INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ADMINISTRATIVE COUNCIL
15th session
Agenda item 24

71FUND/AC.15/21
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RECORD OF DECISIONS OF THE FIFTEENTH SESSION OF THE ADMINISTRATIVE COUNCIL

(held from 18 to 22 October 2004)

Chairman: Captain R Malik (Malaysia)

Vice-Chairman: Mr John Wren (United Kingdom)

Opening of the session

1 Adoption of the Agenda

The Administrative Council adopted the Agenda as contained in document 71FUND/AC.15/1.

2 Election of the Chairman and Vice-Chairman

2.1 The Administrative Council elected Captain R Malik (Malaysia) as Chairman and Mr John Wren (United Kingdom) as Vice-Chairman until the next autumn session of the Council.

2.2 The Chairman thanked the Administrative Council for the renewed confidence shown in him.

3 Participation

3.1 The following States having at any time been Members of the 1971 Fund were present:

Algeria
Antigua and Barbuda
Australia
Bahamas
Belgium
Cameroon
Canada
China (Hong Kong Special Administrative Region)
Cyprus
Denmark
Finland
France
Germany
Ghana
Greece
Ireland
Italy
Japan
Liberia
Malaysia
Malta
Marshall Islands
Mexico
Morocco
Netherlands
New Zealand
Nigeria
Norway
Oman
Panama
Poland
Portugal
Qatar
Republic of Korea
Russian Federation
Sierra Leone
Spain
Sweden
United Arab Emirates
United Kingdom
Vanuatu
Venezuela

3.2 The following States which had not at any time been Members of the 1971 Fund were represented as observers:

Argentina
Iran, Islamic Republic of
Latvia
Philippines
Saudi Arabia
Singapore
Trinidad and Tobago
United Republic of Tanzania
Uruguay

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

Intergovernmental organisations:

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

International non-governmental organisations:

Comité Maritime International (CMI)
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P&I Clubs
International Tanker Owners Pollution Federation Ltd (ITOPF)
Oil Companies International Marine Forum (OCIMF)

4 Report of the Director

4.1 The Director introduced his report on the activities of the 1971 Fund since the Administrative Council's 12th session in October 2003, contained in document 71FUND/AC.15/2 (cf document 92FUND/A.9/2). In his presentation the Director made reference to the fact that the last 12 months had seen continued growth in 1992 Fund membership, a further five States having acceded to the 1992 Fund Protocol since the 8th session. He stated that after the 1971 Fund Convention had ceased to be in force on 24 May 2002 a number of the former 1971 Fund Member States had ratified the 1992 Fund Convention, and that it was hoped that the remaining ten such States would soon do so.

4.2 The Director drew attention to the fact that the failure of a number of Member States to submit oil reports continued to give rise to serious concern.

4.3 The Administrative Council congratulated the Secretariat on the 1992 and 1971 Funds' joint Annual Report for 2003 which had been published in English, French and Spanish and contained an instructive presentation of the activities of the 1992 Fund and 1971 Fund.

4.4 The Council expressed its gratitude to the Director and the other members of the joint Secretariat for the efficient way in which they had administered the 1971 Fund. It also thanked the lawyers and technical experts who had undertaken work for the 1971 Fund.

5 Report on Investments

5.1 The Administrative Council took note of the Director's report on the 1971 Fund's investments during the period July 2003 to June 2004, contained in document 71FUND/AC.15/3.

5.2 The Administrative Council noted the number of investments made during the twelve-month period, the number of institutions used by the 1971 Fund for investment purposes, and the amount invested by the 1971 Fund. The Council stated that it would continue to follow the investment activities closely.

6 Report of the Investment Advisory Body

6.1 The Administrative Council took note of the report of the Investment Advisory Body of the 1971 Fund, contained in the Annex to document 71FUND/AC.15/4 (cf document 92FUND/A.9/7). It also took note of the objectives for the coming year.

6.2 The Administrative Council expressed its gratitude to the members of the Investment Advisory Body for their valuable work.

7 Financial Statements and Auditor's Report and Opinion

7.1 The Director introduced document 71FUND/AC.15/5 containing the Financial Statements of the 1971 Fund for the financial year 2003 and the External Auditor's Report and Opinion thereon.

7.2 A representative of the External Auditor, Mr Graham Miller, Director International, introduced the Auditor's Report and Opinion.

7.3 The representative of the External Auditor mentioned that a review had been carried out of the Secretariat's overall financial control systems, particularly in relation to claims payments, contributions and other income, administrative expenditure, cash management and investments. He stated that the review had found that the Secretariat continued to have satisfactory controls in place and continued to adhere to appropriate control procedures and the Fund's financial and investment policies. He also confirmed that claims had been verified and had been settled as promptly as possible, and that the settlements had properly taken into account the interest of the Fund and the claimants.

7.4 The representative of the External Auditor mentioned that the Fund's Secretariat was not large and provided a responsible and very effective standard of financial control and management.

7.5 The representative of the External Auditor added that the work of the Audit Body represented a significant contribution to the Fund's good governance and management of its operation.

7.6 The representative of the External Auditor stated that the External Auditor would be pleased to continue to assist the Secretariat and the Audit Body in drawing up a risk map for the Funds.

7.7 The Administrative Council noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 71FUND/AC.15/5, and that the External Auditor had provided an unqualified audit opinion on the 2003 Financial Statements, following a rigorous examination of the financial operations and accounts in conformity with audit standards and best practice. The Council also appreciated that the Report went into great depth and detail.

8 Audit Body's Report and approval of accounts

8.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document 71FUND/AC.15/6 (document 92FUND/A.9/9) containing the Audit Body's Report.

8.2 In his introduction, Mr Coppolani drew particular attention to the involvement of the Audit Body in the audit process and noted with satisfaction the co-operative spirit in which the External Auditor had worked with the Audit Body. Mr Coppolani drew the attention of the governing bodies to the difficulties encountered in recovering a certain number of outstanding contributions as well as to the importance of the submission of oil reports. He stated that in the coming year the Audit Body would continue to monitor the area of risk management as well as the claims handling procedure.

8.3 The Administrative Council noted the Audit Body's recommendation that the governing bodies should approve the accounts of the 1971 and 1992 Funds for the financial year 2003.

8.4 The Administrative Council approved the accounts of the 1971 Fund for the financial period 1 January - 31 December 2003.

8.5 The Administrative Council expressed its gratitude for the important work being carried out by the Body.

8.6 The Administrative Council noted that, since the mandate of the members of the Audit Body would expire by the October 2005 session of the Administrative Council, the Council would have to elect at that session members of the Body for the next term of office.

9 Appointment of members of the Investment Advisory Body

The Administrative Council reappointed Mr David Jude, Mr Brian Turner and Mr Simon Whitney-Long as members of the Investment Advisory Body for a term of one year.

10 Report on contributions

10.1 The Administrative Council took note of the Director's report on contributions contained in document 71FUND/AC.15/8.

10.2 The Administrative Council invited Member States to assist the Secretariat to ensure that contributors in their States with outstanding contributions fulfilled their obligations.

11 Non-submission of oil reports

11.1 The Administrative Council considered the situation in respect of the non-submission of oil reports, as set out in document 71FUND/AC.15/9 (cf document 92FUND/A.9/12). It was noted that, since the document had been issued, three States (Algeria, Greece and India) had submitted their outstanding oil reports. It was also noted that a total of 29 States therefore still had outstanding oil reports for the year 2003 and/or previous years: 12 States in respect of the 1971 Fund and 23 States in respect of the 1992 Fund. It was further noted that a number of States had reports outstanding for several years.

11.2 The Administrative Council noted with satisfaction that one State, Côte d'Ivoire, which had had outstanding reports to the 1971 Fund for four years, had submitted all of these reports.

11.3 Many delegations expressed their very serious concerns as regards the number of Member States which still had failed to submit oil reports since the submission of these reports was crucial to the functioning of the IOPC Funds. It was emphasised that the non-submission of oil reports was a violation of States' treaty obligations under the 1971 and 1992 Fund Conventions. It was suggested that States that did not fulfil their duties had no rights.

11.4 The Council noted that the failure of a number of Member States to submit oil reports had been a very serious issue for a number of years and that, whilst the situation might be slightly better than in previous years, it was still very unsatisfactory.

11.5 Several delegations stated that they strongly supported any sanctions that could be imposed on States which did not submit reports. The Director drew attention to the fact that the issue of sanctions had been considered by the 1992 Fund Assembly on several occasions and that the Assembly had concluded that the present text of the 1992 Fund Convention did not make it possible to impose any sanctions against States (other than the one provided for in Article 15.4).

11.6 The Administrative Council instructed the Director to pursue his efforts to obtain the outstanding oil reports and urged all delegations to co-operate with the Secretariat in order to ensure that States fulfilled their obligations in this regard.

