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COMPENSATION
FUND 1992

ASSEMBLY
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Agenda item 15

92FUND/A/ES.3/14/1
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SUMED PIPELINE

Note by the Director

Summary:	To assist the Assembly's consideration of document 92FUND/A/ES.3/14 as to whether the contribution system laid down in the 1992 Fund Convention should apply to the oil passing through the SUMED pipeline, information is provided on the 1971 Fund Assembly's consideration of this issue and on the relevant discussions at the 1971 Diplomatic Conference.
Action to be taken:	Information to be noted.

1 Introduction

1.1 In document 92FUND/A/ES.3/14, the Government of the Arab Republic of Egypt has requested that the Assembly should consider whether the contribution system laid down in the 1992 Fund Convention should not apply to the oil passing through the SUMED pipeline, which runs from the Gulf of Suez to the Mediterranean.

1.2 The question of the application of the 1971 Fund Convention's contribution system to the activities of the company operating the SUMED pipeline was considered at the 1971 Diplomatic Conference which adopted the 1971 Fund Convention and has also been considered by the Assembly of the 1971 Fund on several occasions. To assist the 1992 Fund Assembly in its consideration of this issue, the Director therefore submits as background information details of the Conference's and the 1971 Fund Assembly's consideration of this issue.

2 Consideration at the Diplomatic Conferences

2.1 1971 Diplomatic Conference

2.1.1 The issue of whether oil transported through the projected SUMED pipeline should be taken into account for the purposes of contributions was discussed at the 1971 Diplomatic Conference which adopted the 1971 Fund Convention. The SUMED pipeline was only put into operation in 1977, ie several years after the Conference. At the Conference, the delegations of Egypt, Iraq, Libya and Syria submitted a document containing the following proposal to amend Article 10 of the draft Convention (document LEG/CONF.2/WP.2):

> "Insert the word 'ultimate' between the word 'or' and the word 'terminal' in sub-paragraph (a) of paragraph 1 of Article 10 in the first and last line of that sub-paragraph.
>
> Sub-paragraph (a) of paragraph 1 of Article 10 will then read as follows:
>
> > '(a) in the ports or ultimate terminal installations in the territory of that State contributing oil carried by sea to such ports or ultimate terminal installations'.
>
> *Comments:*
> In some cases, the maritime carriage of oil is interrupted due to technical reasons. Some of these technical reasons such as the oil being in transit or if a tanker carrying oil is in distress, or if the oil is discharged in some installations with a view to re-load it again to the final port or ultimate terminal installation.
>
> It is a widely accepted principle in the concept of accounting and taxation that the same taxes would not be levied twice on the same item of goods.
>
> Accordingly the same oil should not be subject to contribution to the Compensation Fund for more than one time.
>
> If we try to apply any contrary conception there will be a great distortion in the relationship between the level of contribution and the national consumption of the oil in many Contracting States.
>
> We ought to take in consideration many important, urgent and vital factors in this connection:
>
> One of these factors is that unacceptable differences in competition of the transportation of oil would be created, and insurmountable difficulties will encounter the transportation of oil by speedy or more technically advanced means.
>
> The second factor which we ought to take into consideration also is that despite being apparently unfair and irrational to urge the oil in transit to contribute to the Fund, this will create an awkward situation which is likely to entail unforeseen complications.
> In conclusion, it may be argued that the percentage of contribution of the oil to the Fund would be rather low. This argument may be viable now but it may prove invalid with constantly increasing amounts of oil being transported by sea and subsequently the ever-growing dangers of oil pollution."

2.1.2 The proposal was discussed in the plenary of the Conference, and the discussion is reflected in the Official Summary Records, published by IMO, as follows (pages 679-680):

> "Mr Issa (Egypt), introducing the amendments contained in document LEG/CONF.2/WP.2 on behalf of the sponsors, said that the supporting arguments set out in the paper were clear

and valid. In some cases, the maritime carriage of oil had to be interrupted due to technical reasons. A case in point that was of importance in so far as his own country was concerned was that where oil transported from the Persian Gulf by supertankers had to be discharged at an Egyptian Gulf port for trans-shipment by pipeline to Alexandria and subsequent reloading in tankers there. The present wording of Article 10 was somewhat vague and ambiguous in that no clear statement was made whether a contribution should be levied only once in respect to such oil or twice. In other words, in the case he had cited, would Egypt be liable to contribute or would the liability lie with the country of final destination only?

If the first interpretation was correct, the situation would be illogical and irrational and indeed the provision would be in flagrant contradiction with the principles of equity and equality. It might be argued that the double carriage by sea presented two separate risks of pollution. On the other hand, a double contribution would be discriminatory as compared with requirements respecting supertankers travelling by the Cape route.

