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COMPENSATION  
FUND

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## EXAMINATION OF THE CONTRIBUTION SCHEME UNDER THE 1971 FUND CONVENTION AND THE 1984 PROTOCOL THERETO

Note by the Director

### Introduction

1 The Intersessional Working Group, set up by the Assembly at its 13th session, was given the mandate to consider the future development of the intergovernmental oil pollution liability and compensation system by, inter alia, considering which substantive provisions in the existing Conventions and the 1984 Protocols appear to form the main obstacles to their continued relevance, including an examination of the present contribution scheme (document FUND/A.13/21, paragraph 15.2).

2 The present contribution system was examined by the Intersessional Working Group at its first meeting on the basis of document FUND/WGR.6/3 (Annex, page 5, paragraph 6) presented by the Director. As a result of this examination, and in view of a statement by the Japanese delegation, the Director was instructed to examine, in consultation with that delegation, the possibility of presenting a draft text introducing a system for capping contributions in respect of the total share of contributions payable by contributors in any one Member State (document FUND/WGR.6/5, paragraph 8(f)).

### Present Contribution System

3 The payments of compensation and indemnification, as well as the administrative expenses of the IOPC Fund, are financed by contributions levied on any person who has received contributing oil (crude and heavy fuel oil as defined in Article 1.3) in a quantity exceeding 150 000 tonnes in a calendar year in a State Party to the 1971 Fund Convention. The criteria for levying contributions are set out in Article 10, which reads as follows:

"1 Contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 11, paragraph 1, as regards initial contributions and in Article 12, paragraphs 2 (a) or (b), as regards annual contributions, has received in total quantities exceeding 150,000 tons:

- (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations;
- and

- (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this subparagraph on first receipt in a Contracting State after its discharge in that non-Contracting State.
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- (a) For the purposes of paragraph 1, where the quantity of contributing oil received in the territory of a Contracting State by any person in a calendar year when aggregated with the quantity of contributing oil received in the same Contracting State in that year by any associated person or persons exceeds 150,000 tons, such person shall pay contributions in respect of the actual quantity received by him notwithstanding that that quantity did not exceed 150,000 tons.
  - (b) "Associated person" means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned."

4 There are initial and annual contributions. Initial contributions are payable when a State becomes a Member of the IOPC Fund on the basis of a fixed amount per tonne of contributing oil received the year preceding that in which the 1971 Fund Convention entered into force for that State. This amount was fixed by the Assembly at 0.04718 (gold) francs per tonne (0.003145 SDR, which at 28 December 1990 corresponded to £0.0023400). Annual contributions are levied by the Assembly to meet the anticipated payments of compensation and indemnification by the IOPC Fund and the administrative expenses of the Fund during the coming year. As the payments made by the IOPC Fund in respect of claims for compensation vary from year to year, the level of annual contributions varies from one year to another.

5 The 1984 Protocol to the Fund Convention abolished the initial contributions (Article 11 deleted). Under the Protocol, there will thus only be annual contributions. There was no amendment in respect of the criteria for levying contributions set out in Article 10 of the 1971 Fund Convention.

6 Each person liable to contribute to the IOPC Fund pays an amount per tonne of contributing oil received, determined pursuant to Article 12, paragraphs 2 and 3 of the 1971 Fund Convention:

- "2 For each person referred to in Article 10 the amount of his annual contribution shall be determined by the Assembly and shall be calculated in respect of each Contracting State:
- (a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) and (b) <sup><1></sup> on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such persons during the preceding calendar year; and
  - (b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(c) of this Article <sup><2></sup> on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Party to this Convention at the date of the incident.

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<1> This provision refers to contributions to the General Fund.

<2> This provision refers to contributions to Major Claims Funds.

