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OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
53rd session
Agenda item 6

71FUND/EXC.53/12
17 April 1997

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RECORD OF DECISIONS OF THE FIFTY-THIRD SESSION OF THE EXECUTIVE COMMITTEE

(held from 14 to 17 April 1997)

Chairman: Mr W J G Oosterveen (Netherlands)

Vice-Chairman: Miss A N Ogo (Nigeria)

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document 71FUND/EXC.53/1.

2 Examination of credentials

2.1 The following members of the Executive Committee were present:

Australia	Germany	Nigeria
Belgium	Greece	Republic of Korea
Canada	Malaysia	Russian Federation
Denmark	Morocco	Spain
Finland	Netherlands	United Kingdom

The Executive Committee took note of the information given by the Director that all the above-mentioned members of the Committee had submitted credentials which were in order.

2.2 The following Member States were represented as observers:

Algeria	Japan	Slovenia
Bahamas	Kuwait	Sweden
Fiji	Liberia	Syrian Arab Republic
France	Mexico	Tunisia
Indonesia	Norway	Venezuela
Italy	Poland	

The following non-Member States were represented as observers:

Argentina	Latvia	Saudi Arabia
Brazil	Panama	United States
Chile	Peru	

2.3 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:
Cristal Limited
Comité Maritime International (CMI)
Federation of European Tank Storage Associations (FETSA)
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 *Haven* incident

The Executive Committee took note of the information contained in document 71FUND/EXC.53/2. In particular, the Committee noted that the Director was reporting the developments in respect of the *Haven* incident directly to the 1971 Fund Assembly, which was holding an extraordinary session during the same week as the Committee's 53rd session (cf document 71FUND/A/ES.3/2).

3.2 *Braer* incident

3.2.1 The Executive Committee took note of document 71FUND/EXC.53/3 which set out the developments which had taken place in respect of the *Braer* incident, in particular in respect of the legal proceedings in the Court of Session in Edinburgh. It was noted that some claims had been settled, withdrawn or reduced in amount, and that the total amount now claimed in court had accordingly been reduced from £80.3 million to £70.8 million.

3.2.2 The Committee noted that, since it had imposed a suspension of payments in October 1995, 153 claims for a total amount of £2 million had been approved but not paid.

3.2.3 The Committee noted that the Director intended to continue negotiations with those claimants whose claims in the 1971 Fund's view were admissible in principle, for the purpose of reaching an agreement on the admissible quantum.

3.3 *Sea Prince* incident

3.3.1 The Executive Committee took note of the developments in respect of the *Sea Prince* incident, as contained in section 2 of document 71FUND/EXC.53/4.

3.3.2 The Executive Committee recalled that it had, at its 46th session, decided to limit the 1971 Fund's payments to 25% of the established damage suffered by each claimant, in view of the fact that the claims presented or indicated greatly exceeded the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (document FUND/EXC.46/12, paragraph 4.3.3). It was also recalled that, in the light of the information on the aggregate amount of the claims presented by the time of the Committee's 47th session, the Committee had decided to increase the 1971 Fund's payments from 25% to 50% of the established damage suffered by each claimant, subject to confirmation of a significant reduction of the total amount of the fishery related claims (document FUND/EXC.47/14, paragraph 3.6.3). It was noted that no such confirmation had been received. The Committee also noted that it had decided, at its 50th session, to maintain the position taken at its 47th session in respect of the level of the 1971 Fund's payments (document 71FUND/EXC.50/17, paragraph 3.7.4).

3.3.3 It was noted that the total amount claimed in court was Won 120 000 million, corresponding to a total of £83 million.

3.3.4 The Executive Committee recalled that it had decided at previous sessions that the 1971 Fund should not challenge the shipowner's right to limit his liability, that the shipowner was entitled to indemnification under Article 5 of the 1971 Fund Convention and that the 1971 Fund should not take recourse action against any third party (documents FUND/EXC.49/12, paragraphs 3.7.9 and 3.7.10 and 71FUND/EXC.50/17, paragraph 3.7.9).

3.3.5 One delegation drew the attention of the Committee to the fact that the master of the *Sea Prince* had recently been given a prison sentence as a result of the incident. This delegation stated that, for this reason, notwithstanding the decisions of the Executive Committee at its 49th and 50th sessions, the involvement of the shipowner in the decision making process leading to the action taken by the master prior to the grounding should be investigated further.

3.3.6 The Executive Committee instructed the Director to investigate further the possibility of challenging the shipowner's right to limit his liability and of the Fund's taking recourse action against any third party. It was noted that this investigation would not affect the payment of compensation by the 1971 Fund.

