



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS

<b>Agenda item: 8</b>	IOPC/OCT13/8/3	
Original: ENGLISH	20 September 2013	
1992 Fund Assembly	<b>92A18</b>	
1992 Fund Executive Committee	<b>92EC59</b>	
Supplementary Fund Assembly	<b>SA9</b>	
1971 Fund Administrative Council	<b>71AC31</b>	●

## WINDING UP OF THE 1971 FUND

### Note by the Secretariat

**Summary:**

The 1971 Fund Convention ceased to be in force on 24 May 2002. Under Article 44 of the Convention, the 1971 Fund still continues to meet its obligations in respect of the incidents which occurred before the Convention ceased to be in force. The 1971 Fund Administrative Council would be required to take appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among contributors.

At its October 2012 session, the 1971 Fund Administrative Council decided to set up a Consultation Group composed of a small number of delegates from former Member States who could examine the outstanding issues with the Director and make recommendations to facilitate the process of winding up the 1971 Fund to the 1971 Fund Administrative Council at its next session. In accordance with its mandate, the Chairman of the Consultation Group submitted recommendations to the Administrative Council at its April 2013 session.

At its April 2013 session, the Administrative Council instructed the Director to try to resolve as many of the outstanding issues as possible and to put forward proposals for the winding up of the 1971 Fund so that the Administrative Council, at its October 2013 session, could take the decisions required to wind up the 1971 Fund.

This document sets out the developments in respect of the winding up of the 1971 Fund as at 20 September 2013 and the Director makes proposals for consideration by the Administrative Council.

**Action to be taken:**

1971 Fund Administrative Council

- (a) Give the Director such instructions as it deems necessary in respect of paragraphs 12.5, 12.9 and 12.10; and
- (b) Take decisions in respect of the *Nissos Amorgos* and *Plate Princess* incidents as proposed in paragraphs 12.6 and 12.7.

### 1 Introduction

- 1.1 Pursuant to Article 43.1 of the 1971 Fund Convention, as amended by the 2000 Protocol thereto, the 1971 Fund Convention ceased to be in force on 24 May 2002 when the number of States Parties fell below 25. The Convention does not apply to incidents occurring after that date.
- 1.2 The termination of the 1971 Fund Convention did not in itself result in the winding up of the 1971 Fund. Under Article 44 of the Convention, the 1971 Fund continues to meet its obligations in respect of the incidents which occurred before the Convention ceased to be in force. The 1971 Fund

Administrative Council, which was assigned with the function of the 1971 Fund Assembly and its Executive Committee based on Resolutions N°13<sup><1></sup> and N°15<sup><2></sup>, is required to take appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among contributors. The texts of Resolution N°13 (adopted by the 1971 Fund Assembly at its fourth extraordinary session held in May 1998 and amended by the 1971 Fund Administrative Council at its seventh session, acting on behalf of the Assembly's ninth extraordinary session, held in April/May 2002) and of Resolution N°15 are at the Annex.

- 1.3 At each of its regular sessions since 2002, the 1971 Fund Administrative Council has considered issues relating to the winding up of the 1971 Fund on the basis of documents presented by the Secretariat. This document sets out the developments towards the winding up of the 1971 Fund as at 20 September 2013, in particular as regards the outstanding incidents and outstanding oil reports and contributions.

## **2 Consultation Group on the winding up of the 1971 Fund**

- 2.1 At its October 2012 session, the 1971 Fund Administrative Council decided to set up a Consultation Group composed of a small number of delegates from former 1971 Fund Member States who could examine the outstanding issues with the Director and make recommendations to facilitate the process of winding up the 1971 Fund to the Administrative Council at its next session.
- 2.2 The Consultation Group met twice before the April 2013 session of the Administrative Council and, in accordance with its mandate, submitted recommendations to that session as to the steps to be taken to wind up the 1971 Fund. The Administrative Council also approved the amendment of the mandate and composition of the Consultation Group at its April 2013 session so that the Group could continue its work until the October 2013 session of the Administrative Council (see document [IOPC/APR13/8/1](#), paragraphs 4.1.45 and 4.1.46).
- 2.3 The Consultation Group met on two further occasions in April and September 2013 respectively. The Chairman of the Consultation Group has submitted a separate report to the 1971 Fund Administrative Council (document IOPC/OCT13/8/3/1) in which he reports the outcome of the discussions of the Consultation Group and their recommendations on the winding up of the 1971 Fund.