11.7 The Administrative Council instructed the Director to continue to bring the matter of the non-submission of oil reports to its attention at each autumn session

12 Operation of the Secretariat

12.1 The Administrative Council took note of the information contained in document 71FUND/AC.15/10 (document 92FUND/A.9/13) regarding the operation of the Secretariat.

12.2 The Director gave additional information on the new software, 'Trados', that was being introduced to improve the efficiency of the translation services, by explaining that the software did not do the actual translation work but provided assistance to those carrying out the translations.

12.3 The Director drew attention to recent developments of the IOPC Funds' website, which in May 2004 had also become available in French and Spanish. He mentioned that the website had recently been expanded to include all 1971 and 1992 Fund Assembly Resolutions, Rules of Procedure of the governing bodies, the Internal, Financial and Staff Regulations, the Headquarters Agreements and the guidelines on observer status. He pointed out that the section on incidents had also been expanded to include links to information in the Annual Report and meeting documents in respect of all incidents with which the IOPC Funds had been involved during 2003 and 2004.

13 Appointment of the Director

13.1 It was recalled that at the 1992 Fund Assembly's 8th session the Director had informed the Assembly that, given his age, he would be prepared to continue to serve for a couple of years or so after the expiry of his current term but not for a full five year term (document 92FUND/A.8/30, paragraph 26.7). It was noted that the Director had informed the 1992 Fund Assembly at its 9th session that he would be available for an extension of his contract for a period of two years from 1 January 2005.

13.2 It was recalled that at its 4th extraordinary session, the Assembly of the 1971 Fund had decided that the Director of the 1971 Fund should *ex officio* be the person who held the post of Director of the 1992 Fund, provided that the Assembly of the 1992 Fund agreed and that the Director of

the 1992 Fund agreed to carry out the functions of Director of the 1971 Fund (document 71FUND/A/ES.4/16, paragraph 15.1.27).

13.3 The Administrative Council noted the decision of the 1992 Fund Assembly to extend the contract of the present Director, Mr Måns Jacobsson, for a further term of office of two years, as from 1 January 2005, to include any period for a smooth transition to the next Director as the Assembly would decide. It was also noted that the 1992 Fund Assembly had decided that the Director of the 1992 Fund should continue to be allowed to carry out the functions of Director of the 1971 Fund also.

13.4 The Administrative Council took note of the fact that, as a result of the 1992 Fund Assembly's decision, Mr Måns Jacobsson would continue to serve as Director of the 1971 Fund.

13.5 The Director accepted his reappointment, including the role of Director of the 1971 Fund, and expressed his gratitude for the renewed confidence shown in him. He informed the Council that he considered it a great privilege to be allowed to serve the IOPC Funds and the international community for two more years.

13.6 The Director stated that he had found the role of the Director both demanding and rewarding, due to the duties incumbent on the Director being so varied. He explained that this variety had also contributed to why he had enjoyed leading the IOPC Funds into the 21st century where questions relating to the marine environment continued to be high on the political and economic agenda as well as being of great importance to mankind.

13.7 The Director mentioned that he had been encouraged by the steady growth of the number of Member States from 30 to 91 during his term of office. He expressed the belief that this growth in membership was an indication that Governments had considered that the international compensation regime had in general worked well. He considered that this explained why the regime based on the 1992 Conventions had served as a model for the creation of liability and compensation systems in other fields, such as the carriage of hazardous and noxious substances by sea.

13.8 The Director took the opportunity to express his gratitude to shipowners and P&I Clubs, to contributors to the Funds and to the oil industry for the strong support that they had given the IOPC Funds. He also expressed his gratitude to each and every member of the Secretariat, past and present, for their loyalty and the quality of their work.

13.9 The Director stated that the experiences over the last 25 years had shown that the Fund Member States had been willing and able to adapt the international compensation regime to the needs of society. He referred to the fact that, as a result of recent major incidents, the compensation regime based on the 1992 Conventions had been subject to criticism for not providing adequate protection to victims of oil pollution but made the point that the 1992 Fund and its Member States had listened to this criticism and had taken it into account in a constructive way in the review of the adequacy of the regime which began in 2000.

13.10 The Director pointed out that the Funds' governing bodies had found new and innovative ways of implementing rapidly some of the changes that had been adopted in recent years. He expressed his conviction that this would also be the case in the future, and that it would be a great privilege for him to continue for some time to play a role in that respect.

13.11 The Director expressed his appreciation for the strong support which he and the Funds' Secretariat had received from all Member States over the years, without which it would not, in his view, have been possible for the Funds to function in such a smooth and efficient manner. He stated that he would continue to need their guidance and support to meet the further challenges which lay ahead. He emphasised the need for the necessary steps to be taken to

ensure that the regime continued to meet the needs and aspirations of the international community in the 21st century.

13.12 The Director concluded by assuring the Administrative Council that when the time came he would make every effort to contribute to a smooth transition to his successor and to give him or her every possible support so as to ensure the continued efficient operation of the IOPC Funds and the smooth functioning of the international compensation regime.

14 Procedures for recruitment of future Directors

14.1 The Administrative Council noted that the 1992 Fund Assembly had considered the guidance from the Audit Body on procedures for recruitment of future Directors as set out in document 71FUND/AC.15/12 (cf document 92FUND/A.9/15).

14.2 The Council noted that the Assembly had decided that the Audit Body should be requested to prepare a detailed job description and competency requirements for the post of Director and to propose a timetable for the various stages of the selection process. It was noted that the Audit Body was authorised to seek expert advice if considered useful to do so.

14.3 The Administrative Council noted that the 1992 Fund Assembly had also considered a proposal by the delegations of Italy and Spain as set out in document 71FUND/AC.15.12/1 (cf document 92FUND/A.9/15/1) that the Assembly should adopt a resolution setting a limit of four years for the term of office of the Director, renewable once.

14.4 The Administrative Council noted that the 1992 Fund Assembly had decided to adopt a revised draft Resolution prepared by the delegations of Italy and Spain (document 71FUND/AC.15/12/1/Add.1 and 92FUND/A.9/15/1/Add.1) setting a limit of five years for the term of office of the Director, renewable once but allowing the Assembly the flexibility of deciding upon a further extension of the Director's term of office in view of exceptional circumstances. The Council noted that it had been mentioned that it would be up to the Assembly to interpret the term 'exceptional circumstances'.

15 Review of observer status

15.1 The Administrative Council recalled that at its 9th session, held in October 2002, it had decided to review every three years the list of international non-governmental organisations having observer status in order to determine whether the continuance of observer status for any particular organisation was of mutual benefit.

15.2 It was further recalled that the first review had taken place at the Administrative Council's October 2003 session. It was also recalled that, in accordance with a decision taken at their October 2002 sessions, the governing bodies of the 1992 and 1971 Funds had set up a group of five States to consider whether the international non-governmental organisations granted observer status should continue to have such status. The Administrative Council recalled that the group had held a meeting during that session and had reported to the governing bodies which in turn had endorsed the group's recommendations.

Observer Status of ACOPS

15.3 It was noted that, as instructed by the Council, the Director had written to the Advisory Committee on the Protection of the Sea (ACOPS) stating that the Administrative Council was seriously concerned that ACOPS had not attended any meetings since the establishment of the 1992 Fund, despite enjoying observer status, notifying it of the meeting dates for 2004 and informing it that the Council intended to consider whether to withdraw the observer status of ACOPS at its session in October 2004.

15.4 It was further noted that the Director had not received any response to this letter in advance of the session and that ACOPS had neither attended any meetings of the IOPC Funds during 2004, nor submitted any documents.

15.5 The Administrative Council decided that there was no further advantage to the 1971 Fund in ACOPS continuing to have observer status and decided to withdraw it.

15.6 It was noted that the Director had received a letter from ACOPS during the session, requesting the Administrative Council to retain ACOPS' observer status. One delegation indicated that, in its opinion, ACOPS was a prestigious intergovernmental organisation but that it had a small staff and limited resources. Another delegation stated that attendance at meetings should not be the only factor taken into account when deciding whether to withdraw observer status.

15.7 The Council decided to reconsider the matter at its next session.

16 Incidents involving the 1971 Fund

16.1 Overview

The Administrative Council noted the information contained in document 71FUND/AC.15/14, which contained a summary of the situation in respect of all 13 incidents dealt with by the 1971 Fund during the past 12 months.

16.2 Other incidents

The Administrative Council took note of the information contained in document 71FUND/AC.15/14/1 in respect of the following incidents: *Vistabella, Iliad, Kriti Sea* and *Evoikos.*

Vistabella

16.2.1 The Administrative Council noted that in February 2004 the Court of Appeal in Basse-Terre (Guadeloupe) had confirmed the first instance Court's judgement ordering the shipowner's insurer to pay the 1971 Fund FFr8.2 million or €1.3 million (£890 000) plus interest. It was also noted that the shipowner's insurer had not appealed against the judgement to the Court of Cassation and that the Fund's French lawyers were considering what steps should be taken to enforce the judgement.

