



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
20th session
Agenda item 32

71FUND/A.20/30
24 October 1997

Original: ENGLISH

RECORD OF DECISIONS OF THE TWENTIETH SESSION OF THE ASSEMBLY

(held from 21 to 24 October 1997)

Chairman:	Mr C Coppolani (France)
First Vice-Chairman:	Mr A H E Popp (Canada)
Second Vice-Chairman:	Mrs I Barinova (Russian Federation)

Opening of the session

The 20th session of the Assembly was opened by Mr C Coppolani (France) in his capacity as representative of the delegation from which the Chairman of the previous session had been elected.

Procedural matters

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document 71FUND/A.20/1.

2 Election of the Chairman and Two Vice-Chairmen

2.1 The Assembly elected the following delegates to hold office until the next regular session of the Assembly:

Chairman:	Mr C Coppolani (France)
First Vice-Chairman:	Mr A H E Popp (Canada)
Second Vice-Chairman:	Mrs I Barinova (Russian Federation)

2.2 The Chairman, on behalf of himself and the two Vice-Chairmen, thanked the Assembly for the confidence shown in them. He thanked the two outgoing Vice-Chairmen, Professor H Tanikawa and Mr P Gomez-Flores.

2.3 The Chairman stated that, since France would not be a Member of the 1971 Fund after 15 May 1998, he would not be able to exercise the function of Chairman after that date and would be replaced *ex officio* by the first Vice-Chairman.

3 Examination of credentials

3.1 The following Member States were present:

Algeria	Gabon	Nigeria
Australia	Germany	Norway
Bahamas	Greece	Poland
Belgium	India	Republic of Korea
Canada	Indonesia	Russian Federation
China ^{<1>}	Ireland	Slovenia
Colombia	Italy	Spain
Côte d'Ivoire	Japan	Sweden
Cyprus	Liberia	Syrian Arab Republic
Denmark	Mexico	Tunisia
Estonia	Morocco	United Kingdom
Finland	Netherlands	Venezuela
France	New Zealand	

The Assembly took note of the information given by the Director that all Member States participating had submitted credentials which were in order.

3.2 The following non-Member States were represented as observers:

Argentina	Egypt	Philippines
Brazil	Latvia	Saudi Arabia
Chile	Panama	United States
Ecuador	Peru	Uruguay

3.3 The following inter-governmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1992 (1992 Fund)
International Maritime Organization (IMO)
United Nations

International non-governmental organisations:

Comité Maritime International (CMI)
Cristal Limited
International Chamber of Shipping (ICS)
International Group of P & I Clubs
International Tanker Owners Pollution Federation Limited (ITOPF)
International Union for the Conservation of Nature and Natural Resources (IUCN)
Oil Companies International Marine Forum (OCIMF)

^{<1>} The 1971 Fund Convention applies to the Hong Kong Special Administrative Region (cf paragraph 29 below).

General review

4 Report of the Director

4.1 The Director introduced his report on the activities of the 1971 Fund since the 19th session of the Assembly, contained in document 71FUND/A.20/3. In his presentation, the Director made reference to the fact that four States had become Members of the 1971 Fund since the Assembly's 19th session, and observed that this would probably be the height of the Organisation's membership. The Director stated that he envisaged a steady reduction in the number of 1971 Fund Member States in the coming years, with a third of the Organisation's Members leaving the 1971 Fund on 15 May 1998, as required under the 1992 Fund Protocol. He also remarked that States which wished to become part of the international system of liability and compensation were likely to ratify the 1992 Protocols directly.

4.2 The Director drew attention to the fact that the 1971 Fund had since the Assembly's 19th session been involved in the handling of claims arising out of 30 incidents, which had resulted in a very heavy workload on the Secretariat.

4.3 The Director referred to the fact that, since June 1996, the 1971 Fund Secretariat had administered the 1992 Fund as well as the 1971 Fund, and that from 16 May 1998 the 1971 Fund would cease to have its own Secretariat, but would be administered by the newly established Secretariat of the 1992 Fund. He stressed that the joint Secretariat would continue its efforts to bring the pollution cases which the 1971 Fund was now handling to satisfactory conclusions as soon as possible, and that the Secretariat would endeavour to deal efficiently with claims arising from future pollution incidents affecting States which remained Members of the 1971 Fund.

4.4 The Assembly expressed its gratitude to the Director and the other members of the Secretariat for the efficient way in which they administered the 1971 Fund. It also thanked the staff in the local claims offices established following certain incidents, as well as the lawyers and technical experts who had undertaken work for the 1971 Fund.

4.5 The Assembly noted the appointment of Mr Satoru Osanai as Legal Officer, with effect from 1 June 1997. It also noted that Mr Ranjit Pillai had joined the Secretariat as Finance Officer, with effect from 18 November 1996, as successor to Mr Sampson Nte, who had joined the 1971 Fund Secretariat in 1979 and would retire on 31 December 1997. The Assembly welcomed the staff members who had joined the Secretariat since the 19th session.

4.6 The Assembly expressed its gratitude to Mr Nte for his outstanding service to the 1971 Fund over 18 years and in particular for his having established and developed the financial operation of the Organisation.

4.7 The Assembly congratulated the Secretariat on the 1996 Annual Report which contained an instructive presentation of the activities of the 1971 and 1992 Funds.

4.8 It was noted that the joint Secretariat continued to have a very heavy workload, as a result in particular of several major oil pollution incidents, the introduction of a system of deferred invoicing and the operation of two Organisations. Reference was made by the Director to the on-going review of the Secretariat working methods (cf agenda item 13).

