INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ADMINISTRATIVE COUNCIL
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EXECUTIVE COMMITTEE
63rd session

71FUND/AC.1/EXC.63/11
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RECORD OF DECISIONS OF THE 1ST SESSION OF THE ADMINISTRATIVE COUNCIL

ACTING ON BEHALF OF THE 5TH EXTRAORDINARY SESSION OF THE ASSEMBLY, DEALING WITH ITEMS ON THE AGENDA OF THE 63RD SESSION OF THE EXECUTIVE COMMITTEE

(held from 3 to 6 April 2000)

Chairman: Dr M Baradà (Italy)

Vice-Chairman: Mr V Knyazev (Russian Federation)

Opening of the session

0.1 It was noted that the Chairman of the Executive Committee had attempted to open the 63rd session of the Committee at 2.30 pm on Monday 3 April 2000, but that the Committee had failed to achieve a quorum.

0.2 It was recalled that at its 4th extraordinary session the Assembly had adopted 1971 Fund Resolution N°13 whereby, whenever the Executive Committee fails to achieve a quorum, all functions undertaken by the Committee shall revert to the Assembly. It was noted that this Resolution was reproduced in the Annex to the draft annotated agenda for the 63rd session of the Executive Committee (document 71FUND/EXC.63/1). It was also noted that in accordance with that Resolution, if no quorum was achieved, the agenda items contained therein should be dealt with by the Assembly at an extraordinary session.

0.3 At 3.00 pm on Monday 3 April 2000 Mr Paul Czerwinski (Poland), in his capacity as Head of the delegation from which the Chairman of the Assembly had been elected at the Assembly's 4th extraordinary session, attempted to open the 5th extraordinary session of the Assembly, to deal with the items on the agenda of the Executive Committee's 63rd session. Only the following thirteen 1971 Fund Member States were present at that time:

Antigua and Barbuda	Italy	Panama
Côte d'Ivoire	Malaysia	Poland
Estonia	Malta	Russian Federation
Fiji	Nigeria	United Arab Emirates
India		

0.4 The Acting Chairman then adjourned the session for 30 minutes and when the meeting was resumed at 3.30 pm only the same thirteen 1971 Fund Member States were present.

0.5 In view of the fact that no quorum was achieved, the Acting Chairman concluded the Assembly meeting.

0.6 It was recalled that Resolution N°13 created an Administrative Council and provided that the Council should assume its functions whenever the Assembly fails to achieve a quorum after the functions allocated to the Executive Committee have reverted to the Assembly. The items on the agenda of the Executive Committee's 63rd session were therefore dealt with by the Administrative Council.

1 Adoption of the agenda

1.1 The Administrative Council adopted the Agenda contained in document 71FUND/EXC.63/1.

1.1 The Administrative Council elected Dr M Baradà (Italy) as Chairman of the Council, and Mr V Knyazev (Russian Federation) as Vice-Chairman of the Council.

2 Participation

2.1 The following 1971 Fund Member States were present:

Antigua and Barbuda	India	Panama
Colombia	Italy	Poland
Côte d'Ivoire	Malaysia	Russian Federation
Estonia	Malta	United Arab Emirates
Fiji	Nigeria	

2.2 The following former 1971 Fund Member States were present:

Algeria	Finland	Netherlands
Australia	France	Norway
Bahamas	Germany	Republic of Korea
Belgium	Greece	Spain
Canada	Ireland	Sweden
China (Hong Kong Special Administrative Region)	Japan	Tunisia
	Liberia	United Kingdom
Cyprus	Marshall Islands	Vanuatu
Denmark	Mexico	Venezuela

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

Brazil	Peru	Trinidad and Tobago
Chile	Philippines	Turkey
Ecuador	Saudi Arabia	United States
Egypt	Singapore	Uruguay
Georgia		

2.4 The following intergovernmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:
International Oil Pollution Compensation Fund 1992 (1992 Fund)
International Maritime Organization (IMO)
European Commission

International non-governmental organisations:
Cristal Ltd
Comité Maritime International (CMI)
International Association of Independent Tanker Owners (INTERTANKO)
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)

3 Incidents involving the 1971 Fund

3.1 *Aegean Sea*

3.1.1 The Administrative Council took note of the information in document 71FUND/EXC.63/2 regarding the *Aegean Sea* incident.

3.1.2 The Council recalled that it had been agreed with the Spanish Government that in order to facilitate progress efforts should focus on the following questions:

- an examination of the documentation presented by the Spanish Government in support of the claims in the fishery and aquaculture sectors;
- the distribution of liabilities between the Spanish State and the shipowner/his insurer (the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd, UK Club)/1971 Fund; and
- an analysis of the legal issue relating to time bar in respect of a group of claimants.

