



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

ADMINISTRATIVE COUNCIL  
17th session  
Agenda item 24

71FUND/AC.17/20  
21 October 2005  
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## RECORD OF DECISIONS OF THE SEVENTEENTH SESSION OF THE ADMINISTRATIVE COUNCIL

(held from 17 to 21 October 2005)

Chairman: Captain R Malik (Malaysia)

### *Opening of the session*

#### **1 Adoption of the Agenda**

The Administrative Council adopted the Agenda as contained in document 71FUND/AC.17/1.

#### **2 Election of the Chairman and Vice-Chairman**

2.1 The Administrative Council elected Captain R Malik (Malaysia) as Chairman.

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

2.3 Captain Malik informed the Administrative Council of his intention to stand down as Chairman at the end of this session.

#### **3 Participation**

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

Algeria	Germany	Nigeria
Antigua and Barbuda	Ghana	Norway
Australia	Greece	Panama
Bahamas	India	Papua New Guinea
Barbados	Ireland	Poland
Belgium	Italy	Portugal
Cameroon	Japan	Qatar
Canada	Kenya	Republic of Korea
China (Hong Kong Special Administrative Region)	Kuwait	Russian Federation
Colombia	Liberia	Spain
Côte d'Ivoire	Malaysia	Sri Lanka
Croatia	Malta	Sweden
Cyprus	Marshall Islands	Syrian Arab Republic
Denmark	Mexico	Tuvalu
Estonia	Monaco	United Arab Emirates
Finland	Morocco	United Kingdom
France	Netherlands	Vanuatu
	New Zealand	Venezuela

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

Angola	Jamaica	Saudi Arabia
Argentina	Latvia	Singapore
Brazil	Lithuania	South Africa
Dominica	Peru	Trinidad and Tobago
Egypt	Philippines	Turkey
Georgia	Saint Lucia	Uruguay
Iran (Islamic Republic of)	Saint Vincent and the Grenadines	
Israel		

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

*Intergovernmental organisations:*

European Commission  
 International Maritime Organization  
 International Oil Pollution Compensation Fund 1992  
 International Oil Pollution Compensation Supplementary Fund 2003

*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)  
 International Union of Maritime Insurance (IUMI)  
 Oil Companies International Marine Forum (OCIMF)

#### **4 Report of the Director**

- 4.1 The Director introduced his report on the activities of the IOPC Funds since the Administrative Council's 15th session in October 2004, contained in document 71FUND/AC.17/2.
- 4.2 In his presentation the Director made reference to the entry into force of the 2003 Protocol to the International Convention on the Establishment of an International Fund for Oil Pollution Damage 1992 (Supplementary Fund Protocol) on 3 March 2005, which brought the total amount available for compensation for each incident for pollution damage in the States which become Members of the Supplementary Fund to 750 million SDR (£600 million), including the amount payable under the 1992 Civil Liability and Fund Conventions, ie 203 million SDR (£162 million). He mentioned that the administrative structures of the Supplementary Fund had been established at sessions of the governing bodies in March 2005 and drew particular attention to the fact that it had been decided that the Supplementary Fund should be administered by the 1992 Fund Secretariat and that the Director of the 1992 and 1971 Funds should also be the Director of the Supplementary Fund.
- 4.3 The Director also made reference to the fact that the last 12 months had seen continued growth in 1992 Fund membership. 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 eight such States would soon do so.
- 4.4 The Director drew attention to the fact that the failure of a number of former 1971 Fund Member States to submit oil reports continued to give rise to serious concern.

- 4.5 The Director thanked the entire staff for their professionalism and loyalty, which had made it possible to operate the IOPC Funds in an efficient manner.
- 4.6 The Administrative 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 other work for the 1971 Fund.
- 4.7 The Administrative Council congratulated the Secretariat on the 1992 and 1971 Funds' joint Annual Report for 2004, which had been published in English, French and Spanish and contained an instructive presentation of the activities of the 1992 Fund and 1971 Fund.
- 4.8 One delegation drew attention to the fact that in his report the Director had not made any mention of technical assistance, for example in the field of measures to prevent pollution incidents, and that there was no appropriation in the budget for such activities. The Director stated that it had been decided in the early days of the 1971 Fund that technical assistance of that type fell outside its remit. He pointed out, however, that the Funds had developed a training package on the handling and assessment of claims and that several workshops on this matter had been held during the past two years.
- 4.9 One delegation stated that its country had benefited from the Fund workshops and had taken the decision to invite professional trainers to attend these workshops to enable them to pass on the information to a wider audience.
- 4.10 Another delegation suggested that the Funds should approach IMO Technical Cooperation Committee with a view to including the Funds' training package in the Integrated Technical Cooperation Programme (ITCP) for the next biennium. The Director pointed out that the Funds were often invited by IMO to participate in its seminars and workshops to describe the compensation regime, which made it possible for the Funds to reach a wider audience.

## **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 2004 to June 2005, contained in document 71FUND/AC.17/3.
- 5.2 The Administrative Council noted the decrease in the 1971 Fund investment portfolio as a result of number incidents being settled and surpluses on Major Claims Funds being reimbursed to contributors to the respective Major Claims Fund.
- 5.3 The Council noted the 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.
- 5.4 The Council stated that it would continue to follow the investment activities closely.

## **6 Report of the joint Investment Advisory Body**

- 6.1 The Administrative Council took note of the report of the joint Investment Advisory Body of the 1992 Fund, the 1971 Fund and the Supplementary Fund contained in the Annex to document 71FUND/AC.17/4. It noted the amended Internal Investment Guidelines relating to Money Market Investments and Foreign Exchange Transactions contained in the Attachment to the report and the Investment Advisory Body's recommendation that, once proper internal controls were in place, the Funds should use Business Internet Banking to carry out foreign exchange transactions.
- 6.2 The Administrative Council expressed its gratitude to the members of the joint Investment Advisory Body for their valuable work.

