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LEVY OF CONTRIBUTIONS IN RESPECT OF OIL RECEIVERS IN THE FORMER USSR

Note by the Director

Introduction

1 The Secretary General of the International Maritime Organization (IMO) was informed by a note verbale dated 26 December 1991 by the Russian Federation that the membership of the Union of Soviet Socialist Republics (USSR) in all Conventions concluded within the framework of IMO would be continued by the Russian Federation and that the Russian Federation would maintain all rights and obligations of the USSR in IMO, including financial obligations. None of the other independent States which previously formed part of the USSR have made a similar declaration or submitted an instrument of ratification, acceptance, approval or accession in respect of the Fund Convention. It is therefore not yet established whether any of these other States will continue to be or will become Parties to the Fund Convention.

2 As a result of this development, a problem has arisen with regard to the levy of contributions in respect of oil receivers in States which were formerly part of the USSR. As questions of principle are involved, the Director submits these questions to the Assembly for consideration.

Contribution System

3 Contributions to the IOPC Fund shall be made in respect of each Member State by any person who, in a given calendar year, has received contributing oil in total quantities exceeding 150 000 tonnes in ports or terminal installations in the territory of that State, provided that the contributing oil in question was carried by sea to such ports or terminal installations (Article 10 of the Fund Convention).

4 Contributions are payable not by the IOPC Fund Member States but by individual oil receivers in Member States. Pursuant to Article 14.1 of the Fund Convention, a Member State may, however,

declare that it assumes itself obligations that are incumbent under the Fund Convention on any person who is liable to contribute to the IOPC Fund in respect of oil received in the territory of such a State. No such declaration was made by the USSR.

5 There are two categories of contributions to the IOPC Fund, initial contributions and annual contributions. The initial contributions are not of interest for the purpose of this document.

6 Annual contributions are of two kinds, those levied in respect of the General Fund and those levied in respect of Major Claims Funds. Under Article 12.2, contributions to the General Fund are levied on the basis of the quantity of contributing oil received by the contributor in question during the year preceding that in which the IOPC Fund Assembly decides to levy the contributions. As for Major Claims Funds, the contributions are calculated on the basis of the quantity of contributing oil received during the calendar year preceding that in which the incident in question occurred, provided that the State in which the oil was received was a Party to the Fund Convention at the date of the incident.

7 The 1991 annual contributions fixed by the Assembly at its 14th session in October 1991 (document FUND/A.14/23, paragraph 16.3) were composed of three elements, viz contributions to the General Fund (based on the quantities of oil received in 1990), contributions to the RIO ORINOCO Major Claims Fund (based on the quantities of oil received in 1989, the year before the incident) and contributions to the HAVEN Major Claims Fund (based on the quantities of oil received in 1990, the year before the incident).

The Problem

8 As for oil receipts in the calendar year 1990, reports were submitted in April 1991 by the Government of the USSR in respect of eight persons who had received more than 150 000 tonnes of contributing oil after sea transport. After the Assembly had decided, at its 14th session, on the levy of 1991 annual contributions, invoices were issued to these oil receivers in November 1991. In addition, invoices in respect of the RIO ORINOCO Major Claims Fund were issued to two further persons who had received more than 150 000 tonnes of contributing oil in 1989 but who had not received such oil in 1990. In accordance with previous practice, the invoices were sent to the Government of the USSR for distribution to the contributors in question.

9 Of the ten oil receivers in the former USSR to whom invoices were issued in November 1991, five are located within what is now the Russian Federation. The invoices to these five receivers (totalling £113 572) are being handled by the Government of the Russian Federation. Although no payments have yet been received from them, the Director hopes that these payments will soon be made. There are thus no legal problems in respect of these oil receivers.

10 The problem arises in respect of the other five oil receivers who are located outside what is now the Russian Federation (one in Georgia, two in Azerbaijan and two in Turkmenistan). The invoices for these oil receivers (totalling £167 274) have been re-issued and sent directly to the persons concerned. No payments have been received so far by the IOPC Fund. There are no arrears in respect of contributions relating to previous years as regards these persons. An analysis of the obligations of these five oil receivers is set out below.

Director's Analysis

11 As mentioned above, the obligation to pay contributions to the IOPC Fund rests directly on the individual oil receivers and not on the States Parties to the Fund Convention. Nevertheless, the

obligations of the oil receivers have, in the Director's view, as their legal basis the treaty obligations under the Fund Convention of the State in which they received the oil. Once these treaty obligations have ceased to exist, there can, in the Director's opinion, be no obligation for an oil receiver to pay contributions in respect of incidents occurring thereafter. The difficulty in the present situation stems from the fact that contributions are levied retroactively, and that sometimes contributions to a Major Claims Fund are levied a long time after the incident occurred.

