INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
3rd extraordinary session
Agenda item 7

71FUND/A/ES.3/7
17 April 1997

Original: ENGLISH

RECORD OF DECISIONS OF THE THIRD EXTRAORDINARY SESSION OF THE ASSEMBLY

(held from 15 to 17 April 1997)

Chairman:	Mr C Coppolani (France)
First Vice-Chairman:	Professor H Tanikawa (Japan)
Second Vice-Chairman:	Mr P Gómez-Flores (Mexico)

Opening of the session

The 3rd extraordinary session of the Assembly was opened by the Chairman, Mr Charles Coppolani.

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document 71FUND/A/ES.3/1.

2 Examination of credentials

2.1 The following Member States were present:

Algeria	Indonesia	Norway
Australia	Italy	Poland
Bahamas	Japan	Republic of Korea
Belgium	Kuwait	Russian Federation
Canada	Liberia	Slovenia
Cyprus	Malaysia	Spain
Denmark	Mexico	Sweden
Fiji	Morocco	Syrian Arab Republic
Finland	Mozambique	Tunisia
France	Netherlands	United Kingdom
Germany	Nigeria	Venezuela
Greece		

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

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

Argentina	Ecuador	Peru
Brazil	Latvia	Saudi Arabia
Chile	Panama	United States

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)
United Nations
International Maritime Organization (IMO)

International non-governmental organisations:
Oil Companies International Marine Forum (OCIMF)

3 *Haven* incident

3.1 Search for a global solution

3.1.1 The Assembly recalled that, at its 19th session, it had instructed the Director to explore, with the Italian Government and the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), the possibility of arriving at a global settlement in the *Haven* case which, as regards the 1971 Fund, fell within the maximum amount of compensation that would be available under the 1971 Fund Convention, ie the difference between 60 million SDR and 14 million SDR, minus the amounts which the 1971 Fund had paid or might have to pay to other claimants. It was recalled that the Assembly had emphasised that such discussions were without prejudice to the 1971 Fund's position in respect of the time bar issue. The Assembly also recalled that it had authorised the Executive Committee to approve any global settlement within certain parameters (documents 71FUND/A.19/30, paragraph 17.11 and 71FUND/EXC.52/2, paragraph 2.3).

3.1.2 It was noted that, following the Assembly's 19th session, the shipowner/UK Club had continued to settle and pay claims as admitted in the stato passivo, and that the only claims in respect of which agreement had not been reached were those of Oromare and the Italian State.

3.1.3 The Assembly noted further that the shipowner/UK Club had undertaken to waive their claims against the shipowner's limitation fund and the 1971 Fund (Llt 1 354 768 078 plus US$224 900 plus £237 679, corresponding to a total of £884 700), if a global settlement was reached.

3.1.4 It was noted that the Executive Committee had been informed in February 1997 of discussions between representatives of the Italian Government, representatives of the shipowner/UK Club, and the Director on the possibility of reaching a global settlement of all outstanding issues in the *Haven* case. The Assembly noted that the Director had informed the Committee that the settlement discussed would have resulted in the 1971 Fund paying the Italian State approximately Llt 70 000 million (£26.3 million), an amount which was equivalent to the difference between 60 million SDR and the limitation amount applicable to the shipowner of 14 million SDR, less the amounts paid or payable by the 1971 Fund to other claimants. It was noted that the amount to be paid by the UK Club to the Italian State would have represented the balance on the shipowner's limitation fund (Llt 23 950 220 000) plus interest thereon (estimated at Llt 9 069 403 286) after all other claims had been settled and paid, plus a further amount to be paid *ex gratia* to the Italian State (in addition to the amount already paid *ex gratia* by the shipowner/UK Club to certain local public bodies). It was further noted that discussions had been held between the UK Club and the Director concerning the shipowner's/UK Club's right to indemnification pursuant to Article 5.1 of the 1971 Fund Convention.

3.1.5 The Assembly noted that, in the Director's view, a settlement along the lines set out in paragraph 3.1.4 above would fulfill the conditions laid down by the Assembly and the Executive Committee, namely that such a global settlement as regards the 1971 Fund would fall within the total amount that would be available under the 1969 Civil Liability Convention and the 1971 Fund Convention (ie 60 million SDR), that the 1971 Fund's payment would be made only in respect of quantifiable economic loss actually suffered by a claimant and that the 1971 Fund would not pay compensation for damage to the marine environment *per se*.