**7 Financial Statements and Auditor's Report and Opinion**

- 7.1 The Director introduced document 71FUND/AC.17/5 containing the Financial Statements of the 1971 Fund for the financial year 2004 and the External Auditor's Report and Opinion thereon.
- 7.2 A representative of the External Auditor, Mr Martin Sinclair, Assistant Auditor General, 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 internal controls and had found these to be satisfactory in support of the overall audit opinion on the financial statements, particularly in relation to claims payments, contribution income, payroll, administrative expenditure and cash management. He further stated that the Funds had a commendable record in matters of governance, setting a best practice agenda appropriate to the size of the Funds and the Secretariat. He stated that the report focused on the adequacy of key governance arrangements established by the Funds, to ensure that they continued to provide the best level of assurance.
- 7.4 The representative of the External Auditor mentioned that in his Report the External Auditor had reviewed the Funds' existing arrangements to ensure transparency in financial management and had made a number of recommendations, including the establishment of registers of interest and for recording hospitality and gifts, a code of conduct for staff, annual declarations by staff to confirm compliance with the requirements of the Financial Regulations and Administrative Instructions, and the introduction of a whistle-blowing policy to ensure that staff had an appropriate mechanism for reporting misconduct and irregularity. He also mentioned that the External Auditor had recommended that the Secretariat give greater impetus to completing the process of identifying financial risks ensuring that a full and systematic risk management assessment is in place prior to the arrival of the new Director. The representative of the External Auditor welcomed the positive way in which the Secretariat had received the recommendations made in the report and stated that the External Auditor would work with the Secretariat on the implementation of these recommendations.
- 7.5 The Administrative Council noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 71FUND/AC.17/5, and that the External Auditor had provided an unqualified audit opinion on the 2004 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.
- 7.6 The Administrative Council noted the recommendations set out in the External Auditor's Report.
- 7.7 The Director stated that in September 2005 he had informed the External Auditor that he intended to implement as a matter of priority all the recommendations made by the External Auditor.
- 7.8 The representative of the External Auditor stated that the work of the Audit Body represented a significant contribution to the Fund's good governance and management of its operation, and that the External Auditor had recommended therefore that the joint Audit Body should become a permanent part of the Organisations' structure.

**8 Joint Audit Body's Report and approval of Financial Statements**

- 8.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document 71FUND/AC.17/6, containing the joint 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. He referred to the discussions held with the joint Investment Advisory Body. He also referred to other issues which had been covered by the Body, eg the procedures for recruitment of the next Director and risk management where the Audit Body

had noted with satisfaction that considerable work had been carried out on financial risks and that a timetable had been set for addressing other risk areas. He mentioned that the Audit Body was satisfied with the amendments to the Internal and Financial Regulations adopted by the Assembly in March 2005. Mr Coppolani drew the attention of the governing bodies to the importance of Member States fulfilling their obligations to submit oil reports for the proper functioning of the contribution system. He stated that as part of the phased programme of review work agreed upon at the first meeting of the Audit Body in 2002, a review of the efficiency of claims settlement procedures had been carried out and that a report of the review would be considered under Agenda item 9.

- 8.3 Mr Coppolani drew attention to the fact that when the Audit Body had been established in 2002 the governing bodies had decided that the functioning of the Audit Body should be reviewed every three years on the basis of an evaluation report from its Chairman and that such a review should be made at the present session. Mr Coppolani stated that the Audit Body formed part of the governance of the Funds. He reminded the Administrative Council that the External Auditor had emphasised the importance that he attached to the Audit Body and that the Director had stated that he considered that the Audit Body contributed significantly to the effective governance of the IOPC Funds. Mr Coppolani referred to the Audit Body's recommendation that the Body should be instructed to continue its work under such a mandate and with such membership composition as the Administrative Council may decide.
- 8.4 Mr Coppolani stated that the Audit Body, on the assumption that it would be maintained, recommended that the future work programme should include a continuing focus on risk management as well as effective financial control and efficient procedures, monitoring the transition of management control following the new Director taking over responsibility in November 2006, and a continuation of the review of the effectiveness of claims handling procedures.
- 8.5 Many delegations expressed their views on the vital role played by the Audit Body and that the Body's mandate should be reviewed at least once in every three years.
- 8.6 Many delegations supported the view that the Audit Body should be maintained as a permanent structure of the Funds and that it should continue its work not only on the financial aspects of the Funds but also be involved with reviewing operational and management issues.
- 8.7 The Administrative Council decided to maintain the Audit Body as a permanent part of the IOPC Funds' structure. It was also decided that there was no need to amend the Audit Body's mandate at this stage but leave it to the Audit Body to recommend such amendments as it may deem appropriate. It was decided however, that the Council should review the Audit Body's mandate in 2008.
- 8.8 The Administrative Council noted the Audit Body's recommendation that the governing bodies should approve the accounts of the 1971 Fund for the period 1 January – 31 December 2004.
- 8.9 The Administrative Council approved the accounts of the 1971 Fund for the financial period 1 January - 31 December 2004.
- 8.10 The Administrative Council expressed its gratitude for the important work being carried out by the Body.

## **9 Joint Audit Body's review of claims handling**

- 9.1 The joint Audit Body's report of its review of the claims handling efficiency of the Funds (document 71FUND/AC.17/7) was introduced by Mr Nigel MacDonald, the member of the Audit Body who had carried out the review.