## **3 Decisions taken by the 1971 Fund Administrative Council at its April 2013 session**

- 3.1 The 1971 Fund Administrative Council took the following decisions at its April 2013 session in respect of the winding up of the 1971 Fund:
- (i) With respect to the *Vistabella* incident, to instruct the Director to negotiate through its lawyers a possible settlement with the insurance company and to make a proposal to the Administrative Council at its October 2013 session;
  - (ii) With respect to the *Aegean Sea* incident, to instruct the Director to continue his discussions with the Spanish Government in order to resolve this outstanding claim and to make a proposal to the Administrative Council at its October 2013 session;
  - (iii) With respect to the *Iliad* incident, to instruct the Director to explore a possible settlement with the North of England P&I Club with the assistance of the International Group of P&I Associations, and to make a proposal to the Administrative Council at its October 2013 session;
  - (iv) With respect to the *Nissos Amorgos* incident, to instruct the Director to continue discussions with the Gard P&I Club and to report to the Administrative Council at its October 2013 session;

---

<1> 1971 Fund Resolution N° 13 – Operation of the 1971 Fund from 16 May 1998.

<2> 1971 Fund Resolution N° 15 – Operation of the 1971 Fund after 24 May 2002.

- (v) With respect to the outstanding oil reports from Guyana, to instruct the Director to continue his efforts to obtain the outstanding oil reports;
- (vi) To write off contributions due from contributors in successor states of the former USSR and former Socialist Federal Republic of Yugoslavia;
- (vii) To instruct the Director to raise the matter of outstanding contributions from two contributors in the Russian Federation with the Russian Government, given that the Fund had sent invoices to contributors in accordance with oil reports submitted by the Government, and to report back to the October 2013 session of the Administrative Council;
- (viii) To instruct the Director to try to resolve as many of the outstanding issues as possible so that the Administrative Council, at its October 2013 session, could take the decisions required to wind up the 1971 Fund;
- (ix) To instruct the Director to put forward proposals for the winding up of the 1971 Fund for the consideration of the 1971 Fund Administrative Council at its October 2013 session;
- (x) To instruct the Director to study the legal issues relating to the winding up of the 1971 Fund, in consultation with the Legal Affairs and External Relations Division of IMO; and
- (xi) To amend the mandate of the Consultation Group so that it could continue its work until the October 2013 session of the Administrative Council.

3.2 The 1971 Fund Administrative Council approved the amendment of the mandate and composition of the Consultation Group so that it could continue its work until the October 2013 session of the Administrative Council.

#### **4 Financial situation**

4.1 As at 2 September 2013 the balances available in the 1971 Fund General Fund and the *Nissos Amorgos* and *Vistabella* Major Claims Funds are as follows:

	<b>Balance at 2 September 2013</b>
1971 Fund General Fund	2 867 324
<i>Nissos Amorgos</i> Major Claims Fund	2 183 168
<i>Vistabella</i> Major Claims Fund	(3 873)
<b>Total</b>	<b>5 046 619</b>

4.2 Since Major Claims Funds have been established for the *Nissos Amorgos* and *Vistabella* incidents, payments relating to these two incidents are made from the balance of the respective Major Claims Funds. Any further expenses in relation to the *Vistabella* incident will be a loan from the General Fund (1971 Fund Financial Regulation 7.1(c)(iv)).

4.3 Payments in respect of the other three incidents, namely the *Aegean Sea*, *Iliad* and *Plate Princess*, continue to be made from the General Fund, which has a balance of some £2.86 million. Under Article 12.1(i)(b) of the 1971 Fund Convention, payment from the General Fund for each incident is made up to 1 million SDR (some £1 million). Should any payments be required to be made in excess of this amount, a Major Claims Fund would need to be established for the incident. As for the *Aegean Sea* incident, the Major Claims Fund established for this incident was closed in 2005 and any payments relating to legal proceedings are being made from the General Fund.

