



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

ADMINISTRATIVE COUNCIL  
19th session  
Agenda item 7

71FUND/AC.19/5  
25 May 2006  
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## RECORD OF DECISIONS OF THE NINETEENTH SESSION OF THE ADMINISTRATIVE COUNCIL

(held on 22 May and 25 May 2006)

Chairperson: Mrs Teresa Martins de Oliveira (Portugal)  
Vice-Chairperson: Mr John Gillies (Australia)

### *Opening of the session*

- 0.1 The Administrative Council noted that due to ill health the Director had, for the first time in 21 years, been unable to attend the meeting and that in his absence the Deputy Director had assumed the function of Acting Director.
- 0.2 The Administrative Council sent the Director its very best wishes and expressed the hope that he would make a swift recovery.

### *Procedural matters*

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

The Administrative Council adopted the Agenda as contained in document 71FUND/AC.19/1.

#### **2 Participation**

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

Algeria	Germany	Netherlands
Antigua and Barbuda	Ghana	Nigeria
Australia	Greece	Norway
Bahamas	India	Panama
Belgium	Ireland	Poland
Cameroon	Italy	Portugal
Canada	Japan	Republic of Korea
China (Hong Kong Special Administrative Region)	Liberia	Russian Federation
Colombia	Malaysia	Spain
Denmark	Malta	Sweden
Finland	Marshall Islands	United Kingdom
France	Mexico	Venezuela
Gabon	Monaco	
	Morocco	

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

Argentina	Israel	Singapore
Brazil	Latvia	South Africa
Chile	Peru	Turkey
Dominican Republic	Philippines	Uruguay
Ecuador	Saudi Arabia	

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

*Intergovernmental organisations:*

International Oil Pollution Compensation Fund 1992 (1992 Fund)  
International Oil Pollution Compensation Supplementary Fund (Supplementary Fund)

*International non-governmental organisations:*

International Association of Classification Societies Limited (IACS)  
International Association of Independent Tanker Owners (INTERTANKO)  
International Tanker Owners Pollution Federation Ltd (ITOPF)  
International Union of Marine Insurers (IUMI)  
Oil Companies International Marine Forum (OCIMF)

*Secretariat and Headquarters matters*

**3 Premises for the IOPC Funds' Secretariat**

- 3.1 The Administrative Council took note of the information contained in document 71FUND/AC.19/2 regarding the premises of the IOPC Funds' Secretariat. It was noted in particular that as a consequence of the need to vacate the Funds' current office premises during external refurbishment of the building, the landlords had sought to secure the Funds' agreement to terminate the lease before June 2010 and had offered to cover all costs in relation to finding suitable alternative premises and to pay relocation costs.

*Landlords' offer*

- 3.2 The Administrative Council noted that the IOPC Funds currently enjoyed the benefits of excellent office accommodation. The Council also noted that in the Director's view, the Funds had therefore no reason in principle to terminate the present lease before June 2010. It was noted however that since there were only four years remaining on the lease, the Director was of the view that it would be worth considering accepting the landlords' request if appropriate alternative premises could be obtained covered by a lease of 10 to 15 years and provided that the economic conditions offered by the present landlords were acceptable from the Funds' and the United Kingdom Government's points of view.
- 3.3 The Administrative Council noted that the landlords had offered to cover all costs in relation to finding suitable alternative premises and to pay relocation costs, the amount of which to be agreed with the Director in consultation with the United Kingdom Government.
- 3.4 The Administrative Council also noted that the Director was of the view that the landlords would have to cover all costs incurred by the Funds resulting from the move to new premises, including removal costs, fitting-out and decoration. It was further noted that the present landlords would also need to reach agreement with the Funds in respect of the issue of the rent level for the new premises, wherever located, which was expected to be higher per square foot than the rent payable

for the present premises, even after the anticipated rent increase on the latter in the light of the review currently being undertaken.