- 9.2 In his introduction, Mr MacDonald informed the Council that the Audit Body had confirmed at its December 2004 meeting that a review of claims handling procedures would be carried out in 2005 enabling the Body to form a view about the efficiency of those procedures. He mentioned that the review had been designed, in consultation with the Secretariat, to enable the pattern of claims management to be understood and, in particular, the timeliness and costs of claims assessment, in order to enable the Audit Body to form a view as to the underlying efficiency of the process. Mr MacDonald explained that a significant amount of invaluable preparatory work, extracting from files and existing databases suitable data to assist the analysis and review of claims handling had been carried out by the Secretariat during the first three months of 2005. He expressed his gratitude on behalf of the Audit Body to the Secretariat for providing this assistance.
- 9.3 Mr MacDonald explained that once he had carried out the efficiency review, his report thereon had been considered and endorsed (with minor modifications) by the Audit Body at its June 2005 meeting.
- 9.4 Mr MacDonald emphasised that the efficiency review had not been designed to re-assess individual past claims relating to specific incidents, but had rather sought to identify possible trends and patterns from which lessons for claimants or the Funds might be drawn, looking at a number of different incidents and, where necessary, looking at sample claims within those incidents to understand these matters better. He informed the Council that a selection of categories and specific incidents had been examined during the review, namely 'Major incidents', 'Moderate incidents', 'Non-insured incidents' and 'Incidents in one country'. He explained that the efficiency review had focussed on the costs of claims handling and the speed with which claims were assessed, approved and settled, as well as the way claims were handled and the management information available to the Secretariat to monitor and control this activity.
- 9.5 Mr MacDonald explained that considerable assistance had been provided by the Secretariat, both in preparation for this review of the efficiency of claims handling of the Funds, and whilst it was being carried out. He stated that this was the first review of this type undertaken and that it would not have been possible to carry it out without that assistance and expressed the Audit Body's appreciation for it.
- 9.6 Mr MacDonald informed the Council that, as set out in document 71FUND/AC.17/7, the review had identified numerous factors that could cause delay in claims handling. He explained that many of these factors were matters that fell outside the Funds' ability to resolve. The Council noted that a significant issue for the Funds was the tendency of claimants to make inflated claims and that when this led to questions and further enquiries, the claimants often delayed their responses, sometimes for weeks or months, perhaps because of fears of being accused of fraud if the claim were found to be unjustified.
- 9.7 Mr Macdonald stated that the interplay between government relief activity for people affected by an incident, and the Funds' procedures under the Conventions were also an area of potential complexity, particularly where claimants received hardship relief from their Government without having needed to demonstrate the extent of support for their claim that was required to allow the claim to be assessed and approved by the Funds.
- 9.8 It was noted that with one exception (the *Nakhodka* incident – the reasons for which were discussed further in the report) the time taken to assess claims followed a fairly consistent pattern, and the typical time for the majority of claims to be assessed was within six months of being received, with the bulk of all claims being assessed within 12 months, unless there were legal factors causing further delay.
- 9.9 Mr Macdonald stated that the Funds' costs were higher than the equivalent costs of an insurance company, because, in accordance with the Conventions, the Funds had to ensure that every claimant was treated fairly in accordance with legal principles. Mr Macdonald made the point that the practice of setting up a local claims handling office for the larger incidents made a great

deal of sense and allowed the Funds to collect and manage the data in ways that were of considerable value in helping to identify and resolve delays and allowed effective oversight and control of costs.

- 9.10 Mr Macdonald emphasised that each incident was different, and that the challenge of carrying out a review of this type was to draw the correct generic lessons, whilst recognising that in specific cases the circumstances would differ and that flexibility and initiative were essential for the Funds to remain adaptable to new circumstances and problems, which was why the report contained a good deal of explanatory material and commentary, as well as recommendations.
- 9.11 The Council noted that the recommendations relating to the time taken to handle claims, on the costs of claims, on interim payments and on the management of claims handling. It was noted that the review did not identify any serious past weaknesses or failures by the Funds or the Secretariat and no suggestion whatsoever of any impropriety.
- 9.12 The Council expressed its gratitude to the Audit Body for the interesting and useful report.
- 9.13 One delegation, whilst noting the management benefits of claims database systems asked whether the data was protected and for how long was it retained once all claims arising from an incident had been dealt with. The Deputy Director stated that access to the database was restricted to claims staff in the Secretariat, the staff of claims handling offices and the claims staff of the shipowner's insurer. He further stated that all data relating to claims, whether in hard copy or electronic format, was archived after an incident was closed in case the Secretariat needed to refer to it in future, for example in connection with the efficiency review.
- 9.14 Another delegation asked whether any thought had been given to obtaining the claimants' perceptions of the Funds' claims handling efficiency. In reply Mr Macdonald stated that it might be difficult to obtain an objective view from many claimants.
- 9.15 In response to a question about the Funds' support and training programme the Director made the point that it was difficult to reach out to potential claimants prior to an incident, although the Funds' claims workshops had proved very successful and a number of Member States had invited the Funds to run them. The Director also referred to training workshops run by the Secretariat for its experts to ensure that claims were assessed in a consistent way and that assessment reports followed a similar format. It was noted that following the conclusion of major incidents it was the Funds' practice to hold wash ups with all those involved in claims handling to review the lessons learned for use in future incidents.
- 9.16 The Administrative Council instructed the Director to submit a report to its next autumn session setting out an action plan that the Secretariat had put in place in the light of Mr Macdonald's recommendations.

## **10 Report on contributions**

- 10.1 The Administrative Council took note of the Director's report on contributions contained in document 71FUND/AC.17/8.
- 10.2 The Administrative Council invited former 1971 Fund Member States to assist the Secretariat to ensure that contributors in their States with outstanding contributions fulfilled their obligations.

## **11 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.17/9. It was noted that, since the document had been issued, one further State (Slovenia) had submitted its outstanding oil reports and that therefore a total of 28 States still had outstanding oil reports for the year 2004 and/or previous years: 11 States in respect of the 1971 Fund and 22 States in respect of the 1992 Fund. It was further

noted that a number of States had reports outstanding for several years. It was also noted that two States (Argentina and Georgia) had indicated that the Secretariat would receive their outstanding reports shortly.

- 11.2 The Administrative Council noted with satisfaction that one State, Nigeria, which had had outstanding reports to the 1971 Fund for eight years, had submitted seven of these reports. It was also noted that Bahamas, Benin, Cambodia, Colombia, Congo and Morocco had submitted all their outstanding reports.
- 11.3 The Administrative Council noted that the failure of many former 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. The Administrative Council expressed its very serious concern as regards the number of former Member States which had not fulfilled their obligation to submit oil reports since the submission of these reports was crucial to the functioning of the IOPC Funds.
- 11.4 One delegation stated that it expected other States to follow Nigeria's example and that many States that had participated in the Administrative Council's session should also fulfil their treaty obligations under the 1992 and 1971 Fund Conventions.
- 11.5 The Administrative Council noted the information contained in document 71FUND/AC.17/9/1, which contained recommendations as to further measures that might encourage States to fulfil their obligations to submit oil reports. The present procedures for obtaining the oil reports were noted as well as the consideration by the Audit Body of this issue. It also noted the initiatives that had been taken by the Secretariat and the Director's analysis of the factors contributing to the problem.
- 11.6 The Administrative Council considered the Director's suggestion that any further measures to encourage States to submit oil reports would have to focus on either assisting States to submit reports or 'shaming' them into doing so.
- 11.7 The Administrative Council noted the measures suggested by the Director as regards assisting States to submit oil reports, namely:
  - The Secretariat could liaise much more closely with the Embassy or High Commission of new 1992 Fund Member States in order to try to prevent problems from arising in the first place. This could include inviting the Embassy or High Commission to inform the Secretariat of an individual who was to be responsible for the procedure for submission of the oil reports, either at the Embassy or High Commission or at a relevant Ministry or agency.
  - All States could be invited to give the Secretariat the contact details of the person, section or agency which in the respective State was responsible for the submission of reports so as to enable the Secretariat to make direct contacts when problems arose.
  - The Secretariat was considering establishing an electronic reporting system for the submission of reports on contributing oil, similar to that which has been developed in the context of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention). It was conceivable that the reduced administrative work involved in using such a system compared to the present system might assist those States with relatively small administrations in the submission of reports.
  - The Administrative Council might wish to consider whether when electing Chairman and Vice-Chairmen of various Fund bodies account should be taken of whether the States

whose nationals are considered for election have fulfilled their obligations to submit oil reports.

