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COMPENSATION
FUND 1971

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Agenda item 4

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REPORT OF THE DIRECTOR

Summary:

The 1971 Fund Convention will cease to be in force on 24 May 2002 and will therefore not apply to incidents occurring after that date. The failure of a number of Member States to submit oil reports continues to give rise to serious concern. The 1971 Fund has been notified of two new incidents during the last 12 months. There are outstanding third party claims in respect of 15 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 2000 session of the Administrative Council. It also deals with the finances of the 1971 Fund for the first eight months of 2001.
- 1.2 The 1971 Fund and the 1992 Fund published a joint Annual Report in English, French and Spanish for the calendar year 2000. 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.
- 1.3 Since the October 2000 session of the Administrative Council, the Secretariat has been notified of two new incidents 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 Winding up of the 1971 Fund

- 2.1 The 1992 Fund and the 1971 Fund have a joint Secretariat and Director.
- 2.2 Under Article 43.1 of the original version of the 1971 Fund Convention the Convention would remain in force until the number of States Parties fell below three. In September 2000, a Protocol was adopted to amend Article 43.1 to the effect that the Convention would cease to be in force when the number of Member States fell below 25. This Protocol entered into force on 27 June 2001. The 1971 Fund Convention will therefore cease to be in force on 24 May 2002 when the condition set out above will be fulfilled, and will not apply to incidents occurring after this date.
- 2.3 In October 2000 the 1971 Fund purchased insurance to cover its liabilities in respect of incidents occurring during the period up to 31 December 2001 (subject to a deductible of £220 000 per incident). The Director has used an option to extend this insurance cover to incidents occurring up to 31 October 2002.
- 2.4 It will be recalled that at the October 1998 session of the 1992 Fund Assembly, delegations of former 1971 Fund Member States expressed concern in respect of the 1992 Fund's continued involvement in the operation of the 1971 Fund. However, these delegations stated at the October 2000 session that, due to the adoption of the 2000 Protocol to the 1971 Fund Convention and the 1971 Fund's purchase of insurance cover, their concerns had been allayed. The 1992 Fund Assembly decided therefore in October 2000 to maintain the arrangement under which the 1992 Fund shared a Secretariat and Director with the 1971 Fund.

3 Membership of the 1971 Fund and external relations

3.1 1971 Fund Membership

- 3.1.1 The 1971 Fund has at present 28 Member States. Four of these States have deposited instruments of denunciation of the 1971 Fund Convention. When these four denunciations have taken effect, there will be only 24 Members of the 1971 Fund, and the 1971 Fund Convention will therefore cease to be in force on 24 May 2002.
- 3.1.2 The status of the 1971 Fund membership is set out below.

| <i>24 States Parties to the 1971 Fund Convention</i> | | |
|---|-----------------|-----------------------|
| Albania | Gambia | Nigeria |
| Benin | Ghana | Portugal |
| Brunei Darussalam | Guyana | Qatar |
| Cameroon | Kuwait | Saint Kitts and Nevis |
| Colombia | Malaysia | Sierra Leone |
| Côte d'Ivoire | Maldives | Syrian Arab Republic |
| Estonia | Mauritania | Tuvalu |
| Gabon | Mozambique | Yugoslavia |
| <i>4 States Parties to the 1971 Fund Convention which have deposited instruments of denunciation which will take effect on date indicated</i> | | |
| Morocco | 25 October 2001 | |
| Papua New Guinea | 23 January 2002 | |
| Djibouti | 17 May 2002 | |
| United Arab Emirates | 24 May 2002 | |

- 3.1.3 A number of the remaining 1971 Fund Member States are expected to ratify the 1992 Fund Convention in the near future. It is hoped that the other remaining Member States will consider ratification of that Convention as a matter of urgency.

3.2 Information on Fund activities

- 3.2.1 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 five 1971 Fund Member States since the Administrative Council's session in October 2000.
- 3.2.2 The Secretariat has continued its efforts to increase the number of 1992 Fund Member States. The Director and other Officers have participated in seminars, conferences and workshops in a number of 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 1992 Fund and its 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).
- 3.2.3 The Director and other staff members have met with government representatives of a number of States during meetings at the International Maritime Organization (IMO).
- 3.2.4 The Secretariat has, on request, assisted some States in the elaboration of the national legislation necessary for the implementation of the 1992 Conventions.

3.3 Relationship with international organisations and interested parties

- 3.3.1 The 1971 Fund co-operates closely with many intergovernmental and international non-governmental organisations, as well as with private organisations involved in the maritime transport of oil. The 1971 Fund has particularly close links with the IMO, with which a co-operation agreement exists.
- 3.3.2 In the majority of incidents involving the IOPC Funds, clean-up operations are monitored and claims are assessed by the Funds and the shipowner's liability insurer, working closely together. The International Tanker Owners Pollution Federation Limited (ITOPF), supported by a world-wide network of surveyors and experts, provides technical assistance relating to oil spills. The IOPC Funds co-operate closely with the oil industry, represented by the Oil Companies International Marine Forum (OCIMF).