3.1.3 The Administrative Council noted with satisfaction the considerable progress made in recent months in respect of the assessment of the losses suffered by fishermen and shellfish harvesters and by claimants in the mariculture sector on the basis of the documentation presented by the Instituto Español de Oceanografía (IEO).

3.1.4 The Spanish observer delegation reaffirmed the determination of the Spanish Government to complete the negotiations with the 1971 Fund in respect of all claims arising out of the *Aegean Sea* incident in the very near future and, in any case, before the winding up and liquidation of the 1971 Fund. That delegation mentioned that to that end the Spanish Government had worked closely with the UK Club and the 1971 Fund and had participated in five meetings to assist in the examination of the extensive documentation supporting the claims of fishermen, shellfish

harvesters and those in the mariculture sector. It was stated that the Spanish Government would continue to take an active part so as to complete the negotiations on the quantum of the losses of all claims as soon as possible. The point was made that as regards the two pending legal disputes, ie those relating to distribution of liabilities and time bar, the Spanish Government hoped that these issues could eventually be settled by negotiation and that, as a result, all litigation in Spain would be terminated. That delegation stated that in order to have enough time to complete the complex negotiations the Spanish Government was prepared to extend the time period available to the Fund for a recourse action against the Spanish State. Finally, the Spanish delegation emphasised that the objective was to reach a global agreement settling all claims out of court so as to make it possible to close the oldest outstanding incident involving the 1971 Fund. That delegation stated that, to this end, it was imperative that a spirit of compromise was shown by all parties involved, namely the shipowner, the UK Club, the 1971 Fund and the Spanish claimants.

3.1.5 Some delegations expressed their concern that claims had recently been presented before the Civil Court in La Coruña by three tug-owning companies. It was noted that these claims had not been presented in the criminal proceedings within the period fixed by the Court. In the view of one delegation these claims were time-barred.

3.1.6 The Spanish delegation informed the Administrative Council that the claims by the three tug-owning companies were presented in the Criminal Court of La Coruña within three years from the date when the damage occurred, but that due to the internal procedural law of Spain, they were referred to a civil court. That delegation stated that in its view those claims were not time-barred.

3.1.7 The Administrative Council noted that the claims presented before the Criminal and Civil Courts in La Coruña totalled approximately Pts 39 560 million (£143 million).

3.1.8 The Council instructed the Director to continue the discussions with the Spanish Government on the groups of claims referred to in paragraph 3.1.3 and authorised the Director to agree with the Spanish Government on the quantum of the losses suffered by these claimants on the basis of the criteria for assessment applied by the 1971 Fund. It was noted that any agreement as to the quantum of the losses in the mariculture sector would have to be made subject to a reservation to the effect that such an agreement was without prejudice to the 1971 Fund's position in respect of these claims being time-barred.

3.1.9 The Council emphasised that any agreement on the quantum of the claims had to be subject to the consent of all claimants and that the claimants would have to waive their right to claim compensation from the 1971 Fund, the shipowner, the UK Club and the Spanish State over and above the amounts received in loans.

3.1.10 The Administrative Council instructed the Director to pursue the discussions with the Spanish Government on the issues relating to time bar and distribution of liabilities between the Spanish State and the shipowner/UK Club/1971 Fund. The Council also instructed the Director to explore with the Spanish Government the elements of a global settlement and, if appropriate, present a proposal to this effect for consideration at the Assembly's or Council's session in October 2000.

3.1.11 The Council noted that any global agreement settling all outstanding issues would have to cover all parties involved, including the shipowner and the UK Club.

3.1.12 The Administrative Council recalled that on 9 June 1999 the Spanish Ambassador in London and the Director had signed an agreement under which the Spanish State undertook not to invoke the time bar if the competent bodies of the Fund were to take recourse action against the Spanish State to recover 50% of the amounts paid by the Fund, provided that such an action was taken before 12 June 2000. It was also recalled that in a letter to the Director, the Spanish Ambassador had stated that Spain recognised that the agreement applied provisionally from the date of signature but that it would enter into force when Spain informed the 1971 Fund that all the procedures required under Spanish law had been complied with. It was noted that it was stated in

the letter that the provisional application of the agreement would terminate if Spain did not notify the Fund before 12 May 2000 that all these procedures had been complied with, or if Spain notified the Fund before that date that these procedures would not be complied with. It was also noted that it was stated in the letter that Spain undertook in case of termination of the provisional application not to invoke the time bar if the Fund took recourse action against Spain within 30 days of 12 May 2000 or, where applicable, of the receipt of such notification. It was noted that the 1971 Fund had not been informed whether all the procedures required under Spanish law for the entry into force of the agreement had been met.