- The Administrative Council might wish to instruct the Director to invite a few States which have established efficient procedures for compiling the necessary information and submitting the reports to inform the Secretariat of these procedures. The Director could then prepare an information document which could assist other States in setting up such procedures.
- 11.8 As regards 'shaming' States into submitting oil reports, the Administrative Council noted that, in addition to the suggestion that had been made at the 1971 Fund Administrative Council's October 2004 session that States with outstanding reports could be highlighted on the website and in the Annual Report, the Director had suggested that the Assembly or Administrative Council could invite those States with outstanding reports which were represented at the sessions of the governing bodies to report back at the next session with an explanation as to the reasons for that State's failure to submit reports.
- 11.9 Many delegations stated that they supported the proposed measures to encourage States to submit oil reports and several delegations mentioned that they were particularly interested in the development of an electronic reporting system.
- 11.10 As regards the proposed measures intended to 'shame' States into submitting reports, some delegations supported these measures but other delegations expressed their reservations.
- 11.11 During the discussion, it was mentioned that there were a number of reasons for the non-submission of oil reports. Several delegations mentioned that letters often did not reach the appropriate authority. One delegation suggested that the Secretariat could collect information from States on a regular basis as to the contact details of the government authority and the person responsible for the submission of oil reports. Several delegations suggested that the Secretariat should provide States with assistance to submit reports. One delegation considered that the Secretariat should try to engage with States at a high level.
- 11.12 The Administrative Council instructed the Director to proceed with the measures which had been proposed to assist States to submit oil reports listed in paragraph 11.7 but not with those intended to 'shame' States into submitting reports listed in paragraph 11.8.
- 11.13 The Administrative Council also instructed the Director to continue to bring the matter of the submission of oil reports to its attention at each regular session.
- 11.14 The Council further 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.

## **12 Operation of the Secretariat**

- 12.1 The Administrative Council took note of the information contained in document 71FUND/AC.17/10 regarding the operation of the Secretariat.
- 12.2 The Administrative Council noted that a revised version of the 1992 Fund's Claims Manual, which had been approved by the 1992 Fund Assembly at its October 2004 session, had been published in English, French and Spanish in April 2005 and that the revised Manual had been well received.
- 12.3 The Administrative Council noted that the work on strengthening financial control had continued, taking into account recommendations made by the External Auditor and the Audit Body and that

the Investment Advisory Bodies (since March 2005 the joint Investment Advisory Body) had also made valuable proposals in this regard.

- 12.4 The Council further noted that the Funds' risk management programme, including safeguarding the Funds' IT systems services was being pursued, and that in order to ensure business continuity, all electronic communications received in the Funds' office in Portland House were automatically copied to the Funds' offices in the IMO building and that all critical data were also replicated to systems in the Funds' offices in that building, thereby providing back-up in the event of the failure of the systems or services at the Portland House office.
- 12.5 The Administrative Council noted that a new publication in English, French and Spanish of the texts of the 1992 Civil Liability Convention, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol had been issued.
- 12.6 The Director drew attention to recent developments of the IOPC Funds' website, which in May 2004 had become available also in French and Spanish. He mentioned that the website had been further developed by expanding it to provide not only a wider range of information but also to facilitate more user-friendly navigation of the information contained in it. He also mentioned in particular that a section had been added which provided information on the governing bodies, the Secretariat and its staff, the Audit Body and the Investment Advisory Body. He informed the Administrative Council that further expansion of the IOPC Funds' website would take place during 2006 by adding new sections aimed at specific groups of users.
- 12.7 The Director also mentioned that in June 2005 the Secretariat had begun work on the expansion of the Document Server to contain all documents going back to the first session of the 1971 Fund Assembly in November 1978, a period involving more than 4 000 documents. He explained that the first stage of the project, covering some 2 400 meeting documents for the period 1996-2000, was under way, that all documents from the year 2000 had recently been uploaded to the document server and that it was expected that by the end of 2005 all documents for the period 1996-2000 would be available on the Document Server.
- 12.8 The Director informed the Administrative Council that during 2004 and 2005 consideration had been given to the establishment of a database of the decisions taken over the years by the governing bodies. He explained that he had now approved a prototype Records of Decisions Database and that work had commenced on categorising all the decisions and other relevant information, such as court judgements, into an index. He expressed his hope that that phase of the project would be completed by the end of 2005. He explained that the second phase would involve preparing abstracts and incorporating them into the database and that the aim was to complete that phase by October 2006, by which time all the Funds' documents should have been added to the Document Server so that the database could be launched onto the Funds' website. He mentioned that at least initially the database would be set up in the English language only.
- 12.9 The Director mentioned that the Secretariat had set up a dedicated website for the HNS Convention ([www.hnsconvention.org](http://www.hnsconvention.org)), that the website was currently in English only but would be made available in French and Spanish in 2006 and that further development of the HNS website would be considered.
- 12.10 The Director thanked those States who had continually showed interest and support in the ongoing developments of the IOPC Funds' website and document server.
- 12.11 A number of delegations expressed their satisfaction at the ongoing developments in information management. One delegation looked forward to the new booklet containing the texts of the Conventions on the website, especially the Spanish version which was not previously available.
- 12.12 One delegation noted the regrading of seven posts, which represented 25 per cent of the staff, and assumed that these posts had been regraded based on changes in duties and increased

responsibilities. That same delegation further questioned whether it was worthwhile to maintain the posts of French and Spanish translators, which had been vacant since 2003. The Director replied that it was important for the Organisation to build on the staff's competencies and that an external consultant specialised in UN classification of posts had assisted him in determining whether posts should be regraded as a result of new duties and responsibilities. With regard to the two vacant translator posts, the Director stated that no budgetary appropriations had been made for these posts but he considered it appropriate to maintain these established posts to enable the Secretariat to meet increased any significantly increased volume of translations.