Iliad

16.2.2 It was noted that the shipowner and his insurer as well as the owner of a fish farm had taken legal action against the 1971 Fund to prevent their claims against the Fund from becoming time-barred.

Kriti Sea

16.2.3 It was noted that the aggregate of settled claims and the amount claimed in on-going proceedings before the Greek Supreme Court was below the level at which the 1971 Fund would be called upon to make any payments in respect of compensation or indemnification, although the Fund remained a defendant in the Supreme Court proceedings and would continue to be represented at hearings by the Fund's lawyers.

Evoikos

16.2.4 It was noted that all known admissible claims in Malaysia, Singapore and Indonesia had been settled by the shipowner and that the total compensation paid was well below the level at which the 1971 Fund would be required to make any compensation or indemnification payments. It

was further noted, however, that the shipowner's insurer had informed the Fund that it was not prepared to withdraw its actions against the Fund in Malaysia and London until it could establish that there were no outstanding claims against the shipowner, which might result in the Fund being liable to pay compensation or indemnification.

16.3 Three Korean incidents

16.3.1 The Administrative Council took note of the information contained in document 71FUND/AC.15/14/2 in respect of three Korean incidents.

Keumdong N°5

16.3.2 The Council recalled that fishery claims totalling Won 18 803 million (£14.4 million) had become the subject of legal proceedings against the Fund and that the Court of first instance had awarded compensation totalling Won 1 571 million (£740 000). It was recalled that some of the claimants awarded compensation included unlicensed and unregistered fishermen and that the Court had awarded compensation for pain and suffering to some claimants.

16.3.3 It was also recalled that the 1971 Fund had appealed against the decision of the first instance Court and that the Court of Appeal had overturned that decision, concluding that claimants who did not have licenses, permits or registrations were not entitled to compensation and that losses for pain and suffering were not admissible. It was recalled that the Appeal Court had, however, awarded compensation for loss of earnings due to business interruption in respect of licensed fishing grounds and culture farms. It was further recalled that although the individual members of the co-operative did not appeal against the decision of the Appeal Court, 36 village fishery associations had appealed to the Supreme Court, claiming Won 2 756 million (£2.1 million).

16.3.4 The Council noted that in April 2004 the Korean Supreme Court had rendered its judgement and had held that, as a matter of Korean law, oil pollution damage under the 1969 Civil Liability and the 1971 Fund Conventions should be interpreted as including pain and suffering but that, in this particular case, the claims could not be accepted on the grounds that the claimants were not natural persons but fishery associations.

16.3.5 The Council noted that in August 2004 the Fund recovered a deposit it had made to the Court of first instance to enable it to appeal against the decision of that Court.

16.3.6 The Council noted that in September 2004 the Fund had settled all outstanding issues with the shipowner's insurer in respect of compensation paid by the insurer in excess of the limitation amount applicable to the *Keumdomg N°5*, indemnification and the apportionment of joint costs.

16.3.7 The Council noted that the Director had proposed in another document (document 71FUND/AC.15/19) that £8.1 million of the surplus on the *Keumdong N°5* Major Claims Fund should be reimbursed to the contributors to that Fund.

Yeo Myung

16.3.8 The Administrative Council recalled that all claims but one had been settled for a total of Won 1 554 million (£990 000) and that the outstanding claim had become time-barred. It was recalled that the 1971 Fund had requested the Court in charge of the limitation proceedings to issue an Assessment Decision so that the limitation fund could be distributed and the limitation proceedings terminated. The Council noted that although the limitation proceedings had yet to be terminated, the 1971 Fund and the shipowner's insurer had resolved all outstanding issues in respect of compensation paid by the insurer in excess of the limitation amount applicable to the *Yeo Myung*, indemnification and the apportionment of joint costs.

16.3.9 The Council noted that the surplus on the *Yeo Myung* Major Claims Fund had been reimbursed to contributors to that Fund.

Yuil N°1

16.3.10 The Council noted that all claims in respect of clean-up operations and preventive measures, including the removal of oil from the wreck, had been settled for a total of Won 19 218 million (£11.4 million) and that all fishery claims had been settled for a total of Won 7 960 million (£4.7 million)

16.3.11 The Council noted that the 1971 Fund and the shipowner's insurer had been subrogated to all claims that were filed in the limitation proceedings but that the limitation fund had not been constituted. The Council noted that the Fund had settled all outstanding issues with the shipowner's insurer in respect of compensation paid by the insurer in excess of the limitation amount applicable to the *Yuil Nº1*, indemnification and the apportionment of joint costs.

16.3.12 The Council noted that the surplus on the *Yuil Nº1* Major Claims Fund had been reimbursed to contributors to that Fund.

16.4 *Nissos Amorgos*

16.4.1 The Administrative Council took note of the information contained in document 71FUND/AC.15/14/3 concerning the *Nissos Amorgos* incident.

Criminal proceedings

16.4.2 The Administrative Council recalled that criminal proceedings had been brought against the master and that in his pleadings to the Criminal Court the master had maintained that the damage had substantially been caused by negligence imputable to the Republic of Venezuela.

16.4.3 The Administrative Council recalled that the 1971 Fund had submitted pleadings to the Court maintaining that the damage had been principally caused by negligence imputable to the Republic of Venezuela. The Council also recalled that in a judgement rendered in May 2000, the Criminal Court had dismissed the arguments made by the master and had held him liable for the damage arising as a result of the incident and had sentenced him to one year and four months in prison. The Council further recalled that the master had appealed against the judgement before the Criminal Court of Appeal in Maracaibo.

16.4.4 The Administrative Council recalled that the 1971 Fund had presented pleadings to the Court of Appeal arguing that the evidence presented had not been sufficiently considered by the Court. The Council also recalled that in a decision rendered in September 2000 the Court of Appeal had decided not to consider the appeal and to order the Court of Cabimas to send the file to the Supreme Court (Sala Politico-Administrativa) due to the fact that the Supreme Court was considering a request for 'avocamiento'[<1>]. The Council recalled that the Court of Appeal's decision appeared to imply that the judgement of the Criminal Court of Cabimas had become null and void.

16.4.5 The Council noted that in August 2004 the Supreme Court had decided to remit the file on the criminal action against the master to the Criminal Court of Appeal and that the Court had not yet rendered its decision.

16.4.6 The Administrative Council noted that the 1971 Fund's Venezuelan lawyers had advised the Fund that in accordance with Venezuelan procedural law the criminal action against the master

[<1>] Under Venezuelan law, in exceptional circumstances, the Supreme Court may assume jurisdiction, 'avocamiento', and decide on the merits of a case. Such exceptional circumstances are defined as those which directly affect the 'public interest and social order' or where it is necessary to re-establish order in the judicial process because of the great importance of the case. If the request of 'avocamiento' is granted, the Supreme Court would act as a court of first instance and its judgement would be final.

was time-barred, since under Venezuelan law a final sentence would have to be delivered within four and half years from the date of the criminal act.

Claims situation

16.4.7 The Administrative Council noted the situation in respect of the significant claims for compensation pending before the Courts in Venezuela as set out in the table in paragraph 3.1 of document 71FUND/AC.15/14/3.

16.4.8 The Council recalled that the two claims presented by the Republic of Venezuela were, in the Fund's view, not admissible since they did not relate to pollution damage falling within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention. It was further recalled that these two claims were also duplications, since they were based on the same university report and related to the same items of damage. It was also recalled that the Procuraduria General de la Republica (Attorney General) had accepted this duplication in a note submitted to the 1971 Fund's Venezuelan lawyers in August 2001.

16.4.9 The Administrative Council noted the claims settled out-of-court as set out in the table in paragraph 4 of document 71FUND/AC.15/14/3.

Level of payments

16.4.10 The Council recalled that in view of the uncertainty as to the total amount of the claims arising from this incident, the Executive Committee and later the Administrative Council had decided to limit payments to a percentage of the loss or damage actually suffered by each claimant.

16.4.11 It was recalled that in July 2003, the Administrative Council had decided to increase the 1971 Fund's level of payments from 40% to 65%, since the claims by the Republic of Venezuela were duplicated. It was also recalled that the Council had stated that, in the unlikely event that the Venezuelan Courts were to accept both claims submitted by the Republic, the 1971 Fund would nevertheless disregard one of them (document 71FUND/AC.11/3, paragraphs 3.25 and 3.26).

16.4.12 It was recalled that at its July 2003 session, the Administrative Council had noted that if both claims by the Republic of Venezuela were withdrawn or not pursued to the detriment of other claimants, the 1971 Fund would be able to increase its level of payments to 100%.