4.9 The Assembly noted the concerns expressed by the Director and the External Auditor relating to the continued failure of some Member States to submit their reports on contributing oil receipts. It agreed with the Director that the non-submission of these reports constituted a considerable problem. The Assembly drew the attention of Member States to Resolution N°7, adopted at its 11th session, in which Member States were urged to take the necessary steps to ensure that the reports on contributing oil received in their territories were submitted on time and in the manner prescribed in the 1971 Fund's Internal Regulations. The Director was invited to continue his efforts to encourage Member States to submit outstanding reports.

*Financial matters***5 Report on investments**

5.1 The Assembly took note of the Director's report on the 1971 Fund's investments during the period 1 July 1996 - 30 June 1997, contained in document 71FUND/A.20/4.

5.2 The Director drew attention to the difficulties that were encountered in February 1997 in respect of the distribution of contributions received between the 1971 Fund and 1992 Fund. He informed the Assembly that this matter had been resolved to a large extent by having a computer link to one of the Funds' two "house" banks. He also drew the Assembly's attention to the purchase of Japanese Yen by the 1971 Fund for the payment of compensation in respect of the *Nakhodka* incident, and mentioned that these funds were being invested separately.

5.3 The Assembly noted the number of investments made during the twelve-month period, the large number of institutions used by the 1971 Fund for investment purposes and the significant amounts invested by the Fund. It was recognised that the investment of the 1971 Fund's assets had become an important part of the Fund's operations. The Assembly stated that it would continue to follow the investment activities closely.

6 Report of the Investment Advisory Body

6.1 The Assembly took note of the report of the Investment Advisory Body, contained in the Annex to document 71FUND/A.20/5.

6.2 The Assembly expressed its gratitude to the members of the Investment Advisory Body for their work since the 19th session of the Assembly.

6.3 The Assembly noted the administrative instruction concerning payments, investments and cash management which had been proposed by the Investment Advisory Body and implemented by the Director in September 1997. The Assembly expressed its satisfaction that these instructions, together with the Internal Investment Guidelines and the Internal Foreign Exchange Transaction Guidelines, had improved the financial control of the 1971 Fund.

6.4 Some delegations suggested that the 1971 Fund should consider placing their investments with the banks of a greater number of countries. It was also suggested that the Funds should look at the possibility of investing in currencies other than Pound sterling.

6.5 The Director informed the Assembly that investments were placed only with institutions which fulfilled the strict requirements of rating laid down in the Internal Investment Guidelines (cf document FUND/A.18/4, Appendix). He stated that he had understood that the Organisation should choose the banks with which investments were placed on the basis of objective criteria and added that a list of eligible banks was drawn up by the Director on the basis of a proposal by the Investment Advisory Body.

6.6 The Assembly emphasised that the role of the 1971 Fund was to pay compensation for oil pollution damage, and not to act as a financial institution. It was stressed that the primary objective was that the Fund's investments should not be exposed to undue risks, in order to protect the assets of the Organisation. The Assembly endorsed the position taken by the Director as regards the criteria to be applied for the selection of banks to be used for investment purposes.

6.7 As regards investments in currencies other than Pound sterling, it was recalled that, under Financial Regulation 7.1, the 1971 Fund's assets should be held in Pound sterling except that the assets could be held in other currencies required to meet claims arising out of a specific incident which had been settled or were likely to be settled in the near future. The Assembly took the view that policy reflected in this provision should be maintained.

7 Financial Statements and Auditor's Report and Opinion

7.1 The Director introduced document 71FUND/A.20/6 containing the Financial Statements of the 1971 Fund for the period ended 31 December 1996 and the External Auditor's Report and Opinion thereon. A representative of the External Auditor, Mr J Higgins, Assistant Auditor General, introduced the Auditor's Report and Opinion.

7.2 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 71FUND/A.20/6.

7.3 In response to questions in relation to the validation of the claims expenditure, the representative of the External Auditor assured the Assembly that the audit tested the compliance of claims expenditure with decisions taken by the Assembly and Executive Committee. He informed the Assembly that in August 1997 the Auditors had made a visit to the *Sea Empress* Claims Handling Office as part of their audit for the 1997 financial period.

7.4 The representative of the External Auditor stated that the scope of the audit was a statutory audit. He mentioned that, if the Assembly so decided, the scope of the audit could be extended to consider value for money aspects, such as the use of experts and how best to handle claims. He added that such an extension would result in an increase in the annual audit fee.

7.5 Many delegations considered that the scope of the audit was an important issue and that this scope should be extended in light of the growth of the Funds and the significant sums involved. It was suggested that the Funds could use international audit companies to examine the operation of claims offices outside the United Kingdom.

7.6 The Assembly decided that the matter of an extension of the scope of the audit should be considered further. The Assembly therefore instructed the Director to study, in consultation with the External Auditor and the Chairman of the Assembly, the question of extending the audit of the 1971 Fund, and to submit the matter to the Assembly for consideration at its 4th extraordinary session, to be held in April 1998.

7.7 The Assembly approved the accounts of the 1971 Fund for the financial period 1 January to 31 December 1996.

8 Appointment of members of the Investment Advisory Body

The Assembly reappointed Mr David Jude and Mr Simon Whitney-Long as members of the Investment Advisory Body for a term of one year. The Assembly noted that Mrs Maria Estella Beaman Gordon had left the United Kingdom and appointed as her replacement Mr Clive Ffitch for a term of one year.

