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INCIDENTS INVOLVING THE 1971 FUND

SINGAPURA TIMUR

Note by the Director

Summary: Following a collision with another tanker, the *Rowan*, the *Singapura Timur*, carrying some 1 500 tonnes of bitumen, sank in the Strait of Malacca off the coast of Malaysia, resulting in an escape of an unknown quantity of bunker fuel and bitumen cargo. Clean-up operations at sea were organised by the shipowner and the cargo owner. Subsequent underwater operations were conducted to remove the remaining bunkers from the wreck. A study by Malaysian experts has indicated that the cargo of bitumen does not pose a significant threat to marine and coastal resources. All claims submitted have been settled. The 1971 Fund has taken legal action against the owner of the colliding ship to prevent its right to recover the amounts it has paid in compensation from becoming time-barred.

Action to be taken: Information to be noted.

1 The incident

1.1 On 28 May 2001 the chemical tanker *Singapura Timur* (1 369 GT), registered in Panama, carrying some 1 550 tonnes of bitumen, collided with the unladen Bahamanian-registered tanker *Rowan* (24 731 GT) near Undan Island, in the Strait of Malacca (Malaysia).

1.2 The collision caused several fractures to the shell plating of one of the *Singapura Timur*'s bunker fuel tanks. Damage to the forward and aft bulkheads of the tank is believed to have resulted in the ingress of cargo into the compartment and the flooding of the engine room. The vessel sank in some 47 metres of water later the same day.

1.3 A salvage company contracted by the *Singapura Timur*'s insurer, the Japan Ship Owners' Mutual Protection and Indemnity Association (Japan P & I Club), sealed all fractures and plugged the vents of the fuel oil tanks to prevent further escape of oil.

1.4 As regards the clean-up operations, reference is made to document 71FUND/A/ES.8/9.

2 Removal of the remaining bunker fuel from the wreck and study to determine the environmental risk posed by the bitumen cargo

2.1 The wreck of the *Singapura Timur* is lying at a depth of 47 metres in the middle of the northbound shipping lane of the traffic separation scheme in the Malacca Straits, some eight nautical miles from the nearest coast and close to sensitive coastal resources, including coral reefs, mangroves and mariculture facilities. In view of the temporary nature of the measures that were undertaken to prevent the escape of bunker fuel from the vessel, the Malaysian Department of Environment (DOE) considered that the remaining bunkers posed a threat to these resources. The DOE therefore decided to engage a contractor to remove the bunker fuel oil at the earliest opportunity. The Director concurred with the decision by the DOE in this regard, and an expert in Singapore engaged by the 1971 Fund provided technical advice to the authorities during the planning and execution of the bunker removal operation.

2.2 The DOE also informed the 1971 Fund of its intention to conduct a study to ascertain whether the bitumen cargo remaining on board the wreck posed a threat to the environment, and if so, whether the cargo should be removed. The 1971 Fund was involved from the outset in the selection of the experts who would undertake the study and in the determination of the mandate of these experts.

2.3 Since this study required a detailed diving survey of the wreck and the collection of water and sediment samples, the DOE agreed to the 1971 Fund's suggestion of combining the field work associated with the study with the operation to remove the bunker fuel in order to reduce costs.

2.4 In September 2002, the contractor engaged by the DOE submitted detailed technical and financial proposals in respect of the bunker removal operation and the environmental risk study. The Director informed the DOE that the 1971 Fund agreed in principle to the proposals, but reserved the right to monitor the removal operation and the environmental risk study and to make its own assessment as to whether the two elements of the project had been completed satisfactorily. The Director also informed the DOE that claims for the costs of the oil removal operation and the environmental risk study would be assessed by the Fund in the usual way on the basis of the Fund's criteria.

2.5 The operations to remove the bunker fuel, inspect the condition of the wreck and collect samples of water, sediment and bitumen were carried out from 20 October 2002 to 8 November 2002. Some 5 tonnes of heavy fuel oil was pumped from the No.1 port and starboard fuel tanks together with a quantity of oily water from the engine room. Dispersant chemical was added to these spaces after completion of the pumping operation. The DOE issued a completion certificate confirming that to the extent practicable all remaining bunkers had been removed from the wreck.