### **13 Appointment of Director**

- 13.1 The Administrative Council recalled that as a result of the expiry of the contract of the current Director of the 1992 Fund, the 1971 Fund and the Supplementary Fund, Mr Måns Jacobsson, on 31 December 2006 the post of Director would become vacant. The Administrative Council further recalled that the 1992 Fund Assembly had, at its October 2004 session, decided that it would at its 10th session in October 2005 appoint a new Director who would also, *ex officio*, be Director of the 1971 Fund and the Supplementary Fund. It was recalled that at its 9th extraordinary session, held in March 2005, the 1992 Fund Assembly had decided that in order to ensure a smooth transition from the present Director to his successor, the present Director would retain full responsibility for the Organisations up to 31 October 2006, the newly-elected Director would join the Secretariat on 1 September 2006 and take over responsibility for the Organisations on 1 November 2006 and the present Director would continue to be available up to 31 December 2006 (document 92FUND/A/ES.9/28, paragraph 23.2.28.).
- 13.2 The Administrative Council took note of the information contained in document 71FUND/AC.17/11 regarding the candidates for the next Director of the IOPC Funds.
- 13.3 The Administrative Council noted that the 1992 Fund Assembly had, at its 10th session, elected Mr Willem J G Oosterveen (Netherlands) as the next Director of the 1992 Fund from 1 November 2006 and that he would *ex-officio* be Director of the 1971 Fund and the Supplementary Fund also.
- 13.4 The Administrative Council congratulated the Director Elect, wishing him every success in his future management of the IOPC Funds.

### **14 Incidents involving the 1971 Fund**

#### **14.1 Overview**

The Administrative Council noted the information contained in document 71FUND/AC.17/12, which contained a summary of the situation in respect of all 10 incidents dealt with by the 1971 Fund during the past 12 months.

#### **14.2 Nissos Amorgos**

- 14.2.1 The Administrative Council took note of the information contained in document 71FUND/AC.17/12/1 concerning the *Nissos Amorgos* incident.

##### *Criminal proceedings*

- 14.2.2 The Administrative Council recalled that criminal proceedings had been brought against the master of the *Nissos Amorgos* 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.

- 14.2.3 The Council 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 also recalled that the master had appealed against the judgement before the Criminal Court of Appeal in Maracaibo.
- 14.2.4 The Council 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 due to the fact that the Supreme Court was considering a request for 'avocamiento'<sup><1></sup>. The Council also recalled that the Court of Appeal's decision appeared to imply that the judgement of the first instance Court had become null and void.
- 14.2.5 The Council recalled 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. It was noted that in February 2005 the Criminal Court of Appeal had rendered its judgement and had held that the master had incurred criminal liability due to negligence causing pollution damage to the environment, but that in accordance with Venezuelan procedural law, since more than four and a half years from the date of the criminal act had passed, the criminal action against the master had become time-barred. It was noted that in its judgement the Court had stated that its decision was without prejudice to the civil liabilities which could arise from the criminal act dealt with in the judgement that had been declared time-barred.

*Claims by the Republic of Venezuela*

- 14.2.6 The Council recalled that the Republic of Venezuela had presented a claim for environmental damage for US\$60 250 396 (£33.7 million) against the master, the shipowner and his insurer, Assuranceforeningen Gard (Gard Club), in the Criminal Court in Cabimas. It was also recalled that the 1971 Fund had been notified of the criminal action and had submitted pleadings in the proceedings.
- 14.2.7 The Council further recalled that the Republic of Venezuela had also presented a claim for environmental damage against the shipowner, the master of the *Nissos Amorgos* and the Gard Club before the Civil Court of Caracas for US\$60 250 396 (£33.7 million). It was also recalled that the 1971 Fund had not been notified of the civil action.
- 14.2.8 It was recalled that at its 11th session, held in July 2003, the Administrative Council had reiterated the 1971 Fund's position that the components of the claims by the Republic of Venezuela did not relate to pollution damage falling within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and that these claims should therefore be treated as not admissible (document 71FUND/AC.11/3, paragraph 3.33). It was also recalled that at that session the Administrative Council had noted that the two claims presented by the Republic of Venezuela were duplications, since they were based on the same university report and related to the same items of damage. It was further 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 (document 71FUND/AC.11/3, paragraph 3.5).
- 14.2.9 The Administrative Council noted that Article 6.1 of the 1971 Fund Convention relating to the time bar provisions read as follows:

Rights to compensation under Article 4 or indemnification under Article 5

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<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.

shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.

14.2.10 The Council noted that the legal actions by the Republic of Venezuela in the Civil and Criminal Courts had been brought against the shipowner and the Gard Club, but not against the 1971 Fund. The Council also noted that the Fund was therefore not a defendant in these actions, and that although the Fund had intervened in the proceedings brought before the Criminal Court in Cabimas, the actions could not have resulted in a judgement against the Fund. It was recalled that as set out above, Article 6.1 of the 1971 Fund Convention required that in order to prevent a claim from becoming time-barred in respect of the 1971 Fund a legal action had to be brought against the Fund within six years of the date of an incident. The Council noted that the Republic of Venezuela had not brought legal action against the 1971 Fund within the six-year period, which had expired in February 2003.

14.2.11 The Council endorsed the view of the Director that the claims by the Republic of Venezuela were time-barred vis-à-vis the 1971 Fund.

*Claims by fish processors*

14.2.12 The Administrative Council recalled that three fish processors had presented claims totalling US\$30 million (£16.8 million) in the Supreme Court against the 1971 Fund and the Instituto Nacional de Canalizaciones (INC) and that the Supreme Court would in this case act as court of first and last instance. The Council recalled that at its July 2003 session, it was noted that the claims had not been substantiated by supporting documentation and that they should therefore be treated as not admissible.

14.2.13 The Council recalled that in August 2003 the 1971 Fund had submitted pleadings to the Supreme Court arguing that, as the claimants had submitted and subsequently had renounced claims in the Criminal Court in Cabimas and the Civil Court in Caracas against the master, the shipowner and the Gard Club for the same damage, they had implicitly renounced any claim against the 1971 Fund. It was further recalled that the 1971 Fund had also argued that not only had the claimants failed to demonstrate the extent of their loss but the evidence they had submitted indicated that the cause of any loss was not related to the pollution. The Council noted that there had been no developments in respect of these claims.