3.1.6 It was noted that, in the global settlement under discussion, all legal actions in the Italian courts would be withdrawn. It was also noted that the 1971 Fund's Italian lawyer had advised the Director that, once all claims had been settled and paid, it would not be possible to pursue the question of the conversion of the unit of account in the Supreme Court of Cassation, since there would no longer be any dispute. The Assembly noted that the Executive Committee had endorsed the Director's view, in the light of that advice, that, if a global settlement were concluded and became binding on all parties, the 1971 Fund should withdraw its appeal.

3.1.7 The Assembly noted that, since the Executive Committee's 52nd session, further discussions had been held between representatives of the Italian Government and the Director, and between the Government and the shipowner/UK Club, in respect of the elements of the settlement referred to in paragraph 3.1.4 above. It was noted that the Director understood that the shipowner and the UK Club had made a specific offer as regards the amount which they would be prepared to pay *ex gratia* to the Italian State.

3.1.8 The Director informed the Assembly that the offer of a global settlement had been considered at a governmental meeting held in Rome in March 1997, but that he understood that no decision had been taken as to whether to accept or reject the offer. It was noted that the Director understood that the Italian Government had decided to set up a commission composed of three Italian experts on international law to give an opinion as to whether, pursuant to Article 18 of the 1969 Vienna Convention on the Law of Treaties, Italy was bound to apply the 1976 Protocol to the 1971 Fund Convention in the *Haven* case although the Protocol had not yet entered into force when the incident occurred.

3.1.9 The Italian delegation made the following statement:

> With reference to the offer made by the shipowner/UK Club and the 1971 Fund, the Italian Government is not yet in a position to communicate exactly when it will give a formal reply since it has decided to confer upon a panel of world renowned experts the task of ascertaining the legal framework of a possible global settlement. The said panel, which is composed of Professor Antonio La Pergola, Professor Gabriele Pescatore and Professor Guiseppe Guarino, is expected to give its advice in the next two months.

3.1.10 The Assembly noted that the Italian Government had not given a reply to the offer for a global settlement made by the shipowner, the UK Club and the 1971 Fund. In view of this situation, it was decided that it was for the Assembly to take the decision as to whether to agree to a global settlement.

3.1.11 The Assembly instructed the Director to continue the discussions with the Italian Government and the shipowner/UK Club concerning the possibility of arriving at a global settlement in the *Haven* case within the parameters laid down by the Assembly and the Executive Committee.

3.2 New Claims

The Director informed the Assembly that 28 new claims, totalling Llt 35 000 million (£13 million), had recently been presented in the limitation proceedings against the shipowner and the UK Club. It was noted that these claims related to losses allegedly suffered by fish traders and fishermen and that they were being examined by the 1971 Fund's lawyer and technical experts.

3.3 Conversion of the unit of account

3.3.1 The Assembly recalled that, in a judgement rendered on 30 March 1996, the Court of Appeal in Genoa had confirmed the position taken by the Court of first instance that the maximum amount payable by the 1971 Fund should be calculated by the application of the free market value of gold, giving an amount of Llt 771 397 947 400 (£313 million), including the amount payable by the shipowner under the 1969 Civil Liability Convention ("stato attivo"), instead of Llt 102 643 800 000 (£42 million), as maintained by the 1971 Fund, calculated on the basis of the Special Drawing Right (SDR).

3.3.2 The Assembly noted that, as instructed by the Executive Committee at its 48th session, the 1971 Fund had lodged an appeal against the Court of Appeal's judgement to the Supreme Court of Cassation, and that notification of the appeal had been made in the same manner as the corresponding appeal against the judgement of the Court of first instance. The Director informed the Assembly that the substantive arguments invoked by the 1971 Fund in its appeal were mainly the same as those invoked in its pleadings to the Court of first instance and the Court of Appeal. He also referred to certain arguments of a procedural nature raised by the 1971 Fund, as set out in paragraph 3.10 of document 71FUND/A/ES.3/2.