9 System of financial control

9.1 In view of the fact that the question of the auditing of the 1971 Fund would be discussed at the next session of the Assembly (cf paragraph 7.6), the Assembly decided to defer consideration of the 1971 Fund's system of financial control, and in particular the issue of whether the 1971 Fund should establish an Audit Committee, to that session.

9.2 The Chairman informed the Assembly that he would hold discussions with the External Auditor in respect of the audit programme before the audit of the 1997 accounts commenced.

*Contribution questions***10 Report on contributions**

10.1 The Assembly took note of the report on contributions contained in document 71FUND/A.20/9. It noted that over 94% of the 1996 annual contributions had been paid, including payments which were due on 1 September 1997. The Assembly expressed its satisfaction with the situation regarding the payment of contributions.

10.2 The Director introduced document 71FUND/A.20/9/1 in respect of an Italian contributor in liquidation. It was noted that the Director intended to consult the 1971 Fund's Italian lawyer on this issue. The Assembly authorised the Director to agree with the liquidator on a settlement in respect of the outstanding contributions on terms which he considered reasonable.

10.3 The Director informed the Assembly that two other contributors had been declared bankrupt. In the case of a contributor in the Netherlands, it was noted that the 1971 Fund had filed a claim for outstanding contributions in the bankruptcy proceedings but that there was very little likelihood of the outstanding sums being recovered. In the case of a contributor in Germany, the Assembly noted that, in view of the considerable sum outstanding, the Director had instructed a German lawyer to file a claim for outstanding contributions in the bankruptcy proceedings.

11 Submission of oil reports: consideration of sanction mechanisms

11.1 The Assembly considered the question of possible sanctions in respect of States which had not submitted their oil reports to the Secretariat, on the basis of a study by the Director set out in document 71FUND/A.20/10. It was noted that this matter was being studied also within the 1992 Fund (cf 1992 Fund document 92FUND/A.2/10).

11.2 The Assembly agreed with the Director that 1971 Fund Convention did not empower the Assembly to introduce sanctions on States such as restricting voting rights, eligibility for election to the Executive Committee, or the right to speak. The Assembly also agreed with the Director that the 1971 Fund Convention did not allow the 1971 Fund to withhold payments of compensation for pollution damage caused in a State which had not fulfilled its obligations to submit its oil reports.

11.3 The Assembly considered the question of whether, in the case of a State which had not submitted its reports on oil receipts during a given year, annual contributions to be based on quantities received during that year could instead be invoiced on the basis of the figures of the latest reports submitted by that State.

11.4 The Assembly took the view that the obligation to pay contributions arose under Article 10 of the 1971 Fund Convention when an entity had received more than 150 000 tonnes of contributing oil in a calendar year and that this obligation existed whether or not the State in question had submitted the relevant oil report. The Assembly decided that this matter needed further consideration and instructed the Director to examine how the obligation to pay contributions could be enforced when a State had failed to submit its contributing oil reports.

*Secretariat and administrative matters***12 Transfer of Secretariat functions**

12.1 The Assembly recalled that it had decided at its 2nd extraordinary session that the 1971 Fund and the 1992 Fund should have a joint Secretariat and had authorised the Secretariat of the 1971 Fund to administer also the 1992 Fund. It was also recalled that the Assembly of the 1992 Fund had decided that the 1992 Fund should establish its own Secretariat from the date on which the transitional period ended, ie the date on which the compulsory denunciations of the 1969 Civil Liability Convention and 1971 Fund

Convention would take effect (16 May 1998). It was further recalled that the 1971 Fund Assembly had decided that the 1971 Fund should be administered by the 1992 Fund Secretariat once the latter had been established.

12.2 The Assembly considered certain issues resulting from the transfer of secretariat functions (cf document 71FUND/A.20/11).

12.3 The Assembly decided that the title of furniture, office equipment and other supplies should be transferred from the 1971 Fund to the 1992 Fund with effect from 16 May 1998, for a payment of an amount to be calculated as set out in paragraph 2.3 of document 71FUND/A.20/22, at present estimated at £60 000.

12.4 The Italian delegation did not see any reason for this transfer of property.

12.5 The Assembly endorsed the Director's proposal in respect of the staff members' share of the 1971 Fund's Provident Fund, viz that those staff members who wished to do so would be entitled to transfer their respective shares of the 1971 Provident Fund (or part thereof) to the 1992 Fund's Provident Fund in conjunction with the transfer of the Secretariat functions. It was noted that the United Kingdom tax authorities had confirmed that there would be no adverse tax consequences of such a transfer provided that the 1992 Fund's Provident Fund would be identical in all essential respects to the 1971 Fund's Provident Fund.

13 Secretariat working methods

13.1 It was recalled that, at its 19th session, the Assembly had instructed the Director to review the working methods within the Secretariat, possibly with the help of an external consultant, in order to obtain the most efficient and cost effective way of managing the 1971 Fund and the 1992 Fund.

13.2 The Assembly considered a document presented by the Director (document 71FUND/A.20/12) in which he submitted the interim report of the consultants he had engaged.

13.3 The Assembly took note of the consultants' interim report, as contained in the Annex to document 71FUND/A.20/12. In their presentation to the Assembly, the consultants emphasised the great increase in the Secretariat's workload that had taken place in recent years, and that it was necessary to consider how the Organisation should evolve. The consultants mentioned that they would make recommendations for improved efficiency and effectiveness of the Secretariat. They indicated, however, that an increase in staff resources - *inter alia* on the technical side - would be necessary in order to enable the Secretariat to meet its future commitments.

