



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
50th session  
Agenda item 6

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## ANY OTHER BUSINESS

### The 1971 Fund's use of Experts

#### Note by the Director

#### **1** Introduction

At the Executive Committee's 49th session, the Director undertook to submit a document containing information in respect of the 1971 Fund's use of experts for the assessment of claims, and the criteria for their selection (document FUND/EXC.49/12, paragraph 3.2.26). This document contains such information.

#### **2** Consideration by the 7th Intersessional Working Group

2.1 The 7th Intersessional Working Group established by the Assembly, which was set up to study inter alia the procedures to be applied by the 1971 Fund in the assessment and settlement of claims, was given information on the use of experts by the 1971 Fund and matters relating thereto (document FUND/WGR.7/14, paragraphs 4.2.1 - 4.2.14).

2.2 The policy applied by the 1971 Fund was endorsed by the Working Group. The relevant paragraphs of the Working Group's report read as follows (document FUND/A.17/23, paragraphs 8.4.1 and 8.4.2):

The Working Group took note of the information contained in document FUND/WGR.7/14 on the use of experts by the IOPC Fund and matters relating thereto. The policy applied by the IOPC Fund was endorsed by the Working Group. The Group stressed the importance that experts attended the site of a spill as soon as possible, that they were allowed to follow any operations, that they were given access to information relating to the incident by the authorities involved, and that discussions took place between the competent authorities and these experts. It was generally agreed that there was great value in the use of the experts of ITOPF and that it was advantageous if the P & I Club and the IOPC Fund could use joint experts, provided that there was no conflict of interest or no potential conflict of interest between the

Club and the Fund in the particular case. The Working Group took the view that the IOPC Fund should use the most appropriate experts for any aspect of a case.

The Working Group noted that the role of the technical experts used by the IOPC Fund, such as those of ITOFF, was to provide objective technical advice and assistance to those in charge of the clean-up operations, with the aim of mitigating any damage caused by the spill, and that these experts were frequently called upon to assess the extent of damage at the time of the spill. It was also noted that such experts regularly undertook to assess on behalf of the IOPC Fund the technical merits of the claims for compensation for both clean-up measures and damage.

2.3 At its 17th session, the Assembly endorsed the report of the Working Group (document FUND/A.17/35, paragraph 26.8).

### **3 The 1971 Fund's choice of experts**

3.1 The 1971 Fund endeavours to obtain the best possible expertise that is available to address issues arising in the context of a particular incident. In recent years the 1971 Fund has consulted experts in many fields, eg clean-up operations, salvage, damage to fishing boats, yachts, fishing gear and buildings, fisheries, aquaculture, agriculture, tourism and marketing. The 1971 Fund decided at an early stage that it would not be economical for it to employ technical experts as members of the Secretariat. Efforts are made to locate and engage suitable persons as and when they are required to give expert advice. The need for expert advice can only be determined after an incident has occurred and often only after a particular type of damage has affected potential claimants. In many fields, there are very few experts with the appropriate experience.

3.2 Various aspects are considered when the 1971 Fund engages experts. Whilst the character of a particular incident and the claims arising therefrom will dictate the expertise acquired, general criteria will be followed when selecting the appropriate experts. These criteria will normally include a high level of competence in the relevant field of expertise and appropriate broad experience in that field, ability to give objective impartial advice to the 1971 Fund and to act consistently and independently of the various interests involved in an incident, as well as a knowledge of the compensation system established by the Civil Liability Convention and the Fund Convention and of the criteria for admissibility of claims applied by the 1971 Fund.

3.3 The role of the experts will vary depending upon the circumstances in the particular case. In many cases, the experts will be involved in discussions with the competent authorities of the country concerned in respect of the appropriate clean-up techniques. The experts may be called upon to assist claimants in their presentation of claims. They will have to collect factual information and present this information in such a way as to enable the 1971 Fund to take decisions on the admissibility of claims and the acceptable quantum. It should be emphasised that the experts are never authorised to take any decisions concerning the admissibility of claims.