3.1.13 The Council noted that the Spanish Government had indicated its agreement to extending the period during which the 1971 Fund could take recourse action.

3.1.14 The Administrative Council authorised the Director to conclude an agreement with the Spanish State to that effect as soon as possible. The Council instructed the Director that, if an agreement on such an extension was not signed prior to 12 June 2000, the Director should take recourse action against the Spanish State in order to protect the 1971 Fund's interests, pending a solution to the disagreement between the State and the Fund relating to distribution of liabilities.

3.2 *Braer*

3.2.1 The Administrative Council noted the developments in respect of the *Braer* incident as set out in document 71FUND/EXC.63/3.

3.2.2 The Council recalled that payments of compensation had been suspended in respect of this incident since October 1995. The Council further recalled that at its 62nd session in October 1999, the Executive Committee had authorised the Director to make partial payments to those claimants whose claims had been approved but not paid, if the claims pending in the court proceedings together with the claims which had been approved but not paid fell below £20 million (document 71FUND/EXC.62/14, paragraph 3.4.5).

3.2.3 The Council noted that the United Kingdom Government and the Skuld Club had decided not to pursue their claims, totalling £5.3 million, and that a group of fish processors had indicated that they would withdraw their claims, totalling £7.6 million. The Council also noted that the total amount of the claims pending in court and the claims that had been approved but not paid would therefore fall below £20 million and that the conditions the Executive Committee had laid down for a resumption of payments would be met. The Director informed the Council that he was assessing what proportion of the agreed amounts of the claims that had been settled but not paid could be paid at this stage and that preparations were being made for making such provisional payments.

3.2.4 The United Kingdom delegation stated that it looked forward to the maximum possible payment being made as soon as possible to claimants whose claims had been approved. That delegation stated that it was in order to facilitate this that the United Kingdom Government's claim had been withdrawn. That delegation expressed its thanks to the Skuld Club for the withdrawal of the claim relating to salvage operations.

3.2.5 The United Kingdom delegation expressed the hope that at the October 2000 session of the Assembly or the Administrative Council it would be appropriate to discuss the final settlements of claims arising from the *Braer* incident.

3.2.6 The Council expressed its satisfaction that payments would soon resume in respect of this incident.

3.2.7 One delegation stated that the problem faced in the *Braer* case might arise again, since the Fund might make overpayment in some cases in the future. The point was made that the IOPC Funds

should consider how to act in such cases. It was stated, however, that measures should be taken to avoid such situations occurring.

3.2.8 The Director was instructed to make a study of the issue referred to in paragraph 3.2.7 and submit the results of the study to the Assembly or the Administrative Council's October 2000 session.

3.3 *Sea Prince*

3.3.1 The Administrative Council took note of the developments in respect of the *Sea Prince* incident, as set out in document 71FUND/EXC.63/4. The Council noted that most tourism claims and fishery claims had been settled out of court and paid in full, and that most claims for clean-up had also been settled and paid in full.

3.3.2 The Council noted that some of the claimants who had taken legal action against the 1971 Fund in June 1999 had now withdrawn their claims and that other claims would be withdrawn in the near future. It was noted that there remained around 400 claims, the majority of which had been rejected by the Fund and the limitation Court. It was also noted that although the total amount of those remaining claims as presented in the legal action was some Won 200 million (£115 000), compared with Won 6 000 million (£3.5 million) as originally claimed, the plaintiffs had indicated that they might increase the amounts at a later stage.

3.3.3 The Council also noted that the shipowner's insurer had requested reimbursement of US$8.3 million from the 1971 Fund for payments made in respect of preventive measures associated with salvage operations. It was noted that this claim had been approved by the Director for US$6.6 million. The Council further noted that the shipowner had requested payment by the Fund in respect of clean-up costs which had not been reimbursed by the insurer. It was noted that the 1971 Fund could not make any payments in this regard before the limitation amount applicable to the *Sea Prince* had been determined.

3.3.4 The Council recalled that under Article V.9 of the 1969 Civil Liability Convention (as amended by the 1976 Protocol thereto), the limitation amount applicable to the *Sea Prince*, 14 million Special Drawing Rights (SDR), should be converted into the national currency of the State concerned on the basis of the value of that currency by reference to the SDR on the date of the constitution of the shipowner's limitation fund. The Council noted that the Court would not determine the limitation amount applicable to the *Sea Prince* until it had rendered its judgement on the pending claims.

3.3.5 In view of the considerable time that would elapse before the limitation amount would be determined by the Court, as an exception the Administrative Council authorised the Director to agree with the shipowner/insurer on the exchange rate between the SDR and Won to be applied to establish the limitation amount in respect of the *Sea Prince* and to determine the amount of indemnification payable by the Fund under Article 5.1 of the 1971 Fund Convention.