Consideration at the Administrative Council's May 2004 session

16.4.13 The Council recalled that, at its 14th session held in May 2004, the Venezuelan delegation had stated that the Republic of Venezuela had proposed that any claim by the Republic be dealt with after the victims had been fully indemnified so that the pending and settled claims against the Fund were compensated to the benefit of the victims and that the Republic would stand 'last in the queue' and subject to the amount available for compensation from the Fund. The Council recalled that the Vice-Minister of Foreign Affairs, in a letter to the Director, had stated that the Republic of Venezuela accepted that the claims by the Republic of Venezuela would be dealt with after the Fund had paid full compensation to claimants already recognised by it and those who would be recognised legally by a final court judgement, within the maximum amount available established by the Conventions (document 71FUND/AC.14/4, paragraphs 3.1.34 and 3.1.42).

16.4.14 The Council recalled that the Director had stated that in his opinion, and in view of the inter linkage between the 1969 Civil Liability Convention and the 1971 Fund Convention, and in accordance with long established practice within the 1971 and 1992 Funds, the expression 'standing last in the queue' meant that the government in question undertook not to pursue or seek payment for its claims for compensation under these Conventions, or under its national legislation implementing these Conventions, until all other admissible claims had been paid in

full, either for the amount agreed in out-of-court settlement or decided by a competent court in a final judgement, or it was accepted by the Fund that all such claims would be paid in full.

16.4.15 The Council recalled that it had instructed the Director to seek the necessary assurance from the Republic of Venezuela as to whether its understanding of the meaning of the term 'standing last in the queue' coincided with his and had authorised the Director to increase the level of payments to 100% of the established claims, when he had received the necessary assurance (document 71FUND/AC.14/4, paragraphs 3.1.53 and 3.1.54).

Developments after the May 2004 session

16.4.16 The Council noted that in June 2004 the Director had written to the Republic of Venezuela asking whether Venezuela, by undertaking to stand last in the queue, had also agreed with his interpretation of the notion of 'standing last in the queue' set out in paragraph 16.4.14. The Council noted that a letter from the Minister of Foreign Affairs of Venezuela received in August 2004 gave, in the Director's opinion, the necessary assurance that the Republic had agreed with his interpretation of that notion and that the Director had decided to increase the level of payments to 100%.

16.4.17 The Council noted that a payment of US$5.6 million had been made by the 1971 Fund to the shrimp fishermen and processors of Lake Maracaibo and that, with this payment, these claimants had received the full amount of their compensation.

16.4.18 The Council noted that letters had been written to the remaining claimants with settled claims offering further payments.

16.4.19 The Director expressed his gratitude to the Venezuelan Government for agreeing to stand last in the queue in respect of its own claims since this had enabled those claimants most in need of compensation to be paid in full.

16.4.20 It was noted that the Secretary General of the organisations representing the shrimp fishermen and processors of Lake Maracaibo had expressed their gratitude in a letter to the Director.

Possible recourse action against Instituto Nacional de Canalizaciones (INC)

16.4.21 The Administrative Council recalled that at its May 2004 session, it had considered the issue of whether the 1971 Fund should take recourse action against the Instituto Nacional de Canalizaciones (INC), the agency responsible for the maintenance of the Lake Maracaibo navigation channel (cf document 71FUND/AC.14/2, section 8). It was further recalled that the Council had decided that the 1971 Fund should postpone taking a position as to whether or not the Fund should take recourse action against INC (document 71FUND/AC.14/4, paragraph 3.1.93).

16.5 *Pontoon 300*

16.5.1 The Administrative Council took note of the information contained in document 71FUND/AC.15/14/4 in respect of the *Pontoon 300* incident.

Claims for compensation

16.5.2 The Council noted that claims in respect of clean-up operations and preventive measures had been settled for a total of Dhs 6.3 million (£1.2 million) and that the 1971 Fund had paid a total of Dhs 4.7 million (£817 000), corresponding to 75% of the settlement amounts.

16.5.3 The Council recalled that the Municipality of Umm Al Quwain had presented claims against the 1971 Fund totalling Dhs 199 million (£39 million) on behalf of fishermen, tourist hotel owners, private property owners, a Marine Resource Research Centre (MRRC) and the Municipality

itself. It was recalled that little or no documentation had been provided in support of the claims, that the amounts involved appeared to be based upon estimates and that the main claim by the Municipality was for environmental damage, which appeared to have been based upon theoretical models.

Legal actions

16.5.4 The Council recalled that in September 2000 the Umm Al Quwain Municipality had brought legal action in the Umm Al Quwain Court against the owner of the tug which had been towing the *Pontoon* 300 at the time of the incident and against the owner of the cargo on board the *Pontoon 300*. It was also recalled that in December 2000 the UAE Ministry of Agriculture and Fisheries had joined the Umm Al Quwain Municipality's action as a co-plaintiff, claiming Dhs 6.4 million (£1.2 million). It was further recalled that at a court hearing in September 2001 the 1971 Fund had maintained that the claims submitted by the Municipality were time-barred.

16.5.5 It was recalled that in December 2001 the Court had decided to refer the matter to a panel of experts experienced in oil pollution and the environment. It was also recalled that the Court had decided to combine all the pleadings relating to issues of jurisdiction and time bar and to review these after the experts had submitted their report.

16.5.6 The Council recalled that the experts had submitted their report to the Umm Al Quwain Court of first instance in February 2003 and that the experts had assessed the claims at a total of Dhs 3.2 million (£500 000).

16.5.7 The Council recalled that in the light of comments by all the parties on the experts' report, the Court had decided to refer the case back to the experts for a response.

16.5.8 It was noted that the 1971 Fund had held a number of meetings with the experts and the other parties with the aim of reaching agreement on the quantum of the losses, without prejudice to the issue of time bar in respect of the claim by the Municipality. It further noted that as a result of these meetings an agreement in principle had been reached on the claim by the Ministry of Agriculture and Fisheries in respect of the MRRC at Dhs1.6 million (£240 000). It was also noted that since this claim was not time-barred, it was expected that it would be settled in the near future. As regards the claims by the Municipality, it was noted that no agreement had been reached on the quantum. It was noted that at a hearing on 9 October 2004 the Umm Al Quwain Court instructed the court experts to submit their response to the objections raised by the various parties by 27 November 2004. It was also noted that at the same hearing the owner of the tug *Falcon 1* applied to the Court to join three additional defendants to the proceedings. It was noted that the Municipality's lawyers raised objection to the application and that the Fund's lawyers had reserved the Fund's position pending examination of the documents submitted to the Court in support of the application.

Level of payments

16.5.9 The Council recalled that the maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention was 60 million SDR (£48.9 million). It was further recalled that in April 1998 the Executive Committee had decided that, in view of the uncertainty regarding the total amount of claims for compensation, the 1971 Fund's payments should be limited to 75% of the loss or damage actually suffered by each claimant (document 71FUND/EXC.63/11, paragraph 3.7.4).

16.5.10 It was noted that once the claim by the Ministry of Agriculture and Fisheries referred to in paragraph 16.5.8 had been settled, the Fund's total exposure would be Dhs 200.3 million (£30.3 million). It was also noted that although the 1971 Fund had considered the claims by the Umm Al Quwain Municipality, which totalled Dhs 192.4 million (£29 million), to be time-barred, the Fund's lawyers had indicated that the UAE courts might not agree with the Fund on

this point and that the UAE law was also unclear as to whether claimants could increase the amount of their claims in court, but that in any event they would be entitled to interest at 9% per annum on any amounts awarded, either from the date of filing the claims in court or from the date of judgement.

16.5.11 The Council noted the Director's opinion that in view of the continuing uncertainty as to the total amount of the admissible claims, the Fund's level of payments should be maintained at 75% of the total loss or damage suffered by each claimant.

Criminal proceedings

16.5.12 The Council recalled that in November 1999 a Criminal Court of first instance had found the master of the tug *Falcon 1,* the alleged cargo owner, the general manager of the tug owner and the general manager of the alleged cargo owner guilty of misuse of the barge *Pontoon 300,* which had not been in a seaworthy condition and thus in violation of United Arab Emirates law, and of causing harm to the people and the environment by use of the unseaworthy barge. It was recalled that the master of the tug *Falcon 1,* the tug owner and his general manager had appealed against the judgement, but the alleged cargo owner and his general manager had not.

16.5.13 It was recalled that in February 2000 the Criminal Court of Appeal had found the tug owner and his general manager not guilty, but had confirmed the guilty verdict against the master of the *Falcon 1,* the alleged cargo owner and his general manager.

16.5.14 It was also recalled that the master of the tug *Falcon 1* had lodged an appeal in the Federal Court of Cassation, which had sent the case back to the Court of Appeal to consider the issues of the seaworthiness of the *Pontoon 300* and the master's defence of 'force majeure'. It was noted that the Court of Appeal had reserved the matter for judgement in December 2004.