13.4 In the discussions following the consultants' presentation, it was suggested by delegations that the consultants might wish to consider the following issues in their future work: the cost and workload which resulted from extensive litigation; the criteria applied in the selection of experts; a comparison with the operation of the National Pollution Funds Center in the United States; the need for more technical expertise within the Secretariat; the introduction of a 'code of conduct' for experts; the need to increase public relations activities; the need to disseminate consolidated information on decisions of the Organisation which would be of particular value to delegations as well as to claimants; a periodic review of the criteria for the admissibility of claims; the establishment of a list of recognised experts in all Member States; the need to have the appropriate number of staff to carry out the work required of the Secretariat; the development of an 'assessment of damage manual'; an assessment of the cost of consultants engaged in connection with incidents which were not included in the general administrative expenses, but which were charged to the cost of the respective incident.

13.5 The consultants stated that they had noted the issues raised by delegations and would consider those points which they had not addressed to date.

13.6 The Director informed the Assembly that some of the points mentioned in paragraph 13.4, such as improving the public relations activities of the Organisation and preparing an update of decisions of principle taken in the last three years concerning the admissibility of claims, had been considered by the Secretariat, but that the restraints of time and personnel resources had prevented the work from being carried out. He also remarked that he considered that a list of recognised experts in all Member States would be extremely difficult to establish and maintain, and might preclude a certain flexibility which the Organisation required. He also observed that the National Pollution Funds Center in the United States employed over one hundred people, and that useful comparisons might be limited.

13.7 The Chairman thanked the consultants for their interim report. He concluded that the Assembly recognised the need for the Secretariat working methods to be developed and accepted that there was a need for increased staff resources, but that Member States did not wish to create a large bureaucracy.

13.8 The Assembly decided to establish a steering group comprising Mr Willem Oosterveen (Netherlands), Mr Alfred Popp (Canada), Dr Reinhard Renger (Germany), Mr Keiji Takiguchi (Japan), Mr Jerzy Vonau (Poland) and Mr John Wren (United Kingdom) to liaise, through meetings or correspondence, with the consultants through to the preparation of their final report.

13.9 The Assembly noted the Director's intention to pay for the costs of the study from the appropriation in the 1997 budget in Chapter V for consultants (item c) and/or from Chapter VI (Unforeseen expenditure, such as consultants' and lawyers' fees, cost of extra staff and cost of equipment).

14 Amendments to the Staff Rules

The Assembly noted that the Director had implemented, to the extent necessary, in the 1971 Fund's Staff Rules the changes made to the Staff Rules of IMO, as contained in document 71FUND/A.20/13.

15 Appointment of members and substitute members of the Appeals Board

The Assembly appointed the following members and substitute members of the Appeals Board to hold office until the 22nd session of the Assembly.

Members		Substitute Members	
Mr A Benguerah	(Algeria)	Mr P Escherich	(Germany)
Mr T G Ariyaratne	(Sri Lanka)	Mr E Conte	(Italy)
Sir Franklin Berman	(United Kingdom)	Mr K Takiguchi	(Japan)

16 Headquarters Agreement

16.1 The Assembly considered document 71FUND/A.20/15 dealing with a proposed amendment to the 1971 Fund's Headquarters Agreement, by means of an exchange of letters, to provide for the refund by the United Kingdom Government of certain indirect taxes paid by the 1971 Fund.

16.2 The Assembly agreed to the following sub-paragraph being added to Article 8 of the Headquarters Agreement:

- (3) The Fund shall be accorded a refund of insurance premium tax and air passenger duty paid by the Fund in the exercise of its official activities.

Compensation matters

17 Reports of the Executive Committee on its 51st - 55th sessions

17.1 The Chairman of the Executive Committee, Mr W Oosterveen (Netherlands), informed the Assembly of the work of the Committee during its 51st to 55th sessions and reported to the Assembly the decisions taken by the Committee at these sessions. In his report the Committee's Chairman referred to the most important issues dealt with by the Committee since the 19th session of the Assembly.

17.2 The Assembly approved the reports of the Executive Committee and expressed its gratitude to the Chairman of the Executive Committee for the work of the Committee during the particularly busy period of his chairmanship.

17.3 The Assembly considered the situation in respect of the *Haven* incident, and noted the developments as contained in document 71FUND/A.20/28.

17.4 The Director recalled that in 1995 an offer of a global settlement of all issues arising out of the *Haven* incident had been made by the shipowner, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club) and the 1971 Fund. It was also recalled that the Italian Government had not been able to accept this offer. It was further recalled that at the Assembly's 18th session Professor H Tanikawa of the Japanese delegation had stated that any future initiative towards a global settlement must be taken by the claimants, including the Italian Government, and that the terms and conditions of the previous offer of a global settlement were well known. It was also recalled that the Assembly endorsed this statement.

17.5 The Director recalled that the 1971 Fund had become involved in extensive legal proceedings in Italy, *inter alia* concerning the maximum amount available under the 1971 Fund Convention and the method to be applied for the conversion of gold francs into Italian lire, the defence by the 1971 Fund that the majority of the claims arising out of the *Haven* incident had become time-barred and the admissibility of claims for damage to the environment *per se*. He also mentioned that another legal problem had arisen, ie that the Fund had maintained, in the Italian courts, that the right of limitation under the 1969 Civil Liability Convention had been lost. The Director stated that to pursue this issue and the other issues referred to would lead to continued lengthy, complex and costly litigation. He mentioned that representatives of a number of Member States had indicated that it would be in the interests of all parties involved if further litigation could be avoided through a global settlement of all outstanding issues.