3.4 *Sea Empress*

3.4.1 The Administrative Council took note of the information in documents 71FUND/EXC.63/5 and 71FUND/EXC.63/5/Add.1 regarding the *Sea Empress* incident. The Council noted that further payments of £7.2 million had been made since the Executive Committee's 62nd session. It was also noted that the total amount of the outstanding claims was approximately £18.5 million, at least £5.5 million of which related to items considered by the shipowner's P & I insurer and the 1971 Fund to be either inadmissible or unsubstantiated.

3.4.2 The Council noted that legal proceedings had been commenced in respect of the majority of those claims where agreement had not been reached prior to the expiry of the three-year time bar period. It was also noted that the 1971 Fund had made an application to the court for a temporary stay of

the proceedings against the 1971 Fund until all the claims against the shipowner and his insurer in the limitation proceedings had been determined.

3.4.3 The Council recalled that at its 62nd session the Executive Committee had instructed the Director to take recourse action on behalf of the 1971 Fund against the Milford Haven Port Authority (MHPA). It was noted that the Director, together with the 1971 Fund's legal advisers, was currently preparing a recourse action to be submitted to the Admiralty Court in London.

3.4.4 The Administrative Council recalled that criminal proceedings had been brought against MHPA, that in January 1999 MHPA had pleaded guilty to causing or permitting polluting matter, namely oil and bunkers, to enter controlled waters, and that it had been ordered to pay a fine of £4 million. The Council noted that MHPA had appealed against the sentence and that on 16 March 2000 the Court of Appeal had held that the original fine was excessive and should be reduced to £750 000.

3.4.5 The Director informed the Council of the sad news that the 1971 Fund's Counsel in the *Sea Empress* case, Geoffrey Brice QC, had died in November 1999. The Director stated that Mr Brice had given the Fund extremely valuable advice in several cases over the years and that Mr Brice would be missed not only for his professional excellence but also for his personal qualities. The Chairman stated that when one loses a valued colleague one loses a bit of oneself.

3.4.6 The Administrative Council instructed the Director to convey the 1971 Fund's condolences to Mr Brice's family.

3.5 *Nissos Amorgos*

3.5.1 The Administrative Council took note of the developments in respect of the *Nissos Amorgos* incident as set out in document 71FUND/EXC.63/6.

3.5.2 The Council noted that legal proceedings relating to claims for compensation had been brought in four courts in Venezuela, including the Supreme Court, and that a recent decision by the Supreme Court had the effect of staying all civil proceedings.

3.5.3 In view of the remaining uncertainty as to the total amount of the claims arising out of the *Nissos Amorgos* incident, the Administrative Council decided to maintain the limit of the 1971 Fund's payments at 25% of the loss or damage actually suffered by each claimant.

3.5.4 The Administrative Council recalled that the shipowner and his insurer had notified the 1971 Fund that in their view they were entitled to exoneration from liability for pollution damage arising from the incident, under Article III.2.(c) of the 1969 Civil Liability Convention, on the ground that the damage had been wholly caused by the negligence or other wrongful act of a Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function. The Council further noted that the Director had continued his consideration of the cause of the incident and that he still considered, on the basis of legal and technical advice, that negligence attributable to the Venezuelan State, though not the sole cause, was nevertheless the substantial cause of the incident and the ensuing pollution damage, with the result that the shipowner/his insurer would be partly exonerated from liability to the Venezuelan Government and to other government bodies. It was further noted that in such a case the 1971 Fund would also be exonerated to the same extent in respect of claims by the Venezuelan Government, except for the cost of preventive measures.

3.5.5 The Council was informed that the shipowner had filed pleadings in the criminal court in Cabimas based on Article III.3 of the 1969 Civil Liability Convention, maintaining that the incident was substantially or mainly caused by the negligence of the Venezuelan Government. The Council noted that in view of the position thus taken by the shipowner and the insurer, the 1971 Fund had submitted pleadings in which it stated that the Fund in general agreed with their pleadings.

3.5.6 The Council noted that if evidence were to establish contributory negligence on the part of the Instituto Nacional de Canalizaciones (INC), it would need to consider whether the 1971 Fund should take recourse action against the Republic of Venezuela for the purpose of recovering any amount paid by the Fund in compensation.

3.5.7 The Venezuelan delegation expressed concern that the information contained in document 71FUND/EXC.63/6 submitted by the Director gave a partial view of the cause of the incident and that the 1971 Fund had simply taken the same position as the shipowner and his insurer. The Venezuelan delegation stated that the allegations relating to the poor conditions of the channel and the lack of maintenance by INC were unfounded.