- 3.5 The Administrative Council further noted that the United Kingdom Government had been assisting the IOPC Funds in securing alternative office premises and had indicated that it would continue to refund 80% of the rent relating to the offices of the IOPC Funds, as well as continuing to subsidise the rates as was customary for Diplomatic Missions.

*Search for alternative premises*

- 3.6 The Administrative Council noted that the IOPC Funds had engaged consultants to identify suitable premises, including office space available in the new office buildings close to Portland House.

- 3.7 The Administrative Council also noted that that the Director, in consultation with the Director-Elect, had identified the following criteria for the selection of premises:

- the new premises should be located reasonably close to the building of the International Maritime Organization (IMO), so as to enable the IOPC Funds to continue to use the conference facilities of IMO;
- the office space should be sufficient to accommodate the needs of the IOPC Funds for at least the next 10 to 15 years, including accommodation of the HNS Fund, if it were to be decided that the IOPC Funds and the HNS Fund should share a joint Secretariat;
- the premises should provide a good working environment for staff and enable the Secretariat to carry out its work in an efficient manner;
- the location should allow easy access for visitors using public transport;
- the premises should provide an appropriate level of security.

- 3.8 It was further noted that, given the above criteria and subject to the instruction by the 1992 Fund Assembly, the Director intended to concentrate the search for new premises in the Victoria area.

*Contractual arrangements*

- 3.9 The Administrative Council noted that if the IOPC Funds were to move to new premises, some contractual issues would arise.

- 3.10 It was noted that the lease should be entered into on behalf of the 1992 Fund only, since the 1992 Fund Secretariat administered not only the 1992 Fund but also the 1971 Fund and the Supplementary Fund. It was also noted that as was the case in respect of the previous lease, the United Kingdom Government might be requested by the landlords to act as a guarantor for the 1992 Fund.

*Time scale*

- 3.11 The Administrative Council noted that it had become clear that if suitable alternative premises could be found, a decision would have to be taken to enter into a contract in order to secure these premises very rapidly, since there was great demand for office space in a good location in London. The Council also noted that it was likely, therefore, that there would not be time to submit the issue to the 1992 Fund Assembly for a decision.

*Decision by the 1992 Fund Administrative Council*

- 3.12 The 1971 Fund Administrative Council noted that the 1992 Fund Administrative Council, acting on behalf of the 11th extraordinary session of the Assembly, had confirmed the Director's authority to sign on behalf of the 1992 Fund any agreement, lease or any other document relating to the lease of premises outside the present offices of Portland House.
- 3.13 The 1971 Fund Administrative Council also noted that the 1992 Fund Administrative Council had also authorised the Director, in consultation with the Director-Elect and the Chairman of the 1992 Fund Assembly, to take the necessary decisions in respect of relocation of the IOPC Funds' offices from Portland House, provided that the United Kingdom Government agreed in respect of the rent and other financial arrangements and the duration of the lease.

