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OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
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Agenda item 19

71FUND/A.24/16
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INCIDENTS INVOLVING THE 1971 FUND

Note by the Director

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| Summary: | A résumé of all incidents and all documents submitted under this agenda item is set out. |
| Action to be taken: | Information to be noted. |

1 Introduction

- 1.1 Article 26.1(b)(ii) of the 1971 Fund Convention provides that the Executive Committee shall approve settlements of claims against the 1971 Fund and take all other steps in relation to such claims envisaged in Article 18.7 of the 1971 Fund Convention.
- 1.2 There have been no new incidents that have given or may give rise to claims against the 1971 Fund since the 5th session of the Administrative Council held in June 2001. There are 22 incidents that took place before the 5th session, which will be reported to the Assembly.

2 Presentation of documentation

- 2.1 The documentation presented to the 24th session of the Assembly has been structured in the following way:
 - (a) incidents which the Assembly is invited to consider on the basis of a separate document for each incident; and
 - (b) incidents which have been grouped together for practical reasons.
- 2.2 In the documents detailed below, the conversion of currencies into Pounds Sterling has been made - unless otherwise indicated - on the basis of the rates of exchange at the time the respective documents were written. However, for amounts representing actual payments by the 1971 Fund, the conversion has been made at the rate of exchange on the day of payment.

3 Summary of incidents

The situation in respect of the incidents involving the 1971 Fund can be summarised as follows:

3.1 Document 71FUND/A.24/16/1

- *Aegean Sea* (Spain, 1992): As authorised by the Administrative Council the Director has held discussions with the Spanish Government with the objective of concluding an agreement with the Spanish State, the shipowner and his insurer on a global solution of all outstanding issues provided the agreement contained certain elements determined by the Council and without prejudice to the Fund's position in respect of the issues of distribution of liabilities and time bar.

Agreement has been reached in principle on the contents of such an agreement and the Director has made a formal offer to the Spanish State on behalf of the 1971 Fund to conclude such an agreement.

No action requested.

3.2 Document 71FUND/A.24/16/2

- *Braer* (United Kingdom, 1993): The total amount of the claims in court, originally £80 million, now stands at £1.6 million, after a number of claims have been dismissed, settled out of court, withdrawn from the court proceedings or reduced in amounts. In May 2000 the 1971 Fund resumed payments of compensation, which had been suspended since October 1995, by paying 40% of the claims which had been approved but not paid. These payments totalled £2.3 million. The total payments of claims stands at £48.2 million.

As a result of a number of claims having been dismissed or withdrawn and the Skuld Club having made additional funds available, it is now possible to pay all established claims in full. Payments will commence shortly.

No action requested.

3.3 Document 71FUND/A.24/16/3

- *Sea Prince* (Republic of Korea, 1995): Most claims arising out of this incident have been settled and paid in full but some fishery claims remain pending in court. In April 2001 agreement was reached between the 1971 Fund and the shipowner's insurer on the appropriate exchange rate and the appropriate currency to be used to determine the limitation amount applicable to the *Sea Prince* and therefore the amount due to the insurer in respect of compensation overpayments and indemnification. The shipowner's outstanding claims for the costs of environmental studies and additional clean-up in light of the results of those studies were settled in March 2001. An application has been made to the limitation court for the discontinuance of the limitation proceedings. Those claimants whose claims remain pending in court joined the 1971 Fund and the shipowner/insurer in making an application for discontinuance of the limitation proceedings provided that the 1971 Fund made payments of the amounts assessed by that Court, and gave an undertaking that the claimants' rights to pursue their claims against the Fund would not be prejudiced and that the Fund would pay any sums awarded in a final judgement.

No action requested.

3.4 Document 71FUND/A.24/16/4

- *Sea Empress* (United Kingdom, 1996): Compensation totalling £33 million has been paid to 800 claimants. A number of claims in respect of which legal proceedings had been commenced against the shipowner, the shipowner's insurer and the 1971 Fund have been settled or withdrawn. Forty-eight claims totalling £7.2 million are being pursued in court, thirty of which relate to fees only.