3.3.7 The Executive Committee noted that, at a court hearing held in January 1997, the shipowner, after consultation with the shipowner's P & I insurer (the United Kingdom Mutual Steamship Insurance Association (Bermuda) Ltd, the UK Club) and the 1971 Fund, had submitted a report prepared by ITOPF which contained a critique of the assessment of the fishery claims made by the claimants' experts. It was noted that in the report ITOPF had demonstrated that the assessment of the claims undertaken by the claimants' experts was largely subjective and that the claimants had provided little or no supporting documentation. The Committee noted that, at a further court hearing held in February 1997, the administrator appointed by the Court to give an opinion on the various claims had stated that, due to the lack of objective supporting material, he had experienced difficulties in assessing the claims, but that he had submitted an opinion together with a list of the claims accepted by him. It was noted that the administrator had accepted most of the amounts claimed without any significant modification, however, and that he had not taken into account the ITOPF report referred to above. The Director informed the Committee that the judge had requested the UK Club and the 1971 Fund to submit comments on the administrator's opinion, and that, after having received these comments, the Court would request supporting documents to be provided by the claimants. It was noted that the next court hearing would be held at the end of April 1997.

3.3.8 The Director informed the Executive Committee that the 1971 Fund and the UK Club were holding negotiations with claimants for the purpose of arriving at out-of-court settlements of all outstanding claims on the basis of the assessment made by ITOPF, and that considerable progress had been made. It was noted that, if the method of assessment used by ITOPF were to be accepted by the claimants, the total admissible amount of all claims arising out of this incident would fall well below the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention.

3.3.9 The Executive Committee noted the Director's view that, on the assumption set out in paragraph 3.3.8, the 1971 Fund would be able to pay all outstanding claims for the full settlement amounts. The Committee therefore decided to authorise the Director to pay all settled claims in full (to the extent they had not already been paid), provided that all or most of the outstanding claims in the fishery and tourism sectors were settled on the basis of ITOPF's method of assessment, that any uncertainty be eliminated as to the level of the shipowner's claim relating to the cost of the measures associated with the work carried out under the contract for the removal of the ship and related operations, and that the Director was convinced that the aggregate amount of all claims arising out of this incident would fall below 60 million SDR (£51 million).

3.4 *Honam Sapphire* incident

3.4.1 The Executive Committee took note of the developments in respect of the *Honam Sapphire* incident, as contained in section 3 of document 71FUND/EXC.53/4.

3.4.2 The Executive Committee recalled that, in the light of the information available at the time of its 47th session, the Committee had decided, in view of the uncertainty concerning the total amount of the claims, to limit the 1971 Fund's payments to 60% of the established damage suffered by each claimant (document FUND/EXC.47/14, paragraph 3.8.3).

3.4.3 The Committee also noted that it had decided, at its 50th session, that the 1971 Fund should not challenge the shipowner's right to limit his liability (document 71FUND/EXC.50/17, paragraph 3.10.3).

3.4.4 It was noted that the settlements reached so far in respect of the *Honam Sapphire* incident totalled Won 6 100 million (£4.2 million), and that claims totalling Won 17 244 million (£14 million) had been presented in the limitation proceedings. The Executive Committee also noted that the 1971 Fund had not yet made any payments of compensation, since the total amount of the agreed claims had not reached the limitation amount applicable to the *Honam Sapphire*, viz 14 million SDR (£12 million).

3.4.5 The Committee noted that, at a court hearing held in February 1997, the shipowner, after consultation with the UK Club and the 1971 Fund, had submitted a report prepared by ITOPF which contained a critique of the assessment of the fishery claims made by the claimants' experts. It was noted that in the report ITOPF demonstrated that the assessment of the claims undertaken by the claimants' experts was largely subjective and that the claimants had provided little or no supporting documentation. It was also noted that the 1971 Fund's experts had hoped to assess the claims of the fishery co-operatives arising out of the *Honam Sapphire* incident in a way similar to that used in the *Sea Prince* case, namely using commission sales data. It was further noted that for several fishery sectors little or no such information had been submitted, and that for that reason assessments, at least for some sectors, would have to be based on national fishery statistics.

3.4.6 The Director informed the Executive Committee that the next court hearing would be held at the end of April 1997, and that the shipowner would then present those assessments completed by ITOPF at that time.

3.4.7 The Executive Committee noted that the claims submitted in the limitation proceedings were substantially lower than the amounts originally claimed, and that the Director was of the view, after consultation with the 1971 Fund's experts, that it was extremely unlikely that the amount of all the established claims arising out of this incident would exceed the maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. The Committee therefore decided to authorise the Director to pay in full any settled claim, to the extent that the shipowner's limit was exceeded.

3.5 *Sea Empress* incident

3.5.1 The Executive Committee took note of the information contained in document 71FUND/EXC.53/5 in respect of the developments which had taken place in respect of the *Sea Empress* incident since the Committee's 52nd session.

