



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
58th session
Agenda item 3

71FUND/EXC.58/11
17 April 1998

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INCIDENTS INVOLVING THE 1971 FUND

IRVING WHALE

Note by the Director

Summary:	The 1971 Fund has notified the other parties in the court proceedings that it considers that the 1971 Fund Convention does not apply to the <i>Irving Whale</i> case.
Action to be taken:	Information to be noted.

1 **Introduction**

1.1 The Canadian registered oil barge *Irving Whale* loaded with 4 270 tonnes of heavy fuel oil sank on 7 September 1970 in approximately 67 metres of water in the Gulf of St Lawrence (Canada).

1.2 The 1971 Fund Convention entered into force in respect of Canada in April 1989.

1.3 Following the sinking, heavy fuel oil was released from the barge. Over the years, small quantities of oil continued to seep from the barge. In 1991, it was determined that there were still over 3 000 tonnes of oil on board, and the Canadian Government decided to raise the barge.

1.4 The refloating took place in the summer of 1996. The barge was successfully removed. A small quantity of oil was released during the refloating operation. The cost of the preparations in 1995 and of the refloating operation in 1996 (including clean-up costs) amount to some Can\$42 million (£19 million).

1.5 In 1997, the Canadian Government took action before the Federal Court of Canada against the owners and operators of the *Irving Whale*, claiming compensation for the cost referred to in paragraph 1.4. The Canadian Ship-Source Oil Pollution Fund is a party to the proceedings by statute. The defendants have denied liability although all formal defences have not yet been filed.

1.6 It should be noted that the Canadian Government has not claimed compensation for the cost of the clean-up operations incurred in connection with the sinking of the *Irving Whale* in 1970. The claim relates only to the cost of the preparations in 1995 and the refloating operation (including clean-up) in 1996.

1.7 The Government of Canada notified the 1971 Fund of the legal action. The Director informed the Government that in his view the 1971 Fund Convention does not apply in this case.

2 Consideration by the Executive Committee at its 56th session

2.1 At its 56th session, the Executive Committee shared the Director's view that, although the lifting of the barge was carried out in 1996, these operations should be considered as being part of the incident which had started with the sinking of the barge in 1970. It was noted that "incident" was defined in the Conventions as any occurrence or series of occurrences having the same origin (Article I.8 of the 1969 Civil Liability Convention and Article 1.1 of the 1971 Fund Convention).

2.2 It was recalled that a similar situation had been addressed by the 1971 Fund in the *Czantoria* case (Canada, 1988), when the Executive Committee had decided that the 1969 Civil Liability Convention and the 1971 Fund Convention did not apply to damage sustained in a given State after the entry into force of the respective Convention for that State resulting from an incident occurring before the entry into force (document FUND/EXC.24/6, paragraph 3.4.6).

2.3 In the light of the Executive Committee's decision in the *Czantoria* case, the Committee decided that the claim presented by the Canadian Government did not fall within the scope of application of the 1971 Fund Convention (document 71FUND/EXC.56/2, paragraph 4.1.6).

2.4 The Executive Committee noted that the Director intended to intervene in the court proceedings pursuant to Article 7.6 of the 1971 Fund Convention to protect the 1971 Fund's interests.

3 Developments since the Executive Committee's 56th session

3.1 In March 1998, the 1971 Fund submitted a note to the other parties involved in the court proceedings informing them that, in the Fund's view, the 1971 Fund Convention did not apply to this incident and giving the reasons therefor. The 1971 Fund requested the parties to acknowledge that the Fund had no involvement in this matter. However, the other parties were not prepared to make such an acknowledgement.

3.2 In the light of this situation, the 1971 Fund is preparing a submission to the Court in which it requests the Court to declare that the 1971 Fund has no liability with regard to the *Irving Whale* incident.

4 Action to be taken by the Executive Committee

The Executive Committee is invited:

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