In accordance with the Executive Committee's decision, the 1971 Fund is preparing to take recourse action against the Milford Haven Port Authority.

No action requested.

3.5 Document 71FUND/A.24/16/5

- *Nakhodka* (Japan 1997): As at 10 October 2001, 458 claims totalling £198 million had been received. Total payments to claimants amounted to £92 million, including the payments made by the shipowner and his insurer totalling £4 million. It is anticipated that the assessments of all pending claims will be completed by the end of 2001.

Meetings were held in September and October 2001 between the Japanese Government, the IOPC Funds and the UK Club to discuss in detail the technical aspects of the claims relating to the causeway, including the issue of whether the claims fulfilled the criteria for admissibility laid down by the governing bodies of the IOPC Funds. Progress has been made and further discussions will be held.

No action requested.

3.6 Document 71FUND/A.24/16/6

- *Nissos Amorgos* (Venezuela, 1997): Claims have been settled for a total of £16.9 million and the Gard Club and the 1971 Fund have made payments of £6.2 million corresponding to 40% of the settled amounts. Legal proceedings relating to claims for some £105 million are pending in five Venezuelan courts, including the Supreme Court. The total exposure of the 1971 Fund is some £119 million. It is therefore proposed that the level of the Fund's payments should be maintained at 40%. Technical documentation on the cause of the incident submitted by Instituto Nacional de Canalizaciones (INC) is being examined by the Secretariat.

Action requested:

- Consider the level of the 1971 Fund's payments.

3.7 Document 71FUND/A.24/16/7

- *Pontoon 300* (United Arab Emirates, 1998): Apart from a claim by a municipality totalling £40 million, elements of which the Fund considers are inadmissible, and a claim by the Ministry of Agriculture and Fisheries for £1.2 million, all other claims have been settled for a total of £1.2 million. The 1971 Fund has made payments of £900 000, corresponding to 75% of the settlement amounts. The Fund has maintained that not only are elements of the claim by the municipality inadmissible but that the whole claim is time-barred. Nevertheless, it is proposed that the level of the 1971 Fund's payments should be maintained at 75%. The 1971 Fund has taken recourse action against the owner of the tug *Falcon 1* which was towing the *Pontoon 300* when the incident occurred.

Action requested:

- Decision in respect of the level of the 1971 Fund's payment of claims.
- Decision on whether to pursue the recourse action.

3.8 Document 71FUND/A.24/16/8

- *Al Jaziah 1* (United Arab Emirates, 2000): On 24 January 2000 the *Al Jaziah 1*, carrying fuel oil, sank off Abu Dhabi resulting in the loss of 100 - 200 tonnes of oil and the subsequent pollution of

coastal areas. Some 430 tonnes of oil remaining on board was removed prior to the vessel being raised and taken into port. The governing bodies of the 1992 and 1971 Funds decided that the *Al Jaziah 1* fell within the definition of 'ship' laid down in the 1969 and 1992 Civil Liability Conventions and the 1971 and 1992 Fund Conventions. Both governing bodies also decided that the 1971 and 1992 Fund Conventions applied to the incident and that the liabilities should be distributed between the two Funds on a 50:50 basis. Five claims totalling £1.4 million in respect of clean-up and preventive measures have been presented to the IOPC Funds. Two claims have been provisionally assessed in the amount of £330 000 and the remaining three claims have been settled for £418 000.

No action requested.

- *Zeinab* (United Arab Emirates, 2001): On 14 April 2001 the *Zeinab* was arrested by the multi-national maritime Interception Forces. The vessel subsequently sank off Dubai in unknown circumstances resulting in the loss of some 400 tonnes of oil and the subsequent pollution of the coast. Some 1 100 tonnes of oil remaining onboard was removed from the sunken vessel. The governing bodies of the 1971 and 1992 Funds decided that the *Zeinab* fell within the definition of 'ship' laid down in the 1969 and 1992 Civil Liability Conventions and the 1971 and 1992 Fund Conventions. Both governing bodies also decided that the 1971 and 1992 Fund Conventions applied to the incident and that the liabilities should be distributed between the two Funds on a 50:50 basis. However, both bodies decided not to authorise the Director to settle claims until the exact circumstances surrounding the sinking of the vessel were known, in particular whether the Fund could be exonerated from paying compensation for pollution damage in accordance with Article 4.2(a) of the 1971 and 1992 Fund Conventions.