*Compensation matters***4 Incidents involving the 1971 Fund**4.1 *Iliad*

- 4.1.1 The Administrative Council took note of the information contained in document 71FUND/AC.19/3 concerning the *Iliad* incident.
- 4.1.2 The Administrative Council recalled that in March 1994 the shipowner's P&I insurer had established a limitation fund amounting to Drs 1 497 million or €4.4 million (£3 million) with the competent court by the deposit of a bank guarantee and that the Court had decided that claims should be lodged by 20 January 1995. It was recalled that by that date, 527 claims had been presented in the limitation proceedings, totalling €10.3 million (£7.1 million), which included €1.1 million (£760 000) for compensation of 'moral damage'.
- 4.1.3 It was recalled that in March 1994, the Court had appointed a liquidator to examine the claims in the limitation proceedings and that during the Administrative Council's October 2004 session it was reported that the liquidator had submitted his report to the Court but that the report had not been made available to the 1971 Fund (document 71FUND/AC.15/14/1). It was recalled, however, that the Fund's lawyer in Greece had subsequently informed the Director that this report had not been submitted. It was also recalled that the claimants had submitted an official complaint against the liquidator for neglect of duty and that an official inquiry had been launched.
- 4.1.4 The Administrative Council noted that the liquidator had subsequently submitted his report in March 2006. It was noted that he had assessed the claims for a total of €2.13 million (£1.5 million) and had rejected the claims for 'moral damage'. It was noted that as the total assessed amount was below the limitation amount applicable to the *Iliad*, if the Court accepted the assessments, the 1971 Fund would not be called upon to pay compensation or indemnification in respect of this incident. It was also noted that 466 claimants as well as the shipowner and his insurer, had filed objections against the liquidator's assessment. It was noted that the Court would consider the liquidator's report and the objections in due course.
- 4.1.5 It was noted that the shipowner and his insurer had taken legal action against the 1971 Fund in order to prevent their rights to reimbursement from the Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred. It was noted that the owner of a fish farm, whose claim was for €3 million (£2.1 million), also interrupted the time-bar period by taking legal action against the 1971 Fund. It was noted that, whilst in the Director's view all other claims had become time-barred *vis-à-vis* the Fund, there was a possibility that claimants would contest this on the grounds that they had been deprived of the right to file proceedings in order to protect their position due to the liquidator's neglect of duty.

- 4.1.6 The Administrative Council noted that the Director would continue to monitor the case and would intervene, if required, to protect the 1971 Fund's interests.

4.2 Plate Princess

- 4.2.1 The Administrative Council took note of the information contained in document 71FUND/AC.19/3/1 concerning the *Plate Princess* incident.

*The incident*

- 4.2.2 The Administrative Council recalled that on 27 May 1997 the Maltese tanker *Plate Princess* (30 423 GRT) had discharged 3.2 tonnes of oil together with ballast water into Lake Maracaibo (Venezuela) whilst loading a cargo of 44 250 tonnes of Lagotreco crude oil at an oil terminal at Puerto Miranda.

- 4.2.3 It was recalled that the limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention had been estimated at 3.6 million SDR (£3 million) and that the shipowner had provided a bank guarantee from Banco Venezolano de Credito (BVC) in the amount of Bs 2 844 million (£740 000).

*Legal actions*

- 4.2.4 The Administrative Council recalled that in June 1997 a fishermen's trade union (FETRAPESCA) had brought an action against the master and the owner of the *Plate Princess* in the Criminal Court on behalf of 1 692 fishing boat owners, claiming an estimated US\$10 060 per boat (£5 500), ie a total of US\$17 million (£9.2 million) for damage to fishing boats and nets and for loss of earnings. It was also recalled that FETRAPESCA had brought a claim for fishermen's loss of earnings against the shipowner and the master of the *Plate Princess* before the Civil Court of Caracas for an estimated amount of US\$10 million (£5.4 million).

- 4.2.5 It was further recalled that in June 1997 a local fishermen's union, the Sindicato Único de Pescadores de Puerto Miranda, had presented a claim in the Civil Court in Caracas against the shipowner and the master of the *Plate Princess* for an estimated amount of US\$20 million (£10.8 million).

*Time-bar issue*

- 4.2.6 The Administrative Council recalled the provisions of Article 6.1 of the 1971 Fund Convention which stated as follows:

Rights to compensation under Article 4 or indemnification under Article 5 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 that caused the damage.