2.6 The experts submitted a report on the environmental risk posed by the bitumen cargo in August 2003. The DOE informed the Fund that it did not accept the report due to the lack of information specifically required by the DOE and the Malaysian Marine Department in order to enable them to make a judgement on the environmental risk posed by the cargo. The Fund informed the DOE that although the Fund was disappointed with the quality of the report issued by the experts, it agreed with their conclusion, namely that the remaining cargo of bitumen in the wreck of the *Singapura Timur* did not pose a significant risk to the marine and coastal resources.

2.7 In order to clarify the 1971 Fund's position regarding the environmental risk posed by the bitumen cargo, the Fund held a meeting in Malaysia with representatives from the DOE, the Marine Department, the Fisheries Department and the oil industry. At the meeting the Fund stated that on the basis of the underwater inspection of the wreck, it had concluded that the wreck was likely to remain intact for over 100 years during which time no further bitumen would be exposed

to the sea. The Fund further stated that in the longer term, the wreck would be expected to disintegrate slowly through corrosion, gradually exposing the cargo of bitumen on the seabed. Based on the analysis of the bitumen, sediments and the seawater in the vicinity of the wreck, the Fund considered that the cargo of bitumen would not flow or float to the surface and was virtually inert, having no tendency to leach components into the sea or the atmosphere. The Fund concluded that the bitumen did not pose a threat to marine and coastal resources. For these reasons the Fund was of the view that the cargo of bitumen remaining in the wreck did not pose an environmental risk.

2.8 The DOE has reserved its position regarding the environmental risk posed by the bitumen cargo. In particular the DOE has expressed its concern that catastrophic damage to the wreck's hull could result in the release of bitumen in the form of fragments, which could land as tar balls along the Malaysian coastline. The 1971 Fund informed the DOE that in its view such catastrophic hull damage was highly unlikely, but that in the event this would not change the physical properties of the bitumen and would not generate tar balls that could impact the Malaysian coastline.

2.9 The DOE has informed the Fund that it intends to consider the matter further during meetings between the various Government departments before concluding what, if anything, should be done with the cargo.

3 Claims for compensation

3.1 The Japan P & I Club has paid claims totalling US$150 000 (£94 000) in respect of clean-up and preventive measures.

3.2 At the request of the Japan P&I Club, and in view of the low limitation amount applicable to the *Singapura Timur*, the Administrative Council decided at its May 2002 session to waive the requirement under Article V.3 of the 1969 Civil Liability Convention that the shipowner should constitute a limitation fund (document 71FUND/AC.7/A/ES.9/14, paragraph 8.6.8).

3.3 It was agreed between the 1971 Fund and the Japan P&I Club that the limitation amount applicable to the ship under the 1969 Civil Liability Convention was 82 327 SDR which, on the basis of the exchange rate between SDR and the US dollar on the date of the incident (28 May 2001), was US$103 378 (£65 000). On the basis of this amount the Fund paid Japan P&I Club a total of US$47 000 (£30 000) being the amount the Club had paid in compensation above the shipowner's limit.

3.4 The Fund also paid indemnification of US$25 000 (£16 000) to the Japan P&I Club in accordance with Article 5.1 of the 1971 Fund Convention.

3.5 The principal contractor involved in the operations to remove the bunker fuel, inspect the condition of the wreck and collect samples of water, sediment and bitumen for the purpose of the environmental risk assessment submitted a claim for US$1 130 000 (£711 000) in respect of the costs of this phase of the operation and for the costs of the analyses of the water, sediment and bitumen samples. This claim has been settled for US$781 000 (£491 000).

3.6 The claim for the cost of the report on the environmental risk posed by the cargo of bitumen was settled for US$2 500 (£1 600).

