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COMPENSATION
FUND 1971

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Agenda item 8

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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. The shipowner's insurer has requested the 1971 Fund to waive the requirement for the constitution of the limitation fund. The question has arisen as to whether the owner of the *Singapura Timur*, his P & I insurer and the 1971 Fund should take recourse action against the owner of the colliding vessel.

Action to be taken:

Decide whether the requirement for the shipowner to establish a limitation fund should be waived and give the Director instructions in respect of a possible recourse action.

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 It will be recalled that in October 2000, the 1971 Fund purchased insurance cover for any liabilities of the 1971 Fund for compensation and indemnification up to 60 million SDR (£52 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) in respect of all incidents occurring during the period up to 31 December 2001. The 1971 Fund itself has to cover a deductible of 250 000 SDR (£220 000) for each incident. The 1971 Fund has exercised an option to extend the cover up to the date when the 1971 Fund Convention will cease to be in force. This insurance cover is applicable to the *Singapura Timur* incident, and the 1971 Fund's exposure is therefore limited to approximately £220 000 for this incident.
- 1.4 A salvage company contracted by the Japan P & I Club sealed all fractures and plugged the vents of the fuel oil tanks to prevent further escape of oil.
- 1.5 As regards the clean-up operations, reference is made to document 71FUND/A/ES.8/9.
- 1.6 The *Singapura Timur* was entered in the Japan Ship Owners' Mutual Protection and Indemnity Association (Japan P & I Club).

2 Claims for compensation

- 2.1 The Japan P & I Club has paid claims totalling US\$100 994 (£70 800) in respect of clean-up and preventive measures. A further claim by an oil industry co-operative engaged in the clean-up for RM 607 830 (£159 951) is being assessed by the Japan P & I Club and the 1971 Fund. It is anticipated that when this claim is settled, 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. However, it is not yet possible to make an evaluation of the total amount of the established claims.
- 2.2 The 1971 Fund will be required to pay indemnification of the shipowner in accordance with Article 5.1 of the 1971 Fund Convention.

3 Environmental threat posed by the cargo and fuel oil remaining on board the vessel

- 3.1 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.
- 3.2 The Malaysian Department of Environment (DOE) has informed the 1971 Fund of its intention to conduct a study to ascertain whether the bitumen cargo remaining on board the *Singapura Timur* poses a threat to the environment, and if so, whether the cargo should be removed. Meetings have been held in Malaysia between the DOE and the 1971 Fund. The 1971 Fund and its expert have assisted the DOE in preparing the terms of reference of the study.
- 3.3 The DOE has concluded that in view of the temporary nature of the measures that were undertaken to prevent the escape of bunker fuel from the vessel, the remaining oil poses a significant threat to the resources referred to in paragraph 3.1 above. The DOE has therefore decided to engage a salvor to remove the bunker fuel oil at the earliest opportunity. The Director concurs with the decision by the DOE in this regard.
- 3.4 Since the study referred to in paragraph 3.2 will require a detailed diving survey of the wreck, the 1971 Fund has suggested that the DOE should consider combining this survey with the operation to remove the bunker fuel, since this would avoid duplication of effort and reduce costs.

4 Limitation of liability under the 1969 Civil Liability Convention

- 4.1 Malaysia is a Party to the 1969 Civil Liability Convention and the 1971 Fund Convention.
- 4.2 The limitation amount applicable to the *Singapura Timur* under the 1969 Civil Liability Convention has been indicated by the Japan P & I Club at 95 760 SDR (£77 050).
- 4.3 From the information available so far there is no indication that the incident occurred as a result of the actual fault and privity of the owner of the *Singapura Timur*. Consequently there is no reason to believe that the shipowner would not be entitled to limit his liability under the 1969 Civil Liability Convention.
- 4.4 Under Article V.3 of the 1969 Civil Liability Convention the shipowner shall establish a limitation fund for the limitation amount applicable to the ship in order to be able to benefit from limitation of liability. The Japan P & I Club has requested that the 1971 Fund should in this case waive the requirement for the constitution of the limitation fund.
- 4.5 The 1971 Fund Executive Committee has decided previously that the 1971 Fund normally requires the establishment of the limitation fund in order to be able to pay compensation, and that this requirement can be waived only in exceptional cases. In several cases in Japan, the Committee waived this requirement, however, in view of the disproportionately high legal cost that would be incurred in establishing the limitation fund compared with the low limitation amounts under the 1969 Civil Liability Convention in these cases. When making these decisions, the Committee took into account that, under the Memorandum of Understanding signed on 25 November 1985 by the Japan P & I Club and the 1971 Fund, the Club undertakes to repay in full any amount paid by the 1971 Fund in compensation if it is held by the competent court that the shipowner is not entitled to limit his liability under the 1969 Civil Liability Convention. In these cases, the Committee agreed that the 1971 Fund could, as an exception, pay compensation without the limitation fund having been established (cf documents FUND/EXC.49/10 and FUND/EXC.49/12, paragraph 3.9.2).
- 4.6 Although not expressly stated in the Memorandum of Understanding, the undertaking by the Japan P & I Club should in the Director's view be considered restricted to incidents occurring in Japan, since the undertaking refers to the Japanese Law on Compensation for Oil Pollution Damage. The Director considers that the 1971 Fund should nevertheless grant the request of the Japan P & I Club, in view of the relatively low limitation amount applicable to the *Singapura Timur*. The 1971 Fund would in any event not make any compensation payments until the shipowner/Club have paid up to the limitation amount.

5 Recourse action

- 5.1 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.
- 5.2 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.

- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 The Director considers that the proposal by the Japan P & I Club to take action against the *Rowan* interests in Japan has 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. A condition of an agreement with the Club in this regard should in his view 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 have been established. Once the liabilities of all the parties have been determined, the money in the escrow account would be distributed on a *pro rata* basis. A further condition of such an agreement should be that the 1971 Fund would waive its rights to pursue any further claim against the owner of the *Rowan* to recover any amounts the Fund had paid in compensation.
- 5.8 Subject to any instructions which the Assembly may wish to give him, the Director intends to continue discussions with the *Singapura Timur*'s interests.

6 Action to be taken by the Assembly

The Assembly is invited:

- a) to take note of the information contained in this document;
 - b) to consider whether to waive the requirement for the Japan P & I Club to constitute a limitation fund as required by Article V.3 of the Civil Liability Convention;
 - c) to give the Director instructions in respect of a possible recourse action against the *Rowan* interests; and
 - d) to give the Director such instructions in respect of other aspects of this incident as it may consider appropriate.
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