- 4.2.7 The Administrative Council also recalled the provisions of Article 7.6 of the 1971 Fund Convention which stated as follows:

Without prejudice to the provisions of paragraph 4, where an action under the Liability Convention for compensation for pollution damage has been brought against an owner or his guarantor before a competent court in a Contracting State, each party to the proceedings shall be entitled under the national law of that State to notify the Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement

rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the Fund in the sense that the facts and findings in that judgement may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

- 4.2.8 It was recalled that at the October 2005 session of the Administrative Council, the Venezuelan delegation had stated that, although it had been assumed that claims arising from this 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. It was also recalled that the Venezuelan delegation had referred to a decision by the Venezuelan Supreme Court in respect of this incident and had stated that it had wished to include the *Plate Princess* incident on the agenda of the next session of the 1971 Fund Administrative Council (document 71FUND/AC.17/20, paragraph 15.3).
- 4.2.9 It was also recalled that shortly after the Administrative Council's October 2005 session, the 1971 Fund had learned that both fishermen's unions had in 1997 requested the Court to notify the 1971 Fund of their actions, but that it had only been on 31 October 2005 that the 1971 Fund had formally been notified through diplomatic channels of the actions for compensation brought in the Civil Court in Caracas by FETRAPESCA and the Sindicato Único de Pescadores de Puerto Miranda against the shipowner and the master of the *Plate Princess* in June 1997 (cf. paragraphs 4.2.4 and 4.2.5 above).
- 4.2.10 The Administrative Council recalled that the question of whether or not the above claims were time-barred had been considered by the Council at its February/March 2006 session on the basis of a document submitted by the Director in which he had stated as follows:

Claims for compensation before the Venezuelan Courts were brought against the master and the shipowner in June 1997. The 1971 Fund was not named as a defendant in these actions. The 1971 Fund was not notified of the action against the shipowner until 31 October 2005, ie nearly eight and a half years after the damage occurred. Since the Fund was not notified of the claims against the shipowner within three years from the date when the damage occurred, in the Director's opinion these claims are time-barred under the 1971 Fund Convention pursuant to the first sentence of Article 6.1. They are, in his view, also time-barred under the second sentence of that Article since no action was brought against the Fund within six years from the date of the incident.

The Director has examined the judgement by the Supreme Court referred to by the Venezuelan delegation at the Council's October 2005 session and has noted that it relates to an action by Sindicato Único de Pescadores de Puerto Miranda against BVC, the bank that issued the guarantee provided by the shipowner in connection with the incident. The issue dealt with in the judgement was whether the bank guarantee should be given back to BVC. In the Director's view, the judgement has no bearing on the 1971 Fund, since it relates to an action which is entirely different from those brought by the fishermen's unions against the shipowner.

- 4.2.11 It was recalled that at that session the Venezuelan delegation had stated that it did not share the Director's view that the claim by the fishermen was time-barred, since legal action had been taken against the shipowner within the time set out in Articles 6.1 and 7.6 of the 1971 Fund Convention. It was also recalled that the Venezuelan delegation had stated that Article 6.1 of the 1971 Fund Convention referred directly to Article 7.6 of that Convention which established that there had to be an action for compensation against the shipowner under the 1969 Civil Liability Convention or a notification to the 1971 Fund of such an action and that both conditions did not have to be fulfilled; one of them was sufficient.
- 4.2.12 It was also recalled that the Venezuelan delegation had stated that the legal actions against the shipowner were brought in June 1997, ie within the three-year time limit, and that therefore the

1971 Fund had been aware of these actions from that date. It was also recalled that that delegation further stated that the 1971 Fund had been formally notified of these actions, under Article 7.6 of the 1971 Fund Convention, and that it had had sufficient time to intervene in the proceedings if it had found it appropriate.

