



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
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Agenda item 3

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INCIDENTS OF INTEREST TO THE 1992 FUND

NAKHODKA

Note by the Director

1 Introduction

1.1 On 2 January 1997, the Russian tanker *Nakhodka* (13 159 GRT), proceeding from Shanghai (China) to Petropavlovsk (Russian Federation) with a cargo of 19 000 tonnes of medium fuel oil, broke up in heavy seas some 100 kilometres north-east of the Oki Islands in the Sea of Japan.

1.2 The tanker broke into two sections, resulting in a spill of some 6 200 tonnes of oil. The stern section sank soon after the incident and now lies at a depth of 2 500 metres with an estimated 10 000 tonnes of cargo on board. Small quantities of oil (estimated at less than two tonnes per day) are still being released from the sunken stern section.

1.3 The upturned bow section, which may have contained up to 2 800 tonnes of cargo, drifted towards the coast, leaking oil at a slow rate. Attempts to secure a line to the bow were unsuccessful, due to the severe weather conditions and the lack of suitable attachment points. On 7 January, the bow section grounded on rocks some 200 metres from the shore, near the town of Mikuni in Fukui Prefecture. Following the grounding of the bow section, a substantial quantity of oil was released, causing heavy contamination of the adjacent shoreline.

2 Removal of oil from bow section

2.1 A Japanese salvage company was contracted by the shipowner to remove the remaining oil from the bow section prior to its being taken away, but the operations were hampered by adverse swell and weather conditions. The Japanese authorities took over this operation on 14 January 1997, utilising the services of two Japanese salvage companies, while simultaneously ordering the construction of a temporary causeway

to the grounded bow section. This causeway was intended to allow road tankers to be brought close to the wreck, thereby facilitating the removal of the oil, if it should prove impossible to do so from the sea. Some 2 450m³ of oil mixed with water were transferred from the bow section to three small coastal tankers.

2.2 The operation to remove the major part of the oil from the bow section was completed on 10 February 1997. The removal of the remaining oil was completed on 25 February. In total some 2 890m³ of oil/water mixture was removed.

2.3 The causeway extended 175 metres from the shore. A large crane was assembled at the seaward end of the causeway with a sufficiently long arm to reach the bow section. The causeway and crane were not used in the removal of the majority of the oil from the bow section, but were only used to remove the last 380m³ of oil/water mixture.