3.3.3 It was noted that the Italian Government had submitted pleadings in response to the 1971 Fund's appeal. The Assembly noted that, in its pleadings the Government had stated that, as regards the 1971 Fund's position that the majority of the claims arising from the *Haven* incident were time-barred vis-à-vis the Fund, discussions had taken place for three and a half years, and that the Fund had dragged out these negotiations in order to enable it to raise the defence of time bar, thereby acting against the purpose of the Fund which was to ensure the prompt and equitable payment of compensation to victims. It was also noted that the Italian Government appeared in its pleadings to support the position taken by the Court of Appeal that the conversion of the (gold) franc should be made on the basis of the free market value of gold, maintaining that the 1976 Protocol to the 1971 Fund Convention, which replaced the (gold) franc by the SDR, could not be applied since it had not entered into force when the incident occurred, although reserving its right to revert to the issue of the unit of account at a later stage during the proceedings.

3.3.4 The Assembly recalled the statement made by the Italian delegation at its 19th session (document 71FUND/A.19/30, paragraph 17.8), part of which read as follows:

> The Italian Government has proved in the past five years in the legal proceedings pending before the Court of Justice that it has advanced no claims in excess of the limits laid down in the 1976 Protocol. The Protocol in this context remains the term of reference for the definition of the *Haven* case with the IOPC Fund in a global settlement which should see an extra effort on the part of the insurers and the owners.

3.3.5 One delegation expressed its surprise at the position taken by the Italian Government on the issue of the method to be applied for the conversion of the unit of account, in view of the statement made by the Italian delegation at the Assembly's 19th session as set out in paragraph 3.3.4 above.

3.3.6 The Director mentioned that the Italian Government had contested, in its submission to the Supreme Court of Cassation, the 1971 Fund position that the 1976 Protocol to the 1971 Fund Convention should be applied in spite of it not being in force at the time of the *Haven* incident. It was noted that the Government maintained that, if the Protocol was applicable nevertheless, the conversion of the SDR into Italian Lire should be made on the basis of the rate of exchange on the date of the entry into force of the Protocol (24 November 1994) and not on the basis of the rate on the date of the establishment of the shipowner's limitation fund (29 May 1991). It was also noted that, in its submission, the UK Club had supported the Italian Government on this latter point. The Director stated that in the view of the 1971 Fund's lawyer, the position taken by the Government and the UK Club on this point was not correct.

3.3.7 It was noted that the Director and the 1971 Fund's Italian lawyer were studying the pleadings presented by the Italian Government.

4 Assessment of annual contributions

4.1 The Director introduced documents 71FUND/A/ES.3/3, 71FUND/A/ES.3/3/Add.1 and 71FUND/A/ES.3/3/Add.2.

4.2 The Assembly recalled that, at its 19th session, it had decided not to levy any 1996 annual contributions to the General Fund, but that it had been decided that £5 million should be credited to contributors from the General Fund, following a decision to reduce the working capital of the 1971 Fund from £15 million to £10 million. It was also recalled that the Assembly had decided to levy 1996 annual contributions to three Major Claims Funds for a total amount of £85 million. It was further recalled that the Assembly had decided that part of the levies to the *Sea Prince/Yeo Myung/Yuil N°1* and *Sea Empress* Major Claims Funds would be due for payment by 1 February 1997, and that the balance of these levies and the entire levy to the *Keumdong N°5* Major Claims Fund would be deferred. It was recalled that the Director had been authorised by the Assembly to decide whether to invoice all or part of the amounts of the deferred levies for payment during the second half of 1997. The Assembly also recalled that it had considered that the amounts remaining on the *Taiko Maru* and *Toyotaka Maru* Major Claims Funds were substantial, and that, pursuant to Financial Regulation 4.4, the Assembly had decided to reimburse £3.5 million and £4.7 million, respectively, to the contributors to those Major Claims Funds, and to transfer the balance to the General Fund. Furthermore, it was recalled that the Assembly had decided that these reimbursements should be made on the date of payment of the deferred levy, if and to the extent that such a deferred levy was made later in 1997 (document 71FUND/A.19/30, paragraph 25).

4.3 The Assembly took note of the *Nakhodka* incident which had occurred in Japan in January 1997. The Assembly noted that the total payments to be made during 1997 by the 1971 Fund in respect of agreed claims might reach the 1971 Fund's limit of 60 million SDR (£51 million). It was also noted that payments over and above the amount would be made by the 1992 Fund, up to an aggregate amount of 135 million SDR (£114 million).