- 4.2.13 It was further recalled that the Venezuelan delegation had stated that the time taken to notify the 1971 Fund of the proceedings was irrelevant since the action against the shipowner under the 1969 Civil Liability Convention, as could be seen from a correct interpretation of Articles 6.1 and 7.6 of the 1971 Fund Convention, automatically had informed the 1971 Fund of such action since the 1971 Fund represented the second level of compensation to the victims once the shipowner's limitation amount under the Civil Liability Convention had been exhausted.
- 4.2.14 It was further recalled that the Venezuelan delegation had expressed the view that any decision by the Court had been binding on the 1971 Fund and that the Fund had had sufficient time to present its arguments before the courts since points of defence had not yet been submitted. It was also recalled that the delegation had requested the Administrative Council to instruct the Director to intervene in the proceedings, examine the claims for compensation presented and pay the compensation due to the victims.
- 4.2.15 It was recalled that the Director had stated that while he had recognised that the final decision on whether the claims were time-barred *vis-à-vis* the 1971 Fund had been a matter for the Venezuelan Courts, he disagreed with the analysis by the Venezuelan delegation of the provisions of the 1971 Fund Convention.
- 4.2.16 It was recalled that the Administrative Council had instructed the Director to take the necessary action to defend the 1971 Fund's position on time bar before the Venezuelan Courts (document 71FUND/AC.18/6, paragraph 5.2.21).
- 4.2.17 It was noted that the Director, in his document to the present session had stated that he did not share the Venezuelan delegation's interpretation of Articles 6.1 and 7.6 of the 1971 Fund Convention.
- 4.2.18 The Administrative Council noted the Director's view that in order to fulfill the requirements set out in Article 6.1 of the 1971 Fund Convention to prevent a claim from becoming time-barred the claimant must, within three years of the date of the damage, either take legal action against the 1971 Fund or notify the Fund of an action against the shipowner and/or his insurer in accordance with Article 7.6 of the Convention. It was also his view that, even if the claimant had notified the 1971 Fund of an action against the shipowner and/or his insurer within that period, the claim was time-barred unless the claimant had taken legal action against the 1971 Fund within six years of the date of the incident.
- 4.2.19 The Administrative Council noted that in the Director's view it was clear that the claimants in question had not taken legal action against the 1971 Fund within three years of the date of the damage and that it was also clear that the claimants had not notified the Fund of the action against the shipowner/his insurer within that three-year period pursuant to Article 7.6 in accordance with the formalities required by the law of the court seized, ie Venezuelan law. It was noted that, although the claimants had in 1997 requested the Court to notify the 1971 Fund of their actions, the Fund had only been notified on 31 October 2005. It was noted that under the Convention only a formal notification within the three-year period was sufficient to prevent a claim from becoming time-barred. It was noted that the Director therefore maintained his view that the claims were time-barred under the first sentence of Article 6.1. It was further noted that he also maintained his view that the claims were time-barred under the second sentence of Article 6.1, since no action had been brought against the Fund within six years of the date of the incident.
- 4.2.20 The Venezuelan delegation stated that it maintained their view that the claims had not become time-barred because a legal action had been brought against the shipowner in June 1997 fulfilling

the requirements established by Article 6.1 and Article 7.6 of the 1971 Fund Convention. The delegation made the point that under Article 6.1 of the 1971 Fund Convention it was not necessary to fulfil the two requirements but that it was sufficient to comply with one of them.

- 4.2.21 The Venezuelan delegation also stated that the Director had interpreted the Conventions, which were incorporated into Venezuelan law incorrectly, and that, in explaining why the actions were time-barred, the Director had omitted to mention the fact that the claimants had taken legal action against the shipowner under the terms of the Civil Liability Convention as required by a correct interpretation of Articles 6.1 and 7.6 of the 1971 Fund Convention.
- 4.2.22 The Venezuelan delegation made the point that the 1971 Fund had been aware of the incident, had sent experts to the site of the spill and had referred to the incident in its Annual Reports. The delegation explained that there had been a two-and-a-half year delay in formally notifying the Fund because of a request for 'avocamiento'<sup><1></sup> before the Venezuelan Supreme Court, although in its view, the notification was not an absolute requirement since Article 6.1 of the 1971 Fund Convention had already been complied with. The Venezuelan delegation added that nowhere in the text of the 1971 Fund Convention was it stated that a legal action must be brought against the 1971 Fund to prevent a claim becoming time-barred.
- 4.2.23 The Venezuelan delegation concluded by stating that the objective of the international compensation regime was to pay compensation promptly and not to wait for a claimant to obtain a Court judgement and requested the Administrative Council to instruct the Director to examine the claims submitted as a result of this incident.
- 4.2.24 A number of delegations, whilst expressing sympathy with the victims of the incident and regretting that the time bar provisions had worked to their detriment, stated that it was necessary to adhere to the current text of the Conventions. The point was made that knowledge of an incident by the Fund was not the same as formal notification in accordance with Article 6.1 of the 1971 Fund Convention. Those delegations agreed with the Director's interpretation of Articles 6.1 and 7.6 of the 1971 Fund Convention and expressed the view that the claims arising from the incident were time barred.
- 4.2.25 The Administrative Council decided that the claims referred to in paragraphs 4.2.4 and 4.2.5 were time-barred in respect of the 1971 Fund.
- 4.2.26 The Venezuelan delegation stated that it intended to submit a document on the *Plate Princess* at a future session of the Administrative Council and asked that the incident therefore remained on the Council's agenda.