3 Clean-up operations

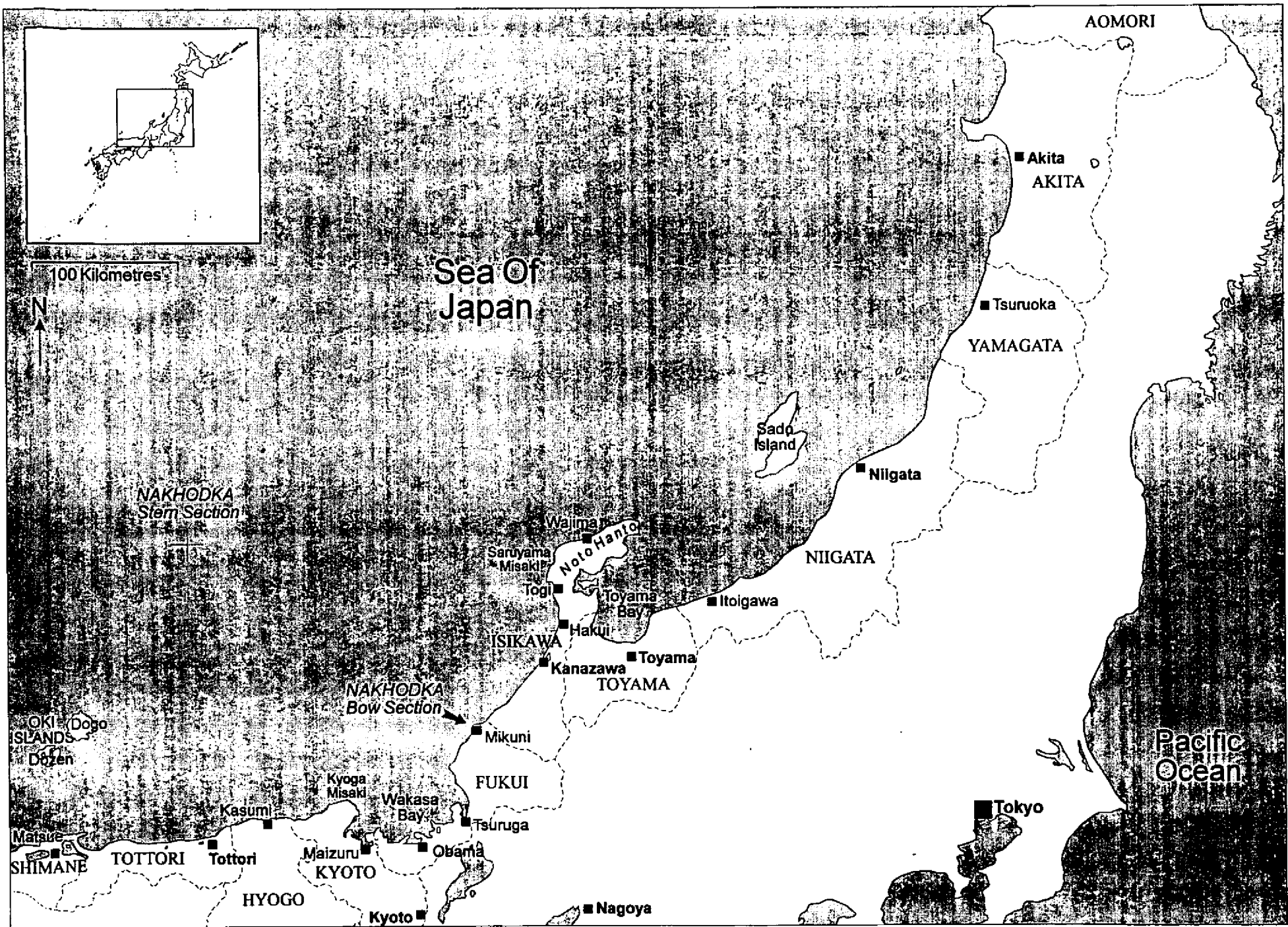
3.1 Although much of the oil which was lost when the ship broke up dispersed naturally at sea, patches of heavily emulsified oil, ranging in size from one to 100 metres in diameter, drifted towards the coast. Several hundred tonnes of emulsion stranded at various locations from the Oki Islands (Shimane Prefecture) in the west to Akita city (Akita Prefecture) in the east, a distance of more than 1 000 kilometres covering ten prefectures. Tar balls of 10–50 centimetres were scattered across Toyama Bay, reaching the coast of Niigata Prefecture. Smaller tar balls also reached the shorelines of Yamagata and Akita Prefectures. The most severely affected shorelines were those in the immediate vicinity of the bow section, extending 20 kilometres to the north, and those along the north coast of the Noto peninsula. The shorelines of both Hyogo and Kyoto Prefectures were also heavily contaminated.

3.2 The 1991 and 1971 Funds and the shipowner's P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club), engaged the International Tanker Owners Pollution Federation Ltd (ITOPF) to monitor the clean-up operations. The ITOPF experts arrived at the site on 5 January 1997. The Funds and the Club also engaged General Marine Surveyors & Co Ltd (GMS), a Japanese surveying company which has previously provided expertise for the 1971 Fund in Japanese oil spills and which has considerable experience of pollution incidents in Japan. The Japanese lawyer representing the 1971 and 1992 Funds has been monitoring the operations.