## 5 Pending incidents

- 5.1 There are five incidents involving the 1971 Fund for which there are issues to be resolved before the winding up of the 1971 Fund can be completed. These incidents are as follows:

<b>Ship</b>	<b>Place and date of incident</b>	<b>Outstanding issues</b>
<i>Vistabella</i>	France 7 March 1991	Pending legal action to enforce a judgement in favour of the 1971 Fund
<i>Aegean Sea</i>	Spain 3 December 1992	Pending legal action against the 1971 Fund No compensation from the 1971 Fund
<i>Iliad</i>	Greece 9 October 1993	Potential compensation/indemnification
<i>Nissos Amorgos</i>	Venezuela (Bolivarian Republic of) 28 February 1997	Pending legal actions against the 1971 Fund
<i>Plate Princess</i>	Venezuela (Bolivarian Republic of) 27 May 1997	Pending legal actions against the 1971 Fund

### 5.2 Vistabella

- 5.2.1 The 1971 Fund obtained a judgement for €1.3 million plus interest in its favour against the insurer of the ship at the Court of Appeal in Guadeloupe (France) in 2004. The insurer refused, however, to comply with the judgement. The 1971 Fund commenced summary proceedings against the insurer in Trinidad and Tobago, where its headquarters are located, to enforce the judgement. In March 2008, the Court of First Instance delivered a judgement in the 1971 Fund's favour. The insurer appealed to the Court of Appeal, arguing that the enforcement of foreign judgements was contrary to public policy as the application of French law was repugnant to the insurance law of Trinidad and Tobago. In July 2012 the Court of Appeal rendered a judgement refusing the enforcement of the judgement. In October 2012 the 1971 Fund was granted conditional leave to appeal to the Privy Council in the United Kingdom and the formalities required to do so have been fulfilled.
- 5.2.2 The Secretariat also commissioned a report to ascertain the financial standing of the insurer. The report indicated that the insurer is a subsidiary of a larger company incorporated in Trinidad and Tobago and that the insurer remains active in the local insurance market within Trinidad and Tobago. The report provides figures for the 2011 financial year (the latest year for which information is available) from which it appears that the insurer operates a reinsurance program, that the insurer underwrote just over 9% of the total policies in Trinidad and Tobago's insurance market and that the insurer made a profit from its underwriting activities of over US\$4.7 million in 2011.
- 5.2.3 On the basis of the report obtained, the Director has appealed to the Privy Council in the United Kingdom. The Secretariat was informed in May 2013 that a Queen's Counsel had been appointed by the Maritime General Insurance Company and, consequently, the decision was taken that the 1971 Fund should do the same. It is anticipated that the Privy Council will hear the case in June 2014.
- 5.2.4 As stated above, the 1971 Fund Administrative Council in April 2013 instructed the Director to negotiate through its lawyers a possible settlement with the insurance company. This negotiation has unfortunately not been possible, however, it is common for parties who are litigating before a court to explore a possible settlement just before the hearing. Since the hearing before the Privy Council is due in June 2104, it is expected that this opportunity will arise then.

### 5.3 Aegean Sea

- 5.3.1 In October 2002 an agreement was concluded between the Spanish State, the 1971 Fund, the shipowner and the UK Club whereby the total amount due by the owner of the *Aegean Sea*, the UK Club and the 1971 Fund to the victims of the incident as a result of the distribution of liabilities determined by the Court of Appeal in La Coruña amounted to €54 million.