Claims situation

3.5.2 It was noted that as at 11 April 1997, 754 claimants had presented claims for compensation to the Claims Handling Office established by the 1971 Fund and the shipowner's P & I insurers (Assuranceföreningen Skuld, the Skuld Club). The Committee noted that the Skuld Club and the 1971 Fund had approved claims for a total of £8 775 394 and that payments had been made by the Skuld Club to 437 claimants, totalling £6 537 716. It was further noted that cheques for £170 852 were awaiting collection by the claimants. It was also noted that most of these payments corresponded to 75% of the approved amounts and that payments of up to 100% of the approved amounts had been made by the Skuld Club in a number of cases where the amount of compensation was small or where the claimant had been able to demonstrate that a payment of more than 75% was necessary to avoid immediate financial hardship.

Level of payments

3.5.3 The Executive Committee recalled that it had decided at its 48th session to limit the Director's authority to make payments to 75% of the damage actually suffered by the respective claimant, since the total amount of the claims arising out of the *Sea Empress* incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. It was also recalled that the Committee had decided at its 49th, 50th and 52nd sessions to maintain the limit of 75% (documents FUND/EXC.48/6, paragraph 3.4.7, FUND/EXC.49/12, paragraph 3.8.21, 71FUND/EXC.50/17, paragraph 3.12.16 and 71FUND/EXC.52/11, paragraph 3.6.22).

3.5.4 It was recalled that in previous cases the Executive Committee had taken the position that it was necessary to exercise caution in the payment of claims if there was a risk that the total amount of the claims arising out of the particular incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. It was also recalled that the Committee had expressed the view that it was necessary to strike a balance between the importance of the 1971 Fund's paying compensation as promptly as possible to victims of oil pollution damage and the need to avoid an over-payment situation.

3.5.5 The Executive Committee took note of the information given by the Director as to the estimate of the total amount of the claims arising from this incident. It was noted that the cost of the clean-up operations was estimated at £23 million. The Committee also noted that fishery claims had been approved for £5.2 million and that pending and rejected fishery claims amounted to £7 million. The Director informed the Committee that it had been suggested that some fishermen might submit claims for damage to fish stocks, that four claims totalling £53 974 had been presented for the alleged reduction in catches of squid and whitefish in the Bristol Channel and that a few further claims in the latter category were expected for relatively small amounts. It was noted that the Director estimated that the fishery claims might total £15 million. With regard to the tourism sector, it was noted that claims had been approved for £750 000 and that claims for £627 000 were being examined. The Executive Committee was informed that the Claims Handling Office had sent letters to 580 potential claimants in the tourism sector who had requested claims forms but had not yet submitted claims, that 244 of the potential claimants had replied, out of whom 130 had stated that they intended to present a claim and 114 had stated that they did not. The Director stated that it was not known whether a claim for costs relating to the salvage of the *Sea Empress* and her cargo would be presented, and if so, in what amount. The Committee recalled that, in a document presented by the United Kingdom delegation to the Executive Committee's 52nd session (document 71FUND/EXC.52/7/1), an amount of £7 million had been included for such a claim. The Committee noted that there might be certain payments in respect of interest and in respect of fees of advisers and experts engaged by the claimants but that it was not possible to give an estimate of the total amounts of such payments.

3.5.6 The Director informed the Executive Committee that he still considered that a degree of uncertainty existed as to the total amount of the claims.

3.5.7 Maintaining its view that the 1971 Fund's 60 million SDR limit would not be breached, the United Kingdom delegation stated that it had no grounds for believing that the admissible fishery claims would reach the Director's estimate of up to £15 million. The delegation restated its view from the previous Executive Committee's session that its estimate of the total amount of all fishery claims was between £8 million and £10 million, and indicated that the total value of annual landings in the squid fishery in the Bristol Channel was approximately £110 000 per year. This delegation referred to the fact that the United Kingdom Ministry of Agriculture, Fisheries and Food was not undertaking any special monitoring of the fish stocks and did not expect any long term damage to these stocks as a result of this incident. The United Kingdom delegation stressed the importance, as in previous incidents, of seeking advice via specialised agencies or experts. The United Kingdom delegation indicated that it had previously estimated the claims in the tourism sector to be between £3 million and £9 million, but expressed satisfaction that the Director now estimated that claims in this sector were unlikely to be more than £4 million. The delegation mentioned that it had been informed by one firm of solicitors which represented 24 claimants in the tourism sector that their clients' claims amounted to approximately £250 000 and by another firm of solicitors representing six claimants that details of their clients' claims were already known to the 1971 Fund. The United Kingdom delegation also stated that £7 million was the highest possible estimate for the salvage claim, as included in its submission to the Executive Committee's 52nd session, but now believed that this was unrealistically high, since the value of ship and cargo salved was substantial.

