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INCREASE OF THE WORKING CAPITAL

Note by the Director

Introduction

1 The IOPC Fund maintains a working capital, the level of which is decided by the Assembly. The working capital is at present £6 million. In view of experience gained from recent incidents, the Assembly may wish to consider whether to increase the working capital.

Financial Regulations

2 Under Financial Regulation 5.1(a) and (c), the IOPC Fund shall have a General Fund which shall be used:

- (a) for the satisfaction of claims arising from smaller incidents, ie incidents where the aggregate amount to be paid by the IOPC Fund does not exceed 15 million (gold) francs (1 million SDR);
- (b) for the payment of the first 15 million (gold) francs in respect of larger incidents;
- (c) to meet the administrative costs and expenses of the IOPC Fund;
- (d) to make provisional payments pursuant to Internal Regulation 8.6; and
- (e) to make loans to a major claims fund for the satisfaction of claims to the extent that sufficient money is not available in that major claims fund.

3 The General Fund shall be maintained at such a level as the Assembly may decide from time to time (Financial Regulation 5.1(b)).

4 Separate major claims funds shall be established in respect of each larger incident, ie each incident where the aggregate amount of the payments by the IOPC Fund exceeds 15 million (gold) francs. Such a major claims fund shall be used for the payment of claims arising from the relevant incident, provided that the first 15 million (gold) francs in respect of each incident are to be paid from the General Fund (Financial Regulation 5.2(a) and (d)).

5 The Financial Regulations do not mention the notion of working capital, nor does the Fund Convention.

Previous Decisions Regarding the Working Capital

6 In 1979, at its 2nd session, the Assembly decided that the IOPC Fund should maintain a working capital of £2 million. The working capital should include the initial contributions and annual contributions raised to meet claims in respect of smaller incidents, and it would be available to meet such claims and the necessary administrative expenses of the IOPC Fund. If the working capital were to fall below an amount reasonably required to meet the administrative expenses and anticipated claims, annual contributions should be raised to restore the working capital to the level of £2 million (document FUND/A.2/16/1, paragraph 9).

7 At its 11th session, in October 1988, the Assembly decided to increase the working capital from £2 million to £4 million (document FUND/A.11/20, paragraph 14).

8 In October 1991, at its 14th session, the Assembly considered a proposal by the Director that the working capital should be increased from £4 million to £8 million (document FUND/A.14/12). This proposal was made in view of the increased membership of the IOPC Fund and the experience of recent incidents. The Assembly agreed with the Director that the IOPC Fund should have a working capital at a sufficient level so as to enable it to make rapid payments of compensation to victims of oil pollution. It also agreed with the Director that it would not be appropriate for the IOPC Fund to rely on the possibility of raising money by way of bank loans, at least not in normal circumstances. In the view of the Assembly it was necessary, however, to take into account the financial burden on contributors resulting from an increase of the working capital. The Assembly decided to increase the working capital of the IOPC Fund from £4 million to £6 million. In addition, the Assembly decided to review, at its 15th session, the question of whether a further increase of the working capital would be required (document FUND/A.14/23, paragraph 15.2).

9 At its 15th session, in October 1992, the Assembly decided to maintain the working capital at £6 million, as proposed by the Director (document FUND/A.15/28, paragraph 13; cf document FUND/A.15/10).

Experience Regarding the Payment of Claims

10 Under Internal Regulation 8.4.1, the Director may make final settlement of any claim for compensation without the prior approval of the Executive Committee, if he estimates that the total cost to the IOPC Fund of satisfying all such claims arising out of the relevant incident is not likely to exceed 37.5 million (gold) francs (2.5 million SDR), which corresponds to approximately £2.3 million. The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of 10 million (gold) francs (£626 000) in respect of each incident. In respect of the Director's authority to settle claims for indemnification of the shipowner, the limit is 25 million (gold) francs (£1.6 million) (Internal Regulation 9.5). The Executive Committee may authorise the Director to settle claims beyond these limits in respect of a particular incident (Internal Regulations 8.4.2 and 9.6, respectively). The Director has invited the Assembly to consider, at its 16th session, whether the limits of the Director's authority should be amended (document FUND/A.16/22).