3.4 A list of most of the experts (other than legal experts) used by the 1971 Fund in recent years is at the Annex. A more detailed description of the experts used frequently is given in paragraphs 3.5 – 3.14 below.

3.5 Since its inception in 1978, the 1971 IOPC Fund has used the services of the International Tanker Owners Pollution Federation Limited (ITOPF) in the majority of cases in the Fund Member States. The organisation is non-profit-making and financed through subscriptions levied on the world's tanker owners through the P & I Clubs. ITOFF's small team of technical experts, comprising mainly marine biologists, chemists and civil engineers, is on constant standby to travel anywhere in the world. Over the past 20 years technical experts from ITOFF have attended on-site at over 350 oil spills in some 80 countries, giving the organisation unparalleled, first-hand practical experience of oil spill clean-up operations and pollution damage. Whilst the role of ITOFF technical experts can vary from incident to incident, their primary task is always to provide objective impartial technical advice and assistance to those in charge of clean-up operations. The assessment of the technical merits of claims for compensation for clean-up measures and other claims is another activity regularly undertaken by ITOFF experts, often in cooperation with other experts. As well as

responding to oil spills ITOPF is involved in various other related activities such as contingency planning and training, often for governments. ITOPF also produces various technical publications, maintain a number of databases and have a worldwide network of contacts, which means that ITOPF is often the first to inform the Fund of a new incident.

3.6 Murray Fenton & Associates Ltd has several experts with wide experience in maritime matters. The 1971 Fund has used the services of this company in salvage related matters in the *Patmos*, *Rio Orinoco*, *Agip Abruzzo*, *Haven*, *Braer* and *Sea Empress* cases. One of the directors of this company was responsible for the co-ordination of the claims assessment in the *Patmos* and *Haven* cases.

3.7 MacAlister Elliott & Partners Ltd, founded in 1976, provides fisheries management consultancy, worldwide. The company, which has a number of staff and consultants with wide experience in fishery related matters, has carried out numerous projects for a wide range of clients in the public and private sectors throughout the world. Public sector clients include the World Bank, United Nations Development Programme (UNDP), the Food and Agriculture Organization (FAO), the European Commission, the African Development Bank and the Asian Development Bank. Staff and consultants of the company have been engaged by the 1971 Fund for the assessment of fishery claims in respect of incidents in the *Keumdong N°5*, *Seki*, *Braer* and *Sea Empress* incidents.

3.8 L & R Management Consultants Ltd is a leading management consultant to the tourism, leisure and cultural industries and has worked in these fields for over 25 years. The staff have practical experience in the tourism and leisure industries. This company has provided expertise for the 1971 Fund for the assessment of tourism related claims in the *Braer* and *Sea Empress* cases.

3.9 SERMAP has several experts with wide experience in marine matters. The company has been involved in, inter alia, marine surveys, cargo control, hull and engine damage inspections, seaworthiness and technical advice on marine casualties. SERMAP has dealt with various types of claims for P & I Clubs for 20 years. The staff includes master mariners, marine engineers and cargo surveyors. The company has provided expertise for the 1971 Fund in the monitoring of the clean-up operations which took place in the aftermath of the *Aegean Sea* incident and in the assessment of claims for property damage in that case.

3.10 Korea Marine Oil Pollution Surveyors Co Ltd (KOMOS) has dealt with oil pollution cases in the Republic of Korea for many years on behalf of P&I Clubs. This company has been used by the 1971 Fund for claims assessment in most cases in which it has become involved in that country. Recently, when several major cases in that country had to be dealt with simultaneously, the 1971 Fund has also used Hyopsung Shipping Corporation and National Marine Surveyors & Consultants (NASCO), which have experience in handling compensation claims for the P & I Clubs.

3.11 In Japan, the 1971 Fund has in recent years used mainly Pegasus Marine Surveyors & Consultants Ltd and General Marine Surveyors & Consultants Ltd, which have acquired considerable experience in dealing with oil spills and assessing claims for compensation, both in respect of clean-up costs and in respect of fishery claims.