Recourse action by the 1971 Fund

16.5.15 It was recalled that in January 2000, the 1971 Fund had taken legal action against the individual who owned the tug *Falcon 1* maintaining that, since the sinking of the *Pontoon 300* had occurred due to its unseaworthiness and the negligence of the master and owner of the *Falcon 1* during the towage, the tug owner was liable for the ensuing damage.

16.5.16 It was further recalled that in December 2000, the Dubai Court of first instance had rendered a judgement in which it had rejected the 1971 Fund's claim against the owner of the tug *Falcon 1,* but had ordered the owner of the cargo on board the *Pontoon 300,* who had allegedly chartered the *Falcon 1,* to pay the Fund Dhs 4.5 million (£760 000). It was also recalled that the basis of the rejection of the claims against the owner of the *Falcon 1* was that under the terms of the charter party the master of the tug had been under the control of the charterer.

16.5.17 The Council recalled that the 1971 Fund had appealed against the judgement, contesting the validity of the charter party and maintaining that in any event the charter party was only binding upon the parties thereto and not on the Fund. It was further recalled that in February 2002 the Dubai Court of Appeal had upheld the judgement of the Court of first instance against the same parties, but had increased the amount awarded to the 1971 Fund to Dhs 4.7 million (£800 000).

16.5.18 It was recalled that the Fund had appealed to the Dubai Court of Cassation against the Court of Appeal's judgement on the grounds that under UAE maritime law, even if the cargo owner had chartered the tug, the management of the tug would remain under the control of the tug owner unless the charter party had specified otherwise. It was recalled that the Fund had further argued that a photocopy of the charter party submitted by the tug owner had not been sufficient evidence to support an alleged charter arrangement between the owner of the tug and the cargo owner.

16.5.19 The Council recalled that in October 2002 the Court of Cassation had allowed the Fund's appeal and had referred the matter back to the Court of Appeal for it to reconsider the matter and that the Court of Appeal had issued a preliminary judgement in June 2003 appointing a local marine expert to review all documents relating to the case in order to determine if the tug was in fact on charter to the cargo owner.

16.5.20 It was noted that in December 2003 the expert had filed his report with the Dubai Court of Appeal in which he had concluded that the charter party had transferred both maritime and commercial control to the charterer, that both the tug and the barge had been seaworthy and that the sinking of the barge had been due to bad weather.

16.5.21 It was noted that the 1971 Fund had submitted detailed objections to the conclusions of the expert at a court hearing held in February 2004.

16.5.22 It was noted that in April 2004, the Court of Appeal had issued its judgement in favour of the 1971 Fund holding that both the charterer and the owner of the *Falcon 1* were jointly and severally liable to pay the Fund an amount of Dhs 3 526 398 (£533 000). It was also noted that in the judgement, the Court had concluded *inter alia* that the master of the tug and its owner were together responsible for the damage caused arising from this incident, that the *Pontoon 300* had not been seaworthy, that the question of the tug's seaworthiness did not need to be ascertained as both the tug and tow formed one floating unit and that the liability provisions in the charter party were only effective between the owner and the charterer and did not extend to third parties.

16.5.23 It was noted that the 1971 Fund had appealed against this judgement to the Court of Cassation on the question of the quantum and that the owner of the *Falcon 1* had appealed on procedural grounds, including, *inter alia*, that the civil case should have been suspended pending the final judgement in the criminal proceedings relating to the incident.

16.6 *Al Jaziah 1* and *Zeinab* incidents

16.6.1 The Administrative Council took note of the information contained in document 71FUND/AC.15/14/5 (cf 92FUND/EXC.26/5) concerning the *Al Jaziah 1* and *Zeinab* incidents which had occurred in the United Arab Emirates and which involved both the 1971 and the 1992 Funds.

Al Jaziah 1

16.6.2 It was recalled that the *Al Jaziah 1* had not been covered by any liability insurance, that claims totalling £1.4 million had been submitted to the Funds in relation to clean-up and pollution prevention and that these claims had been settled at £1.1 million and had been paid by the Funds. The Council noted that all further claims had become time-barred and that therefore the Funds would not be required to make any further compensation payments.

16.6.3 The Council recalled that the Abu Dhabi Public Prosecutor had brought criminal proceedings against the master of the *Al Jaziah 1*. It was recalled that the Court had held, *inter alia*, that the vessel had caused damage to the environment and that it had not fulfilled basic safety requirements, had not been fit to sail, had had many holes in the bottom and had not been authorised by the Ministry of Communications of the UAE to carry oil. It was further recalled that the conclusion of the Court was that the sinking of the vessel had been due to these deficiencies and that the master had been fined Dhs 5 000 (£850) for causing damage to the environment.

16.6.4 It was recalled that the Funds' lawyers had expressed the view that there were reasonably good prospects for the Funds to obtain a favourable judgement against the shipowner and that it was likely that he would not be entitled to limit his liability. It was also recalled, however, that in

the Funds' lawyers' view, the Funds might encounter considerable difficulties in enforcing a judgement against the assets of the defendant and that it was in any event uncertain whether the defendant would have sufficient assets to enable the Funds to recover any substantial amount.

16.6.5 The Administrative Council recalled that at the October 2002 sessions most delegations had expressed the view that the question of whether or not to pursue a recourse action against the shipowner raised an important issue of principle and that the IOPC Funds should play a part in discouraging the operation of substandard ships and enforcing the 'polluter pays' principle.

16.6.6 It was recalled that the governing bodies of the 1971 and 1992 Funds had decided that the Funds should pursue recourse action against the shipowner and that in so deciding it had been recognised that the decision to pursue a recourse action in this particular case represented a deviation from the Funds' policy of basing their decisions in part on the prospects of recovery in the event of a favourable judgement (documents 71FUND/AC.9/20, paragraph 15.10.9 and 92FUND/EXC.18/14, paragraph 3.5.9).

16.6.7 The Administrative Council recalled that the Funds had commenced legal action in the Abu Dhabi Court of first instance against the shipowning company and its sole proprietor in January 2003, requesting that the defendants should be ordered to pay Dhs 6.4 million (£1.1 million) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.

16.6.8 It was recalled that the defendants had in their pleadings argued that the Funds had not submitted admissible legal evidence in respect of the incident or details of the alleged losses suffered by the parties who had subrogated their rights to the Funds, that none of those persons had filed any claims directly against the shipowner under UAE law, that the subrogation of the claimants' rights had not been done correctly under UAE law and that these rights had not existed legally as the claimants had not exercised their right to claim against the shipowner under the Civil Liability Convention.

16.6.9 It was also recalled that in their pleadings the Funds had maintained that the shipowner had failed to set up a limitation fund in accordance with the 1969 Civil Liability Convention or the 1992 Civil Liability Convention and that the Funds had paid compensation to those who had suffered pollution damage instead of waiting for the shipowner to provide compensation under the Civil Liability Convention, since there was no indication that the shipowner had any intention to pay compensation. It was further noted that the Fund had argued that the subrogation of the claimants' rights was based on Article 9 of the Fund Conventions and not on UAE law, which required a court judgement for a party to acquire subrogated rights in order to be able to commence proceedings against a third party. The Council noted that the Funds had also presented the Court with further evidence in relation to the incident and the losses caused, including documents issued by various government authorities.

16.6.10 It was noted that in November 2003 the Abu Dhabi Court of first instance had issued a preliminary judgement appointing an expert to investigate the nature of the incident and the payments made by the 1971 Fund. It was also noted that the Fund and its lawyers had met with the expert on two occasions and had provided supplementary information as requested by the expert and that the expert had not submitted his report. It was further noted that the Court was expected to render its judgement before the end of 2004.

Zeinab

16.6.11 The Council recalled that the Georgian-registered vessel *Zeinab*, suspected of smuggling oil from Iraq, had sunk about 16 miles from the Dubai coastline in April 2001. It was recalled that the *Zeinab* had not been entered with any classification society or covered by any liability insurance.

16.6.12 It was recalled that the 1971 Fund Administrative Council and 1992 Fund Executive Committee had decided at their June 2001 sessions that, since the United Arab Emirates was at the time of the *Zeinab* incident a Party to both the 1969/1971 Conventions and the 1992 Conventions, both sets of Conventions applied to the incident, and that the liabilities should be distributed between the 1971 Fund and the 1992 Fund on a 50:50 basis.

16.6.13 It was recalled that claims in relation to clean-up and pollution prevention measures had been settled at £1.0 million and had been paid by the Funds. It was also noted that all further claims had became time-barred on 14 April 2004 and that therefore the Funds would not be required to make further compensation payments.

16.6.14 It was recalled that the 1971 Fund's liability for compensation and indemnification for incidents occurring between 25 October 2000 and 24 May 2002, the date when the 1971 Fund Convention ceased to be in force, was covered by insurance, subject to a deductible of 250 000 SDR for each incident. It was also recalled that in July 2002 the Administrative Council had decided that the relevant date for conversion of this amount into Pounds sterling should be the date of the incident, ie 14 April 2001, and that on the basis of the SDR: Pounds sterling exchange rate on 12 April 2001, 1 SDR=£0.88130, (13, 14, 15 and 16 April being non-banking days), the deductible under the policy would be £220 325 (document 71FUND/AC.8/6, paragraph 3.5.6).

