1 Secretariat

- 3.1.1 Following the review of the working methods within the Secretariat, the 1971 and 1992 Fund Assemblies approved in April 1998 the Director's proposals for a new structure of the Secretariat and an increase in staff.
- 3.1.2 The implementation of the Assemblies' decisions has been an ongoing process. In the Director's view the increased resources and the new structure of the Secretariat have resulted in increased efficiency enabling the Secretariat to give better service to Member States and victims of oil pollution. However, the Director considers that further work has to be carried out in order to derive maximum benefit from the changes.
- 3.1.3 The Assembly has emphasised the importance of the IOPC Funds' strengthening their use of information technology (IT). In October 1999 the 1971 Fund Executive Committee, acting on behalf of the Assembly, decided to create a new post, that of an IT Officer, and the post was filled from 17 January 2000. As a result the IOPC Funds have developed their use of IT significantly, and more work in this field is envisaged (cf document 71FUND/A.5/13).
- 3.1.4 During 2000, the post of Senior French Translator/Reviser and two posts in the general service category in the External Relations and Conference Department, all established by the 1992 Fund Assembly, were filled.
- 3.1.5 In June 2000 the Secretariat was relocated from the IMO building to Portland House, Stag Place in Victoria. The new premises are located in the heart of London and give the Secretariat the necessary additional office space, including space for future expansion, if required. The new

offices provide the Secretariat with a very functional and pleasant working environment (cf document 71FUND/A.23/12).

3.2 Accounts of the 1971 Fund

- 3.2.1 The expenditure for the joint administration of the 1971 Fund and 1992 Fund in 1999 was £1 707 052, compared with the budgetary appropriation of £2 792 360. Details of the accounts of the 1971 Fund for the financial year 1999 are given in the Financial Statements (document 71FUND/A.23/8, Annex IV).
- 3.2.2 The expenditure for the joint administration of the 1971 and 1992 Funds during the first six months of 2000 amounts to approximately £882 000. The budget appropriation for the whole of 2000 for both Organisations is £3 475 040. The major part of the cost of the relocation of the Secretariat was paid during the period July - September 2000. It is expected that there will be a budgetary surplus at the end of the year.
- 3.2.3 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 1999 and 2000 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 1999 was 5.7%.
- 3.3.2 The base rate in London, which stood at 5.25% at the time of the October 1999 session of the governing bodies, was increased to 5.5% on 4 November 1999 and to 5.75% on 13 January 2000. Since 10 February 2000 the rate has been 6%.
- 3.3.3 Interest earned by the 1971 Fund during the first six months of 2000 amounted to some £3.6 million.
- 3.3.4 As at 20 September 2000, the 1971 Fund's investments totalled some £105 million.
- 3.3.5 Details of the investments from 1 July 1999 to 30 June 2000 are given in document 71FUND/A.23/6.
- 3.3.6 The 1971 Fund has 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.23/7.

4 Contributions

- 4.1 At its session in October 1999 the Executive Committee, acting on behalf of the Assembly, decided to levy annual contributions in respect of 1999 annual contributions to three Major Claims Funds for a total amount of £8.3 million. It was decided that the levies to the *Nakhodka* and *Osung N°3* Major Claims Funds (£1.0 million and £5.3 million) should be due for payment by 1 March 2000, and that the entire levy in respect of the *Sea Empress* incident (£2.0 million) should be deferred. The Director was authorised to decide whether to invoice all or part of the amount of the deferred levy for payment during the second half of 2000.
- 4.2 The Executive Committee also decided, pursuant to Financial Regulation 4.4, that an amount of £2.5 million should be reimbursed to the contributors to the *Haven* Major Claims Fund and that the balance should be transferred to the General Fund.

4.3 In accordance with the authority given to him by the Executive Committee, the Director decided in June 2000 that, in the light of the likely timetable for the settlement and payment of claims arising out of the *Sea Empress* incident and the monies already available to the 1971 Fund for making payments, no deferred levy should be made in 2000 to that Major Claims Fund.

4.4 The Executive Committee's decisions, as well as the Director's action taken in accordance with the authority given to him by the Committee, are summarised in the table below.

Fund	Total 1999 levy/credit authorised by Executive Committee £	Amount levied for payment by/(credited on) 1 March 2000 £	Maximum deferred levy £	Amount levied for payment by 1 Sept 2000 £	Total amount actually levied/ credited £	Levy/credit per tonne £
<i>Nakhodka</i>	1 000 000	1 000 000	0	0	1 000 000	0.0008178
<i>Osung N°3</i>	5 300 000	5 300 000	0	0	5 300 000	0.0043189
<i>Sea Empress</i>	2 000 000	0	2 000 000	0	0	
<i>Haven</i>	(2 500 000)	(2 500 000)	0	0	(2 500 000)	(0.0026328)
Total levy	5 800 000	3 800 000	2 000 000	0	3 800 000	

4.5 A report on the payment of 1999 annual contributions as at 15 October 2000 will be given in document 71FUND/A.23/10.

4.6 The Director regrets to report that the failure of a number of States to submit reports on contributing oil receipts continues to give rise to considerable concern. By 21 September 2000, reports of oil received in 1999 were outstanding for 24 States. A number of Member States or former Member States have reports outstanding for several years. This issue is examined further in document 71FUND/A.23/11.

5 Incidents involving the 1971 Fund

5.1 Since its establishment in October 1978 the 1971 Fund has, up to 25 September 2000, been involved in 92 oil pollution incidents.

5.2 Since the October 1999 sessions of the governing bodies, the Secretariat has been notified of one new incident which may give rise to claims against the 1971 Fund. In addition, there are, as at 25 September 2000, outstanding third party claims in respect of 18 incidents. It is likely, however, that several of these incidents will not result in any payments by the 1971 Fund.

5.3 The various documents submitted to the Assembly under agenda item 17 give details of all the incidents dealt with by the 1971 Fund during the last twelve months.

5.4 For details regarding the various incidents with which the 1971 Fund has dealt in previous years, reference is made to the 1999 Annual Report.

6 Looking ahead

6.1 As already mentioned, the 1971 Fund is facing significant problems due to the rapidly decreasing membership and the ensuing reduction in the quantities of contributing oil received in the remaining Member States. The Director is therefore very pleased that the Diplomatic Conference was able to adopt a Protocol based on tacit acceptance, as this will make a decisive impact on the process of winding up the 1971 Fund. The fact that the 1971 Fund Convention will - in all probability - cease to be in force by the end of 2001, or by June 2002 at the latest, will facilitate the orderly termination of the Convention and will assist considerably in the administration of the 1971 Fund during its closing years.

- 6.2 However, the winding up of the 1971 Fund will not happen automatically. For Article 43.1 - even as revised by the 2000 Protocol - to take effect resulting in the termination of the 1971 Fund Convention, more States need to denounce the Convention. Meanwhile, Governments of Member States and former Member States need to ensure that outstanding reports on contributing oil are submitted to the Secretariat so that the 1971 Fund can continue to function. Even after the Convention has ceased to be in force, former Member States will have an important role to play in the operation of the Organisation during the winding up period in order to ensure that the 1971 Fund fulfils its remaining obligations.
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