Apart from the basic purposes of providing for compensation to innocent victims and relief of the burden imposed on the shipowner by the 1969 Liability Convention, the draft convention should also take into consideration the interest of the oil consumer. Indeed, adoption of the double contribution system would be tantamount to subsidizing the shipowner at the expense of the oil industry and oil consumers. And the end result would be to hamper world progress and discourage adhesion to the convention. It was to be hoped therefore that a constructive approach would be adopted, either exonerating oil in transit completely or assessing the contribution in its respect at a very low rate.

Lastly, the amendments proposed were of a purely drafting nature and hence would not require a qualified vote for their adoption.

Mr Aljaibaji (Iraq) and Mr Loutfi (Syrian Arab Republic) endorsed the statement just made. In the case cited the transport constituted a single journey and under international transport rules such successive carriage was treated as a single journey.

Mr Massey (USA) said that the problem raised by Egypt had been discussed thoroughly in the IMCO Legal Committee but, since it was recognized that the risks of pollution damage were more directly related to entry and exit from harbour areas and that it was not always easy to ascertain the exact terminal destination of the oil with consequent accounting difficulties, the Committee had come to the conclusion that there was merit in requiring a double contribution in the case of a single journey involving double port entry and exit.

As to the financial burden involved, contributions to be levied on oil movements for purposes of the Fund were going to be at an absolutely minimal rate, at most one-tenth of a cent per ton. The total cost of one ton of oil delivered in the United States was about $22. The additional burden represented by one-tenth of a cent was not big enough to warrant the proposed change. His delegation would therefore prefer that the present text be maintained.

Mr Jeannel (France) said that France had some common interest with Egypt in the matter since a project for transporting oil by rail was now under way in his country. He therefore fully sympathized with the concern expressed. On the other hand, the draft convention, linked as it was to the 1969 Convention on Liability, related to shipping and only indirectly to transport matters. The whole system in fact was based on shipping and it would therefore be most difficult to change the concept at that stage. He would therefore suggest as a possible way out that the Conference adopt a resolution requesting IMCO to study the matter further with a view to finding an equitable solution to the problem.

The Acting President called for a vote on the proposal submitted by the delegations of Egypt, Iraq, the Libyan Arab Republic and the Syrian Arab Republic (LEG/CONF.2/WP.2)

That proposal was rejected by 15 votes to 15, with 14 abstentions."

2.2 1984 and 1992 Diplomatic Conferences

At the 1984 and 1992 Diplomatic Conferences, which adopted the 1984 and 1992 Protocols to the 1971 Fund Convention, there was no discussion of the issues referred to in this document.

3 Consideration by the 1971 Fund Assembly

3.1 15th session

3.1.1 The Arab Republic of Egypt was granted observer status with the 1971 Fund at the 15th session of its Assembly. In its request for observer status, the Government of Egypt mentioned that it was considering accession to the 1971 Fund Convention but that it had some concerns regarding the application of the contribution system laid down in the 1971 Fund Convention to the activities of the Arab Petroleum Pipelines Company (SUMED), and stated that it would be grateful if the 1971 Fund could look into this matter (document FUND/A.15/28, paragraph 29.1.1).

3.2 16th session

3.2.1 At its 16th session, the 1971 Fund Assembly considered a study of the matter carried out by the Director in consultation with the Government of Egypt (document FUND/A.16/24) and a document presented by that Government (document FUND/A.16/24/1).

3.2.2 The 1971 Fund Assembly recognised that the notion of "received" was a basic concept in the contribution system under the 1971 Fund Convention and that the position previously adopted by the Assembly, as well as the text of the Convention itself, was based on the idea that contributions were paid by the actual (physical) receiver of the oil after sea transport. It was recalled that the point of departure for this position was that oil was to be taken into account for the purpose of levying contributions each time the oil was physically received after sea transport in a port or terminal installation located in a State Party to the 1971 Fund Convention (document FUND/A.16/32, paragraph 27.3).

3.2.3 It was recalled that the 1971 Fund Assembly had examined, at its 1st extraordinary session, the question of the circumstances in which oil should be considered as received and that it had approved the following interpretation of Article 10.1 of the 1971 Fund Convention (document FUND/A/ES.1/13, paragraph 10):

> Ship-to-ship transfer shall not be considered as receipt, irrespective of where this transfer takes place (ie within a port area or outside the port but within territorial waters) and whether it is done solely by using the ships' equipment or by means of a pipeline passing over land. This applies for a transfer between two sea-going vessels as well as for a transfer between a sea-going vessel and an internal waterway vessel and irrespective of whether the transfer takes place within or outside a port area. When the oil, after having been transferred in this way from a sea-going vessel to another vessel has been carried by the latter to an on-shore installation situated in the same Contracting State or in another Contracting State, the receipt in that installation shall be considered as a receipt of oil carried by sea. However, in the case where the oil passes through a storage tank before being loaded to the other ship it has to be reported as oil received at that tank in that Contracting State.