3.3 A contract was signed on behalf of the shipowner with the Japan Marine Disaster Prevention Centre (JMDPC) and its network of commercial clean-up contractors to organise the clean-up operations. In addition, the Petroleum Association of Japan provided coastal booms, skimmers, portable storage tanks and a number of trained operators. This equipment was used to protect sensitive areas and to recover floating oil. Several crane barges and tugs were mobilised to collect viscous emulsions.

3.4 A considerable number of vessels, belonging to the Maritime Safety Agency of Japan (MSA) and the Japan Self Defence Force, were engaged in oil recovery operations, using manual and mechanical means. Prefecture governments within the affected area also mobilised their own vessels and chartered others to collect oil from the sea. Helicopters from MSA and from private companies were used to spray dispersants at sea, primarily to deal with floating oil escaping from the bow section. In addition, several hundred fishing boats from eight prefectures were mobilised to collect oil at sea.

3.5 Since there was a risk that the bow section would break up before the oil could be removed, ITOPF recommended that the local offshore response capability should be supplemented with equipment from the East Asia Response Ltd (EARL) stockpile in Singapore. Two recovery systems were airlifted to Osaka and then transported to Mikuni by road, arriving on 14 January. One unit was installed on a salvage tug and the other on a supply vessel. Both units were deployed offshore in an attempt to recover heavily emulsified oil off Noto peninsula. The equipment and personnel were returned to Singapore on 5 February 1997.



3.6 In response to a request for assistance by the Japanese Government, the Russian Ministry of Merchant Marine dispatched an offshore supply vessel, two tugs equipped with oil recovery systems and a barge. Two of these vessels arrived on site on 18 January and the others followed later. The vessels were used to supplement MSA's offshore clean-up response.

3.7 Onshore clean-up has been carried out by manual and mechanical methods, and the bulk of the stranded oil had been removed from polluted beaches by mid February. Several large pits were excavated to provide temporary storage for the large volumes of oil, water and sand which were recovered as a result of these operations.

3.8 Some 500 000 man days have been used in the onshore clean-up operations in the five prefectures which were most severely affected. About half of the work was carried out by volunteers from all over Japan. The remainder of the workforce comprised fishermen, local residents, municipal workers, fire brigades and the Self Defence Force.

3.9 Operations are now concentrated on final clean-up. Further cleaning is required to remove oil traces from the shore in fishing and amenity areas. Sieving techniques are being used on sandy shorelines to remove tar balls, while a variety of techniques are being used to clean oil stained rocks and man-made structures. In various locations a viscous oil emulsion will have to be removed from the base of tetrapods used along the affected shoreline as sea defences.

3.10 Clean-up operations both at sea and on the shoreline have generated considerable quantities of oily waste. Much of the collected waste was contained in over 100 000 drums, but some material was stored in bulk. The total quantity of waste is estimated at 40 000 tonnes. This waste is being transported to disposal facilities throughout Japan by ship, rail and road. The quantities involved have over-stretched the capacity of these facilities, leading to delays in their receiving cargoes of waste material transported by sea. In addition, an estimated 14 000 tonnes of lightly oiled sand is to be buried at local industrial land fill sites.

4 Impact on fishing, tourism and other industries

4.1 Several national parks are located within the affected area, and tourism is an important industry. Tourists visit this coast throughout the year, not only for its natural beauty, spas and temples, but also to eat crabs which are caught in deep water offshore.

4.2 There are important mariculture activities in the affected area, including oyster, fish and seaweed cultivation in sheltered bays and inlets, particularly in Wakasa Bay. Throughout the affected area there are many large complex set nets, some of which have been contaminated. Where practicable, booms were used extensively throughout the affected area to protect mariculture facilities and nets, and their deployment was largely successful.

4.3 On rocky shores throughout the affected area naturally occurring seaweeds are harvested for human consumption, both commercially and for domestic use. One such seaweed, *iwa nori*, grows on concrete platforms constructed amongst rocky outcrops and is usually harvested from December to February. Following the spill, harvesting of this seaweed was abandoned for the season.