16.6.15 It was noted that, since the 1971 Fund's payments had exceeded the deductible, the 1971 Fund had recovered from the insurer all payments in excess of the deductible.

16.6.16 It was recalled that at their February 2004 sessions, the governing bodies of the 1971 and 1992 Funds had considered whether the Funds should pursue recourse action against the owner of the *Zeinab*. It was recalled that, emphasising that the IOPC Funds should in principle take recourse action in order to discourage the operation of substandard ships, the governing bodies had decided not to pursue a recourse action against the owner of the *Zeinab* on the sole ground that it would be extremely difficult to pursue such an action for legal and practical reasons (documents 71FUND/AC.13/8, paragraph 3.2.8 and 92FUND/EXC.24/8, paragraph 3.2.8).

16.7 *Alambra*

16.7.1 The Administrative Council took note of the information contained in document 71FUND/AC.15/14/6 concerning the *Alambra* incident, which had occurred in Estonia on 17 September 2000.

Claims for compensation

16.7.2 The Council recalled that the shipowner's insurer had settled claims for clean-up at US$620 000 (£345 000).

16.7.3 It was also recalled that a claim by the Estonian State for EEK 45.1 million (£1.8 million), which had the character of a fine or charge, had been settled by the shipowner's insurer for US$655 000 (£366 000).

16.7.4 The Council also recalled that a claim for US$100 000 (£65 000) was being pursued against the shipowner and his insurer by a charterer of a vessel said to have been delayed whilst clean-up operations were undertaken. It was further recalled that the owner of the berth in the Port of Muuga, at which the *Alambra* had been loading cargo at the time of the incident, and a company contracted by the owner of the berth to carry out oil loading activities, had submitted claims to the shipowner and the insurer for EEK 29.1 million (£1.3 million) and EEK 9.7 million (£430 000) respectively for loss of income due to the unavailability of the berth whilst clean-up operations were undertaken.

Legal actions

16.7.5 The Administrative Council recalled that in November 2000 the owner of the berth in the Port of Muuga and the company it had contracted to carry out oil-loading operations had taken legal action in the first instance court in Tallinn against the shipowner and his insurer and had requested the Court to notify the 1971 Fund of the proceedings in accordance with Article 7.6 of the 1971 Fund Convention. The Council further recalled that having been notified of the actions in February 2002, the 1971 Fund had intervened in the proceedings.

16.7.6 The Council also recalled that in the context of these legal actions, the question had arisen as to whether the 1969 Civil Liability Convention and the 1971 Fund Convention had been correctly implemented into Estonian national law and that the shipowner and the insurer had raised this issue in their pleadings in court, as had the 1971 Fund in its submission to the court in order to protect its position.

16.7.7 It was recalled that the total amount of the claims for compensation filed in court fell well below the limitation amount applicable to the *Alambra* under the 1969 Civil Liability Convention and also below the amount at which the 1971 Fund might be called upon to pay indemnification to the shipowner. It was recalled, however, that the insurer had maintained that the incident had resulted from the shipowner's intentional wrongful act and that the insurer therefore had no liability in this case. It was recalled that, since it was doubtful whether the shipowner would be financially capable of meeting his obligations, the 1971 Fund might be called upon to pay compensation, and that for this reason, the issue of the constitutionality of the 1969 Civil Liability Convention was of importance to the Fund.

16.7.8 The Council recalled that in December 2003 the Court of first instance had rendered its decision on the constitutional issue in relation to the proceedings commenced by the owner of the berth in the Port of Muuga. It was recalled that the Court had held that, since the Government had ratified the 1969 Civil Liability Convention without the prior approval by Parliament, the ratification procedure had been a breach of the Estonian Constitution. It was further recalled that, for that reason, the Court had decided that the Convention could not be applied in the case under consideration and should be declared in conflict with the Constitution. It was also recalled that the Court of first instance had therefore decided that constitutional review proceedings should be initiated before the Supreme Court.

16.7.9 The Council recalled that in April 2004 the Supreme Court had held that it would not carry out the constitutional review requested by the Court of first instance. The Council also recalled that, in view of the decision by the Supreme Court, the Court of first instance would consider the merits of the legal actions.

Other issues raised in the legal proceedings

16.7.10 The Council recalled that in September 2002 the shipowner's insurer had filed pleadings in court in respect of the claims presented by the Port of Muuga and the contractor for the loading operations, maintaining that the shipowner had deliberately failed to make the necessary repairs to the *Alambra* resulting in the ship becoming unseaworthy and that therefore under the insurance contract as well as under the Merchant Shipping Act, the insurer was not liable to pay compensation for the damage resulting from the incident.

16.7.11 The Council recalled that the 1971 Fund had filed pleadings arguing that the Fund had maintained that the evidence presented regarding the condition of the *Alambra* had not established that the shipowner had been guilty of wilful misconduct and that the insurer was therefore not exonerated from its liability for pollution damage.

16.7.12 It was noted that a hearing at the Court of first instance had been set for 19 October 2004.

16.8 *Singapura Timur*

16.8.1 The Administrative Council took note of the information contained in document 71FUND/AC.15/14/7 concerning the *Singapura Timur* incident.

16.8.2 The Council recalled that the *Singapura Timur* had sunk in the Strait of Malacca (Malaysia) in May 2001 after colliding with another tanker, the *Rowan.*

Removal of the remaining bunker fuel from the wreck and study to determine the environmental risk posed by the bitumen cargo

16.8.3 The Council recalled that in view of the temporary nature of the measures that had been undertaken to prevent the escape of bunker fuel from the *Singapura Timur*, the Malaysian Department of Environment (DOE) had considered that the remaining bunkers posed a threat to nearby coastal resources and had therefore decided to engage a contractor to remove the bunker fuel oil. It was also recalled that the DOE had decided to conduct a study to ascertain whether the bitumen cargo remaining onboard the wreck posed a threat to these resources.

16.8.4 The Council recalled that the operations to remove the bunker fuel, inspect the condition of the wreck and collect samples of water, sediment and bitumen had been carried out in 2002. The Council also recalled that some five tonnes of heavy fuel oil had been pumped from the No.1 port and starboard fuel tanks together with a quantity of oily water from the engine room.

16.8.5 The Council noted that based on the findings of the study, the 1971 Fund and the DOE had concluded that the bitumen did not pose a threat to marine and coastal resources and that for these reasons the Fund was of the view that the cargo of bitumen remaining in the wreck did not pose an environmental risk.

16.8.6 The Council noted that in July 2004, the DOE had informed the Director that it had decided not to remove the cargo of bitumen remaining in the wreck.

Claims for compensation

16.8.7 The Council recalled that the insurer of the *Singapura Timur*'s owner, the Japan Ship Owner's Mutual Protection and Indemnity Association (Japan P&I Club), had paid claims totalling US$150 000 (£94 000) in respect of clean-up and preventive measures.

16.8.8 The Council also recalled that it had been agreed between the 1971 Fund and the Japan P&I Club that the limitation amount applicable to the *Singapura Timur* under the 1969 Civil Liability Convention was 82 327 SDR which, on the basis of the exchange rate between SDR and the US dollar on the date of the incident (28 May 2001), was US$103 378 (£65 000). The Council further recalled that on the basis of this amount, the Fund had paid the Japan P&I Club a total of US$47 000 being the amount the Club had paid in compensation above the limitation amount applicable to the ship.

16.8.9 The Council recalled that the Fund had also paid indemnification of US$25 000 (£16 000) to the Japan P&I Club in accordance with Article 5.1 of the 1971 Fund Convention.

16.8.10 The Council noted that there were no outstanding claims for compensation arising from this incident.

The 1971 Fund's insurance policy

16.8.11 The Council recalled that the 1971 Fund's liabilities for incidents occurring between 25 October 2000 and 24 May 2002, the date when the 1971 Fund Convention ceased to be in force, was covered by insurance and that the insurance policy covered the 1971 Fund's liabilities up to 60 million SDR (£51 million) per incident minus the amount actually paid by the

shipowner or his insurer under the 1969 Civil Liability Convention as well as all fees and costs including costs associated with recovery, subject to a deductible of 250 000 SDR for each incident. The Council noted that, under the policy, the insurer should pay on behalf of the insured (the 1971 Fund) all compensation payments which the Fund determined were payable in respect of incidents covered by the insurance. The Council noted that the policy also stipulated that the Fund had the discretion to pay small claims and to seek indemnity in respect of such claims when the aggregate of such claims exceeded £100 000. It was further noted that the policy also provided that the insurer waived rights of subrogation unless the Fund decided to pursue recovery.