3.2.4 The 1971 Fund Assembly noted that the Government of Egypt had invoked the following main arguments in support of its request that the oil received at the terminal on the Gulf of Suez for transport through the SUMED pipeline should not be taken into account for the purposes of contributions:

> The situation of the SUMED pipeline is unique because it is used for transferring oil from one ship to another, due to the fact that large tankers are unable to transit the Suez Canal. The storage tanks at both ends of the pipeline are an integral part of a closed transit pipeline system. The oil transported through the pipeline is not owned by the company operating the pipeline but by the users. This oil cannot be considered as received in Egypt since it is only in transit and not actually delivered to Egyptian cargo interests. SUMED acts only as a common carrier of the oil against payment of a fee. Transport through the SUMED pipeline should be considered as ship-to-ship transfer and the quantities received for such transport should therefore not be taken into account for the purpose of levying contributions to the IOPC Fund. The transport of oil through the SUMED pipeline is much safer from an environmental point of view than alternative transport routes.

3.2.5 During the discussions of this issue, a number of delegations supported the request made by the Government of Egypt, whereas a number of other delegations opposed the request (document FUND/A.16/32, paragraph 27.6).

3.2.6 The 1971 Fund Assembly concluded that there was not a majority in favour of the request made by the Government of Egypt. It was noted, however, that several delegations had expressed the opinion that a compromise solution should be sought. The Assembly decided, therefore, that this question should be re-examined if a firm compromise proposal were made or new arguments advanced (document FUND/A.16/23, paragraph 27.7).

3.3 19th session

3.3.1 At its 19th session the 1971 Fund Assembly considered a request by the observer delegation of the Arab Republic of Egypt that the 1971 Fund should reconsider whether Article 10.1 of the 1971 Fund Convention would apply to oil passing through the SUMED pipeline (document 71FUND/A.19/28).

3.3.2 The Egyptian delegation introduced document 71FUND/A.19/28 setting out the activities of SUMED and explaining why the company was of the view that oil passing through the SUMED pipeline should not be considered as contributing oil. It was maintained in particular that it was not economically possible for SUMED to pay contributions to the 1971 Fund, since the total quantity transported through the pipeline exceeded 100 million tonnes per year. It was maintained that transport through the pipeline was much safer from an environmental point of view than alternative transport routes. This delegation proposed that, given the company's unique method of operation, a committee or working group should be set up to study the nature of the company's activities, to establish whether there were similarities between SUMED and other oil receivers who were liable to pay contributions to the 1971 Fund (document 71FUND/A.19/30, paragraph 29.3.3).

3.3.3 Some delegations stated that they understood the position of SUMED, and some delegations supported the idea of a further study of this matter. A number of delegations stated, however, that they were opposed to studying this matter further at this stage, but that the matter could be reconsidered provided new elements were made available (document 71FUND/A.19/30, paragraph 29.3.5).

3.3.4 The 1971 Fund Assembly decided that, since no new elements had been presented and this subject had been discussed at length during previous sessions of the Assembly, the matter should not be considered further at that stage (document 71FUND/A.19/30, paragraph 29.3.6).

3.4 20th session

3.4.1 At its 20th session, the 1971 Fund Assembly considered a request by the observer delegation of the Arab Republic of Egypt that the 1971 Fund should reconsider whether Article 10.1 of the 1971 Fund Convention would apply to oil passing through the SUMED pipeline (document 71FUND/A.20/29).

3.4.2 The Egyptian observer delegation stated that Egypt wanted to become Member of the 1992 Fund but needed first to clarify a misunderstanding. The delegation explained that SUMED's pipeline was not connected to any commercial storage or processing facilities, that SUMED was unique in the world and that for these reasons the oil transported through the pipeline should not be considered as contributing oil. The Egyptian delegation explained that SUMED was fully insured for the risk of an oil spill and that no accident had occurred in connection with the operation of the SUMED pipeline. This delegation stated that SUMED shared the same objectives as the 1971 Fund, since it has prevented or minimised the risk of oil pollution by safely transporting crude oil inland (document 71FUND/A.20/30, paragraph 31.3).

3.4.3 The Egyptian delegation stated that it did not request a decision by the Assembly of the 1971 Fund, since the delegation intended to request that the Assembly of the 1992 Fund should decide, at its next session, whether oil passing through the SUMED pipeline should be considered as contributing oil (document 71FUND/A.20/30, paragraph 31.4).

3.4.4 Some delegations stated that they supported the Egyptian delegation's point of view since the SUMED pipeline could not be considered as a port operation and that the oil passing through the SUMED pipeline should not be considered as contributing oil. It was stated, on the other hand, that the oil in question was to be subject to contributions, since it was physically received after sea transport (document 71FUND/A.20/30, paragraph 31.4).

3.4.5 The Assembly took note of the information provided by the Egyptian delegation (document 71FUND/A.20/30, paragraph 31.7).

4 Action to be taken by the Assembly

The Assembly is invited to take note of the information contained in the document .