4.4 It was recalled that, at the Executive Committee's 52nd session, it had been emphasised by a number of delegations that the 1971 Fund and the 1992 Fund should endeavour to ensure consistency in respect of not only the admissibility of claims but also the handling of a case involving both Organisations. It was further recalled that many delegations, including seven delegations of States which were also Members of the 1992 Fund, had expressed the view that the level of payments should be the same for the 1971 Fund as for the 1992 Fund.

4.5 The Assembly endorsed the Director's view that the 1971 Fund should pay 60% of the damage suffered by each claimant up to a total amount of 60 million SDR, before the 1992 Fund commenced payments of compensation.

4.6 It was noted that the first 1 million SDR (£845 655) in respect of the *Nakhodka* incident would be paid from the General Fund. The Assembly shared the Director's view that payments up to that amount (including fees and expenses) should be made using the working capital, and that no adjustment should be made vis-à-vis the Assembly's decision in October 1996 not to levy annual contributions to the General Fund.

4.7 The Assembly endorsed the Director's opinion that £50 million should be available from the *Nakhodka* Major Claims Fund in the early autumn of 1997 for the payment of claims.

4.8 The Assembly considered whether it would be appropriate to use the present balance on the *Haven* Major Claims Fund to make loans to other Major Claims Funds.

4.9 The Italian delegation opposed the idea that any monies in the *Haven* Major Claims Fund should be used as a loan to other Major Claims Funds. The delegation stressed that such a decision could be seen as running counter to the understanding of the Italian delegation that, if and when a global settlement was reached in the *Haven* case, then prompt payments should be made.

4.10 Several delegations took the position that the Italian delegation's interpretation of a decision to use the monies in the *Haven* Major Claims Fund as a loan was misguided. They stated that if a global settlement which was binding for all parties was reached, the 1971 Fund would pay in accordance with the agreement. It was pointed out that, unfortunately, there was no prospect of such a binding agreement in the near future. It would therefore not be reasonable, in their view, to freeze such a significant amount and to levy contributions without taking into account that the 1971 Fund had at its disposal the significant assets in the *Haven* Major Claims Fund.

4.11 The Assembly decided that loans totalling some £25 million could be made from the *Haven* Major Claims Fund to other Major Claims Funds, repayable with interest.

4.12 It was noted that a total of £10 million could be made available for use during 1997 from the balances on the *Aegean Sea* and *Braer* Major Claims Funds.

4.13 The Spanish delegation stated its opposition to monies in the *Aegean Sea* Major Claims Fund being used as loans for payments in respect of other incidents, since this could delay payments of claims following a judgement by the Court of Appeal in the *Aegean Sea* case.

4.14 A number of delegations considered it unlikely that a judgement would be rendered in the *Aegean Sea* case which would enable the 1971 Fund to make payments before 1 February 1998 for such amounts that it would be inappropriate to take a modest loan from the *Aegean Sea* Major Claims Fund. This view was endorsed by the Assembly.

4.15 With regard to the deferred levies authorised by the Assembly, the latter noted that the Director considered that extra monies would be required in respect of the *Sea Prince*, *Yuil N°1* and *Sea Empress* incidents in the amounts of £5.0 million, £6.0 million and £20.0 million, respectively, and that no extra monies would be needed in respect of the *Keumdong N°5* and *Yeo Myung* incidents.

4.16 The Assembly noted that the Director intended to make deferred levies in respect of the *Sea Prince/Yeo Myung/Yuil N°1* and *Sea Empress* Major Claims Funds in the amounts of £11 million and £20 million, respectively.

4.17 The Assembly decided to levy annual contributions to the *Nakhodka* Major Claims Fund in the amount of £15 million.

4.18 The Assembly noted that Director intended to make the reimbursement of the balances on the *Taiko Maru* and *Toyotaka Maru* Major Claims Funds (£3.5 million and £4.7 million, respectively) on the date when the above-mentioned deferred levies and the levy to the *Nakhodka* Major Claims Fund were due.