3.5.8 The Venezuelan delegation stated that the vessel had been sailing outside the channel when it grounded for the first time and that the master had twice been warned by the pilot of this fact. That delegation made the point that the channel was properly dredged and marked by buoys and lights at the time of the incident. It was stated that, furthermore, the Venezuelan Navy had carried out several thorough inspections of the navigation channel soon after the incident and that no metallic object or other obstruction had been detected in the course of these inspections.

3.5.9 The Venezuelan delegation informed the Administrative Council that, two weeks after the incident, a judicial inspection of the channel had been carried out which, in the view of the Republic of Venezuela, proved that there had been no obstacles or solid objects in the channel. That delegation further stated that the inspection had established that the depth of the channel was accurately reflected in the official navigation charts, that there were no metallic objects on the bottom of the dredged channel and that the average depth was 12.8 metres as indicated in the documentation held by INC. That delegation concluded that the results of this inspection, together with the report of INC to the court, demonstrated the good condition of the dredged part of the channel.

3.5.10 In addition, the Venezuelan delegation drew the attention of the Administrative Council to the fact that half an hour before the incident, the *Tessus*, a vessel wider and of deeper draught than the *Nissos Amorgos*, had passed through the same channel under the same weather conditions and that numerous other tankers had also used the channel without problems both before and after the incident.

3.5.11 The Director responded to the points made by the Venezuelan delegation by stating that the position of the Venezuelan authorities that the grounding of the vessel had occurred outside the channel had been reflected in the note submitted by the Director (document 71FUND/EXC.63/6, paragraph 1.1). The Director further made the point that the 1971 Fund had taken into account the information relating to the cause of the incident contained in the documents presented to the courts by the Republic of Venezuela.

3.5.12 The Director stated that he did not accept that the 1971 Fund had simply taken the same position as the shipowner and his insurer in the pleadings presented by the Fund to the Venezuelan courts in respect of the cause of the incident. The Director indicated that, as mentioned in paragraph 3.5.4, the shipowner and the Club had originally taken the position that the incident had been wholly caused by the negligence of public bodies in Venezuela but had since modified their position to the effect that the incident was substantially rather than wholly caused by the negligence of INC. The Director also made the point that, although many tankers had navigated the channel successfully, two vessels had grounded in the vicinity of where the *Nissos Amorgos* incident had taken place and at around the same time. He stated that several other vessels had also experienced difficulties in that area.

3.5.13 The Director stated that, in spite of the difficulties encountered in this case, progress had recently been made through a constructive dialogue with some claimants. He stressed that the 1971 Fund was always willing to discuss new points relating to any issue but that deadlines fixed by the courts had to be met and that the 1971 Fund could only base its position on available information.

3.5.14 Several delegations encouraged the Director to pursue a dialogue with the Venezuelan Government and other claimants to resolve as many of the outstanding issues as possible. It was emphasised, however, that the 1971 Fund should take the necessary steps to protect its interests.

3.5.15 The Venezuelan delegation informed the Administrative Council that it would be in a position to submit further information to the 1971 Fund on the cause of the incident once this issue had been decided by the Court. That delegation stated that the Venezuelan Government was willing to assist all parties in any discussion aimed at resolving the outstanding issues.

3.6 *Nakhodka*

Claims for compensation

3.6.1 The Administrative Council took note of the developments in respect of the *Nakhodka* incident, as contained in document 71FUND/EXC.63/7 and 92FUND/EXC.7/2.

3.6.2 It was noted that as at 31 March 2000 claims totalling ¥35 871 million (£210 million) had been received and that payments totalling ¥10 354 million (£52 million) had been made by the 1971 Fund and the shipowner and his insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club). It was also noted that out of this amount, ¥2 314 million (£11.2 million) had been paid after the 1971 and 1992 Funds' Executive Committee sessions in October 1999.

3.6.3 The Council noted that it was expected that the assessment of all claims in the tourism sector would be completed by summer 2000.

3.6.4 The Japanese delegation observed that, although the *Nakhodka* incident had taken place in January 1997, ie more than three years ago, the damage caused by this incident had not yet been fully compensated. That delegation noted that the prolonged financial difficulties suffered by the victims due to the lack of full compensation had now become a serious problem, in particular for fishermen and small-scale tourism businesses. The Japanese delegation also noted that victims recently had to take actions in the Japanese courts - because if legal actions had not been taken, their rights to compensation would have been extinguished under Article VIII of the Civil Liability Convention and Article 6 of the Fund Convention – which had resulted in additional costs for them and further anxiety. That delegation considered that it was no exaggeration to say that the victims now felt uncertainty as to their future life.

3.6.5 The Japanese delegation stated that the Japanese Government highly valued and endorsed the proposal made by the Director to increase the level of the Funds' payments to 70%, as it would be a significant step towards giving victims as much relief as possible pending the final settlement of the case, and that that delegation considered the proposal to be totally in line with the ultimate aim of the IOPC Funds of ensuring that adequate compensation was available to persons who suffered damage caused by oil pollution.