### 4.3 Pontoon 300

- 4.3.1 The Administrative Council took note of the information contained in document 71FUND/AC.19/3/2 in respect of the *Pontoon 300* incident.

#### *Claims for compensation*

- 4.3.2 The Administrative Council recalled 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.

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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.

- 4.3.3 It was also recalled that the Municipality of Umm Al Quwain had presented claims against the 1971 Fund totalling Dhs199 million (£29.8 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 relating to claims*

- 4.3.4 The Administrative 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.
- 4.3.5 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.
- 4.3.6 The Administrative 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.
- 4.3.7 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 claim by the Municipality, no agreement had been reached on the quantum.

*Level of payments*

- 4.3.8 The Administrative Council recalled that the maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention was 60 million SDR (£48.7 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).
- 4.3.9 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 (£30 million). It was also recalled that although the 1971 Fund had considered the claim by the Umm Al Quwain Municipality, which totalled Dhs192.4 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.

*Criminal proceedings*

- 4.3.10 The Administrative 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.
- 4.3.11 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.
- 4.3.12 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 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*

- 4.3.13 It was recalled that in January 2000 the 1971 Fund had taken legal action against the owner of the tug *Falcon 1* (tug owner) maintaining that, since the sinking of the *Pontoon 300* had occurred due to its unseaworthiness and the negligence of the master and the tug owner during the towage, the tug owner was liable for the ensuing damage. It was recalled that the Fund had claimed Dhs5 950 976 (£890 000).
- 4.3.14 It was recalled that the Fund's action had given rise to protracted litigation in the Dubai Court of first instance and the Court of Appeal and that in this respect reference was made to paragraphs 6.2-6.7 of document 71FUND/AC.17/12/2.
- 4.3.15 It was recalled that in April 2004, the Court of Appeal had issued its judgement in favour of the 1971 Fund holding that the charterer and the tug owner were jointly and severally liable to pay the Fund an amount of Dhs4.7 million (£705 000).
- 4.3.16 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 tug owner 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.
- 4.3.17 It was noted that the Court of Cassation had in its judgment in January 2006 rejected the tug owner's appeal and upheld the Court of Appeal's judgement as regards the liability of the tug owner, ie that the tug owner was liable to pay compensation to the 1971 Fund in the amount of Dhs 4.7 million (£705 000). It was noted that the Court of Cassation had reversed the Court of Appeal's judgment in respect of the charterer, holding him not liable to pay compensation to the Fund.
- 4.3.18 It was noted that the 1971 Fund had initiated execution proceedings against the tug owner in order to recover the amount awarded by the Court of Cassation.