11 Since its establishment, it has been the policy of the IOPC Fund that victims of oil pollution incidents should be compensated as soon as possible. This has been the policy underlying the decisions of the Assembly and the Executive Committee in respect of claim settlements, and it has guided the Director in his negotiations with claimants. The IOPC Fund has also gained a reputation for the rapid payment of claims. In respect of minor and medium-sized incidents, payments are normally made within a short period of time, provided that claims are submitted promptly and that they are accompanied by sufficient supporting documentation. Claims arising out of major incidents have also been paid promptly in many cases. Rapid payments can only be guaranteed, however, if the IOPC Fund's working capital is maintained at an appropriate level.

12 In recent years there have been several incidents involving the IOPC Fund in which there was no P & I insurer who could make payments promptly to individual claimants and small businesses, such as fishermen, boat owners and hoteliers. In such cases, it is imperative that the IOPC Fund is in a position to act promptly in order to mitigate undue financial hardship to the victims. The prompt payment of compensation is particularly important in respect of individuals and small businesses, and generally in respect of victims in developing countries.

13 In October 1991, at its 28th session, the Executive Committee approved claims presented by the Canadian Government in the RIO ORINOCO case at an aggregate amount of Can\$10 218 848 (£4.9 million). The IOPC Fund had to make payment in respect of these claims in two instalments, since the IOPC Fund's working capital was insufficient to cover such a significant payment in respect of an incident which, having occurred in October 1990 shortly after the 13th session of the Assembly, had not been taken into account in the assessment of the 1990 annual contributions. The first instalment, Can\$6 million (£2 962 232), was made on 20 November 1991 and the second instalment, Can\$4 218 848 (£1 964 539), on 10 February 1992, after the 1991 annual contributions had been received.

14 Shortly after the 1992 annual contributions had been fixed by the Assembly in October 1992, two major incidents occurred which have given rise to significant claims for compensation, namely the AEGEAN SEA and the BRAER incidents which took place on 3 December 1992 and 5 January 1993, respectively. In both cases, claims were presented very soon after the incident, and payments of significant amounts were made promptly. The limitation amounts applicable to these ships were comparatively high (£5.8 million and £5.5 million, respectively), and the P & I insurers could, therefore, make substantial payments. As for the AEGEAN SEA incident, all the payments have so far been made by the P & I insurer. In the BRAER case, the P & I insurer has paid some £5.2 million and the IOPC Fund £4.2 million, whereas £2 651 090 has been paid from the Bridging Fund set up by the United Kingdom Government through the Scottish Office. The TAIKO MARU incident, which occurred on 31 May 1993, will give rise to large claims, and requests for significant advance payments have already been made.

15 In view of the fact that the IOPC Fund's working capital was only £6 million, the Director submitted to the Executive Committee for consideration at its 34th and 35th sessions, held in March and May 1993 respectively, the problems which had arisen for the IOPC Fund in its endeavour to ensure that liquid funds were available to make prompt payment of claims arising out of the AEGEAN SEA and BRAER incidents. At its 34th session, the Executive Committee authorised the Director to make available the necessary liquid funds to pay claims arising out of these incidents by means of loans of £3 million from the General Fund and £15 million from the HAVEN Major Claims Fund. These amounts were increased by the Committee at its 35th session to £4 million and £23 million, respectively. The Committee took these decisions since, in view of the complexity of the HAVEN case and the on-going legal proceedings in the Court of Genoa, it was reasonable to assume that a major part of this amount would not be used during 1993 for the payment of claims arising out of the HAVEN incident. The Committee agreed to leave it to the Director to decide how the funds referred to above should be distributed between the two incidents, provided, however, that he should endeavour to

ensure a fair distribution between the two incidents. The Director was instructed to refer the matter back to the Executive Committee for decision if these liquid funds were to prove insufficient to ensure prompt payments. At its 34th session, the Committee also instructed the Director to submit to the Assembly for consideration at its 16th session the question of whether the working capital should be increased so as to ensure the availability of sufficient liquid funds for the rapid payment of claims (documents FUND/EXC.34/9, paragraphs 5.1.1-5.1.3 and FUND/EXC.35/10, paragraphs 5.2.1-5.2.3).

16 The total assets invested by the IOPC Fund have up to 1991 usually been in the region of £6 million. It has been possible, therefore, to spread the maturity dates of the investments over the year, thus ensuring that amounts of £500 000 to £1 million would always be available at short notice. This has considerably facilitated the settlement negotiations with claimants and the rapid payment of accepted claims. During 1992, the assets were in the region of £24 million.