4 Administration of the 1971 Fund

4.1 Secretariat

- 4.1.1 As instructed by the Assembly, the Director has continued to review the operation of the Secretariat. In the Director's view a continuous review of the working methods has become increasingly important as a result of the growth of the IOPC Funds in terms of the number of Member States and the increased complexity of the issues dealt with by the Funds. There is also a need for increased transparency in respect of the Funds' operations.
- 4.1.2 The Assembly will be invited to consider a note by the Director (document 71FUND/A.24/14) in which he gives details of the steps taken to improve the efficiency of the Secretariat, to make optimum use of the Secretariat resources and to ensure the best possible service to Member States, victims of oil pollution, contributors and society at large. In that document the Director also sets out his intentions as to the further development of the operation of the Secretariat.

4.2 Accounts of the 1971 Fund

- 4.2.1 The expenditure for the joint administration of the 1992 Fund and the 1971 Fund during 2000 was £2 424 039, compared with the budgetary appropriation of £3 225 040. Details of the accounts of the 1971 Fund for the financial year 2000 are given in the Financial Statements (document 71FUND/A.24/8, Annex IV).

- 4.2.2 The expenditure for the joint administration of the 1971 and 1992 Funds during the first eight months of 2001 amounts to approximately £1 391 000. The budget appropriation for the whole of 2001 for both Organisations is £2 776 970. It is expected that there will be a budgetary surplus at the end of the year.
- 4.2.3 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.
- 4.3 Investment of funds
- 4.3.1 During 2000 and 2001 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 received on the investments in 2000 was over 6.0%.
- 4.3.2 The base rate in London, which stood at 6% at the time of the October 2000 session of the Administrative Council, was decreased to 5.75% on 8 February 2001, to 5.5% on 5 April 2001, to 5.25% on 10 May 2001 and to 5% on 2 August 2001. Since 18 September 2001 the rate has been 4.75%.
- 4.3.3 Interest earned by the 1971 Fund during the first eight months of 2001 amounted to some £4.6 million.
- 4.3.4 As at 25 September 2001, the 1971 Fund's investments totalled some £90 million.
- 4.3.5 Details of the investments from 1 July 2000 to 30 June 2001 are given in document 71FUND/A.24/6.
- 4.3.6 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.24/7.

5 Contributions

- 5.1 At its session in October 2000 the Administrative Council decided not to levy contributions to the General Fund. The Council further decided to levy 2000 annual contributions to the *Nissos Amorgos* Major Claims Fund of £25 million. It was decided that the entire levy 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 2001. In the light of developments, the Director decided in July 2001 not to make any deferred levy.
- 5.2 The Administrative Council's decisions and the Director's subsequent decision are summarised in the table below.

| Fund | Total 2000 levy authorised by Administrative Council | Amount levied for payment by 1 March 2001 | Maximum deferred levy | Amount levied for payment by 1 September 2001 | Total amount actually levied | Levy per tonne |
|-----------------------|--|---|-----------------------|---|------------------------------|----------------|
| | £ | £ | £ | £ | £ | £ |
| General Fund | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Nissos Amorgos</i> | 25 000 000 | 0 | 25 000 000 | 0 | 0 | 0 |
| Total levy | 25 000 000 | 0 | 25 000 000 | 0 | 0 | 0 |

- 5.3 A report on the payment of annual contributions will be given in document 71FUND/A.24/11.
- 5.4 The Director regrets to report that the failure of a number of Member States to submit reports on contributing oil receipts continues to give rise to considerable concern. By 25 September 2001, reports of oil received in 2000 were outstanding for 27 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.24/12.

6 Incidents involving the 1971 Fund

- 6.1 Since its establishment in October 1978 the 1971 Fund has, up to 25 September 2001, been involved in 106 oil pollution incidents.
- 6.2 Since the October 2000 session of the Administrative Council, the Secretariat has been notified of two new incidents which may give rise to claims against the 1971 Fund: the *Zeinab* (United Arab Emirates) and the *Singapura Timur* (Malaysia).
- 6.3 The *Zeinab*, carrying about 1 500 tonnes of fuel oil, sank off Dubai (United Arab Emirates) resulting in the loss of some 400 tonnes of fuel oil and the subsequent pollution of the coastal areas. The *Singapura Timur*, carrying some 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.
- 6.4 In addition, there are, as at 25 September 2000, outstanding third party claims in respect of 15 incidents. It is likely, however, that several of these incidents will not result in any payments by the 1971 Fund.
- 6.5 The various documents submitted to the Assembly under agenda item 19 give details of all the incidents dealt with by the 1971 Fund during the last twelve months.

7 Looking ahead

- 7.1 The 1971 Fund Convention will cease to be in force on 24 May 2002 and will not apply to incidents occurring after that date. The Secretariat will focus its efforts on settling all pending claims for compensation so as to make it possible to wind up the 1971 Fund within a reasonable period of time. 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.
- 7.2 It is a priority for the Secretariat to encourage those States which are still Members of the 1971 Fund to accede to the 1992 Fund Convention. States which have not yet acceded to that Convention will have no financial protection in respect of incidents which occur after 24 May 2002.
- 7.3 The review of the working methods of the Secretariat will continue so as to enable the Secretariat to make optimum use of the resources available.
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