17.6 The representative of the UK Club made the following statement:

We are able to advise the Assembly that the shipowner and the UK Club have proposed to the Italian Government an offer to contribute to a global settlement on a basis which would enable the Italian Government to consider positively a global solution within the terms that the 1971 Fund has previously laid down as conditions for a global settlement. We understand that the terms of this offer, if accompanied by a contribution from the 1971 Fund within the terms of the 1971 Fund's previous offer, can form the basis of a global settlement acceptable to the Italian Government subject to ratification by the Italian Parliament.

The offer, which has been made by the shipowner and the UK Club, is made without any admission as to liability in excess of the shipowner's limitation amount under the 1969 Civil Liability Convention and consists of the offer of an *ex gratia* amount in consideration of the termination of all outstanding litigation between the parties to a global settlement in connection with the *Haven* incident. The offer which has been made is entirely consistent with the position of the 1971 Fund in respect of its prior conditions for a global settlement.

There remains one claim which was admitted to the "stato passivo", submitted by the clean-up contractor Oromare, which has not been agreed for settlement and in respect of

which no amount has been paid. In order to conclude all litigation between the Italian State, the shipowner/Club and the 1971 Fund, the UK Club, as part of its contribution to a global settlement, will undertake to resolve the claim of Oromare without recourse to the 1971 Fund and to indemnify the 1971 Fund in the event of any judgement of the Court against the 1971 Fund in connection with this claim.

Further claims have recently been submitted in the "stato passivo" from fishing interests in the Province of Imperia, which claims will be vigorously resisted. The UK Club will undertake to continue to defend these claims and to resolve them at its own expense with the appropriate indemnity to the 1971 Fund.

We understand that a global settlement on this basis, and within the conditions previously set down by the 1971 Fund, can now be positively considered by the Italian State, thus bringing an end to all litigation in connection with the *Haven*.

The Assembly will recall that, as part of the previous consideration of a global settlement, the Club had volunteered to waive its claim for indemnification from the 1971 Fund under Article 5.1 of the Convention. Since the original terms of the proposal for a global settlement have not been met, the Club is no longer prepared to waive its claim in this respect and will continue to maintain its claim for indemnification under Article 5.1.

We would therefore seek an early opportunity of presenting to the Director the legal and factual basis on which the claim for indemnification is made.

17.7 The Italian delegation made the following statement:

The Italian Delegation wishes to state that the proposal presented by the P & I Club satisfies, in conjunction with the offer made by the Fund, the minimum requisites requested by the Italian Government in order to examine the possibility of accepting a global settlement for the *Haven* incident. The Italian Government will therefore be now in the position to evaluate positively the matter.

For this purpose the Fund should possibly reconfirm its offer, clearly indicating the financial details on the basis of the amounts it has already disbursed.

The decision of the Government will then have to be submitted to the Italian Parliament.

17.8 Professor H Tanikawa of the Japanese delegation stated that, in his view, the 1971 Fund's proposal of a so-called global settlement was still available.

17.9 The Chairman confirmed, on behalf of the Assembly, the statement made by Professor Tanikawa that the 1971 Fund's offer was still available.

17.10 The Assembly emphasised that the offer was subject to certain conditions as laid down in paragraphs 3.20 and 3.24 of document FUND/EXC.43/7, in particular that the offer was without prejudice to the 1971 Fund's position in respect of the issue of time bar.

17.11 It was noted that, under the proposed global settlement, all legal actions in the Italian Courts would be withdrawn.

17.12 The Director stated that if a global settlement of all outstanding issues were to be reached along the lines set out by the Assembly and the Executive Committee (cf document FUND/EXC.43/7, paragraph 3.14), the 1971 Fund 's involvement would be as follows:

	<u>Italian Lire</u>
Total amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR, converted on the basis of the rate of exchange on the day of the constitution of the shipowner's limitation fund	102 643 800 000
<u>less</u> shipowner's limitation amount, ie 14 million SDR	<u>23 950 220 000</u>
	78 693 580 000
<u>less</u> Ecolfriuli/Ecolmare (already paid by the 1971 Fund)	<u>1 582 341 690</u>
	77 111 238 310
<u>less</u> payments already made by the 1971 Fund to French public bodies other than the State, FFr10 659 469, converted on the basis of the cross rate FFr:Lire on the date of purchase of French Francs (28.3.1996) according to the Financial Times, ie Lit 311.60:FFr	3 321 490 540
<u>less</u> payments to be made by the 1971 Fund	
to the French Government	FFr12 580 724
to the Principality of Monaco	<u>270 035</u>
⇒ FFr12 850 759	<u>3 742 141 021</u>
Balance to be paid by the 1971 Fund to the Italian Government in the context of a possible global settlement	<u>70 047 606 749</u>

17.13 The Assembly authorised the Executive Committee to determine, at its 57th session, whether the conditions for the global settlement laid down by the Assembly had been fulfilled, and if so, to approve it. It was agreed that if this issue could not be decided at that session, the matter would be referred to the Assembly at its 4th extraordinary session, to be held in April 1998.

17.14 The Assembly decided that the mandate of the Consultation Group established by the Executive Committee at its 42nd session was extended up to the next session of the Assembly.

<2> This figure represents an estimate of the cost in Italian Lire to purchase FFr12 850 759, based on the cross rate of 17 October 1997, ie 291.20. Consequently the final figure may differ from the estimated figure.