12 The Director considers that the treaty obligations under the Fund Convention ceased to exist on 26 December 1991 for those parts of the former USSR which do not form part of the Russian Federation. In his view, the provisions in Article 41.3 of the Fund Convention dealing with denunciation do not apply in this case, neither directly nor by analogy. Under that Article, a denunciation of the Fund Convention takes effect for a given State one year after that State has deposited an instrument of denunciation.

13 The problem should be examined separately for contributions to the General Fund and for contributions to Major Claims Funds.

14 In respect of the annual contributions for 1991 to the General Fund, the five oil receivers located outside the Russian Federation should, in the Director's view, be liable to pay contributions in respect of that part of the year during which they were situated in the territory of a State Party to the Fund Convention (USSR), viz 1 January to 25 December 1991. The contributions for these persons should thus be 359/365 of the contributions which normally would be payable by a contributor having received the same quantity of contributing oil. The Director's position as regards the pro rata reduction is based on an application by analogy of Regulation 3.6 of the Internal Regulations which reads:

"In respect of any State for which the Fund Convention is not in force on 1 January of a particular year, the annual contribution to be paid by each person in that State for that year, in accordance with Article 12.2(a) of the Fund Convention, shall be calculated pro rata for that part of the calendar year for which the Convention is in force for that State."

15 The five oil receivers in question should not, in the Director's view, be liable to pay contributions to the General Fund for 1992 or any subsequent year, unless the State in which they are now located becomes Party to the Fund Convention.

16 Concerning annual contributions to Major Claims Funds, it should first be noted that Internal Regulation 3.6 does not distinguish between contributions to the General Fund and contributions to Major Claims Funds. It appears to the Director, nevertheless, that as regards annual contributions to Major Claims Funds in respect of incidents occurring before 26 December 1991, the oil receivers in question should be liable to pay the full contributions; this should apply not only in respect of the 1991 annual contributions to such Major Claims Funds but also in respect of annual contributions levied to such Major Claims Funds in 1992 or subsequent years. On the other hand, these oil receivers should not pay any contributions to Major Claims Funds constituted in respect of incidents occurring after 25 December 1991.

17 In this context reference should be made to Article 41.5 of the Fund Convention. Under this Article, oil receivers in a Contracting State which has denounced the Fund Convention are obliged to pay contributions to Major Claims Funds in respect of any incident which occurred before the denunciation takes effect. This Article reads:

"Notwithstanding a denunciation by a Contracting State pursuant to this Article, any provisions of this Convention relating to the obligations to make contributions under

Article 10 with respect to an incident referred to in Article 12, paragraph 2(b), and occurring before the denunciation takes effect shall continue to apply."

18 The position of the Director in respect of the obligation to pay contributions for oil receivers who were located in the USSR but who are now situated in an independent State other than the Russian Federation, can be summarised as follows.

- (a) Annual contributions to the General Fund for 1991: the oil receivers concerned should pay 359/365 of the contributions which normally would be payable by a contributor who received the same quantity of contributing oil.
- (b) Annual contributions to the General Fund for 1992 and subsequent years: the oil receivers concerned should not be under any obligation to pay contributions.
- (c) Annual contributions to Major Claims Funds constituted in respect of incidents occurring before 26 December 1991: the oil receivers concerned should pay not only the total annual contributions for 1991, but also any annual contributions to be levied in 1992 or subsequent years to these Major Claims Funds, without any reduction.
- (d) Annual contributions to Major Claims Funds constituted in respect of incidents occurring after 25 December 1991: the oil receivers concerned should not be under any obligation to pay contributions.

19 As for the recovery of any outstanding contributions payable by the five oil receivers referred to above, the Director intends to contact them again and request payment of any arrears, in accordance with the position taken by the Assembly as to their obligation to pay contributions. In addition, he intends to seek assistance from the Governments of Azerbaijan, Georgia and Turkmenistan for the purpose of obtaining payment. If these attempts were to fail, the Director would submit the matter to the Assembly for further consideration at its 16th session.

Action to be Taken by the Assembly

20 The Assembly is invited to:

- (a) consider the information contained in this document;
 - (b) decide on the interpretation of the Fund Convention in respect of the obligation to pay contributions of persons who received contributing oil in the territory of the former USSR but who are now located outside the territory of the Russian Federation (paragraph 18); and
 - (c) give the Director such instructions concerning the recovery of any outstanding contributions payable by oil receivers referred to under (b) above (paragraph 19).
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