17 As at 1 April 1993, before commencement of payments in respect of the BRAER incident, the total assets of the IOPC Fund amounted to £34 million.

Assessment of Contributions

18 There is a considerable element of uncertainty in the estimates that form the basis of the Assembly's decision to levy annual contributions. This is due partly to the comparatively long period of time involved. It has been the policy of the Director to include in his estimates which form the basis of the Assembly's decision only those incidents in respect of which the IOPC Fund's payments can be assessed with a reasonable degree of accuracy. These estimates are normally made in July or August, and are reviewed immediately before the session of the Assembly. The decision to levy contributions is usually taken by the Assembly in October, say in October 1993, and the contributions are then due by 1 February 1994. No further contributions will be payable until the 1994 contributions, to be fixed by the Assembly in October 1994, are due on 1 February 1995, unless the Assembly were to decide otherwise.

19 It would be possible to keep the working capital at a comparatively low level if the Director's estimates for the assessment of contributions included figures based on the worst possible outcome from the IOPC Fund's point of view in respect of incidents where there is a large degree of uncertainty as to the level at which the claims will finally be established. However, this would be at variance with the method of assessment applied so far, and the Director is not in favour of a change in this direction. In any event, such an approach would not take into account incidents which take place after the Assembly's decision.

20 The IOPC Fund is at present holding a considerable amount in the HAVEN Major Claims Fund, and the Director has proposed that a further levy of £10 million in 1993 annual contributions should be made for this Major Claims Fund (document FUND/A.16/14). If this proposal were to be approved by the Assembly, the balance on this Major Claims Fund would on 1 February 1994 be over £35 million. As mentioned above, a significant part of the assets of this Major Claims Fund is being used or will be used, in the form of loans, to pay claims arising out of the BRAER and AEGEAN SEA incidents. It is possible that loans will have to be taken from the HAVEN Major Claims Fund also to pay claims arising out of the TAIKO MARU incident. These loans will have to be repaid when the contributions to these three Major Claims Funds have been received. The Director has proposed that these contributions would be payable by 1 February 1994 (document FUND/A.16/14). Once these loans have been repaid, it would again be possible to take loans from the HAVEN Major Claims Fund for the satisfaction of claims arising out of other incidents, to the extent that the assets in this Major Claims Fund are not for the time being used for payments of claims arising out of the HAVEN incident.

Director's Proposal

21 When the Assembly fixed the working capital at £6 million, the IOPC Fund had 45 Member States. Since then eleven more States have become Members, and it is expected that a number of other States will join the IOPC Fund in the near future. The larger the number of Member States, the greater the risk that the IOPC Fund will be called upon to pay compensation for oil pollution incidents.

22 In the Director's view, the prompt payment of compensation is of crucial importance. The Executive Committee may hold meetings early in the year (as was the case in March and June 1991, in May 1992 and in March and June 1993) and either approve claims for significant amounts or authorise the Director to do so. The IOPC Fund should, in his view, hold sufficient liquid funds to enable it to pay such claims without having to wait for the payment of contributions in February of the following year. In addition, the Director considers that the working capital should be sufficiently large so that bank loans are not required for the prompt payment of accepted claims, at least not in normal circumstances.

23 In the light of experience gained from the IOPC Fund's involvement in the AEGEAN SEA, BRAER and TAIKO MARU incidents, the IOPC Fund would need a much higher working capital than £6 million in order to ensure prompt payments. To be able to deal speedily with claims arising out of major incidents which occur shortly after the session of the Assembly held in September or October of a given year, the IOPC Fund would need a working capital in the region of £30 million to £40 million. The Director is aware, nevertheless, of the importance of limiting the financial burden on contributors, and considers it inappropriate to increase the working capital to that level at present, particularly in view of the fact that the Assembly will be invited at this session to consider significant levies to the HAVEN, AEGEAN SEA, BRAER and TAIKO MARU Major Claims Funds. The working capital should therefore, in his view, be increased in stages. For this reason, he proposes that at this stage the working capital be increased to £20 million.

24 The Assembly may wish to instruct the Director to submit to the Assembly for renewed consideration at its 17th session the question of the level of working capital.

Action to be Taken by the Assembly

25 The Assembly is invited to consider the Director's proposal that the working capital of the IOPC Fund should be increased to £20 million.