Although the Director's further investigations have not revealed any details surrounding the sinking of the *Zeinab*, he is of the view that the arrest by the multi-national maritime Interception Forces could not be considered as "an act of war, hostilities, civil war or insurrection" and that the IOPC Funds would not be able to invoke the defence provided in Article 4.2(a).

Claims totalling £343 000 have been submitted in respect of clean-up operations and further claims are expected.

Action requested:

- Consider whether the *Zeinab* incident resulted from an act of war.
- Decide whether to authorise the Director to settle claims arising from the incident.

3.9 Document 71FUND/A.24/16/9

- *Natuna Sea* (Indonesia 2000): The grounding of the *Natuna Sea* in the Singapore Strait resulted in a spill of some 7 000 tonnes of crude oil. The oil affected Singapore, Malaysia and Indonesia. Claims for pollution damage in Malaysia have been settled for a total of £426 000, well within the limit applicable to the *Natuna Sea* under the 1969 Civil Liability Convention. Claims arising in Singapore and Indonesia total £136 million and the 1992 Fund may therefore be required to make payments for pollution damage in Singapore.

No action requested.

3.10 Document 71FUND/A.24/16/10

- *Singapura Timur* (Malaysia, 2001): The vessel, laden with 1 500 tonnes of asphalt, sank after a collision in the Strait of Malacca off the coast of Malaysia, resulting in an escape of an unknown quantity of bunker fuel and asphalt cargo. Clean-up operations were organised by the cargo owner. No oil is reported to have gone ashore. Whilst it is not yet possible to make a full

evaluation of the total amount of the claims for compensation, it is anticipated that clean-up costs will exceed the limitation amount applicable to the *Singapura Timur* under the 1969 Civil Liability Convention. The Malaysian authorities are studying the environmental risks posed by asphalt onboard the vessel in order to decide whether steps should be taken to remove the remaining cargo.

No action requested.

3.11 Document 71FUND/A.24/16/11

- *Vistabella* (Caribbean, 1991): All claims have been settled and paid. In March 2000 the Court of first instance ordered the shipowner's insurer to pay the 1971 Fund £771 000, plus interest from 22 March 1993. The insurer has appealed against the judgement.

No action requested.

- *Keumdong N°5* (Republic of Korea, 1993): The 1971 Fund appealed against the first instance Court's decisions in respect of a number of fishery claims. In May 2001 the Court of Appeal rendered its judgement with regard to these claims. The Court accepted the 1971 Fund's position on matters of principle, ie that compensation is not granted for pain and suffering, nor for unlicensed and unregistered fishing activities. The Appellate Court ordered the 1971 Fund to pay £77 000 plus interest. In view of the fact that the 1971 Fund's position on matters of principle had been accepted the Director decided that the Fund should not appeal against the decision by the Appellate Court. Although the individual members of the Yosu FCU did not appeal against the decision, 36 village associations have appealed to the Supreme Court. The amount claimed in the appeal is £1.5 million.
- *Iliad* (Greece, 1993): Claims for compensation totalling some £6.3 million have been lodged in the competent Greek court. Claims against the 1971 Fund became time-barred on or shortly after 9 October 1996. With the exception of a claim for £1.4 million by an owner of a fish farm, and potential claims by the shipowner and the P & I insurer in respect of compensation payments in excess of the shipowner's limitation amount, and indemnification under Article 5.1 of the 1971 Fund Convention, for which protective legal actions were taken, all claims have become time-barred *vis-à-vis* the Fund.

No action requested.

- *Yeo Myung* (Republic of Korea, 1995): All claims, with the exception of one fishery claim for £180 000, have been settled for a total of £990 000. There has been no progress in the limitation proceedings during the last twelve months.

No action requested.

- *Yuil N°1* (Republic of Korea, 1995): Fishery and clean-up claims, as well as claims for the cost of the operations to remove the oil from the sunken vessel, have been settled at £11.7 million. Further fisheries claims totalling £9.1 million are pending in court. There have been no developments in the legal proceedings.