16.8.12 The Administrative Council recalled that it had decided at its October 2002 session that the relevant date for the conversion of this amount into Pounds sterling should be the date of the incident (28 May 2001), giving a deductible of £221 283 (document 71FUND/AC.9/20 paragraph 15.14.4).

16.8.13 The Council noted that the total amount paid by the Fund in compensation and indemnification was US$846 500 (£538 600). The Council also noted that the Fund had incurred costs totalling £147 775. It was further noted that the Fund's total payment arising from this incident including costs exceeded its deductible of £221 283 by some £465 000 and that the insurer had reimbursed the Fund for this excess amount.

16.8.14 The Council noted that the Fund would have to pay some additional minor legal fees which would be reimbursed by the insurer.

Recourse action

16.8.15 The Administrative Council recalled that any action by the 1971 Fund against the colliding vessel's (the *Rowan*) interests to recover compensation amounts paid by the Fund would, as regards the right of limitation, be governed by the conventions dealing with this matter in general, namely the 1957 Convention relating to the Limitation of the Liability of Owners of Sea-going Ships or the 1976 Convention on Limitation of Liability for Maritime Claims. The Council also recalled that the limitation amount applicable to the *Rowan* under the 1976 Convention was estimated at £3.7 million whereas the limit under the 1957 Convention was estimated at £768 000 and that the test for breaking the shipowner's right to limitation was much stricter in the 1976 Convention than in the 1957 Convention.

16.8.16 The Council recalled that the total costs incurred by the *Singapura Timur*'s interests (Japan P&I Club and the hull insurers) were in the region of US$4.8 million (£3 million), which was less than the limitation amount applicable to the *Rowan* under the 1976 Convention. The Council noted that, in November 2003 the Japan P&I Club had informed the Director that the *Singapura Timur* interests had reached an out-of-court settlement with the *Rowan* interests and that the Fund had not been informed of the settlement amount.

16.8.17 The Council recalled that information available on the cause of the incident, ie the collision, gave no indication of facts which would make it possible to deprive the owner of the *Rowan* his right to limitation, neither under the 1957 Convention nor under the 1976 Convention.

16.8.18 The Council recalled that documentary evidence had suggested that the owner of the *Rowan* had resided in Belgium at the time of the incident and that whilst Malaysia was a party to the 1957 Convention, Japan and Belgium were parties to the 1976 Convention. The Council also recalled that in order to prevent the 1971 Fund's claim against the *Rowan*'s interests from becoming time-barred, the 1971 Fund had taken legal action against the shipowner in Malaysia and Belgium. The Council further recalled that all costs incurred in relation to recourse actions were payable by the Fund's insurer under the insurance policy and that if a recourse action had been pursued, it would have been an action on behalf of the 1971 Fund only as regards the deductible and on behalf of the insurer as regards the more substantial excess amount.

16.8.19 The Council noted that in order to avoid a protracted litigation and in the absence of realistic prospects to breach the right of limitation of the owner of the *Rowan* and in the interests of making progress towards the winding up of the 1971 Fund, the Fund, in co-operation with its insurer, had held discussions with the *Rowan* interests for the purpose of settling the issue of recovery out-of-court, and that in July 2004 an out-of-court settlement was reached. The Council also noted that under the settlement agreement, the *Rowan* interests had paid US$340 000 (£185 000) in settlement of the recovery claim and that under the insurance policy, the insurer had acquired by subrogation the rights against the *Rowan* interests. The Council also noted that the insurer was therefore entitled to any amount recovered up to the total amount of his payments (£465 000), and that the 1971 Fund would only be entitled to retain a recovery in excess of that amount, if any. The Council further noted that since there was no such excess, the recovered amount had been transferred to the insurer.

16.8.20 The Council noted that as a result of the out-of-court settlement, all legal actions that had commenced by the 1971 Fund against the *Rowan* interests in Malaysia and Belgium had been terminated in August 2004.

17 Winding up of the 1971 Fund

17.1 The Administrative Council took note of the information in documents 71FUND/AC.15/15 and 71FUND/AC.15/15/Add.1 regarding the winding up of the 1971 Fund.

Pending incidents

17.2 The Council noted that the Director anticipated that by the end of 2005 there would only be outstanding compensation and indemnification claims in respect of the *Nissos Amorgos* incident and, possibly, in respect of the *Iliad, Pontoon 300* and *Alambra* incidents. It was noted that it was possible, however, that the 1971 Fund would still be involved in recourse proceedings in respect of the *Vistabella, Pontoon 300, Al Jaziah 1* and *Nissos Amorgos* incidents.

17.3 It was noted that any further costs arising with regard to the *Aegean Sea*, *Braer*, *Yeo Myung and Katja* incidents would be paid from the General Fund and that payments in respect of the *Iliad*, *Kriti Sea* and *Al Jaziah 1* incidents (estimated not to exceed £735 000, £15 000 and £30 000 respectively) would also be made from the General Fund.

17.4 With respect to the *Alambra* incident, the Council noted that payments would be made from the General Fund for a total of £917 680 and any payments in excess of that amount from a Major Claims Fund to be established for that incident. It was noted that this incident had occurred after the denunciation of the 1971 Fund Convention by a large number of States and that for this reason there were only relatively few contributors against whom contributions could be levied to a Major Claims Fund in respect of this incident.

17.5 It was noted that further payments relating to the *Nissos Amorgos* and *Pontoon 300* would be made from the respective Major Claims Funds as would the payment of costs in respect of the *Vistabella* incident.

Distribution of the 1971 Fund's remaining assets

17.6 It was recalled that at the October 2003 session, the Administrative Council had decided to reimburse the surpluses on six Major Claims Funds provided, however, that reimbursements to contributors in those States that had any oil reports outstanding should be postponed until all such reports had been submitted. It was noted that the reimbursements had been made in March 2004 except in respect of States having outstanding oil reports.

17.7 It was noted that there was a surplus on the *Keumdong Nº5* Major Claims Fund and that the Director had made a proposal to the Administrative Council on the distribution of this surplus in document 71FUND/AC.15/19.

17.8 It was further noted that there remained only two other Major Claims Funds, namely those established for the *Nissos Amorgos* and *Pontoon 300* incidents, but that it was not possible to predict whether more contributions would have to be levied to these Major Claims Funds.

17.9 The Administrative Council recalled that there were no provisions in the Financial Regulations on the distribution of the surplus on the General Fund, if any. The Council also recalled that the Director had carried out a study of the different options for distributing the surplus on the General Fund and the ramifications for contributors. It was further recalled that at its October 2003 session the Council had decided to consider the issue at a future session.

17.10 The Council noted that the Director had taken the view that the most equitable and practicable solution would be first to distribute any surplus on the General Fund between the States on the basis of the percentage of the total contributions made to the General Fund by contributors in the respective State and that the amount allocated to a given State should then be distributed between the contributors in that State on the basis of the quantities of contributing oil reported as having been received during 1997 by each contributor in that State, ie the last full year before the end of the transitional period (15 May 1998).

17.11 The 1971 Fund Administrative Council approved the Director's proposal for the distribution of any surplus on the General Fund.

Non-submission of oil reports

17.12 The Council noted that in the document dealing with the assessment of contributions to certain Major Claims Funds the Director had invited the Administrative Council to confirm that the decision to postpone the reimbursements referred to in paragraph 17.6 above should apply also to any reimbursements which the Council might decide at its 15th session (document 71FUND/AC.15/19, paragraph 9.6).

Contributors in arrears

17.13 The Council noted that since the October 2003 session the Director had continued his efforts to make those contributors who were in arrears pay the amounts due. It was also noted that the Director had written to the contributors with significant arrears, explaining the legal basis for their obligations to pay and making it clear that unless payment was made by a specified date, the 1971 Fund might take legal action to recover outstanding amounts.

17.14 The Council noted that as at 18 October 2004 there were 17 contributors that were in arrears for the principal total amount of contributions of £384 264. It was noted that this was a considerable improvement on the situation two years ago when there were 27 contributors with such arrears for a total principal amount of contributions of £930 000.

17.15 It was noted that 69% of the amount outstanding were arrears due from contributors in the former Union of Soviet Socialist Republics (USSR) and the former Socialist Federal Republic of Yugoslavia.

17.16 The Council instructed the Director to continue his efforts and consider, on a case by case basis, whether legal action should be taken against a particular contributor and present a report on the developments to the Administrative Council's October 2005 session.

18 Sharing of joint administrative costs between the 1992 Fund and the 1971 Fund

18.1 The Administrative Council approved the Director's proposal that the 1971 Fund should pay a flat management fee of £325 000 to the 1992 Fund for the costs of running the joint Secretariat for the financial year 2005 (document 71FUND/AC.15/16).

18.2 It was noted that the 1992 Fund Assembly had agreed at its 9th session to the distribution proposed by the Director.