*'Avocamiento'*

14.2.14 The Council noted that in a judgement rendered in July 2005, the Supreme Court had decided to accept the withdrawal of claims by a group of eleven fish and shellfish processors and the fishermen's union FETRAPESCA following the settlement reached by the six shrimp processors and the two thousand fishermen with the 1971 Fund in December 2000 (71FUND/A/ES.7/4, paragraph 3.3.1). It was noted that in its judgement, the Supreme Court had also rejected the request for 'avocamiento'. It was further noted that the 1971 Fund's Venezuelan lawyers were examining this decision.

*Possible recourse action against Instituto Nacional de Canalizaciones (INC)*

14.2.15 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 (cf document 71FUND/AC.14/4, paragraph 3.1.93).

14.2.16 The Council noted that a time bar period of 10 years applied to a recourse action by the 1971 Fund against INC and that such an action would therefore become time-barred on 28 February 2007. The Council also noted that for this reason it would have to take a decision no later than during 2006 as to whether such action should be brought.

*Request by the delegation of Venezuela*

14.2.17 The Venezuelan delegation acknowledged that most outstanding claims resulting from the *Nissos Amorgos* incident were time-barred and requested the Administrative Council to authorise the Director to approach the Gard P&I Club and the Attorney General and the Public Prosecutor of the Republic of Venezuela to facilitate the resolution of the outstanding issues arising from this incident. That delegation pointed out that a resolution of the rest of the outstanding issues would contribute to the winding up of the 1971 Fund. The Director indicated his willingness to make the suggested approaches.

14.2.18 The Administrative Council invited the Director to approach the Gard Club and the Attorney General and the Public Prosecutor of the Republic of Venezuela for the purpose of assisting them in resolving the outstanding issues.

14.3 *Pontoon 300*

14.3.1 The Administrative Council took note of the information contained in document 71FUND/AC.17/12/2 in respect of the *Pontoon 300* incident.

*Claims for compensation*

14.3.2 The Council noted that claims in respect of clean-up operations and preventive measures had been settled for a total of Dhs6.3 million (£958 000) and that the 1971 Fund had paid a total of Dhs4.8 million (£817 000), corresponding to 75% of the settlement amounts.

14.3.3 The Council recalled that the Municipality of Umm Al Quwain had presented claims against the 1971 Fund totalling Dhs199 million (£29.5 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*

14.3.4 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 Dhs6.4 million (£901 000). 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.

14.3.5 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.

14.3.6 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 Dhs3.2 million (£477 000). It was 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.

- 14.3.7 It was recalled 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 also recalled 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), which was not time-barred. It was noted that this claim had not been paid pending clarification as to the recipient of the compensation. It was also noted that as regards the claims by the Municipality, no agreement had been reached on the quantum.
- 14.3.8 It was recalled that at a hearing on October 2004 the Umm Al Quwain Court had instructed the court experts to submit their response to the objections raised by the various parties. It was also recalled that at the same hearing the owner of the tug *Falcon I* had applied to the Court to join three additional defendants to the proceedings. It was further recalled that the Municipality's lawyers had 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.
- 14.3.9 It was noted that at a court hearing in December 2004, the owner of the tug *Falcon I* had filed a memorandum seeking an amendment to the court experts' brief and that at subsequent court hearings, the owner of *Falcon I* had applied to the Court to admit new defendants to the proceedings. It was noted that the Fund had submitted pleadings requesting the Court to reject these applications on the grounds that such applications were groundless and that these applications were being made to extend the proceedings unnecessarily. It was also noted that the proceedings had been adjourned pending receipt of the experts' response to the objections raised by the various parties.

#### *Level of payments*

- 14.3.10 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 (£48.3 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).
- 14.3.11 It was recalled that once the claim by the Ministry of Agriculture and Fisheries referred to in paragraph 14.3.7 had been settled, the Fund's total exposure would be Dhs200.3 million (£29.7 million). It was also recalled that although the 1971 Fund had considered the claims by the Umm Al Quwain Municipality, which totalled Dhs192.4 million (£28.5 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.

#### *Criminal proceedings*

- 14.3.12 The Council recalled that in November 1999 a Criminal Court of first instance had found the master of the tug *Falcon I*, 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 I*, the tug owner and his general manager had appealed against the judgement, but the alleged cargo owner and his general manager had not.

14.3.13 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 I*, the alleged cargo owner and his general manager.

14.3.14 It was also recalled that the master of the tug *Falcon I* 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 in March 2005 the Court had rejected the appeal and had sentenced the master to one year's imprisonment.

*Recourse action by the 1971 Fund*

14.3.15 It was recalled that in January 2000, the 1971 Fund had taken legal action against the individual who owned the tug *Falcon I* 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 I* during the towage, the tug owner was liable for the ensuing damage.

14.3.16 The Court 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 I*, but had ordered the owner of the cargo on board the *Pontoon 300* to pay the Fund Dhs4.5 million (£667 000). It was also recalled that the 1971 Fund had appealed and 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 Dhs4.7 million (£696 000).

14.3.17 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.

14.3.18 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.

14.3.19 It was recalled 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 I* were jointly and severally liable to pay the Fund an amount of Dhs3.5 million (£519 000).

14.3.20 It was further recalled 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 I* 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. It was noted that the Court of Cassation had not fixed a date to hear the appeals.

14.4 *Al Jaziah I*

14.4.1 The Administrative Council took note of the information contained in document 71FUND/AC.17/12/3 (cf 92FUND/EXC.30/7) concerning the *Al Jaziah I* incident which had occurred in the United Arab Emirates and which involved both the 1971 and the 1992 Funds.

14.4.2 It was recalled that the *Al Jaziah I* 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 Committee recalled that the Funds would not be required to make any further compensation payments.

- 14.4.3 It was recalled that, at their October 2002 sessions, the governing bodies of the 1971 and 1992 Funds had decided that the Funds should pursue recourse action against the shipowner (documents 71FUND/AC.9/20, paragraph 15.10.9 and 92FUND/EXC.18/14, paragraph 3.5.9).
- 14.4.4 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 Dhs6.4 million (£0.95 million) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.
- 14.4.5 It was recalled 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 Funds. It was also recalled that the Funds and their lawyers had met with the expert on two occasions and had provided supplementary information as requested by the expert.
- 14.4.6 The Council noted that in August 2005, the Funds' lawyers in the UAE had reported that the expert had informed the Court that he could not complete his report due to other commitments. It was also noted that in September 2005 the Court had appointed a new expert and that in early October the Funds and their lawyers had met with him and provided him with all the background material surrounding the incident.