*Meeting with the tug owner*

- 4.3.19 It was noted that in April 2006 the tug owner had contacted the 1971 Fund and requested a meeting with the Director in order to discuss the future conduct of this matter. It was noted that at a meeting in London in April 2006 the tug owner had confirmed that he was in negotiations with the Umm Al Quwain Municipality for the purpose of reaching an out-of-court settlement in

respect of its claim. It was noted that the tug owner had requested that the Fund should postpone any attempts to resolve the Umm Al Quwain Municipality's claim for the time being and to delay the service relating to the execution proceedings in respect of the Dubai Court of Cassation's judgment to give him time to resolve the Municipality's claim and the legal proceedings in the Umm Al Quwain Court.

- 4.3.20 It was noted that the Director had considered that, in view of the uncertainties as to the outcome of the pending litigation concerning the Municipality's claim, which could take many years, it would be in the 1971 Fund's interest to continue the discussion with the tug owner and to allow him further time to try to reach an out-of-court settlement of that claim.
- 4.3.21 The Administrative Council endorsed the Director's proposal that he be allowed to continue the discussions with the tug owner and to allow the tug owner further time to reach an out of court settlement with the Municipality.
- 4.3.22 In response to a query from one delegate on how long the Director intended to allow the tug owner to continue negotiations with the Municipality, the Acting Director stated that the tug owner had recently advised the Fund that negotiations between him and the Municipality had been progressing well. The Acting Director stated that he hoped to be able to report to the October session on the results of the negotiations.

*Other matters*

## **5 Co-operation with P&I Clubs**

The Administrative Council took note of the information contained in documents 71FUND/AC.19/4 and 71FUND/AC.19/4/Add.1 and of the discussions which had taken place at the 2nd session of the 1992 Fund Administrative Council and the 3rd extraordinary session of the Supplementary Fund Assembly.

## **6 Any other business**

### **6.1 Nissos Amorgos**

- 6.1.1 The Venezuelan delegation reminded the Administrative Council that at its October 2005 session it had 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 in relation to the incident. That delegation pointed out that the Director had not acted on this invitation.
- 6.1.2 The Head of the Claims Department responded that there had been preliminary discussions with the Venezuelan delegation and with the Gard Club but that, as a result of ongoing arbitration proceedings between the shipowner and the charterers of the *Nissos Amorgos*, the Gard Club had requested that the discussions with the Venezuelan authorities be postponed until the arbitration award had been published in June 2006. He further explained that, although the arbitration proceedings did not directly concern the 1971 Fund, their outcome could have an impact on the resolution of the outstanding issues since the claims by the Republic of Venezuela were against the master, shipowner and the Gard Club but not against the 1971 Fund. The Head of the Claims Department informed the Administrative Council that the Fund would approach the Gard Club and the Venezuelan authorities as soon as the outcome of the arbitration had been examined. The Council noted that information on further developments would be provided at its October 2006 session.

6.2 Contributions

The Gabon delegation apologised to the governing bodies for its failure to submit oil reports and stated that it was the intention of the Government of Gabon to correct the situation as soon as possible and to play its full part in the activities of the 1971 Fund and the 1992 Fund in the future. That delegation explained that Gabon was an oil exporter and that it was therefore unlikely that there would have been any outstanding contributions to the 1971 Fund or the 1992 Fund.

6.3 Winding up of the 1971 Fund

6.3.1 One delegation proposed that the Director should regularly update the 1971 Fund Administrative Council on the situation regarding outstanding incidents involving the 1971 Fund and progress towards winding up that Fund.

6.3.2 The Acting Director stated that it had been the Director's practice to present such information at the October sessions of the Administrative Council, but that this could be extended to other sessions of the Council in future, subject to there being developments to report.

6.4 Legal Counsel

The Administrative Council noted that the Legal Counsel, Mr Masamichi Hasebe, would leave the IOPC Funds at the end of June after five years with the Funds. The Chairperson, on behalf of herself and the Administrative Council, thanked Mr Hasebe for his contribution to the work of the IOPC Funds and extended her best wishes for the future.

**7 Adoption of the Record of Decisions**

The draft Record of Decisions of the Administrative Council, as contained in documents 71FUND/AC.19/WP.1, was adopted subject to certain amendments.

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