3.6.6 The Japanese Government requested that the IOPC Funds and all other parties concerned should make further efforts so that prompt and adequate compensation could be provided to the victims of the *Nakhodka* incident. That delegation also stressed that such efforts would be essential in dealing with the *Erika* incident.

3.6.7 The Director assured the Administrative Council that every effort would be made to assess the remaining claims as soon as possible. He mentioned that it was expected that another ¥1 200 million (£7.1 million) would be paid to claimants in the near future. He added that, should his proposal to increase the level of payments from 60% to 70% of the loss or damage actually suffered by the individual claimants be approved by the Council, another ¥1 645 million (£9.7 million) would be made available to claimants.

Legal actions taken against the shipowner/UK Club and the IOPC Funds

3.6.8 The Administrative Council noted that before the third anniversary of the incident on 2 January 2000 a large number of claimants had taken action against the shipowner, the UK Club and the IOPC Funds for ¥20 309 million (£119 million). It was also noted that in December 1999 the shipowner and the UK Club had taken legal actions against the 1971 and 1992 Funds for ¥537 million (£3.2 million) in respect of the payments which they had made to certain contractors.

Level of payments

3.6.9 The Administrative Council recalled that the Executive Committee of the 1971 Fund and the Assembly of the 1992 Fund had decided in April 1997 that the payments to be made by the two Organisations should, for the time being, be limited to 60%. The Council also recalled that the Executive Committees of the two Organisations had confirmed, most recently at their October 1999 sessions, that the level of payments should be maintained at 60%.

3.6.10 The Council noted that claims against the IOPC Funds had become time-barred on or shortly after 2 January 2000.

3.6.11 The Council noted further that the total exposure of the Funds could be estimated at some ¥30 500 million (£179 million) and that the total amount available for compensation under the 1992 Fund Convention was ¥23 164 515 000 (£136 million).

3.6.12 In the light of the foregoing the Administrative Council decided to increase the level of the 1971 Fund's payments to 70% of the amount of the damage actually suffered by the respective claimants. It was agreed that the level of payments should be reviewed again at the Assembly's or the Administrative Council's session in October 2000.

3.6.13 The Council noted that the Executive Committee of the 1992 Fund had, at its 7th session, taken the corresponding decision on the level of payments (document 92FUND/EXC.7/5, paragraph 3.1.12).

3.6.14 In reply to a question the Director informed the Council that the amount still to be paid in compensation by the 1971 Fund was comparatively small. He added that it was not possible at this stage to indicate the exact amount, since the maximum amount payable by the 1971 Fund (60 million SDR) had to be converted into Yen on the basis of the value of that currency by reference to the SDR on the date of the constitution of the shipowner's limitation fund, and this fund had not yet been established.

Recourse actions taken by the IOPC Funds

3.6.15 It was recalled that at their October 1999 sessions the Executive Committees of the 1971 Fund and the 1992 Fund had decided that if the shipowner, Prisco Traffic Limited, initiated limitation proceedings, the 1971 and the 1992 Funds should oppose its right to limit its liability. It was further recalled that the Committees had also decided that the Funds should take recourse action against Prisco Traffic Limited, its parent company Primorsk Shipping Corporation ('Primorsk'), the UK Club and the Russian Maritime Register of Shipping.

3.6.16 The Administrative Council noted that in November and December 1999 the 1971 Fund and the 1992 Fund had brought legal actions against Prisco Traffic Limited, Primorsk, the UK Club and the Russian Maritime Register of Shipping for a total of ¥23 000 million.

3.6.17 The Administrative Council recalled that at their October 1999 sessions the Executive Committees of the two Organisations had noted that significant repairs had been carried out on the *Nakhodka* in 1993 at a shipyard in Singapore and that the Committees had decided that the question of whether or not the 1971 and 1992 Funds should take legal action against the shipyard

should be left to the discretion of the Director, in the light of what was in the best interest of the Organisations. The Council noted that, in the light of the advice received from the Funds' lawyers and experts, the Director had decided not to take legal action against the shipyard.

3.7 *Pontoon 300*

3.7.1 The Administrative Council took note of the information in document 71FUND/EXC.63/8 regarding the *Pontoon 300* incident.

3.7.2 It was noted that the Executive Committee had at previous sessions decided that the level of the 1971 Fund's payments should be limited to 75% of the loss or damage actually suffered by each claimant. It was also noted that this position had been taken mainly due to the uncertainty relating to claims to be presented by Umm Al Quwain municipality which allegedly would include items relating to environmental damage.