3.12 The Centre de documentation, de recherche et d'expérimentations sur les pollutions accidentelles des eaux (CEDRE) is a non-profit making organisation supported by the French Ministry of the Environment. It was established in 1979 and undertakes to inform and advise on all matters relating to oil spill response. CEDRE has been involved in the assessment of the biological and economic impact of oil spills in a number of countries. The 1971 Fund has used CEDRE's experts for the assessment of fishery claims in the *Aegean Sea* and *Sea Prince* incidents and for advice on clean-up in the *Seki* case.

3.13 Brookes Bell & Co has wide experience in dealing with marine casualties and various types of claims for P & I clubs for over 100 years. This company, through its senior partner, has been responsible for running the Joint Claims Office in the *Aegean Sea* case, and this partner has been heavily involved in the assessment of the claims in this case.

3.14 Saltire Management Ltd has been responsible for running the Claims Handling Office in the *Sea Empress* case. The Managing Director of this company was also, in his previous employment, responsible for setting up of the *Braer* Claims Office.

3.15 As has been repeatedly stated by the Executive Committee, it is important that there is consistency in the 1971 Fund's assessment of claims. For this reason, it is essential that the experts used by the Fund have or acquire a thorough knowledge of the Fund's policy. In order to promote this consistency, the 1971 Fund has in many cases engaged ITOPF experts to work together with local surveyors in the assessment of claims and for coordinating the work of various experts.

**4 Action to be taken by the Executive Committee**

The Executive Committee is invited to:

- (a) take note of the information contained in this document; and
- (b) give the Director such instructions as it may deem appropriate in respect of the engagement of experts.

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## ANNEX

**EXPERTS (OTHER THAN LAWYERS) USED BY THE 1971 FUND IN RECENT YEARS  
(with an indication of the State in which they are based)**

*International Tanker Owners Pollution Federation Ltd (United Kingdom)*

On site advice on clean-up and technical assessment of claims, including those relating to fishery issues

*Murray Fenton & Associates Ltd (United Kingdom)*

Salvage issues and general claims handling.

*Brookes Bell & Co (United Kingdom)*

General claims handling; operating Joint Claims Office in the *Aegean Sea* case.

*London Offshore Consultants Ltd (United Kingdom and Dubai)*

Salvage issues and general claims handling.

*Seawise Maritime Services (Pte) Ltd (Singapore)*

Salvage issues

*MacAlister Elliott & Partners Ltd (United Kingdom)*

Fishery issues

*L & R Management Consultants Ltd (United Kingdom)*

Tourism and related issues

*Saltire Management Ltd (UK)*

General claims handling; responsible for running the Claims Handling Office in the *Sea Empress* case<sup><1></sup>

*Howard Humphreys & Partners Ltd (United Kingdom)*

Consulting civil engineers

*AEA Technology plc (United Kingdom)*

Clean-up

*SERMAP Marine Surveyors Ltd (Spain)*

Clean-up and marine surveyors

*Dr Alicia Sanmamed (Spain)*

Fishery issues

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<sup><1></sup> The Managing Director of this company was also, in his previous employment, responsible for the setting up of the *Braer* Claims Office.

Studio Mattarelli (Italy)

Clean-up; general claims assessment

Centre de documentation, de recherche et d'expérimentations sur les pollutions accidentelles des eaux (CEDRE) (France)

Clean-up and fishery issues

Korea Marine Oil Pollution Surveyors Co Ltd (KOMOS) (Republic of Korea)

Clean-up, fishery issues and general claims assessment

National Marine Surveyors & Consultants (NASCO) (Republic of Korea)

Clean-up, fishery issues and general claims assessment

Hyopsung Shipping Corporation (Republic of Korea)

Clean-up, fishery claims and general claims assessment

PEGASUS Marine Surveyors & Consultants Ltd (Japan)

Clean-up and fishery issues

General Marine Surveyors & Consultants Ltd (Japan)

Clean-up and fishery issues

Japan Marine Surveyors & Sworn Measurers Association (Nippon Kaiji Kantei Kyokai, NKKK) (Japan)

General claims assessment

Inchcape (Japan)

General claims assessment

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