3.5.8 Although more information was now available than at the time of the Executive Committee's 52nd session, the Committee considered that there was still a degree of uncertainty as to the total amount of the claims. The Committee therefore decided that the 1971 Fund's payments should for the time being remain limited to 75% of the damage actually suffered by the respective claimants as assessed by the experts engaged by the 1971 Fund and the Skuld Club. It was further decided that this matter should be reviewed at the Committee's 54th session.

3.5.9 The United Kingdom delegation stated that, since the cargo carried by the *Sea Empress* was owned by a party to CRISTAL (Contract Regarding a Supplement to Tanker Liability for Oil Pollution), there was approximately £20 million available from Cristal Ltd to provide compensation to claimants who had not received full compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. This delegation took the view that the 1971 Fund should formally notify Cristal Ltd that the amounts available for compensation under the 1969 Civil Liability Convention and 1971 Fund Convention might not be sufficient to compensate all claimants in full.

3.5.10 The Executive Committee decided that the 1971 Fund, after consultation with the Skuld Club, should notify Cristal Ltd that the amounts available for compensation under the 1969 Civil Liability Convention and 1971 Fund Convention might not be sufficient to meet in full the claims arising from the *Sea Empress* incident.

3.5.11 The Executive Committee instructed the Director to study whether to notify Cristal Ltd before the expiry of the two-year notification period laid down in the CRISTAL contract of any incidents other than the *Sea Empress* where a CRISTAL cargo had been involved and where there was a risk that victims might not receive full compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention.

Claim by a haulage company

3.5.12 The Executive Committee recalled that, at its 52nd session, it had considered a claim presented by a haulage company for loss of income allegedly suffered as a result of the company not having been able to use one of its vehicles which had been specifically modified for the collection of whelks (document 71FUND/EXC.52/11, paragraph 3.6.13 - 3.6.16). It was also recalled that the Committee had instructed the Director to examine this claim further and to submit the claim for renewed consideration at its 53rd session.

3.5.13 The Executive Committee noted that the haulage company operated 11 vehicles for general transport throughout the United Kingdom from its base 10 kilometres from Saundersfoot in the area

affected by the oil spill, and that the claim related to loss of income suffered as a result of the company not having been able to use one of its vehicles which had been equipped specifically for the collection of whelks and their transportation to a fish processor some 60 kilometres from the company's base. The Committee also noted that a fish processor purchasing whelks from the area affected by the *Sea Empress* incident had requested that the company should provide a vehicle with the means to lift 500kg bags, in order to reduce handling costs. It was noted that in November 1995 the company had purchased a crane and fitted it to one of its trucks to accommodate this request and that the fitting of the crane had reduced the truck's carrying capacity. It was further noted that the company had an oral agreement with the fish processor whereby the latter would use the company as the sole transporter of whelks, using the crane to lift the 500kg bags directly from the boats on to the truck. The Committee was informed that the specialised vehicle was virtually unused during the period of the fishing ban.

3.5.14 The Executive Committee noted that the oil spill had affected the use of only one of the claimant's 11 vehicles. For this reason the Committee took the view that the claimant was only to a very limited extent dependent on the affected resource. It was also considered that only a minor part of the claimant's business formed an integral part of the economic activity within the area affected by the spill. For these reasons, the Committee took the view that there was not a reasonable degree of proximity between the contamination and the alleged loss and decided therefore to reject the claim.

Cash and carry wholesaler

3.5.15 The Executive Committee considered a claim for loss of profit presented by a wholesale company based in Wellingborough (Northamptonshire), some 450 kilometres from Milford Haven. It was noted that the company, which operated 169 depots in the United Kingdom, of which only five were located in Wales, sold a wide range of goods through a cash and carry system to some 1 700 customers in the hotel and catering trade and some 670 retailers throughout the United Kingdom. It was also noted that the turnover of the company's depot in Haverfordwest in 1995 (£8.5 million) represented approximately 0.37% of the company's total turnover (£2 278 million). The Committee noted that the company had claimed compensation for loss of profit at its Haverfordwest depot (located some 11 kilometres from Milford Haven), which had suffered a reduction in sales during the period 15 February - 3 October 1996 compared with the same period in 1995. It was also noted that the company had claimed that, had it not been for the *Sea Empress* incident, that depot would have achieved the same increase in turnover during that period as its other four depots in Wales.

3.5.16 The Executive Committee emphasised that the system of compensation established by the 1969 Civil Liability Convention and the 1971 Fund Convention related to damage caused by contamination. It was considered therefore that it was necessary to distinguish between, on the one hand, those claimants who sold their goods or services directly to tourists and whose businesses were affected directly by a reduction in visitors to the area affected by an oil spill, and, on the other hand, those claimants who did not provide goods or services directly to tourists but only to other businesses which in their turn served tourists. The Committee took the view that in general there would not be a reasonable degree of proximity between the contamination and the losses suffered by claimants in the latter category and that claims of this type would not normally be admissible in principle.