4 Recovery from the 1971 Fund's insurance policy

4.1 The 1971 Fund's liabilities for incidents occurring between 25 October 2000 and 24 May 2002, the date when the 1971 Fund Convention ceased to be in force, is covered by insurance. The insurance policy covers the 1971 Fund's liabilities up to 60 million SDR (£51 million) per incident minus the amount actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention as well as legal and other experts' fees, subject to a deductible of 250 000 SDR for each incident.

4.2 The Administrative Council decided at its October 2002 session that the relevant date for the conversion of this amount into Pounds Sterling should be the date of the incident (28 May 2001) (document 71FUND/AC.9/20 paragraph 15.14.4), giving a deductible of £221 283.

4.3 Since the 1971 Fund's payments for compensation and costs have exceeded the deductible, the Fund will recover the excess amounts from its insurer in the near future.

5 Recourse action

5.1 Any action by the 1971 Fund against the *Rowan*'s interests to recover amounts paid in compensation by it would, as regards the right of limitation, be governed by the conventions dealing with this matter in general, namely the 1957 Convention relating to the Limitation of the Liability of Owners of Sea-going Ships or the 1976 Convention on Limitation of Liability for Maritime Claims. The limitation amount applicable to the *Rowan* under the 1976 Convention is estimated at £3.7 million whereas the limit under the 1957 Convention is estimated at £768 000. The test for breaking the shipowner's right to limitation is much stricter in the 1976 Convention than in the 1957 Convention.

5.2 Documentary evidence suggested that the owner of the *Rowan* resided in Belgium at the time of the incident. Malaysia is a party to the 1957 Convention, whereas Japan and Belgium are parties to the 1976 Convention. In order to prevent its claim against the *Rowan's* interests from becoming time barred, the Director decided to take legal action against the shipowner in Malaysia and Belgium.

5.3 The total costs incurred by the *Singapura Timur*'s interests (Japan P & I Club and the hull insurers) are in the region of US$4.8 million (£3 million), which is less than the limitation amount applicable to the *Rowan* under the 1976 Convention.

5.4 In December 2001, the *Singapura Timur*'s interests (P & I and hull insurers) commenced proceedings in Japan against the *Rowan* interests in order to recover the costs they had incurred and the costs they would incur as well as the costs that the Fund might incur as a result of this incident. The Fund did not take part in these proceedings and the Director informed the Japan P & I Club that the 1971 Fund reserved its position with regard to a recourse action, as the extent of the liability of the Fund had not been established at that time.

5.5 The Japan P & I Club and the hull underwriters of the *Singapura Timur* had sought the agreement of the 1971 Fund to their taking recourse action against the *Rowan* interests in Japan or any other State that is party to the 1976 Convention. The Director considered that the proposal had merit, since it would ensure that the 1971 Fund would recover at least part of any compensation payments made by it without having to incur any substantial litigation costs. In the Director's view, a condition of an agreement with the Club in this regard should be that any amount paid as a result of a judgement or settlement would be placed in an escrow account until the liabilities of

the Japan P & I Club, the hull underwriters and the 1971 Fund had been established, and that once the liabilities of all the parties had been determined, the money in the escrow account would be distributed on a *pro rata* basis. The Japan P & I Club informed the Director that the hull underwriters of the *Singapura Timur* required the postponement of the discussion in relation to the terms of this agreement although the hull underwriter had understood the purpose and necessity of such an agreement. The Club also informed the Director that the hull underwriter wished to finalise the settlement agreement with the *Rowan* interests prior to concluding this agreement. The Fund did not agree to this condition required by the hull underwriters.

5.6 The *Rowan* interests have commenced proceedings in Malaysia against the *Singapura Timur* and its owner *in rem* and against the owner in person and in limitation. The Japan P & I Club has contested the action *in rem* on the ground that such an action can only be taken against a ship and not against a wreck. The Club has further contested the action against the owner in person and in limitation on the ground that Malaysian courts do not have jurisdiction in this case.

6 Action to be taken by the Administrative Council

The Administrative Council is invited:

a) to take note of the information contained in this document;

b) to give the Director such instructions in respect of this incident as it may consider appropriate.