18 Election of members of the Executive Committee

18.1 The Assembly elected the following Member States as members of the Executive Committee:

Elected under Article 22.2(b)
of the 1971 Fund Convention

France
India
Italy
Japan
Netherlands
Republic of Korea
United Kingdom

Elected under Article 22.2(a)
of the 1971 Fund Convention

Algeria
Belgium
Colombia
Denmark
Greece
Malaysia
Morocco
Poland

18.2 In view of the fact that an extraordinary session of the Assembly would be held in the spring of 1998 to consider certain issues resulting from the compulsory denunciation of the 1969 Civil Liability Convention and 1971 Fund Convention by 1992 Fund Member States, the Assembly decided that the question of the membership of the Executive Committee should be reviewed on that occasion.

18.3 The Chairman stressed that it was crucial for the work of the 1971 Fund that States which were elected to the Executive Committee did attend sessions of the Committee.

19 Co-operation with P & I Clubs

19.1 It was noted that, in accordance with the authority given to him by the Assembly, the scope of the 1980 Memorandum of Understanding signed by the International Group of P & I Clubs and the 1971 Fund had been extended, by means of an exchange of letters, to cover also co-operation between the P & I Clubs and the 1992 Fund.

19.2 It was recalled that the Assembly had decided that the 1985 Memorandum of Understanding between the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) and the 1971 Fund could be replaced by an exchange of letters covering the parts of the text of the Memorandum which were not covered by the Memorandum of 1980 with the International Group and that the Assembly had authorised the Director to agree with JPIA on the text of such letters.

19.3 The Assembly noted that JPIA had expressed the view that, since it was now a full member of the International Group of P & I Clubs, it was not necessary to have a special Memorandum covering co-operation between JPIA and the 1992 Fund and that it would be more appropriate if the same Memorandum were to apply to JPIA as to the other members of the International Group.

19.4 It was noted that, in the light of the position taken by JPIA, the Director had not pursued the issue of an extension to the 1992 Fund of the 1985 Memorandum of Understanding. The Assembly noted that the Director intended to have further discussions with JPIA concerning co-operation between JPIA and the Fund, with particular reference to the provisions in the 1985 Memorandum concerning the payment of claims.

20 Claims Manual

20.1 It was recalled that, at its 19th session, the Assembly had authorised the Director to publish the revised Claims Manual, taking into account any comments submitted by delegations, and after consultation with the Chairman.

20.2 The Director informed the Assembly that no comments on the draft text of the Claims Manual had been received by 30 November 1996, and that he had therefore published the 5th edition of the Claims Manual in December 1996, in accordance with the draft submitted to the Assembly at its 19th session.

20.3 The Assembly noted that a further revision of the Claims Manual would be required at the end of the transitional period, to reflect the different situation which would exist from 16 May 1998.

21 Informal working group on emergency payments

21.1 It was recalled that, at its 19th session, the Assembly had established an informal Working Group, to be led by the United Kingdom delegation in co-operation with the Director, in order to consider the question of emergency payments in cases of financial hardship.

21.2 The United Kingdom delegation presented document 71FUND/A.20/19 and reported that no correspondence had been received from other delegations. It stressed the importance of this issue and the need for States to consider emergency payments to claimants facing financial difficulty following an oil spill. The delegation mentioned that the question of emergency payments was being taken into account during a review of the United Kingdom oil spill contingency plan. This delegation stated that it would be prepared to continue to lead the informal Working Group, should the Assembly so wish.

21.3 The Assembly accepted the offer of the United Kingdom delegation to continue to lead the informal Working Group on emergency payments and invited delegations to share their experiences on the subject with other delegations through the United Kingdom delegation.

22 Applicability of the 1969 Civil Liability Convention and the 1971 Fund Convention to floating storage units (FSUs) and floating production storage and offloading units (FPSOs)

As proposed by the Director in document 71FUND/A.2/22, the Assembly decided to defer to its next session consideration of the question of whether the 1969 Civil Liability Convention and the 1971 Fund Convention applied to oil spills from floating storage units (FSUs) and floating production storage and offloading units (FPSOs).

Budgetary matters

23 Sharing of joint administrative costs with the 1992 Fund

23.1 The Assembly approved the Director's proposal that the costs of running the joint Secretariat for 1998 should be distributed with 60% to be paid by the 1971 Fund and 40% by the 1992 Fund.

23.2 It was noted that the Assembly of the 1992 Fund had agreed, at its 2nd session, to the distribution proposed by the Director.

24 Budget 1998

24.1 The Assembly considered the draft 1998 Budget for the administrative expenses of the 1971 Fund and 1992 Fund, as proposed by the Director in document 71FUND/A.20/22.

24.2 The Assembly adopted the budget appropriations for 1998, with a total administrative expenditure for the joint Secretariat of £1 791 820, as proposed by the Director.

24.3 It was noted that the Assembly of the 1992 Fund had decided, at its 2nd session, to adopt the same budget appropriations.

25 Working capital

The Assembly decided to reduce the working capital of the 1971 Fund from £10 million to £5 million.

26 Assessment of annual contributions

26.1 The Director introduced documents 71FUND/A.20/24 and 71FUND/A.20/24/Add.1, which contained proposals for the levy of 1997 annual contributions.

26.2 The Assembly decided to credit contributors in respect of the 1997 General Fund for a total of £2 million on 1 February 1998.

26.3 The Assembly took note of the fact that all claims and expenses arising out of the *Senyo Maru* incident had been paid. Since the amount remaining in this Major Claims Fund was considered to be substantial, the Assembly decided, pursuant to Financial Regulation 4.4, that £2 800 000 should be reimbursed to the contributors to that Major Claims Fund on 1 February 1998 and that the balance should be transferred to the General Fund.