3.5.17 As regards the claim under consideration, the Executive Committee shared the Director's view that the company's business did not form an integral part of the economic activity of the area affected by the spill, since only a very small part of its activity was carried out in that area, and that it was not dependent on the affected resource. The Committee noted that the reduction in turnover at the Haverfordwest depot was a more indirect result of the reduction in tourism than losses suffered by hotels and restaurants. For these reasons, the Committee was of the view that the loss allegedly suffered by the company could not be considered as damage caused by contamination and therefore decided to reject the claim.

Ice cream and frozen food supplier - Upton Farm Frozen Foods Ltd

3.5.18 The Committee considered a claim submitted by an ice cream and frozen food supplier, Upton Farm Frozen Foods (Ltd), relating to loss of profit for the period February - October 1996, allegedly due to the reduction in trade caused by the *Sea Empress* incident.

3.5.19 It was noted that the company, whose business was based in Pembroke Dock, traded as a wholesaler of frozen food and ice cream in the area affected by the oil spill, and that its customers were mainly hotels, restaurants, cafes and tourist attractions. It was also noted that the total sales of the company during the 12 month period to 31 October 1996 were £1 218 000, of which £277 000 related to ice cream sales, and that the five month period April - August normally accounted for 69% of the claimant's annual turnover. It was further noted that, according to the claimant, there were no alternative business opportunities.

3.5.20 The Executive Committee considered that the company's alleged loss was a more indirect result of the reduction in tourism than losses suffered by hotels, restaurants and tourist attractions. Although the company was located in the area affected by the spill and formed an integral part of the economic activity of that area, the Committee considered that there was not a reasonable degree of proximity between the alleged loss and the contamination (cf paragraph 3.5.16 above). For this reason, the Executive Committee decided to reject the claim.

Frozen food supplier - Pembrokeshire Foods Ltd

3.5.21 The Committee considered a claim from another supplier of frozen foods, Pembrokeshire Foods Ltd, for losses allegedly incurred during the period April - August 1996 as a result of the decline in the number of tourists in the area affected by the oil spill.

3.5.22 It was noted that the company, located in Haverfordwest, supplied frozen food to hotels, guest houses, restaurants, caravan sites and public houses. It was also noted that the company had maintained that its customers were heavily dependent on tourism. It was further noted that the company had argued that it had no possibility of mitigating the losses by selling outside its normal marketing area, since due to the distance of such other markets from the company's depot, it could not match the price and service offered by wholesalers in those areas. In addition, it was noted that the company had stated that it could not seek alternative business opportunities, since all its trucks were refrigerated and could not be used for any other business.

3.5.23 The Executive Committee considered that the company's alleged loss was a more indirect result of the reduction in tourism than losses suffered by hotels, restaurants and tourist attractions. Although the company was located in the area affected by the oil spill and formed an integral part of the economic activity of that area, the Committee considered that there was not a reasonable degree of proximity between the alleged loss and the contamination (cf paragraph 3.5.16 above). For this reason, the Executive Committee decided to reject the claim.

Postcard manufacturer

3.5.24 The Executive Committee considered a claim for loss of profit during 1996 as a result of a reduction in sales by a claimant who manufactured and distributed postcards of scenes in Pembrokeshire to various tourism-related businesses, mainly in Pembrokeshire. It was noted that the claimant, whose business was located in Haverfordwest, took the photographs, printed the cards and sold them to retail outlets.

3.5.25 The Committee noted that the claimant had stated that the fall in sales in the early part of 1996 was due mainly to the cancellation of and reduction in previous orders directly after the *Sea Empress* incident, when retailers anticipated a decrease in the number of tourists. It was also noted that the claimant had reported a subsequent increase in sales later in the season. It was noted that the experts engaged by the 1971 Fund and the Skuld Club had expressed the view that any reduction in the number of tourists visiting Pembrokeshire would be expected to have a direct effect on the number of postcards purchased. The Committee recognised that, since the postcards depicted scenes of Pembrokeshire, the claimant's market was limited to that region and that the claimant was therefore dependent on sales to tourists visiting Pembrokeshire.

3.5.26 It was recognised that the claimant's business was located in the area affected by the oil spill and formed an integral part of the economic activity of that area. It was also recognised that the claimant's product was specifically targeted at tourists. Nevertheless, since the claimant did not sell his product

directly to tourists but to retail outlets which in their turn sold the postcards to tourists, the Committee considered that there was not a reasonable degree of proximity between the alleged loss and the contamination (cf paragraph 3.5.16 above). For this reason, the Executive Committee decided that the claims was not admissible.

Laundry service

3.5.27 The Executive Committee considered a claim for loss of profit during April and May 1996, submitted by a company located in Milford Haven which provided linen supplies and laundry services to hospitals and the hotel and catering trade throughout the whole of south west Wales.