3.7.3 The delegation of the United Arab Emirates expressed its appreciation of the partial payments made to claimants and recognised the need for caution as regards the level of payments, but nevertheless requested the Administrative Council to consider raising the level of payments to 100% in respect of all claims which had been approved by the 1971 Fund. That delegation confirmed that the claim by Umm Al Quwain municipality would be submitted in the near future, and although the delegation was unable to provide details of the quantum of the claim, it related to losses suffered by some 200 fishermen, beach cleaning costs, damage to facilities of the Marine Resources Research Centre, costs of studies undertaken by Al Ain University and the Federal Environment Agency and damage to mangroves.

3.7.4 The Administrative Council took the view that until the quantum and nature of the claim by Umm Al Quwain were known there would be continuing uncertainty as to the total amount of the claims arising out of this incident and that therefore the level of the 1971 Fund's payments should be maintained at 75% of the loss or damage actually suffered by each claimant.

3.7.5 The Council recalled that at its 62nd session the Executive Committee had decided that as a precaution the 1971 Fund should commence legal action against the owner of the tug *Falcon 1* before the expiry of a possible two-year time bar period (6 January 2000), in order to recover the amounts paid in compensation by the Fund. The Council noted that legal proceedings had been commenced against the owner on 4January 2000 and that the owner had since expressed a willingness to enter into discussions with the 1971 Fund. It was noted that discussions between the 1971 Fund and the tug owner were expected to take place in the near future.

3.7.6 One delegation drew attention to the fact that the limit of liability in respect of the tug *Falcon 1* was likely to be very low, and that if there was no prospect of breaking the tug owner's limitation, the costs of continuing the recourse action should be balanced against the recovery that could be achieved.

4 Winding up of the 1971 Fund

4.1 The Administrative Council recalled that its consideration of the winding up of the 1971 Fund fell within the context of Resolution N°13 of the 1971 Fund, adopted by the Assembly at its 4th extraordinary session, held in April/May 1998 (document 71FUND/A/ES.4/16, Annex II). It was further recalled that one aspect of the mandate of the Administrative Council created by the Assembly was 'to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity' (paragraph (e) of Resolution N°13).

4.2 The Council was informed by the Chairman of the 1992 Fund Assembly of the discussions at its 4th extraordinary session on the future role of the 1992 Fund, its Director and its Secretariat in the

operation and activities of the 1971 Fund. These discussions were summarised in the Record of Decisions as follows (document 92FUND/A/ES.4/7, paragraphs 5.2.4 - 5.2.10):

> Several delegations expressed their concern that a number of 1971 Fund Member States had not taken the necessary steps to denounce the 1971 Fund Convention, in spite of the considerable efforts made by the Director to draw their attention to the importance of this being done and the consequences of their remaining Party to the 1971 Fund Convention. It was stated that in the very near future the 1971 Fund would not be viable, since the contribution base of the 1971 Fund would soon fall to only 90 million tonnes and the 1971 Fund would be unable to pay compensation to victims of a major incident which might occur in a remaining Member State.
>
> Many delegations emphasised that the 1971 Fund and the 1992 Fund were two totally separate entities, that the 1992 Fund and its Member States had no legal or financial obligations *vis-à-vis* the 1971 Fund in respect of future incidents and that these obligations were limited to those laid down in Article 43.2 of the 1971 Fund Convention. Several delegations considered however that the credibility of the Fund regime as a whole was at stake, particularly as the two Organisations were often perceived as being one and the same.
>
> Several delegations questioned whether it would be appropriate for the 1992 Fund to continue to share a Secretariat with the 1971 Fund and for the 1992 Fund's Director to remain Director of the 1971 Fund also. The point was made that the 1992 Fund should consider whether at some point in the near future the roles of Director and Secretariat of the 1992 Fund should be separated from those of Director and Secretariat of the 1971 Fund. It was pointed out that it would nevertheless be necessary to find a mechanism to allow outstanding incidents to be handled in a manner which safeguarded the interests of both contributors and victims in former 1971 Fund Member States.
>
> The Assembly instructed the Director to study the possibilities open to the 1992 Fund, setting out the requirements as well as the legal, practical and organisational consequences of the various options. The Director was instructed to look at the situation with regard to both outstanding incidents and new incidents in 1971 Fund Member States. The Director was also instructed to obtain expert advice on legal, practical and organisational aspects.
>
> It was decided that the question of the future role of the 1992 Fund in the operation of the 1971 Fund should be placed on the agenda of the Assembly at its 5th session in October 2000, with a view to taking decisions on the subject at that session in the light of developments and of the Director's study.
>
> The Director was instructed to inform the remaining 1971 Fund Member States of the discussions at the present Assembly session.
>
> The Assembly also instructed the Director to continue his efforts to draw the attention of 1971 Fund Member States to the importance of denouncing the 1971 Fund Convention and the consequences of their remaining Party to the 1971 Fund Convention, and of providing advice and assistance to such States as requested.