4.4 The sea water used to supply an aquarium near Mikuni was contaminated. The owner of the aquarium therefore moved 14 dolphins to other locations in Japan.

4.5 In the affected area there are seven nuclear power stations and several oil fired stations which depend on sea water for their cooling systems. The sea water intakes were successfully protected by booms.

5 Claims handling

5.1 The 1992 and 1971 Funds, the shipowner and the UK Club have established jointly a Claims Handling Office in Kobe, managed by GMS. The claims handling is being monitored by the Funds' Japanese lawyer.

5.2 At regular intervals the staff of the Claims Handling Office will visit the ten prefectures which comprise the affected area, so as to enable claimants and their representatives to discuss the claims with the staff.

5.3 The technical examination of the claims is being carried out by the staff of the Claims Handling Office in close co-operation with the staff of ITOPF. Experts will be engaged for the assessment of claims in certain specialised fields, as required.

6 Claims for compensation

6.1 So far, only a limited number of claims for compensation have been received. It is clear, however, that the claims relating to clean-up operations and preventive measures will be significant. It has been estimated that the clean-up operations carried out up to the end of March 1997 will give rise to claims in the region of ¥9 000 million (£45 million)^{<1>}. The cost of the disposal of collected oily waste is estimated at ¥2 000 million (£10 million). A claim is expected from the salvor who made attempts to tow the bow section. Claims will also be presented for costs relating to the removal of the oil from the grounded bow section, and it is not possible at this stage to estimate the amount involved. Claims may be submitted for the costs incurred by the Japanese authorities in the construction of the causeway leading to the bow section. Claims are expected for additional costs incurred by MSA for aerial surveillance and offshore clean-up operations, and by the Self Defence Force for aerial surveillance, offshore clean-up operations and assistance in the removal of oil from the shoreline. In addition a claim for the cost of the assistance given by the Russian vessels dispatched to the affected area is expected. Members of 173 fishery co-operative associations will submit claims for their involvement in the clean-up operations, and claims will be presented also for loss of income in the fishing and aquaculture industries. It is anticipated that claims will be presented also by businesses in the tourism industry in the area, although it is not possible to estimate the amount involved at this stage.

6.2 It is believed that claims will be submitted for at least ¥ 20 000 million (£100 million), but it cannot be ruled out that the total amount of the claims will be significantly higher.

6.3 A claim has been received from the National Fishery Federation, representing nine Fishery Co-operative Associations with some 68 000 members. The claim totals ¥2 312 043 456 (£11.8 million) and relates to the fishermen's involvement in the clean-up operations for the period up to the end of February 1997.

6.4 Claims have also been received from seven contractors for their participation in the clean-up operations up to the end of January 1997, totalling ¥310 million (£1.6 million).

6.5 The Government of Japan has made funds available to JMDPC in order to enable it to make loans to those who have participated in the clean-up operations, pending payments from the shipowner/UK Club and the 1971/1992 Funds.

6.6 The claims are being examined by the experts engaged by the UK Club and the 1971/1992 Funds.

<1> In this document, conversion of the Yen has been made on the basis of the rate of exchange as at 21 March 1997, ie ¥196.347:£1.

7 Wreck removal

A contract for the removal of the grounded bow section (including the removal of the remaining oil, pollution prevention and clean-up) has been concluded between the shipowner and a Japanese salvage company. The intention is that the wreck should be taken to a scrapyard.

8 Consideration by the 1971 Fund's Executive Committee at its 52nd session

8.1 Applicability of the Conventions

8.1.1 The 1992 Protocols entered into force in respect of Japan on 30 May 1996. The 1992 Civil Liability Convention and the 1992 Fund Convention are therefore in principle applicable to this incident.

8.1.2 The limitation amount applicable to the *Nakhodka* is estimated at 1 588 000 Special Drawing Rights (SDR) (£1.4 million) under the 1969 Civil Liability Convention and 6 425 940 SDR (£5.5 million) under the 1992 Civil Liability Convention.