3.5.28 The Executive Committee noted that the company was located in the area affected by the spill and that the company's services were rendered partly to customers within the area affected by the oil spill. It was considered that the company formed an integral part of the economic activity in the area, but that the claimant's business was only partly dependent on customers in the tourism sector. The Committee took the view that the loss allegedly suffered by the claimant was a more indirect result of the reduction in tourism than losses suffered by hotels, restaurants and tourism attractions (cf paragraph 3.5.16 above). For this reason, the Committee considered that there was not a reasonable degree of proximity between the alleged loss and the contamination and therefore decided to reject the claim.

Decrease in value of an island

3.5.29 The Executive Committee considered a claim presented by a trust acting for the owner of Thorne Island located in the entrance to Milford Haven, for losses allegedly suffered as a result of not having been able to sell the island at the price expected before the *Sea Empress* incident. It was noted that a hotel located on the island was to have been included in the sale.

3.5.30 The Committee noted that Thorne Island had been cleaned after the oil spill, that there was no remaining contamination of any significance, and that there was therefore no indication that any permanent damage had been caused to the island. The Committee shared the Director's view that the depreciation in value, if any, which would be of a psychological nature, should not be considered as damage caused by contamination. For this reason, the Executive Committee decided to reject the claim.

The Youth Hostel Association

3.5.31 The Executive Committee considered a claim presented by the Youth Hostel Association (England and Wales) Ltd (YHA), through its Wales regional office located in Cardiff, for loss of income for the period March-August 1996. It was noted that the YHA, which had its headquarters outside Wales, owned and operated a network of 240 hostels in England and Wales, offering a very basic standard of low price accommodation for people of any age looking for inexpensive holidays. It was also noted that the claim related to eight hostels in Pembrokeshire operated by the regional office, which also operated 37 hostels in other parts of Wales.

3.5.32 It was noted that the eight hostels in Pembrokeshire which were the subject of the claim recorded an average drop in the number of overnight stays during the period March - August 1996, compared to the same period in 1995. It was also noted that the relative increase in the annual number of overnight stays in the youth hostels in Wales operated by the regional office was much lower than that of the hostels operated by the YHA as a whole. The Committee noted that the Wales regional office had maintained that this lower increase was due to the impact of the *Sea Empress* incident on the number of overnight stays in the above-mentioned eight hostels.

3.5.33 The Executive Committee considered that the eight hostels in Pembrokeshire operated by the Wales regional office satisfied the criterion of geographic proximity between the claimant's activity and the pollution, since they were located on or very close to the coast, and that the operations of the hostels which were the subject of the claim were economically dependent on the affected resource. The Committee took the view that the operations of the eight hostels formed an integral part of the economic activity within the area affected by the spill. For these reasons, the Committee considered that losses suffered as a result of the reduction in occupancy of the eight youth hostels in Pembrokeshire should be

considered as damage caused by contamination, and decided that the claim was admissible in principle, provided that when assessing the quantum of the loss, any increase in occupancy in the other hostels run by the Wales regional office as a result of people not wishing to use the hostels in Pembrokeshire should be taken into account.

Fire brigade

3.5.34 The Committee noted that a claim had been presented by a county fire brigade for expenses incurred in providing fire fighting and emergency stand-by cover during the clean-up and salvage operations, including the cost of labour and the use of vehicles and equipment.

3.5.35 The Executive Committee decided that the admissibility of this claim should not be considered until the details of any salvage claim were known.

3.6 *Nakhodka* incident

3.6.1 The Executive Committee took note of the information contained in documents 71FUND/EXC.53/6 and 71FUND/EXC.53/6/Add.1 on the developments which had taken place in respect of the *Nakhodka* incident since the Committee's 52nd session.

Settlement of claims

3.6.2 The Committee noted that the 1971 and 1992 Funds and the shipowner's insurer (the UK Club) had jointly established a Claims Handling Office in Kobe (Japan).

3.6.3 It was noted that a claim for ¥2 312 million (£11.7 million) had been received from the National Fishery Federation, representing nine fishery co-operative associations with some 68 000 members, relating to the fishermen's involvement in the clean-up operations until the end of February 1997. It was also noted that claims for clean-up costs had been submitted by nine contractors and five prefectures for ¥611 million (£3 million) and ¥2 000 million (£10 million), respectively.

Level of payments

3.6.4 The Executive Committee recalled that, at its 52nd session, it had authorised the Director to make final settlements on behalf of the 1971 Fund of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee. It was also recalled that the Committee had decided to authorise the Director to make payments on behalf of the 1971 Fund in respect of claims arising from the *Nakhodka* incident. It was further recalled that, in view of the uncertainty as to the level of the total amount of the claims, the Committee had decided that the payments to be made by the 1971 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/UK Club at the time when the payment was made. It was noted that the Committee had decided that this percentage should be reviewed at its 53rd session, in the light of further information as to the likely level of the claims and taking into account the position to be taken by the 1992 Fund Assembly (document 71FUND/EXC.52/11, paragraph 3.7.14).