No action requested.

- *Kriti Sea* (Greece, 1996): Claims totalling £7.5 million have been notified to the shipowner and his P & I insurer and to the administrator appointed by the Court to examine claims against the shipowner's limitation fund. The total amount of the claims accepted by the administrator was £2 million, well below the limitation amount applicable to the *Kriti Sea* of £4.1 million. Appeals against the decision of the administrator have been lodged by the shipowner/insurer and the 1971 Fund. Some claimants have also lodged appeals and the amounts set out in the appeals are for a

total of £4.9 million. The Appeal Court's decision is expected in early 2002. The shipowner/insurer have taken legal action against the 1971 Fund in respect of claims in excess of the shipowner's limitation fund as well as for indemnification.

No action requested.

- *Osung N°3* (Republic of Korea, 1997): All claims in the Republic of Korea and Japan have been settled for a total of £9.3 million. The shipowner's limitation fund was established in February 2001, but the indemnification of the shipowner, for £20 500, has not yet been paid.

No action requested.

- *Katja* (France, 1997): A claim by the French Government in respect of clean-up costs was settled in July 2000 for £127 000. Other claims relating to clean-up, damage to property and loss of income in the fisheries sector have been settled for £1.4 million. Legal actions have been taken against the shipowner, his insurer and the 1971 Fund in respect of claims totalling £860 000 for clean-up costs incurred by the regional and local authorities, property damage and loss of income in the fisheries sector. It is very unlikely that the 1971 Fund will be required to make any payments in this case.

No action requested.

- *Kyungnam N°1* (Republic of Korea, 1997): All claims arising out of this incident have been settled for a total of £149 000. In December 2000 the Ulsan District Court fixed the limitation amount applicable to the vessel at Won 43 543 015 (£23 000) and the Fund received £24 000 from the limitation fund in respect of its subrogated claims, including interest. Also in December 2000 the Fund paid £5 600 to the shipowner in indemnification.

No action requested.

- *Maritza Sayalero* (Venezuela, 1998): While discharging cargo the tanker *Maritza Sayalero* spilled an estimated 262 tonnes of medium diesel oil. A nearby town presented a claim for compensation for an estimated £10.1 million against the terminal operator, the shipowner and his P & I insurer before the Supreme Court in Caracas. The town requested the Court to notify the 1971 Fund of the proceedings. The Fund has not yet been notified. The Executive Committee decided that the incident fell outside the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention because the oil involved was non-persistent and was not being carried by the *Maritza Sayalero* at the time of the spill.

No action requested.

3.12 Document 71FUND/A.24/16/12

- *Evoikos* (Singapore, 1997): Claims have been presented in Singapore, Malaysia and Indonesia. All clean-up and fishery claims in Malaysia have been settled by the shipowner's insurer for a total of £458 000. Claims in respect of the costs of clean-up operations and property damage in Singapore totalled £10.2 million. Most of these claims have been assessed and settlement offers have been made in respect of these claims. The Indonesian authorities have submitted claims totalling £2.1 million in respect of clean-up costs, damage to mangroves, sand pollution and loss of income of fishermen. The supporting documentation presented in respect of these claims is insufficient to carry out any assessments, but the 1971 Fund has expressed the view that it appears that the amounts claimed under the items relating to pollution of mangroves and pollution of sand are based on abstract calculations and that these items are therefore inadmissible. The limitation amount applicable to the *Evoikos* has been determined by the competent court in Singapore at £7.5 million. In view of the uncertainty regarding the total amount of established claims the Director considers that it is still premature for the 1971 Fund to make payments. The shipowner

and the insurer commenced legal proceedings in Malaysia, Indonesia and the United Kingdom in order to prevent their subrogated claims and the shipowner's indemnification from becoming time-barred. The proceedings in Malaysia have been stayed by mutual consent.

Action requested:

- Decide whether the Director should be authorised to make payments.

4 Action to be taken by the Assembly

The Assembly is invited to take note of the information contained in this document.