18.3 It was decided that the management fee payable by the 1971 Fund should be reviewed annually, in view of changes in the total figure of the costs of running the joint Secretariat and the amount of work required by the Secretariat in the operation of the 1971 Fund.

19 Working Capital

The Administrative Council noted that the balance on the General Fund had fallen below £5 million during 2003 and would fall considerably below that amount during 2004 and 2005 (cf document 71FUND/AC.15/18 - Budget for 2005). It was recalled that since the 1971 Fund Convention had ceased to be in force it was no longer possible to levy further contributions to the General Fund.

20 Budget for 2005

20.1 The Administrative Council considered the draft 2005 Budget for the administrative expenses of the 1971 Fund and 1992 Fund.

20.2 The Administrative Council adopted the budget for 2005 for the administrative expenses for the joint Secretariat with a total of £3 372 600, as reproduced in the Annex to this document.

20.3 It was noted that the 1992 Fund Assembly had at its 9th session adopted the same budget appropriations for the administrative expenses for the joint Secretariat.

20.4 The Administrative Council renewed its authorisation to the Director to create positions in the General Service category as required provided that the resulting cost would not exceed 10% of the figure for salaries in the budget.

20.5 The Administrative Council took note of the Director's belief that the surplus on the General Fund as at 31 December 2005 should be sufficient to cover any payments of compensation, indemnification or other incident related expenses to be made after 31 December 2005 as well as the 1971 Fund's share of the administrative expenditure of the joint Secretariat and the costs of the winding up of the 1971 Fund.

21 Assessment of contributions to Major Claims Funds

21.1 The Director introduced document 71FUND/AC.15/21 which dealt with the levy of 2004 contributions to Major Claims Funds and reimbursements to contributors of Major Claims Funds.

21.2 It was decided that there should be no levy of 2004 contributions in respect of the *Vistabella*, *Nissos Amorgos* and *Pontoon 300* Major Claims Funds.

21.3 It was also decided that the *Braer* Major Claims Fund should be closed in 2004.

21.4 It was further decided that due to the significant surplus on the *Keumdong N°5* Major Claims Fund an amount of £8.1 million should be reimbursed to contributors to that Major Claims Fund and that the remaining balance should be transferred to the General Fund.

21.5 The Council noted the Director's proposal for reimbursements of the surpluses on certain Major Claims Funds and decided to reimburse the following amounts to contributors to the Major Claims Funds mentioned below:

Aegean Sea Major Claims Fund	£800 000
Sea Empress Major Claims Fund	£350 000
Nakhodka Major Claims Fund	£400 000
Total	**£1 550 000**

21.6 The Administrative Council decided that reimbursement from surpluses on the Major Claims Funds referred to in paragraph 21.5 (after offset had been made against any arrears) to contributors in those States which had any oil reports outstanding should be postponed until all such reports had been submitted.

21.7 It was decided that the reimbursements referred to in paragraph 21.5 should be made on 1 March 2005.

21.8 It was further decided that any outstanding contributions received after 1 March 2005 in respect of the Major Claims Funds referred to in paragraph 21.5 should be transferred to the General Fund.

21.9 The Council noted that, following a payment made in February 2004 to the shipowner's insurer in respect of the *Yuil N°1* incident, the balance on the *Yuil N°1* Major Claims Fund was lower than previously estimated. It was also noted that a further payment of £50 000 to the insurer might be necessary in respect of costs relating to the incident. In the light of this additional expenditure, the Council approved the Director's proposal that the reimbursement of £19.0 million made on the 1 March 2004 from the three Major Claims Funds referred to below be redistributed as follows:

Sea Prince Major Claims Fund -	£11.2 million
Yeo Myung Major Claims Fund -	£3.7 million
Yuil N°1 Major Claims Fund -	£4.1 million
Total	£19.0 million

21.10 The Council decided that any outstanding contribution received after 1 March 2005 in respect of the Major Claims Funds closed at that date should be transferred to the General Fund.

21.11 The Council noted that its decision in respect of reimbursements to contributors could be summarised as follows:

Fund	Oil year	Estimated total oil receipts	Repayment by 1 March 2005	
			Amount £	Estimated repayment per tonne £
Aegean Sea	1991	963 262 971	(800 000)	-0.0008305
Keumdong N°5	1992	1 073 597 115	(8 100 000)	-0.0075447
Sea Empress	1995	1 181 121 314	(350 000)	-0.0002963
Nakhodka	1996	1 221 810 897	(400 000)	-0.0003274
Total			**(9 650 000)**	

22 Future sessions

22.1 The Administrative Council decided to hold its next autumn session during the week of 17 - 21 October 2005.

22.2 It was noted that the weeks of 28 February and 31 May 2005 were available for IOPC Fund meetings and that at its 14th session held in May 2004 the Administrative Council had agreed to hold an additional session at the same time as the first session of the Supplementary Fund Assembly.

23 Any other business

Transfer within the 2004 Budget

23.1 The Administrative Council approved the Director's proposal that the he be authorised to make the necessary transfer to Chapter IV (Travel), within the 2004 budget, from Chapter 1(Personnel) to cover the costs of travel for 2004 (document 71FUND/AC.15/20).

23.2 It was noted that the 1992 Fund Assembly had agreed at its 9th session to the transfer proposed by the Director.

24 Adoption of the Record of Decisions

The draft Record of Decisions of the Administrative Council, as contained in documents 71FUND/AC.15/WP.1 and 71FUND/AC.15/WP.1/Add.1 was adopted, subject to certain amendments.

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ANNEX

2005 ADMINISTRATIVE BUDGET FOR 1992 FUND AND 1971 FUND

	STATEMENT OF EXPENDITURE	Actual 2003 expenditure for 1992 and 1971 Funds		2003 budget appropriations for 1992 and 1971 Funds		2004 budget appropriations for 1992 Fund	2004 budget appropriations for 1971 Fund	2005 budget appropriations for 1992 Fund	2005 budget appropriations for 1971 Fund
	SECRETARIAT	£		£		£		£	
I	**Personnel**								
(a)	Salaries	*1 105 414*		*1 275 816*		*1 341 000*		1 306 900	
(b)	Separation and recruitment	*40 623*		*35 000*		*115 000*		105 000	
(c)	Staff benefits, allowances and training	*400 877*		*523 341*		*551 800*		566 000	
	Sub-total		***1 546 914***		***1 834 157***	***2 007 800***		**1 977 900**	
II	**General Services**								
(a)	Rent of office accommodation (including service charges and rates)	*236 049*		*249 700*		*249 700*		259 200	
(b)	Office machines, including maintenance	*46 870*		*71 500*		*90 000*		90 000	
(c)	Furniture and other office equipment	*8 366*		*17 500*		*17 500*		17 500	
(d)	Office stationery and supplies	*16 001*		*20 000*		*20 000*		22 000	
(e)	Communications (courier,telephone, postage, e-mail/internet)	*52 890*		*65 000*		*65 000*		70 000	
(f)	Other supplies and services	*28 565*		*41 000*		*41 000*		51 000	
(g)	Representation (hospitality)	*22 858*		*22 500*		*18 000*		20 000	
(h)	Public Information	*126 354*		*180 000*		*180 000*		180 000	
	Sub-total		***537 953***		***667 200***	***681 200***		**709 700**	
III	**Meetings**								
	Sessions of the 1992 and 1971 Fund Governing Bodies and Intersessional Working Groups		***111 913***		***126 500***	***145 000***		**145 000**	
IV	**Travel**								
	Conferences, seminars and missions		***58 056***		***70 000***	***100 000***		**125 000**	
V	**Miscellaneous expenditure**								
(a)	External audit fees for Financial Statements-1992 and 1971 Funds	*50 000*		*50 000*		*53 250*		55 000	
(b)	Consultants' fees	*118 924*		*125 000*		*125 000*		180 000	
(c)	Audit Body	*72 015*		*50 000*		*90 000*		90 000	
(d)	Investment Advisory Bodies	*30 000*		*30 000*		*30 000*		30 000	
	Sub-total		***270 939***		***255 000***	***298 250***		**355 000**	
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		***18 020***		***60 000***	***60 000***		**60 000**	
Total Expenditure I-VI			***2 543 795***		***3 012 857***	***3 292 250***		**3 372 600**	
VII	**Expenditure relating only to 71Fund**								
(a)	Management fee payable to 1992 Fund (cf documents 92FUND/A.9/22 and 71FUND/AC.15/15)					*- 325 000*	*325 000*	**(325 000)**	**325 000**
(b)	Costs for Winding up of the 1971 Fund		***0***		***250 000***		*250 000*		**250 000**
(c)	External audit fees for Financial Statements-1971 Fund only		***0***		***0***	*- 15 000*	*15 000*	**(12 500)**	**12 500**
	2004 Budget for 1992 Fund and 1971 Funds respectively					*2 952 250*	*590 000*		
	2005 Budget for 1992 Fund and 1971 Funds respectively							**3 035 100**	**587 500**