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COMPENSATION
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Agenda item 8

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FUTURE ROLE OF THE 1992 FUND IN THE OPERATION OF THE 1971 FUND

Note by the Director

Summary:	The future role of the 1992 Fund in the operation of the 1971 Fund is discussed, as is the role of the joint 1971/1992 Fund Secretariat and Director.
Action to be taken:	Consider the 1992 Fund's involvement in the operation and activities of the 1971 Fund, in particular the position of the joint Secretariat and the Director.

1 Introduction

- 1.1 The 1992 Fund and the 1971 Fund have a joint Secretariat and the 1992 Fund Director is *ex officio* Director also of the 1971 Fund.
- 1.2 The 1971 Fund Convention (Article 43.1) in its original version provides that the Convention will remain in force until the date when the number of Contracting States falls below three. Although a number of States had denounced the 1971 Fund Convention after the entry into force of the 1992 Fund Convention, it became clear that it was very unlikely that this would happen in the near future. Concerns were expressed that, as a result of the decrease in the number of Member States and the ensuing reduction in the contribution base, the 1971 Fund would not remain financially viable. Consideration was therefore given to the possibility of accelerating the winding up of the 1971 Fund.
- 1.3 A Diplomatic Conference, which was held from 25 to 27 September 2000 under the auspices of the International Maritime Organization (IMO), adopted a Protocol to amend Article 43.1 of the 1971 Fund Convention. Under the amended text, the 1971 Fund Convention will cease to be in force on the date on which the number of 1971 Fund Member States falls below 25 **or** 12 months following the date on which the Assembly (or any other body acting on its behalf) notes that the total quantity of contributing oil received in the remaining Member States falls below 100 million tonnes, whichever is the earlier. The Protocol would enter into force on 27 June 2001, unless one

third of the remaining Member States had informed the Secretary-General of IMO by 27 March 2001 of their objection to the Protocol.

2 Insurance covering the 1971 Fund's liabilities

On 25 October 2000 the 1971 Fund purchased insurance covering any liabilities of the 1971 Fund for compensation and indemnification up to 60 million SDR (£53 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 expert fees, in respect of all incidents occurring during the period up to 31 December 2001, with the 1971 Fund itself having to cover a deductible of 250 000 SDR for each incident, and the 1971 Fund having the option to extend the insurance cover up to 31 October 2002. This insurance came into effect on 25 October 2000. In July 2001 the Director exercised the option to extend the insurance up to 31 October 2002.

3 Consideration at the Assembly's October 2000 session

At its 5th session held in October 2000, the Assembly considered that as a result of the adoption of the 2000 Protocol, the problems facing the 1971 Fund had been reduced considerably, unless a sufficient number of objections were lodged. A number of delegations stated that in the light of the adoption of the 2000 Protocol to the 1971 Fund Convention and the 1971 Fund's purchase of insurance cover the concerns expressed by them at the Assembly's April 2000 session had been allayed. Since it was likely that the 1971 Fund Convention would cease to be in force by the end of 2001 or during the summer of 2002 at the latest, the Assembly decided to maintain the existing arrangement under which the 1992 Fund shared a Secretariat with the 1971 Fund and the 1992 Fund Director was also Director of the 1971 Fund, in order to ensure the efficient handling of pending incidents involving the 1971 Fund and the orderly winding up of that Organisation (document 92FUND/A.5/28, paragraphs 9.7 - 9.9).

4 Recent developments

- 4.1 The 2000 Protocol to the 1971 Fund Convention entered into force on 27 June 2001.
- 4.2 As a result of further denunciations of the 1971 Fund Convention during 2000 and 2001, the number of Member States will fall to 24 on 24 May 2002, when the denunciation of the Convention by the United Arab Emirates takes effect. The Convention will therefore cease to be in force on 24 May 2002 and will not apply to incidents occurring after that date.

5 Director's proposal

Since it is now established that the 1971 Fund Convention will cease to be in force on 24 May 2002 and the 1971 Fund's liabilities for incidents which will occur up to that date are covered by insurance (except for a relatively modest deductible), the Director proposes that that existing arrangement should be maintained, ie that the 1992 Fund shares a Secretariat with the 1971 Fund and that the Director of the 1992 Fund is also Director of the 1971 Fund.

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 note that the 2000 Protocol to the 1971 Fund Convention amending Article 43.1 entered into force on 27 June 2001;
- (c) to note that the 1971 Fund Convention will cease to be in force on 24 May 2002 and will not apply to incidents occurring after that date;

- (d) to consider the 1992 Fund's involvement in the operation and activities of the 1971 Fund, in particular the position of the joint Secretariat and the Director; and
 - (e) to give the Director such other instructions as it may deem appropriate on the issues dealt with in this document.
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