#### 14.5 Other incidents

The Administrative Council took note of the information contained in document 71FUND/AC.17/12/4 in respect of the following incidents: *Vistabella*, *Braer*, *Iliad*, *Kriti Sea*, *Katja*, *Evoikos* and *Alambra*.

### 15 Winding up of the 1971 Fund

- 15.1 The Administrative Council took note of the information in document 71FUND/AC.17/13 regarding the winding up of the 1971 Fund.

#### *Pending incidents*

- 15.2 The Administrative Council noted that it was anticipated that by the end of 2006 there would only be outstanding compensation and/or indemnification claims in respect of the *Nissos Amorgos* incident and, possibly, in respect of the *Iliad*, *Pontoon 300* and *Alambra* incidents. It was also noted that the 1971 Fund might still be involved in recourse proceedings in respect of the *Pontoon 300* and *Al Jaziah 1* incidents and, possibly, the *Nissos Amorgos* incident. It was further noted that the enforcement of the judgement in the 1971 Fund's favour in respect of the *Vistabella* incident should be completed by the end of 2006. It was noted that issues relating to costs might be outstanding in respect of some other incidents.
- 15.3 The Venezuelan delegation drew the Administrative Council's attention to an incident in Maracaibo (Venezuela) in 1997 involving the tanker *Plate Princess*. That delegation stated that although it had been assumed that claims in respect of the incident had become time-barred, its legal advisers were of the opinion that this was not the case by virtue of Article 7.6 of the 1971 Fund Convention. The Venezuelan delegation referred to a recent decision by the Venezuelan Supreme Court in respect of this incident and stated that it wished to include the *Plate Princess* incident on the agenda of the next session of 1971 Fund Administrative Council.
- 15.4 The Director stated that, although he had not seen the decision by the Supreme Court, the 1971 Fund had not been notified in accordance with Article 7.6 of an action against the shipowner and/or the insurer within three years of the date of the damage, nor had a legal action been brought against the 1971 Fund within six years from the date of the incident and that, in his view, claims arising from this incident were therefore time-barred pursuant to Article 6 of the

1971 Fund Convention. The Director mentioned, however, that he intended to examine the situation in respect of the incident and report to the Administrative Council at its next session.

*Financial situation in respect of pending incidents*

- 15.5 The Administrative Council noted that any further costs arising with regard to the *Aegean Sea*, *Braer* and *Katja* incidents would be paid from the General Fund and that payments in respect of the *Iliad*, *Kriti Sea* and *Al Jaziah I* incidents (estimated not to exceed £735 000, £15 000 and £30 000 respectively) would also be made from the General Fund.
- 15.6 It was noted that with respect to the *Alambra* incident, 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 recalled that this incident had occurred after the end of the transitional period when the denunciation of the 1971 Fund Convention by a large number of States had resulted in a major reduction in the contribution base, 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.
- 15.7 It was noted that further payments relating to the *Nissos Amorgos* and *Pontoon 300* incidents would be made from the respective Major Claims Funds as would the payments of costs in respect of the *Vistabella* incident.

*Distribution of the 1971 Fund's remaining assets*

- 15.8 As regards Major Claims Funds, the Administrative Council recalled that at its October 2004 session it had decided to reimburse surpluses on four Major Claims Funds, subject to the proviso that reimbursements to contributors in those States which had any oil reports outstanding should be postponed until all such reports had been submitted (document 71FUND/AC.15/21, paragraphs 21.4 to 21.8).
- 15.9 As regards the distribution of any surpluses on the General Fund, the Council recalled that at its October 2004 session it had decided 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 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) (document 71FUND/AC.15/21, paragraphs 17.10 and 17.11; see also Annex II to document 71FUND/AC.15/15 which provides a summary of the net contributions levied to the General Fund given by means of the percentage of the total paid by contributors in each State).

*Non-submission of oil reports*

- 15.10 It was recalled that apart from postponing the reimbursement of surpluses from Major Claims Funds to contributors in States with outstanding oil reports, the Council had not yet reached any conclusion as to what action should be taken in the event that outstanding reports had not been submitted by the time all pending incidents had been resolved and the 1971 Fund could be wound up.

*Contributors in arrears*

- 15.11 It was noted that at 5 October 2005 there had been 15 contributors in arrears for the principle amount of contributions of £368 768, which represented some 0.096% of the total amount levied by the 1971 Fund.
- 15.12 The Administrative Council recalled that when the issue of contributors in arrears was considered at its October 2004 session the Director was instructed to concentrate his efforts on the remaining

contributors in arrears 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 Council's October 2005 session (document 71FUND/AC.15/21, paragraph 17.16).

- 15.13 It was noted that the Director had continued his efforts to make those contributors who are in arrears pay the amounts due, and that there had been a considerable improvement over the last three years. It was also noted that of the 15 contributors in arrears, five were in the former Union of Soviet Socialist Republics (USSR) to the extent not part of the Russian Federation and three were in the former Socialist Republic of Yugoslavia.
- 15.14 It was also noted that 72% of the amount outstanding were arrears due from contributors in the former USSR and the former Socialist Federal Republic of Yugoslavia.

*Consideration by the Administrative Council*

- 15.15 A number of delegations expressed their concerns regarding the failure of some former 1971 Fund Member States to submit oil reports, and that as the time for winding up the 1971 Fund approached, vigorous action was required to remind those States of their treaty obligations.
- 15.16 The Director stated that failure to submit oil reports was the root of the problem as regards the winding up of the 1971 Fund, and that although contributors in arrears was also a serious issue, the Fund had the possibility to take legal action against defaulting contributors.
- 15.17 The Council endorsed the Director's proposal to continue his efforts and consider, on a case-by-case basis, whether legal action should be taken against a particular contributor or whether other steps would be more efficient and to present a report on developments to the Administrative Council's October 2006 session.
- 15.18 The Administrative Council also decided that the former 1971 Fund Member States with outstanding oil reports should be listed on the IOPC Funds' website.