26.4 A number of delegations expressed the view that, in the light of the significant sums held by the 1971 Fund, a redistribution between the levy due on 1 February 1998 and the deferred levy should be made compared with the Director's proposal, and that there should if possible be a reduction in the overall 1997 annual contributions.

26.5 In the light of this discussion, the Director submitted a revised proposal for the levy of 1997 annual contributions, as set out in document 71FUND/A.20/26/Add.2.

26.6 In order to enable the 1971 Fund to meet payments in the relevant years for the satisfaction of claims for compensation under Article 4 and for indemnification under Article 5 of the 1971 Fund Convention arising out of the *Sea Prince*, *Yuil N°1*, *Nakhodka*, *Nissos Amorgos* and *Osung N°3* incidents, to the extent that the aggregate amount of the payments made by the 1971 Fund in respect of each incident exceeded 1 million Special Drawing Rights (SDRs), the Assembly decided, pursuant to Article 12.2(b) of the 1971 Fund Convention, to raise 1997 annual contributions, to the following four Major Claims Funds:

- (a) a third levy of £14 million to the *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund, out of which £10 million related to the *Sea Prince* incident, £4 million to the *Yuil N°1* incident and nil to the *Yeo Myung* incident;
- (b) a second levy of £35 million to the *Nakhodka* Major Claims Fund;
- (c) a levy of £5 million to the *Nissos Amorgos* Major Claims Fund; and
- (d) a levy of £10 million to the *Osung N°3* Major Claims Fund.

26.7 The Assembly decided that part of the levies to the *Sea Prince/Yeo Myung/Yuil N°1*, *Nakhodka*, *Nissos Amorgos* and *Osung N°3* Major Claims Funds (£3 million, £30 million, £2 million and £2 million respectively), should be due for payment by 1 February 1998, as indicated in the table in paragraph 26.11 below, and that the balance of these levies should be deferred. The Director was authorised to decide whether to invoice all or part of amounts of the deferred levies for payment during the second half of 1998.

26.8 It was recalled that the *Sea Prince*, *Yeo Myung* and *Yuil N°1* incidents had occurred in the same Member State within a period of two months, that the contributors to Major Claims Funds in respect of these three incidents were the same, and that the levy for all three incidents was based on the quantities of contributing oil received in 1994.

26.9 The Assembly shared the Director's view that any decision to levy annual contributions to the *Vistabella* Major Claims Fund should be postponed until the total cost of the incident to the 1971 Fund could be established.

26.10 The Assembly decided that no further levy in the form of 1997 annual contributions should be made to the *Haven*, *Aegean Sea*, *Braer*, *Keumdong N°5* and *Sea Empress* Major Claims Funds.

26.11 The Assembly noted that its decisions in respect of the levy of the 1997 annual contributions and reimbursement to contributors could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment by 1 February 1998		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
<i>Sea Prince</i> <i>Yeo Myung</i> <i>Yuil N°1</i>			10 000 000 0 4 000 000	3 000 000 0 0		7 000 000 0 4 000 000	
<i>Sea Prince/Yeo Myung/Yuil N°1</i>	1994	1 204	14 000 000	3 000 000	0.0024917	11 000 000	0.0091362
<i>Nakhodka</i>	1996	1 205	35 000 000	30 000 000	0.0248963	5 000 000	0.0041494
<i>Nissos Amorgos</i>	1996	1 205	5 000 000	2 000 000	0.0016598	3 000 000	0.0024896
<i>Osung N°3</i>	1996	1 205	10 000 000	2 000 000	0.0016598	8 000 000	0.0066390
Total			64 000 000	37 000 000	0.0307076	27 000 000	0.0224142

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total reimbursement £	Credit on 1 February 1998		Deferred reimbursement	
				Reimbursement £	Estimated reimbursement per tonne £	Reimbursement £	Estimated reimbursement per tonne £
General	1996	1 205	-2 000 000	-2 000 000	-0.0016598		
<i>Senyo Maru</i>	1994	1 204	-2 800 000	-2 800 000	-0.0023256		
Total			-4 800 000	-4 800 000	-0.0039854		
Grand total			59 200 000	32 200 000	0.0267222	27 000 000	0.0224142

26.12 The Director was instructed to take into account the sums held by the 1971 Fund when deciding on the amounts to be invoiced for the deferred levies.

26.13 The Assembly considered document 71FUND/A.20/24/1 concerning certain questions which had arisen in respect of the pro-rating of contributions (or credits) in respect of the General Fund.

26.14 The Assembly confirmed the position taken at its 2nd extraordinary session that, in respect of States which ceased to be Members of the 1971 Fund, contributions to the General Fund should be pro-rated to reflect the period of the year during which a State was a Member and therefore benefitted from economic protection by the 1971 Fund in respect of oil spills occurring during that period. The Assembly confirmed that pro-rating should apply also to deferred levies, and to both payments of contributions to and reimbursements from the General Fund.

*Treaty questions***27 Replacement of instruments enumerated in Article 5.3 of the 1971 Fund Convention**

27.1 The Assembly considered the information contained in document 71FUND/A.20/25 on the replacement of instruments enumerated in Article 5.3(a) of the 1971 Fund Convention.

27.2 The Italian delegation considered it inappropriate at the moment to resort to the procedure of "tacit consensus" for the replacement of instruments enumerated in Article 5.3(e) of the 1971 Fund Convention and therefore it did not accept (according to Article 5.4) such replacement for the time being.