4.19 The Assembly noted that the levies and reimbursements to contributors could be summarised as follows:

Major Claims Fund	Maximum deferred levy £ million	Extra monies required £ million	Source of funds	
			Borrowed from other Major Claims Funds £ million	To be levied £ million
Keumdong N°5	5.0	0.0	0.0	0.0
Sea Prince}	23.0	5.0	0.0	5.0
Yeo Myung}	4.0	0.0	0.0	0.0
Yuil N°1}	10.0	6.0	0.0	6.0
	37.0	11.0	0.0	11.0
Sea Empress	20.0	20.0	0.0	20.0
Nakhodka	–	50.0	35.0	15.0
Total gross levy	62.0	81.0	35.0	46.0
Major Claims Fund	Deferred reimbursement £ million			To be credited £ million
Taiko Maru	3.5			3.5
Toyotaka Maru	4.7			4.7
Total credit	8.2			8.2
Total net levy	53.8			37.8

4.20 The Assembly decided that the levies and repayments indicated in the table in paragraph 4.19 above should be due by 1 September 1997.

4.21 With regard to the reports on contributing oil received in 1996, it was noted that only a third of the Member States had so far submitted their reports. Since these reports formed the basis of the levy to the *Nakhodka* Major Claims Fund, Governments were encouraged to submit outstanding reports as soon as possible so that invoices could be issued reflecting the Assembly's decision on the levy of contributions to this Major Claims Fund.

5 Denunciations of the 1971 Fund Convention

5.1 Principles of co-operation between the 1971 Fund and its former Member States during the winding up of the 1971 Fund

5.1.1 The German delegation introduced document 71FUND/A/ES.3/4 which addressed the matter of co-operation between the 1971 Fund and its former Member States as regards incidents which had occurred in a State which had since left the 1971 Fund or as regards incidents in respect of which contributions would have to be paid by persons in such States, in accordance with Article 41.5 of the 1971 Fund Convention.

5.1.2 The Italian delegation questioned the need for a resolution on the subject. In the view of that delegation, the issues raised by the German delegation on one side were already dealt with in the final clauses of the 1971 Fund Convention or governed by clear rules of international law in general. The delegation also made the point that, if on the other side the purpose of the draft resolution was to limit the sovereignty of the bodies of the 1971 Fund, by subjecting it to the previous consent of those Member States who had freely quitted the Organisation, this was legally objectionable and politically unacceptable. For this reason, the Italian delegation objected to the proposed resolution as well as the proposed

amendment to the Internal Regulations. This delegation took the view that it would be preferable to postpone the consideration of these issues so as to give delegations more time for reflection in order to find a solution which would promote future co-operation between the 1971 Fund and the 1992 Fund.

5.1.3 Most delegations expressed their strong support for the proposal made by the German delegation to adopt a resolution and amend the Internal Regulations so as to formalise the co-operation between the 1971 Fund and its former Member States. These delegations considered it necessary to send a message to contributors and claimants that the 1971 Fund Convention would continue to operate in a consistent manner. They took the view that it was necessary therefore to adopt a resolution along the lines proposed by the German delegation, since contributors in States leaving the 1971 Fund would still have obligations to that Organisation, and victims in those States would have certain rights under the 1971 Fund Convention. It was maintained that it was a general principle of law that such States should have the right to influence decisions affecting the rights and duties of their nationals. The point was made that this was in full conformity with international law. In this context reference was made to Article 70.1(b) of the 1969 Vienna Convention on the Law of Treaties, which provided that the termination of a treaty "... does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.". Reference was also made to the need to ensure consistency between the decisions of the 1971 Fund and those of the 1992 Fund on the admissibility of claims (cf 1971 Fund Resolution N°9 on the admissibility of claims for compensation).

5.1.4 Some delegations, while supporting the purpose of the proposed resolution, expressed hesitation concerning its wording, which seemed to indicate that States which denounced the 1971 Fund Convention would have more extensive rights to oppose decisions than they had while they were Members of the 1971 Fund. One delegation expressed the view that such rights could be regarded as "rights of veto", which would not conform with the general principles of international law and the 1971 Fund Convention itself and, for these reasons, such rights would be meaningless if used. In order to accommodate these concerns, proposals were made to modify the text of the resolution.

5.1.5 One delegation was of the view that the rights envisaged in the proposed resolution of those States which left the 1971 Fund were inconsistent with those envisaged in the proposed amendment to the Internal Regulations.

