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COMPENSATION
FUND

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Agenda item 30

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

Note by the Director

Introduction

1 The Fund Convention entered into force in respect of the Union of Soviet Socialist Republics (USSR) on 15 September 1987. In a note verbale dated 26 December 1991 to the Secretary-General of the International Maritime Organization (IMO), the Russian Federation stated that the membership of the 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.

2 At its 15th session, the Assembly considered, on the basis of a document submitted by the Director (document FUND/A.15/19), certain problems which had arisen with regard to the levy of contributions in respect of oil receivers in States which were formerly part of USSR.

3 The present document reports on the developments in respect of this issue since the 15th session of the Assembly.

Consideration by the Assembly at its 15th Session

4 In document FUND/A.15/19, submitted to the 15th session of the Assembly, the Director made an analysis of the legal situation in respect of the obligation to pay contributions for oil receivers who were located in the USSR but who are now situated in independent States other than the Russian Federation. This analysis 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.

5 The Assembly noted the analysis made by the Director of the obligation to pay contributions to the IOPC Fund incumbent upon oil receivers in those parts of the former USSR which were not part of the Russian Federation, viz Azerbaijan, Georgia and Turkmenistan. Most delegations agreed with the analysis made by the Director. It was pointed out, however, that there was also another important aspect to be considered, ie whether in the case of an oil pollution incident compensation would be granted for oil pollution damage in the newly independent States (other than the Russian Federation) which were formerly part of the USSR. The Assembly noted the legal uncertainties that existed as to the position of these States in relation to the Civil Liability Convention and the Fund Convention, and consequently as to the applicability of these Conventions in respect of these States both as regards the obligation to pay contributions and as regards the right to compensation, although it was pointed out that any obligation to pay contributions which existed at the time of the dissolution of the USSR remained unaffected. For this reason, the Assembly considered it inappropriate to draw any firm conclusions as to the above-mentioned obligations of the oil receivers in those three States and to give the Director instructions as regards the issuing of invoices to those oil receivers.

6 The Assembly instructed the Director to approach the Governments of the newly independent States (other than the Russian Federation) which were formerly part of the USSR, in particular the Governments of Azerbaijan, Georgia and Turkmenistan, in consultation with the Secretary-General of IMO, in order to establish the respective positions of the Governments of those States vis-à-vis the Fund Convention, and to report the results of these enquiries to the Assembly at its 16th session.

Developments Since the 15th Session of the Assembly

7 The situation as regards Estonia became clear before any action was taken by the Director, when Estonia deposited its instrument of accession to the Fund Convention on 1 December 1992.

8 After careful consideration and consultation with the Secretary-General of IMO, the Director decided to write to all of the newly independent States (other than the Russian Federation and Estonia) which were formerly part of the USSR and which have a coast, requesting the clarification sought by the Assembly.

9 Letters requesting clarification concerning the position of the respective Governments vis-à-vis the Fund Convention were sent in July 1993 to the following States: Azerbaijan, Georgia, Kazakhstan, Latvia, Lithuania, Turkmenistan and Ukraine.

10 So far a reply has been received only from Lithuania. In the reply the IOPC Fund was requested to provide the Lithuanian Government with certain documents in order to facilitate its review of the Civil Liability Convention and the Fund Convention.

Director's Proposal

11 The Director proposes that he should pursue his efforts to establish the position of the States concerned vis-à-vis the Fund Convention and to give those States considering accession to the Convention any assistance which they may require in drafting the legislation needed to implement the Civil Liability Convention and the Fund Convention. He would then report to the Assembly at its 17th session on any developments.

Action to be Taken by the Assembly

12 The Assembly is invited to:

- (a) consider the information contained in this document; and
 - (b) give the Director such further instructions as it may deem appropriate in respect of the uncertainty as to the respective positions of the newly independent States (other than the Russian Federation and Estonia) vis-à-vis the Fund Convention.
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