**16 Election of Members of the joint Audit Body**

- 16.1 The Administrative Council noted that, at its 10th session, the 1992 Fund Assembly had elected the following members of the joint Audit Body nominated by 1992 Fund Member States for a period of three years:

Mr Charles Coppolani (France)  
Mr Maurice Jaques (Canada)  
Mr Mendim Me Nko'o (Cameroon)  
Dr Reinhard Renger (Germany)  
Mr Wayne Stuart (Australia)  
Professor Hisashi Tanikawa (Japan)

- 16.2 The Administrative Council also noted that the 1992 Fund Assembly had elected Mr Charles Coppolani (France) as Chairman of the Audit Body.
- 16.3 The Council further noted that the 1992 Fund Assembly had elected Mr Nigel Macdonald as the member of the Audit Body not related to the Organisations ('outsider') for a final three-year term.

**17 Appointment of members of the joint Investment Advisory Body**

The Administrative Council noted that, at its 10th session, the 1992 Fund Assembly had reappointed Mr David Jude, Mr Brian Turner and Mr Simon Whitney-Long as members of the joint Investment Advisory Body for a term of three years.

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

- 18.1 It was recalled that at their October 2003 sessions, the governing bodies of the 1992 and 1971 Funds had decided that the distribution of the costs of running the joint Secretariat should be made by means of the 1971 Fund paying a flat management fee to the 1992 Fund. It was also recalled that at their March 2005 sessions the governing bodies of the 1992 Fund, the 1971 Fund and the Supplementary Fund had decided that the same approach should be used as regards the Supplementary Fund's contribution to the costs of running the joint Secretariat.
- 18.2 It was recalled that at the Administrative Council's March 2005 session the Director had undertaken to provide more details of expenses that could be attributed specifically to the Supplementary Fund.
- 18.3 The Administrative Council noted the Director's view that it would, with a few exceptions, be very difficult to identify the volume of work of individual staff members which should be attributed specifically to the Supplementary Fund or to the 1971 Fund without requiring all staff to maintain records of time spent on tasks relating to those Funds, which would have given rise to a considerable administrative burden. It was noted that the Director had instead tried to assess how many working days per year the staff as a whole would, during 2006, devote to tasks relating to the 1971 Fund and the Supplementary Fund, that he had arrived at 20 days for the 1971 Fund and five days for the Supplementary Fund and that he had apportioned the costs on the basis of the daily costs of running the joint Secretariat based on the proposed administrative budget for 2006, resulting in a management fee for the 1971 Fund of £275 000 and for the Supplementary Fund of £70 000, payable to the 1992 Fund (document 71FUND/AC.17/9, paragraphs 5 and 6).
- 18.4 The Administrative Council agreed with the approach taken by the Director and approved the Director's proposal that for 2006 the 1971 Fund should pay a flat management fee of £275 000 to the 1992 Fund.
- 18.5 It was decided that the management fee payable by the 1971 Fund should be reviewed annually, in view of changes of the total figure of the costs of running the joint Secretariat and the amount of work required by the Secretariat in the operation of that Fund.
- 18.6 It was noted that the Assembly of the 1992 Fund had agreed, at its 10th session, to the flat management fee of £275 000 payable by the 1971 Fund to the 1992 Fund as set out in paragraph 18.4.

**19 Budget for 2006**

- 19.1 The Administrative Council noted that the draft budget for 2006 for the administrative expenses for the joint Secretariat adopted by the 1992 Fund Assembly totalled £3 601 900.
- 19.2 The Administrative Council adopted the draft 2006 Budget for the administrative expenses of the 1971 Fund with a total of £53 500 (including a management fee of £275 000), as reproduced in the Annex of this document.
- 19.3 The Administrative Council noted the Director's view that the surplus on the General Fund as at 31 December 2006 should be sufficient to cover any payments of compensation, indemnification or other incident related expenses to be made after 31 December 2006 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.

**20 Assessment of contributions to Major Claims Funds**

- 20.1 The Director introduced document 71FUND/AC.17/18 which dealt with the levy of 2005 contributions to the remaining three Major Claims Funds.

- 20.2 It was decided that there should be no levy of 2005 contributions in respect of the *Vistabella*, *Nissos Amorgos* and *Pontoon 300* Major Claims Funds.

**21 Co-operation with P&I Clubs**

- 21.1 The Administrative Council took note of the information contained in document 71FUND/AC.17/19 and in particular the proposed text of a revised Memorandum of Understanding between the 1992 Fund/Supplementary Fund and the International Group of P&I Clubs as contained in Annex II to that document.
- 21.2 In view of the decision by the 1992 Fund Assembly to collaborate with the International Group of P&I Clubs and OCIMF on a revision of the voluntary agreement package this agenda item was not considered (cf document 92FUND/A.10/37, paragraph 8.31).

**22 Future sessions**

- 22.1 The Administrative Council decided to hold its next autumn session during the week of 23 – 27 October 2006, but noted that this session might be held at an alternative venue to the IMO building.
- 22.2 It was noted that the weeks of 27 February and 22 May 2006 were available for IOPC Fund meetings and that such meetings could take place at the IMO building.

**23 Any other business**

- 23.1 The Administrative Council elected Mrs Teresa Martins de Oliveira (Portugal) as its chairman and Mr John Gillies (Australia) as its Vice-Chairman.
- 23.2 The Administrative Council thanked its outgoing Chairman, Captain Raja Malik (Malaysia) for his excellent chairmanship over many years. The Council also thanked Mr John Wren (United Kingdom) who had on a number of occasions taken on the role of acting Chairman.

**24 Adoption of the Record of Decisions**

The draft Record of Decisions of the Administrative Council, as contained in documents 71FUND/AC.17/WP.1 and 71FUND/AC.17/WP.1/Add.1 was adopted, subject to certain amendments.

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**ANNEX**

**2006 ADMINISTRATIVE BUDGET FOR 1971 FUND**

*(Figures in Pounds Sterling)*

<b>STATEMENT OF EXPENDITURE</b>		<b>Actual 2004 Expenditure</b>	<b>2004 budget Appropriations</b>	<b>2005 budget Appropriations</b>	<b>2006 budget Appropriations</b>
(a)	Management fee payable to 1992 Fund by 1971 Fund	325 000	325 000	325,000	275 000
(b)	Costs for Winding up of the 1971 Fund	17 145	250 000	250,000	250 000
(c)	External audit fees for Financial Statements	15 000	15 000	12,500	10 000
	<b>TOTAL for 2004</b>	357 145	590 000		
<b>1971 Fund Budget Appropriation</b>				587 500	535 000