5.1.6 The Assembly adopted a Resolution (1971 Fund Resolution N°11, reproduced in the Annex) to the effect that the views of former 1971 Member States should be heard before further decisions were taken concerning the admissibility of claims arising out of incidents which had occurred before those States left the 1971 Fund, that earlier decisions in pending cases should not be overruled without the consent of the majority of the States which were Members of the 1971 Fund when those earlier decisions had been taken, and that persons in former Member States who had contributed to the 1971 Fund should be entitled to participate in an equitable manner in the distribution of the assets which remained when the winding up of the 1971 Fund was completed.

5.1.7 The Assembly adopted an amendment to the 1971 Fund's Internal Regulation by inserting a new provision, Regulation 7.13, reading as follows:

> 7.13 In respect of the settlement of claims arising from incidents to which persons in States Parties which have denounced the 1971 Fund Convention have to make contributions in accordance with Article 41.5 of the 1971 Fund Convention, no decisions on matters of principle with regard to the admissibility of claims shall be made without those former States Parties having been heard in the Assembly or the Executive Committee.

5.1.8 It was noted that the text of Internal Regulation 7.13 should be interpreted against the background of the Resolution and the purpose for which it was adopted.

5.2 Compulsory denunciation of the 1969 Civil Liability Convention and 1971 Fund Convention

5.2.1 The Assembly noted that, in accordance with Article 31 of the 1992 Fund Protocol, all States which had deposited instruments of ratification, acceptance, approval or accession to that Protocol (whether or not the Protocol had entered into force) were required to deposit instruments of denunciation of the 1969 Civil Liability Convention and of the 1971 Fund Convention by 15 May 1997. It was noted that, as at 15 April 1997, only nine of the 22 States which had acceded to the 1971 Fund Protocol had deposited such instruments of denunciation.

5.2.2 It was noted that an instrument of denunciation by a State had to be signed by a person who had the power also to bind that State in accordance with international law and depositary practice within the United Nations system.

5.2.3 It was emphasised that States which did not deposit instruments of denunciation of the 1969 and 1971 Conventions by 15 May 1997, would be deemed to have denounced the 1992 Protocols, with effect twelve months after that date. It was noted that, as a result, such a State would, from 16 May 1998, be Party to the 1969 Civil Liability Convention and 1971 Fund Convention only, and that the procedure of acceding to the Protocols would have to be undertaken for a second time.

5.2.4 The Assembly noted that from 16 May 1998 (the date when the 1992 Fund Member States would be leaving the 1971 Fund), the total quantity of contributing oil in the 1971 Fund Member States would be reduced from 1 228 million tonnes received to an estimated 295 million tonnes. It was noted that this would result in a significantly increased cost for the oil industry in those States which remained Members of the 1971 Fund as regards contributions relating to incidents occurring after that date in these States (more than a four-fold increase in their respective share of the total contributions levied), since the financial burden would be spread among fewer contributors.

6 Any other business

6.1 Secretariat working methods

6.1.1 The Assembly took note of the information contained in document 71FUND/A/ES.3/5 on the terms of reference proposed by the Director for a consultant to be engaged to carry out the study to review the working methods within the Secretariat, as had been requested by the Assembly at its 19th session.

6.1.2 A number of delegations were of the view that the terms of reference should be formulated along the lines indicated by the Director. Several delegations considered that it should be made clear that the consultant should also study the present system of handling claims (including the use of experts in claims handling), as well as the use of experts in other aspects of the Organisation's work and the procedure for the selection of experts.

6.1.3 It was noted that the study would involve interviewing staff members. The Director informed the Assembly that he considered that the consultant should attend a meeting of the Assembly or Executive Committee and meet delegates. The Director indicated that he would report to the October session of the Assembly on the progress made.

6.1.4 The Director informed the Assembly that he did not intend to use a large consultancy firm which had little knowledge of the operation of an intergovernmental organisation.

6.1.5 The question was raised whether a small monitoring group should be established to follow the work of the consultant. The Assembly decided that this matter could be addressed at a later stage.

6.1.6 The Director was instructed to proceed with the study and to revise the terms of reference of the consultant in the light of the Assembly's discussions.