8.1.3 The *Nakhodka* was registered in the Russian Federation, which has not ratified the 1992 Protocols but which is Party to the 1969 Civil Liability Convention and the 1971 Fund Convention. At its 52nd session, the 1971 Fund Executive Committee endorsed the Director's view that, as a result, the shipowner's right of limitation should be governed by the 1969 Civil Liability Convention, to which both Japan and the Russian Federation were Parties on the date of the incident. The Committee confirmed that, in the event that the total amount of the accepted claims were to exceed the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), compensation would be available as follows (document 71FUND/EXC.52/11, paragraph 3.7.5):

	<u>SDR</u>
Shipowner under the 1969 Civil Liability Convention	1 588 000
1971 Fund	58 412 000
Shipowner under the 1992 Civil Liability Convention	0
1992 Fund, in excess of 60 million SDR	<u>75 000 000</u>
Total compensation available	135 000 000

8.2 Director's authority to settle claims

8.2.1 At its 52nd session, the 1971 Fund Executive Committee 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 (document 71FUND/EXC.52/11, paragraph 3.7.7).

8.2.2 The 1971 Fund Executive Committee expressed the view that the 1971 Fund and the 1992 Fund should endeavour to ensure consistency in respect of the admissibility of claims for compensation, in accordance with 1971 Fund Resolution N°9 and 1992 Fund Resolution N°3 (document 71FUND/EXC.52/11, paragraph 3.7.8).

8.3 Level of payments

8.3.1 As regards the question of whether the Director should be authorised to make payments, the 1971 Fund Executive Committee noted that the total amount of the claims arising out of the *Nakhodka* incident would exceed the amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR (approximately ¥10 100 million or £52 million). Since the 1992 Fund Convention also applied in the *Nakhodka* case, the Committee considered that the level of the 1971 Fund's payments should

be determined by taking into account the amounts available under both the 1971 and the 1992 Fund Conventions, ie a total of 135 million SDR (approximately ¥22 700 million or £116 million).

8.3.2 It was emphasised by a number of delegations that the 1971 Fund and 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. Many delegations, including seven delegations of States which were also Members of the 1992 Fund, were of the view that the level of payments should be the same for the 1971 Fund as for the 1992 Fund.

8.3.3 The 1971 Fund Executive Committee noted that, as regards the 1992 Fund, any decisions in respect of the admissibility or payment of claims could be taken only by the 1992 Fund Assembly, except to the extent that the Director was authorised under the 1992 Fund's Internal Regulations to make final settlements of claims and decide on payments.

8.3.4 The Executive Committee of the 1971 Fund recalled that, in previous cases, it 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 would exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention, since under Article 4.5 of the 1971 Fund Convention all claimants had to be given equal treatment. 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.

8.3.5 The 1971 Fund Executive Committee decided to authorise the Director to make payments on behalf of the 1971 Fund in respect of claims arising from the *Nakhodka* incident. However, in view of the uncertainty as to the level of the total amount of the claims, the Committee 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 also decided that this percentage should be reviewed at the Executive Committee's 53rd session, to be held in April 1997, 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).

8.4 Source of funds for the prompt payment of claims

The 1971 Fund Executive Committee took the view that it was important to ensure that sufficient funds were available to enable the 1971 Fund to make payments promptly for claims arising from the *Nakhodka* incident. It was recognised that the Committee was not authorised to take decisions on the levying of contributions or other budgetary matters, and that such decisions could be taken only by the Assembly. The Committee decided to request, in accordance with Article 19.2 of the 1971 Fund Convention, the Director to convene an extraordinary session of the 1971 Assembly. Such a session will be held from 15 to 18 April 1997.

9 Authority to settle claims

9.1 The Assembly may wish to consider whether, and, if so, to what extent, it is prepared to authorise the Director to make final settlements of claims arising out of this incident on behalf of the 1992 Fund.