4.3 The Council noted the continued efforts made by the Director to convince the remaining 1971 Fund Member States of the urgency of denouncing the 1971 Fund Convention. The Council also noted that a Diplomatic Conference would be held from 25 to 27 September 2000 to consider a draft Protocol amending Article 43.1 of the Convention to the effect that the 1971 Fund Convention would cease to be in force well before the number of Contracting States fell below

three, the requirement under the present text, and that the draft Protocol contained two options for its entry into force, one based on a tacit acceptance procedure and the other requiring explicit acceptance by States.

4.4 The Council further noted that the number of 1971 Fund Member States had fallen from 76 to 42 and would decrease to 33 by March 2001 (cf document 71FUND/EXC.63/9).

4.5 The Director introduced document 71FUND/EXC.63/10 in which he had proposed that, in order to ensure that the winding up of the 1971 Fund was impartial and equitable, it might be appropriate to consider appointing some eminent person outside the 1971 Fund, but who was nevertheless familiar with the operation of the Organisation, to oversee the winding up. The Administrative Council noted that the Director had proposed that Dr Thomas A Mensah might be a suitable candidate for such an appointment.

4.6 It was decided that the question of whether to appoint a person to oversee the winding up of the 1971 Fund, and if so whom, should be considered at the October 2000 session of the Assembly/Administrative Council in a broader context of the discussions which would be held at that time, as set out below.

4.7 The Administrative Council instructed the Director to study all aspects of the winding up and liquidation of the 1971 Fund, including:

(a) the role of the Secretariat and the Director, in particular the implications for the 1971 Fund if the 1992 Fund Director and 1992 Fund Secretariat should cease to fulfil also the roles of Director and Secretariat of the 1971 Fund;

(b) the budgetary implications which would arise, taking into consideration the interests of contributors in present and former 1971 Fund Member States;

(c) the need to appoint a person to oversee the winding up and liquidation processes; and

(d) the consequences for the winding up and liquidation process of the outcome of the Diplomatic Conference to be held in September 2000 to amend Article 43.1 of the 1971 Fund Convention.

4.8 The Director was instructed to take such legal, technical, organisational and financial advice as he considered necessary to assist him in his study.

4.9 The Administrative Council further instructed the Director to report to the October 2000 session of the 1971 Fund Assembly/Administrative Council. It was noted that the 1992 Assembly had also instructed the Director to carry out a similar study and to report to the 1992 Fund Assembly at its October 2000 session.

4.10 The Council instructed the Director to continue his efforts to draw the attention of 1971 Fund Member States to the importance of denouncing the 1971 Fund Convention and the consequences of their remaining Party to the 1971 Fund Convention.

5 Any other business

Status of Conventions

5.1 The Administrative Council took note of the information in document 71FUND/EXC.63/9 regarding the status of the 1971 and 1992 Fund Conventions. It was also noted that 42 States were still Parties to the 1971 Fund Convention, that nine of these States had deposited instruments of denunciation and that the 1971 Fund would have 33 Members by March 2001.

5.2 The Indian observer delegation indicated that the Council of Ministers had decided on 7 March 2000 to denounce the 1971 Fund Convention and accede to the 1992 Fund Convention. The Estonian observer delegation stated that the process for ratification of the 1992 Conventions was underway.

5.3 The Administrative Council noted that paragraph 2.3 of document 71FUND/EXC.63/9 did not accurately reflect the situation with regard to the Russian Federation's denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention. The Council noted that the following wording, agreed by the delegation of the Russian Federation and the IMO Secretariat, was more appropriate:

> On 20 March 2000 the Secretary-General of IMO received notes verbales from the Ministry of Foreign Affairs of the Russian Federation announcing the denunciation by the Russian Federation of the 1969 Civil Liability Convention and the 1971 Fund Convention. However, there are certain questions of a technical nature which are in the process of being resolved in co-operation with the IMO Secretariat.

5.4 It was further noted that two States which had ratified the 1992 Fund Convention had not denounced the 1971 Fund Convention.

5.5 The Administrative Council also noted that the 1992 Fund Convention had entered into force for 43 States, that a further 12 States had deposited instruments of accession and that consequently the 1992 Fund would have 55 members by March 2001.

6 Adoption of the Record of Decisions

The draft Record of Decisions of the Administrative Council, as contained in documents 71FUND/AC.1/EXC.63/WP.1, 71FUND/AC.1/EXC.63/WP.1/Add.1 and 71FUND/AC.1/EXC.63/WP.1/Add.2, was adopted, subject to certain amendments.