3 The sums referred to in paragraph 2 above shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year."

7 In Article 12.2 (opening phrase) it is provided that the Assembly shall determine the amount of annual contributions for each person who is liable to contribute. However, the IOPC Fund Assembly has in practice only fixed the total amount to be levied, leaving it for the Director to calculate the amount payable by each contributor. This practice was codified in the 1984 Protocol by replacing the opening sentence of Article 12.2 with the following text:

"The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director shall, in respect of each Contracting State, calculate for each person referred to in Article 10 the amount of his annual contribution:".

#### **Earlier Proposals for Amendments of the Contribution System**

8 During the preparations for the International Conference which adopted the 1984 Protocols, some States raised the question as to whether the system of levying contributions should be amended, as they considered that the criteria laid down in the 1971 Fund Convention did not lead to equitable results. Proposals for amendments were made by the delegations of Indonesia and the United States, but the proposals were not adopted by the Conference. In respect of these proposals reference is made to paragraphs 6.4 to 6.8 of the Annex to document FUND/WGR.6/3.

#### **Discussion at the First Meeting of the Intersessional Working Group**

9 At the first meeting of the Intersessional Working Group a discussion was held concerning the present contribution system. This discussion was reflected in the Report of the Working Group as follows (document FUND/WGR.6/5, paragraphs 6.15 to 6.18):

- "6.15 Most delegations stated that they found the present contribution system appropriate and did not consider any amendment necessary.
- 6.16 The Japanese delegation drew the Working Group's attention to the fact that the Japanese contributors paid a large part of the total contributions to the IOPC Fund; the Japanese contributors' share of the annual contributions for 1980 (ie the IOPC Fund's second year of operation) was 44%, and their share represented 29% of the 1989 annual contributions. In the view of this delegation, the Japanese Government would not be prepared to consider ratification of the 1984 Protocol to the Fund Convention unless guarantees could be given that the Japanese oil industry would not be excessively burdened by a large share of the total contributions levied under the Protocol. The Japanese delegation stated that, in order to enable Japan to consider ratification of the 1984 Protocol, the contribution system had to be revised so as to include a cap on the contributions payable in respect of a single Member State.
- 6.17 Some delegations stated that, although they did not have any problems with the present contribution system, they were prepared to consider the question raised by the Japanese delegation so as to establish whether there was a solution which would be acceptable both to Japan and to other IOPC Fund Member States.
- 6.18 It was pointed out by several delegations that the contribution system contained in the 1971 Fund Convention and in the 1984 Protocol thereto established a regime of mutual co-operation in the fight against pollution and that this fact had been recognised by the 1990 International Conference on International Co-operation on Oil Pollution Preparedness and Response. In their view, the existing contribution system was based

on a balance between the various interests concerned. It was also emphasised that a basic feature of the present contribution system was that every contributor should pay the same amount per tonne of contributing oil received. Some delegations mentioned that, if a capping system were to be introduced, this could lead to a situation in which the contributors in one or two States would pay a lower amount per tonne of contributing oil than contributors in other Member States. Several delegations stated that if the contribution system were to be amended, this would create a very complex situation during the period of co-existence of different versions of the Fund Convention."

### Examination by the Director

10 In accordance with the mandate given to him as set out in paragraph 2 above, the Director has studied certain aspects of the problems raised during the discussions of the Intersessional Working Group at its first session. After consultation with the Japanese delegation, the Director makes the following assessment of the situation.

11 The shares of the contributions to the General Fund in respect of Member States over the years are set out in the following table.