6.2 Amendments to the Financial Regulations

6.2.1 It was noted that some banks had maintained that there were certain ambiguities in Financial Regulations 9.2 and 10.5. In order to remove any ambiguity, the Assembly decided to amend those Regulations to read as follows:

Regulation 9.2:

The Director may authorise one or more officers to act as signatories on behalf of the 1971 Fund in giving payment instructions, and the 1971 Fund's bankers shall be empowered to accept payment instructions on behalf of the 1971 Fund as follows:

(a) if signed by only one authorised officer, for any sum up to £5 000 or, in the case of the Director, for any sum up to £15 000;

(b) if signed jointly by any two authorised officers, for any sum up to £30 000;

(c) if signed by the Director and another authorised officer, for any sum in excess of £30 000;

(d) for the payment of salaries to members of the Fund's Secretariat, if signed jointly by any two authorised officers, for any sum up to £60 000.

Regulation 10.5:

Instructions relating to the 1971 Fund's investments, as well as instructions relating to the transfer of funds from one financial institution to another for the credit of the 1971 Fund's deposit accounts, shall be given by the Director. The Director may authorise another officer or officers to act on his behalf. Instructions shall be given

(a) in writing, signed jointly by two authorised officers, or

(b) orally by one authorised officer followed by written confirmation signed jointly by two authorised officers.

6.3 Informal working group on emergency payments

6.3.1 The Chairman of the informal working group on emergency payments, Mr John Wren (United Kingdom), introduced document 71FUND/A/ES.3/INF.1, which contained a summary of the work of the group. It was noted that there had been little support for the present Conventions being amended to institutionalise an emergency payment regime, but that there was agreement that methods for improving the payment of claims should be examined further.

6.3.2 The Chairman of the informal working group urged delegations to communicate to him in writing further information on the functioning of various national regimes providing emergency payments.

6.4 External audit of the 1996 financial year

In response to a question from one delegation, the Chairman informed the Assembly that, since an Audit Committee had not been established, he would, as in 1996, be meeting the 1971 Fund's External Auditor at an appropriate time to discuss the audit of the Fund's accounts for the financial period ended 31 December 1996.

6.5 Privileges and immunities of the 1971 Fund

The United Kingdom delegation stated that provisions contained in the United Kingdom Merchant Shipping and Maritime Security Act 1997, which had recently been approved by Parliament, safeguarded the privileges and immunities of the 1971 Fund when the United Kingdom ceased to be a Member of the Organisation.

6.6 Expression of gratitude to the Legal Officer

The Assembly expressed its gratitude to the Legal Officer, Mr Hideo Osuga, who would be leaving the Fund Secretariat before the Assembly's next session, for his great contribution to the activities of the IOPC Funds.

7 Adoption of the Record of Decisions of the 3rd extraordinary session

The draft Record of Decisions, as contained in document 71FUND/A/ES.3/WP.1, was adopted, subject to some amendments.

* * *

ANNEX

Resolution N°11 - Co-operation between the 1971 Fund and its former Member States

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 (1971 Fund),

AWARE that, following the entry into force of the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention, the settlement of and payment of compensation in accordance with the 1971 Fund Convention for claims arising from certain major incidents which occurred in recent years will not be finalised before the compulsory denunciations of the 1969 and 1971 Conventions become effective for a significant number of States Parties to these Conventions,

NOTING that the provisions of the 1971 Fund Convention relating to the obligations to make contributions to such incidents continue to apply also in respect of States which have denounced that Convention,

RECALLING its Resolution N°9 on the admissibility of claims for compensation and the need for consistency between the decisions of the 1971 Fund and those of the 1992 Fund,

MINDFUL of the principles and aims of the 1971 Fund and of the importance of adherence to previous decisions,

NOTING that further decisions may need to be taken in respect of claims arising out of pending cases,

RECOGNISING that former States Parties which have been affected by incidents covered by the 1971 Fund Convention but in respect of which settlements have not yet been finalised, should be entitled to present their views on pending cases in the competent bodies of the 1971 Fund,

DECIDES that, to the extent that the provisions of the 1971 Fund Convention relating to the obligations to make contributions under Articles 10 and 12 with respect to incidents which occurred before denunciation of the Convention has taken effect continue to apply, such States Parties shall be heard before further decisions concerning the admissibility of claims arising out of such incidents are taken,

RESOLVES that earlier decisions in pending cases shall not be overruled without the consent of the majority of those States which were Parties to the 1971 Fund Convention when those earlier decisions were taken,

AND AFFIRMS that persons in former States Parties who have contributed to the 1971 Fund shall be entitled to participate in an equitable manner in the distribution of the assets which remain when the winding up of the 1971 Fund has been completed.