3.6.5 In the light of the remaining uncertainty as to the level of the total amount of the claims arising from the *Nakhodka* incident, the Executive Committee decided to maintain the percentage fixed by the Committee at its 52nd session. The Director was instructed to obtain as much additional information as possible on the estimated total amount of the claims, so that the percentage could be reviewed at the Committee's next session.

3.6.6 It was recalled that at its 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.

3.6.7 In reply to a question, the Director stated that in his view 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.

Investigation into the cause of the incident

3.6.8 The Director informed the Committee that the 1971 Fund was following the investigation into the cause of the incident which was being carried out by the Japanese and Russian authorities.

3.7 *Nissos Amorgos* incident

3.7.1 The Executive Committee took note of the information contained in documents 71FUND/EXC.53/7 and 71FUND/EXC.53/7/Add.1 on the *Nissos Amorgos* incident, which had occurred in Venezuela on 28 February 1997.

3.7.2 It was noted that the 1971 Fund and the shipowner's P & I insurer (Assuranceföreningen Gard, the Gard Club) had jointly established a Claims Agency in Maracaibo (Venezuela).

3.7.3 The Executive Committee noted that the 1971 Fund had been informed by its Venezuelan lawyer that the State of Venezuela had presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club for an estimated US$20 million (£12.3 million) before a first instance court in Caracas, and that the State had requested that the 1971 Fund should be notified as an interested party. It was also noted that the Venezuelan State had further requested that the Caracas Court should arrest the *Nissos Amorgos* and order the owner/insurer to provide security for US$40 million (£24.6 million) plus US$6 million (£3.7 million) for legal costs and expenses in order to avoid arrest. The Committee noted that it was not clear what types of damage were covered by the claim, nor how the amount claimed had been calculated, but that the State had in its submission to the Court referred to the serious impact of the incident on the environment and the ecosystem in general.

3.7.4 Several delegations expressed concern that the action taken by the Venezuelan State might not be in conformity with the Conventions.

3.7.5 The Director was instructed to contact the Venezuelan Government to provide further information regarding the functioning of the regime of liability and compensation established by the 1969 Civil Liability Convention and 1971 Fund Convention.

3.7.6 The Committee recognised that it was not possible for the Director to express any opinion at this stage on the admissibility of the claim submitted by the Venezuelan State. If and to the extent that the claim were to relate to damage to the environment *per se*, it was recalled that the 1971 Fund Assembly and Executive Committee had consistently taken the position that such claims were not admissible under the 1969 Civil Liability Convention and 1971 Fund Convention. It was also recalled that the Assembly had decided that compensation could be granted only if a claimant had suffered a quantifiable economic loss (cf documents FUND/WGR.7/4, paragraph 7.1, FUND/A.17/23, paragraphs 7.3.5 and 7.3.6 and FUND/A.17/35, paragraph 26.8).

3.7.7 The Executive Committee authorised the Director to make final settlements of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee.

3.7.8 As for the question of whether and, if so, to what extent the Director should be authorised to make payments, the Executive Committee noted that it was not yet possible to make an accurate estimate of the total amount of claims which might be submitted, in particular due to the claim presented by the State of Venezuela and its request for security to be provided by the shipowner. The Committee considered it necessary, therefore, for the 1971 Fund to exercise caution in the payment of claims. It was noted that the 1971 Fund was liable to pay compensation only when the total amount of the payments made by the shipowner exceeded the limitation amount applicable to the vessel, in this case approximately £4.5 million. In view of the uncertainty as to whether the total amount of the claims might exceed the total amount

available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR, corresponding to approximately £51 million), the Committee decided that the Director was not authorised to make any payments for the time being.

3.7.9 The Executive Committee instructed the Director to investigate the circumstances that had given rise to the incident.

3.8 *Osung N°3* incident

3.8.1 The Executive Committee took note of the information contained in document 71FUND/EXC.53/8 on the *Osung N°3* incident, which had occurred in the Republic of Korea on 3 April 1997. It was noted in particular that oil which might have originated from the *Osung N°3* had reached the sea adjacent to Tsushima Island in Japan.

3.8.2 The Executive Committee noted that it was likely that a significant quantity of oil remained on board the sunken ship, that if this oil were to be released there would be a risk of the oil affecting a large number of aquaculture facilities located some seven kilometres north of the site of the sunken ship and that such a release could give rise to substantial claims for compensation.

