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COMPENSATION
FUND 1971

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Agenda item 15

71FUND/AC.9/13/13
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INCIDENTS INVOLVING THE 1971 FUND

SINGAPURA TIMUR

Note by the Director

Summary: 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 and asphalt cargo. Clean-up operations at sea were organised by the shipowner and the cargo owner. No oil is reported to have gone ashore. It is not yet possible to estimate the total amount of the claims. A contractor has been engaged by the Malaysian authorities to remove the remaining bunker fuel from the wreck and undertake a study to assess the environmental risk posed by the cargo of bitumen remaining onboard. Discussions are taking place between the shipowner's insurer and the 1971 Fund as regards a recourse action in this incident.

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 asphalt, 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 **Limitation of liability**

2.1 The limitation amount applicable to the *Singapura Timur* under the 1969 Civil Liability Convention has been estimated by the Japan P&I Club at 95 760 SDR (£82 000).

2.2 At its 7th session held in April/May 2002 the Administrative Council decided that, in view of the relatively low limitation amount applicable to the *Singapura Timur*, the 1971 Fund should grant a request by the Japan P&I Club to waive the requirement under Article V.3 of the 1969 Civil Liability Convention to constitute the limitation fund (document 71FUND/AC.7/A/ES.9/14, paragraphs 8.6.5 – 8.6.8).

3 **Claims for compensation**

3.1 The Japan P & I Club has paid claims totalling US\$104 000 (£67 000) in respect of clean-up and preventive measures. A further claim by an oil industry co-operative engaged in the clean-up for US\$154 000 (£100 000) has been agreed in principle at US\$53 000 (£35 000).

3.2 When the claim by the industry co-operative is settled and paid, the total payments made by the Japan P & I Club will have exceeded the limitation amount applicable to the *Singapura Timur* under the 1969 Civil Liability Convention and the 1971 Fund will therefore be liable for any further claims for compensation. The 1971 Fund will also be liable to pay indemnification to the shipowner in accordance with Article 5.1 of the 1971 Fund Convention.

3.3 The 1971 Fund's liability in respect of the incident, as well as its legal and other experts' costs, are covered by insurance purchased in October 2000, less a deductible of 250 000 SDR.

3.4 As regards the conversion of the deductible of 250 000 SDR the Director proposes that the same method shall be used as that adopted by the Administrative Council for the conversion of the same deductible in respect of the *Zeinab* incident, namely that the relevant date for conversion shall be the date of the incident in question (document 71FUND/AC.8/6, paragraph 3.5.5) which in the case of the *Singapura Timur* is 28 May 2001.

3.5 The SDR: pound sterling exchange rate on 25 May 2001 (the 26, 27, and 28 May being non-banking days) was 1 SDR = £0.88513. If the Administrative Council were to approve the Director's proposal, the deductible under the insurance policy would be £221 283.

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

4.1 The wreck of the *Singapura Timur* is lying in 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.

4.2 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) has concluded that the remaining bunkers pose a threat to these resources. The DOE has therefore decided to engage a contractor to remove the bunker fuel oil at the earliest opportunity. The Director concurs with the decision by the DOE in this regard, and the 1971 Fund's expert in Singapore has provided technical advice to the authorities during the planning of the bunker removal operation.

- 4.3 The DOE has also informed the 1971 Fund of its intention to conduct a study to ascertain whether the bitumen cargo remaining onboard the wreck poses a threat to the environment, and if so, whether the cargo should be removed. The 1971 Fund has been involved from the outset in the selection of the experts who will undertake the study and in the determination of the mandate of these experts.
- 4.4 Since this study will require a detailed diving survey of the wreck and the collection of water and sediment samples in the vicinity of the wreck, the DOE has 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.
- 4.5 In September 2002 the contractors engaged by the DOE submitted detailed technical and financial proposals in respect of the bunker removal operation and the environmental risk study. The Director has informed the DOE that the 1971 Fund agrees in principle to the proposals, but reserves the right to consider the reports of the removal operation and the environmental risk study on their merits and to make its own assessment as to whether the two elements of the project have been completed satisfactorily. The Director has also informed the DOE that claims for the costs of the oil removal operation and the environmental risk study will be assessed by the Fund in the usual way on the basis of the Fund's criteria.
- 4.6 It is expected that the bunker removal and the environmental risk assessment will commence in October 2002 and that the contractors will have issued their report on the risk study by the end of the year.

5 **Recourse action**

- 5.1 The question arises as to whether the 1971 Fund should take recourse action against the owner of the *Rowan* to recover the amounts paid by the 1971 Fund or by its insurer under the insurance policy.
- 5.2 Any action against the *Rowan* interests 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. Malaysia is a party to the 1957 Convention, whereas Japan is a party to the 1976 Convention. The limitation amount under the 1976 Convention is significantly higher than that under the 1957 Convention. The limit 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.
- 5.3 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.
- 5.4 The Director informed the Japan P & I Club that the 1971 Fund reserved its position with regard to recourse action, as the extent of the liability of the Fund had not been established.
- 5.5 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.

- 5.6 The total losses incurred by the *Singapura Timur*'s interests (Japan P & I Club and the hull insurers) are in the region of US\$4.8 million (£3.4 million), which is less than the limitation amount applicable to the *Rowan* under the 1976 Convention.
- 5.7 The Japan P & I Club and the hull underwriters of the *Singapura Timur* have sought the agreement of the 1971 Fund to their proceeding against the *Rowan* interests in Japan or any other State that is Party to the 1976 Convention.
- 5.8 The Director considered that the proposal by the Japan P & I Club to take action against the *Rowan* interests in Japan 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.
- 5.9 At its 7th session held in April/May 2002, the Administrative Council noted the proposal by the Japan P & I Club. In response to a query regarding the grounds for pursuing *Rowan* interests under the 1976 Convention in Japan, the Director stated that he understood that, since Japan was a party to that Convention, the interested parties had taken these steps in order to avail themselves of the higher limitation amount under that Convention.
- 5.10 The Administrative Council endorsed the Director's position as regards proceedings against the *Rowan* and instructed him to continue discussions with the *Singapura Timur*'s interests.
- 5.11 The Japan P & I Club has recently informed the Director that the hull underwriters of the *Singapura Timur* are not prepared to enter into such an agreement. The Director will continue discussions on the recourse action with the Club in order to arrive at a mutually acceptable solution.

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.
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