9.2 It should be noted that in several cases recently dealt with by the 1971 Fund, including the *Nakhodka* incident, the Director has been given such authority by the 1971 Fund's Executive Committee, to the extent that the claims do not give rise to questions of principle which have not previously been decided.

10 Level of payments

10.1 The Assembly may also wish to consider whether and, if so, to what extent the Director should be authorised to make payments on behalf of the 1992 Fund.

10.2 The 1971 Fund's Executive Committee will be reviewing, at its 53rd session, its decision to limit the payments to be made by the 1971 Fund to 60% of the amount of the damage actually suffered by the respective claimant as assessed by the experts engaged by the 1971/1992 Funds and the shipowner/UK Club.

10.3 As set out in paragraph 6.2 above, it is believed that claims will be submitted for at least ¥20 000 million (£100 million), but it cannot be ruled out that the total amount of the claims will be significantly higher. It is clear, therefore, that the total amount of the claims arising out of the *Nakhodka* incident will exceed the amount available under the 1971 Fund Convention, ie 60 million Special Drawing Rights (SDR) (approximately ¥10 100 million or £52 million). It is also possible that the admissible claims will exceed the amount available under the 1992 Fund Convention, ie 135 million SDR (approximately ¥22 700 million or £116 million).

10.4 The Director considers that – like the 1971 Fund – the 1992 Fund should exercise caution in the payment of claims, if there is 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 1992 Civil Liability Convention and the 1992 Fund Convention, since under Article 4.5 of the 1992 Fund Convention all claimants have to be given equal treatment. He also considers that it is necessary to strike a balance between the importance of the 1992 Fund's paying compensation as promptly as possible to victims of oil pollution damage and the need to prevent an over-payment situation from arising.

10.5 Since both the 1971 and 1992 Fund Conventions apply in the *Nakhodka* case, the Director suggests that the level of the 1992 Fund's payments should be determined by taking into account the amounts available under both Fund Conventions. He considers that in order to prevent an over-payment situation from arising for either the 1971 Fund or the 1992 Fund (or for both), a co-ordinated approach should be taken in respect of the payments by the two Organisations.

10.6 As indicated in paragraph 8.3.2 above, it was emphasised by a number of delegations at the 52nd session of the 1971 Fund's Executive Committee that the 1971 Fund and 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. Many delegations at that session, including seven delegations of States which were also Members of the 1992 Fund, were of the view that the level of payments should be the same for the 1971 Fund as for the 1992 Fund.

10.7 It should be noted that, in the light of the remaining uncertainty as to the level of the total amount of the claims arising from the *Nakhodka* incident, the Director has not been able to recommend to the 1971 Fund Executive Committee that there should be an increase of the percentage fixed by the Committee at its 52nd session (document 71FUND/EXC.53/6, paragraph 9.2).

10.8 In view of the uncertainty as to the level of the total amount of the claims, the Director proposes that the payments to be made by the 1992 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimant on the basis of the advice of the experts engaged by the Funds and the shipowner/UK Club at the time when the payment is made. It is also proposed that this percentage should be reviewed at the Assembly's next session.

11 Investigation into the cause of the incident

11.1 The Japanese and Russian authorities have decided to co-operate in the investigation into the cause of the incident.

11.2 The 1971 and 1992 Funds are following the investigation through their Japanese lawyer, with the assistance of technical experts.

12 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document;
 - (b) to give the Director such instructions in respect of the handling of this incident and of claims arising therefrom as the Assembly may deem appropriate;
 - (c) to take a position in respect of certain issues relating to the applicability of the 1969 and 1992 Civil Liability Conventions and the 1971 and 1992 Fund Conventions;
 - (d) to decide whether to authorise the Director to make final settlements of claims; and
 - (e) to decide whether to authorise the Director to make payments and, if so, at what level.
-