3.8.3 The Director stated that, subject to any instructions which the Executive Committee might wish to give him, he intended to hold discussions with the Korean authorities concerning the most appropriate way of dealing with the oil remaining in the sunken ship, whilst not involving the 1971 Fund in carrying out such operations. He emphasised that he would make it clear that the 1971 Fund could assist the Korean authorities only with expert advice and could not become involved in the operations to inspect the ship, make repairs to prevent further escape of oil or remove any oil from the ship. He stated that he would also make it clear that the 1971 Fund could not guarantee to pay the costs of any such operations, but that these costs would have to be presented as a claim for compensation which would be subject to an assessment as to admissibility on the basis of the criteria laid down by the Assembly and Executive Committee.

3.8.4 The Committee recalled that, in respect of the *Tanio* incident (France, 1980), the 1971 Fund had been present at the meetings between the French Government and marine engineering companies held to consider the best way of dealing with the sunken fore-section of the tanker. It was also recalled that the 1971 Fund had informed the French Government that, in its view, the proposed pumping of the oil from the wreck seemed to be a reasonable measure to prevent, or at least minimise, further pollution damage. It was further recalled that the French Government's claim for the cost of the pumping operation had not been accepted in full.

3.8.5 The Executive Committee endorsed the course of action proposed by the Director in paragraph 3.8.3.

3.8.6 It was noted that no claims for compensation had yet been received.

3.8.7 The Executive Committee authorised the Director to make final settlements of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee.

3.8.8 The Executive Committee noted that it was not possible at this stage to make any accurate estimate of the total amount of the claims arising out of this incident, in particular in view of the risk represented by the oil remaining on board the sunken ship. The Committee considered that the total amount of the claims arising out of the *Osung N°3* incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and 1971 Fund Convention. The Committee maintained the position taken in respect of previous incidents that it was necessary, in such cases, to exercise caution in the payment of claims, since under Article 4.5 of the 1971 Fund Convention all claimants had to be given equal treatment. In the Committee's view it was necessary to strike a balance between the need to prevent an overpayment situation from arising and the importance of the Fund's paying compensation as promptly as possible to victims of oil pollution damage. Due to the fact that the

limitation amount applicable to the *Osung N°3* was very low, the Committee considered it essential that the 1971 Fund should be able to make payments at an early stage. In view of the paucity of information available, the Committee considered that it was unable at this stage, to determine a percentage for the payments to be made by the Fund. For this reason, the Committee decided to authorise the Director to make payments up to a percentage to be fixed by him, exercising caution in the assessment of the likely total amount of the claims.

3.8.9 The Executive Committee decided that the level of payments should be reassessed by the Committee at its 54th session, in the light of the information available at that time. The Director was instructed to obtain as much information as possible on the potential claims arising out of this incident.

3.9 *Tsubame Maru N°31* and *Daiwa Maru N°18* incidents

3.9.1 The Executive Committee took note of the information contained in document 71FUND/EXC.53/9 on the *Tsubame Maru N°31* and *Daiwa Maru N°18* incidents, which had occurred in Japan on 25 January and 27 March 1997, respectively.

3.9.2 The Executive Committee authorised the Director to settle and pay all claims arising out of these incidents, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee.

3.10 *Jeong Jin N°101* incident

3.10.1 The Executive Committee took note of the information contained in document 71FUND/EXC.53/10 on the *Jeong Jin N°101* incident, which had occurred in the Republic of Korea on 1 April 1997.

3.10.2 Some delegations expressed concern as to whether the 1969 Civil Liability Convention and the 1971 Fund Convention applied to this incident. Attention was drawn to the fact that the Conventions applied only to oil spills from ships actually carrying oil in bulk as cargo and that the definition of oil referred to oil carried on board a ship. Given the relatively large quantity that had been spilled, a number of delegations considered that the circumstances of the incident should be thoroughly investigated.

3.10.3 The Director was instructed to investigate the sequence of events leading up to the spill. He was also instructed to examine whether the incident fell within the scope of application of the 1969 Civil Liability Convention and the 1971 Fund Convention, in the light of the position taken by the 1971 Fund in previous cases, eg the *Kugenuma Maru* incident.

3.10.4 Since only limited information was available as to the circumstances surrounding the incident, the Executive Committee deferred any decision in respect of the settlement and payment of claims until its next session.

3.11 *Keumdong N°5* incident

The Director informed the Executive Committee of certain developments in respect of the *Keumdong N°5* incident (document 71FUND/EXC.53/11).

4 Any other business

Date of next session

The Executive Committee authorised the Director, after consultation with the Chairman, to convene a session of the Executive Committee to be held on 16 and 17 June 1997, should the developments in respect of various incidents make it essential to hold such a session.

5 Adoption of the Record of Decisions

The draft Record of Decisions of the Executive Committee's 53rd session, as contained in document 71FUND/EXC.53/WP.1 was adopted, subject to certain amendments.