27.3 It was recalled that at its 8th session the Assembly had decided to interpret Article 5.4 so as to allow the inclusion in the list of instruments contained in Article 5.3(a) of not only new conventions but also amendments adopted by a tacit amendment procedure, provided that such amendments were of an important character for the purpose of the prevention of oil pollution (documents FUND/A.8/12 and FUND/A.8/15, paragraph 15.1).

27.4 The Assembly recalled that it had at previous sessions decided that the following amendments were of an important character for the purpose of the prevention of oil pollution: (a) May 1994 Amendments to SOLAS 1974 (those covered by Conference Resolution 1 and relating to Chapter IX, as well as those covered by Resolution MSC.31(63) and relating to amendments other than Regulations V/8-1 and V/15-1), (b) the November 1995 Amendments to the International Convention on Load Lines 1966 adopted by the IMO Assembly (Resolution A.784(19)), and (c) the June 1996 Amendments to SOLAS 74 adopted by the Maritime Safety Committee of IMO (Resolution MSC.47(66)). The Assembly took the view that it was still premature to take a decision at the present session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention, since it was not possible to determine whether these Amendments would enter into force.

27.5 The Assembly also considered the December 1996 Amendments to SOLAS 1974 adopted by the Maritime Safety Committee of IMO (Resolution MSC.57(57)) and decided that they were of an important character for the purpose of the prevention of oil pollution. The Assembly took the view, however, that it was premature to take a decision at the present session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention, since it was not possible to determine whether these Amendments would enter into force.

27.6 The Assembly decided not to include the July 1996 Amendments to MARPOL 73/78 adopted by the Marine Environment Protection Committee of IMO (Resolution MEPC.68(38)) and the June 1997 Amendments to SOLAS 74 adopted by the Maritime Safety Committee of IMO (Resolution MSC.65(68)) in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention, because they were not considered relevant for the purposes of Article 5.3 of the Convention.

28 Denunciation of the 1971 Fund Convention by States Parties to the 1992 Fund Convention

The Assembly took note of the information contained in document 71FUND/A.20/26 concerning the denunciation of the 1971 Fund Convention by States Parties to the 1992 Protocol amending the 1971 Fund Convention.

29 Status of Hong Kong

29.1 The Assembly recalled that with effect from 1 July 1997, Hong Kong had ceased to be a dependent territory of the United Kingdom, and had been restored to the People's Republic of China.

29.2 The Director presented document 71FUND/A.20/27 inviting the Assembly to consider certain issues arising from this change of status.

29.3 The Japanese delegation stated that, while it would not oppose the application of the 1971 Fund Convention to the Hong Kong Special Administrative Region, it reserved its position on this matter from a legal point of view and stated that it would consider the question further in the light of the Assembly's discussions.

29.4 Another delegation questioned whether there were legal grounds for allowing the 1971 Fund Convention to continue to apply to the Hong Kong Special Administrative Region.

29.5 Several delegations took the view that the situation of Hong Kong was unique. It was emphasised that the 1971 Fund Convention was of a special character since it had as its object providing compensation to victims of oil pollution. For this reason, these delegations stated that they supported the continued application of the 1971 Fund to the Hong Kong Special Administrative Region.

29.6 The Assembly agreed to consider that the 1971 Fund Convention should continue to apply to the Hong Kong Special Administrative Region after 30 June 1997, recognising that the consequences of this understanding were that:

- (a) pollution damage caused in the Hong Kong Special Administrative Region after 30 June 1997 and measures taken after that date to prevent or minimise pollution damage in the Region would fall within the scope of the 1971 Fund Convention; and
- (b) entities in the Hong Kong Special Administrative Region would be liable to pay contributions to the 1971 Fund in respect of contributing oil received in the Region as follows:
 - (i) general fund contributions in accordance with Article 12.2(a) for the period 1 July 1997 - 31 December 1997 and thereafter; and
 - (ii) major claims fund contributions in accordance with Article 12.2(b) where the incident in question occurred after 30 June 1997.

29.7 The delegation of the People's Republic of China expressed its gratitude for the position taken by the Assembly on this issue. This delegation assured the Assembly that all obligations under the 1971 Fund Convention would be strictly fulfilled.

Other matters

30 Future sessions

30.1 The Assembly decided to hold its next ordinary session during the week of 26 to 30 October 1998.

30.2 The Assembly decided to hold an extraordinary session during the week of 27 April to 1 May 1998.

31 Any other business

SUMED Pipeline question

31.1 The 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.

31.2 It was recalled that the Assembly had considered this issue at its 16th session, on the basis of documents presented by the Director and the Government of Egypt (documents FUND/A.16/24 and FUND/A.16/24/1, respectively). It was also recalled that the Assembly had concluded that there was not a majority in favour of the request made by the Government of Egypt that the oil passing through the SUMED pipeline should not be considered as received for the purpose of Article 10.1 of the Fund

Convention and should not, therefore, be subject to contributions. It was noted that several delegations had expressed the opinion that a compromise solution should be sought and that the Assembly had decided, therefore, that this question should be re-examined if a firm compromise proposal were made or new arguments advanced.

31.3 The Egyptian observer delegation introduced document 71FUND/A.20/29 setting out the activities of the Arab Petroleum Pipelines Company (SUMED). The Egyptian 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.

31.4 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.

31.5 The Chairman thanked the Egyptian delegation for its clear presentation of SUMED's activities.

31.6 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.

31.7 The Assembly took note of the information provided by the Egyptian delegation.

32 Adoption of the Record of Decisions of the 20th session

The draft Record of Decisions, as contained in documents 71FUND/A.20/WP.1 and 71FUND/A.20/WP.1/Add.1, was adopted, subject to some amendments.
