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COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
63rd session
Agenda item 4

71FUND/EXC.63/10
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WINDING UP OF THE 1971 FUND

Note by the Director

Summary:	A Diplomatic Conference to amend Article 43.1 of the 1971 Fund Convention will be held in September 2000 in an attempt to accelerate the winding up of the 1971 Fund. The Executive Committee might wish to consider appointing an outside person to oversee the winding up.
Action to be taken:	Decide on the possible appointment and mandate of an outside person to oversee the winding up of the 1971 Fund.

1 Introduction

- 1.1 At its 62nd session the Executive Committee, acting on behalf of the Assembly, considered certain issues relating to the winding up of the 1971 Fund and its liquidation. The discussions were based on a note by the Director and studies carried out by two consultants, Dr Thomas A Mensah and Sir Arthur Watts QC (documents 71FUND/A.22/4, 71FUND/A.22/4/1 and 71FUND/A.22/4/2).
- 1.2 The Assembly discussions and resulting decisions are set out in the Record of Decisions (document 71FUND/EXC.62/14/A.22/23, section 6).
- 1.3 This document deals with the Director's further consideration of certain issues.

2 Termination of the 1971 Fund Convention

- 2.1 Under Article 43.1 the 1971 Fund Convention ceases to be in force when the number of Contracting States falls below three.
- 2.2 The number of Contracting States has fallen from 76 in May 1998 to 42 as at 10 March 2000. Nine further States have deposited instruments of denunciation, and the Convention will have 33 Contracting States as at 10 March 2001.

- 2.3 It is expected that a number of other Contracting States will denounce the Convention during the coming 18 months. It is unlikely, however, that the number of Contracting States will fall below three in the foreseeable future.

3 Secretariat's efforts

Since the October 1999 session of the Executive Committee, the Secretariat has continued its efforts to convince the remaining 1971 Fund Member States of the urgency of denouncing the 1971 Fund Convention. On the occasion of the International Maritime Organization (IMO) Assembly in November 1999, the Director held meetings with representatives of 31 of the remaining 1971 Fund Member States for the purpose of emphasising the urgency of their respective States' denouncing the 1971 Fund Convention.

4 Diplomatic Conference to amend Article 43.1

- 4.1 A number of ways of accelerating the winding up of the 1971 Fund were considered at the October 1999 session of the 1971 Fund Executive Committee, acting on behalf of the Assembly. The discussions were based on the note by the Director and the studies referred to in paragraph 1.1. The Committee decided that IMO should be requested to convene urgently a Diplomatic Conference for the purpose of adopting a Protocol amending Article 43.1 of the 1971 Fund Convention. The Committee elaborated a draft Protocol containing two options, one based on a tacit amendment procedure and the other requiring explicit acceptance by States.
- 4.2 In November 1999 the IMO Assembly approved the 1971 Fund's request. The Diplomatic Conference will be held from 25 to 27 September 2000. The Secretary-General of IMO will in the near future issue invitations to the Diplomatic Conference.

5 Appointment of person to oversee the winding up

- 5.1 At its 4th extraordinary session in April 1998, the Assembly stressed that any solution to the problems encountered by the 1971 Fund should be found within the framework of the 1971 Fund Convention, and that this would be the best way to protect the interests of 1971 Fund Member States. The Committee will recall that the External Auditor in his report on the Financial Statements for 1998 had strongly recommended that the 1971 Fund should consider the need ultimately to appoint a liquidator (document 71FUND/A.22/8). At its 62nd session the Executive Committee noted the Director's view that it would be difficult for a liquidator – in the technical sense of the word - who was not totally familiar with the IOPC Funds' policy on the admissibility of claims to administer the 1971 Fund. The Director suggested that it would therefore have to be considered whether the winding up and liquidation should, at least for the time being, be handled by the organs of the 1971 Fund (ie the Assembly, the Executive Committee and the Administrative Council) and the Director (document 71FUND/EXC.62/14/A.22/23, paragraph 6.38).
- 5.2 In order to ensure that the winding up of the 1971 Fund is impartial and equitable, however, the Executive Committee may wish to consider involving some eminent person outside the 1971 Fund who is nevertheless familiar with the operation of the Organisation.
- 5.3 The mandate of such a person could be:
- (a) to follow all matters relating to the winding up of the 1971 Fund, working in close co-operation with the Fund's External Auditor; and
 - (b) to ensure that the winding up process is carried out in a correct and equitable manner which takes into account the interests of all parties involved, ie victims of pollution damage resulting from incidents involving the 1971 Fund, 1971 Fund Member States and the contributors in those States.

5.4 If the Executive Committee were to agree to this approach, the Committee may wish to consider appointing Dr Thomas A Mensah^{<1>} to fulfil the role. Dr Mensah has indicated that he would be prepared to accept such an appointment.

6 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
 - (b) to consider whether to appoint an outside person to oversee the winding up of the 1971 Fund and, if it considers such an arrangement appropriate, determine the mandate of this person and appoint a person to fulfil this role; and
 - (c) to give the Director such instructions relating to the winding up of the 1971 Fund as it may deem appropriate.
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