Percentage of Total Annual Contributions for Certain Years <sup><3></sup>

State	1979 GF	1980 GF	1980 MCF	1985 GF	1990 GF
Algeria	0.07	0.04	0.08	0.04	-
Bahamas	3.91	3.76	4.32	1.53	1.33
Cameroon	-	-	-	0.16	0.14
Canada	-	-	-	-	4.62
Côte d'Ivoire	-	-	-	-	0.35
Cyprus	-	-	-	-	0.12
Denmark	1.47	1.35	1.63	0.89	1.09
Finland	-	-	-	1.45	1.22
France	15.50	15.62	17.12	11.39	9.92
Gabon	-	-	-	0.08	-
Germany	7.51	6.15	10.44	2.86	2.73
Ghana	0.20	0.11	0.22	0.10	0.10
Greece	-	-	-	-	2.01
Indonesia	2.00	1.77	2.21	1.16	1.00
Italy	11.46	17.64	-	14.58	15.01
Japan	40.51	37.52	44.75	32.59	26.90
Liberia	0.03	0.06	0.03	0.00	0.00
Netherlands	-	-	-	9.51	10.44
Norway	0.99	0.90	1.09	1.09	1.72
Papua New Guinea	-	0.00	-	0.03	0.00
Poland	-	-	-	0.00	0.20
Portugal	-	-	-	0.08	1.65
Spain	-	-	-	5.91	6.26
Sri Lanka	-	-	-	0.21	0.14
Sweden	2.71	2.80	3.00	1.97	1.92
Syrian Arab Republic	0.23	0.00	0.26	0.76	0.05
Tunisia	0.19	0.16	0.21	0.29	0.29
Union of Soviet Socialist Republics	-	-	-	-	1.30
United Kingdom	12.12	10.99	13.43	12.00	8.53
Yugoslavia	1.10	1.13	1.21	1.30	0.99
Remaining Member States	0.00	0.00	0.00	0.00	0.00
	100%	100%	100%	100%	100%

<3>

GF = General Fund

MCF = Major Claims Fund in respect of an incident which occurred in 1979

12 As mentioned above, the Japanese delegation stated that the Japanese Government would not be prepared to consider ratification of the 1984 Protocol to the Fund Convention unless guarantees could be given that the Japanese oil industry would not be excessively burdened by a large share of the total contributions levied under that Protocol. As can be seen from the table set out in paragraph 11 above, the share of the contributions paid by the Japanese contributors during the first years after the entry into force of the 1971 Fund Convention was very high, and that share has gradually decreased over the years. A possibility of alleviating the concerns of the Japanese Government could therefore be to introduce a "cap" on contributions payable by oil receivers in any given Member State. Such a "cap" could be permanent or it could be a transitional measure until the aggregate quantity of contributing oil received in all Member States reached a certain level.

13 If the Contracting States were prepared to accept the introduction of a cap on the contributions payable in respect of oil receipts in a single Member State, provisions along the following lines are submitted for consideration; they could be included in the 1971 Fund Convention as new paragraphs 7 to 9 of Article 12:

7 [In the event that the total quantity of contributing oil received in all Contracting States during a given calendar year is less than [750 million] tonnes] the aggregate amount of the annual contributions payable by persons in respect of contributing oil received in a single Contracting State shall not exceed X% of the total amount of annual contributions to the IOPC Fund in respect of that calendar year.

8 If in respect of a given calendar year the application of the provisions in paragraphs 2 and 3 of this Article would result in the aggregate amount of the contributions payable by contributors in a single Contracting State exceeding X% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equal X% of the total annual contributions to the IOPC Fund in respect of that year.

9 If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 8 of this Article, the contributions payable by persons in all other Contracting States shall be increased pro rata so as to ensure that the total amount of contributions payable by all persons liable to contribute to the IOPC Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

14 At the first meeting of the Intersessional Working Group, several delegations stated that if the contribution system were to be amended, this would create a very complex situation during the period of co-existence of different versions of the Fund Convention.

15 The Director accepts that an amendment to the contribution system of the kind discussed above would result in some administrative difficulties for the IOPC Fund. However, he does not believe that these difficulties would be fundamentally different from those arising by the parallel application of the contribution system based on the 1971 Fund Convention and the contribution system laid down in the 1984 Protocol to the Fund Convention. In any case, the calculations of the contributions under the 1971 Fund Convention would be different from those under the 1984 Protocol (or a new Protocol) thereto, as the groups of Contracting States and thereby the total quantity of contributing oil would be different in respect of these two instruments.

#### **Action to be Taken by the Intersessional Working Group**

16 The Intersessional Working Group is invited to consider the information contained in this document.