- 5.3.2 As a consequence of the distribution of liabilities determined by the Court of Appeal in La Coruña, the Spanish State undertook to compensate all the victims who might obtain a final judgement by a Spanish court in their favour which condemned the shipowner, the UK Club or the 1971 Fund to pay compensation as a result of the incident. The 1971 Fund, in turn, undertook to notify the Spanish State of any proceedings to which the Spanish State was not a party and not to accept the claims brought in any such proceedings.
- 5.3.3 There is one remaining legal action in court. In July 2012, the Court of First Instance, after reconsideration of a case being returned from the Court of Appeal, delivered a judgement ordering the 1971 Fund to pay €181 873, which was 50% of the amount awarded at the initial judgement in 2005 plus interest. In accordance with the agreement with the Spanish State, the 1971 Fund has notified the Spanish Government of the judgement and has submitted an appeal against it.
- 5.3.4 The 1971 Fund expert and the court-appointed expert have been summoned to appear before the Court of Appeal on 1 October 2013. At this hearing, the Court will decide on the quantum of the compensation to be paid in respect of the one remaining claim.
- 5.3.5 At the April 2013 session of the 1971 Fund Administrative Council, the delegation of Spain confirmed the information provided by the Director in respect of the *Aegean Sea* incident and that the responsible body within the Spanish Finance Ministry had indicated that the Spanish Government would not oppose an out-of-court settlement between the 1971 Fund and the one remaining claimant and would pay the amount of such a settlement. That delegation noted that this decision had been taken in order to facilitate the winding up of the 1971 Fund. That delegation also noted that, unfortunately, negotiations with the claimant had proved unsuccessful so far.
- 5.3.6 As instructed by the 1971 Fund Administrative Council in April 2013, the Director will continue his discussions with the Spanish Government in order to resolve this outstanding claim once the outcome of the hearing on 1 October 2013 before the Court of Appeal is known.
- 5.4 Iliad
- 5.4.1 Claims totalling €11 million were filed in the limitation proceedings in which the shipowner's insurer (North of England P&I Club) established a limitation fund amounting to €4.4 million. Taking into account the total claimed amount approved by the liquidator (€2 125 755) and the applicable interest, it seems unlikely that the final adjudicated amount will exceed the limitation sum of €4.4 million. Moreover, claims representing approximately one third of the liquidator-approved amount may well be found to be time-barred by the Court. However, although based on the above facts the likelihood of the 1971 Fund having to pay compensation appears to be slim, it should be noted that 446 claimants have filed appeals against the liquidator's report. The total claimed amount of €11 million has yet to be assessed by the Court. The 1971 Fund will therefore have to continue monitoring the legal proceedings. It is very likely that the limitation proceedings could last for several more years.
- 5.4.2 It should be noted that if the established losses, as adjudicated by the Greek Courts, were to exceed €4.4 million, the 1971 Fund would also have to pay some €1.1 million to the shipowner as indemnification under Article 5 of the 1971 Fund Convention.
- 5.4.3 The Secretariat has discussed with the 1971 Fund insurance brokers whether the Lloyds insurance market would insure the 1971 Fund's potential liability to pay compensation to victims of this spill if the final adjudicated amount were to exceed €4.4 million. After an initial approach to a number of Lloyd's underwriters, the Secretariat was informed that insurance cover for this risk was unlikely to be available since the event, namely the pollution damage caused by the oil spill, had already occurred.
- 5.4.4 In January 2013 the Secretariat met with the North of England P&I Club to explore a possible solution to this case. One possibility discussed was whether the Club would be prepared to release the 1971 Fund from its potential liability to pay compensation to the victims of this incident in exchange for a premium.

- 5.4.5 As instructed by the 1971 Fund Administrative Council in April 2013, the Director has continued his discussions with the North of England P&I Club, with the assistance of the International Group of P&I Associations. These discussions are on-going.
- 5.5 Nissos Amorgos
- 5.5.1 All established claims, namely all claims admissible under the International Conventions, have been paid in full. Compensation totalling some US\$25 million has been paid by the shipowner's insurer (Gard Club) and the 1971 Fund. Indemnification for some US\$1.8 million has also been paid to the Gard Club.
- 5.5.2 There are three pending claims, two by the Bolivarian Republic of Venezuela for some US\$60 million each with pending criminal proceedings, and civil proceedings and another by three fish processors for some US\$30 million.
- 5.5.3 The two claims by the Bolivarian Republic of Venezuela are against the shipowner and the Gard P&I Club. The 1971 Fund is not a defendant in either of them. In 2003 the 1971 Fund Administrative Council decided that neither claim was admissible under the International Conventions as they were calculated on the basis of theoretical models. In addition, the claims were duplicated and in 2005 the Administrative Council decided that they were time-barred *vis-à-vis* the 1971 Fund.
- 5.5.4 In March 2011 the Criminal Court of Appeal in Maracaibo denied the shipowner's right to limit liability and ordered the master, the shipowner and his insurer to pay to the Venezuelan State some US\$60 million. In the judgement it is stated that it is for the shipowner and his insurer to approach the 1971 Fund to obtain compensation. The master, shipowner and insurer have appealed to the Supreme Court. The 1971 Fund, although not a defendant, has joined in the appeal.
- 5.5.5 A judgement from the Criminal Chamber of the Supreme Court was delivered on 15 May 2013, rejecting the appeal against the decision of the Appeal Court.
- 5.5.6 The claim by the three fish processors is against the 1971 Fund and the Instituto Nacional de Canalizaciones. In 2003 the 1971 Fund Administrative Council noted that the fish processors had not demonstrated any loss. There have been no developments in respect of this claim for a number of years.
- 5.5.7 As instructed by the 1971 Fund Administrative Council in April 2013, the Director has continued his discussions with the Gard Club. The Chairman of the Consultation Group and the Director attended a meeting with representatives of the Gard Club in Norway in June 2013. Mr Gaute Sivertsen of Norway, Chairman of the 1992 Fund Assembly, also attended, purely in his capacity as facilitator of the meeting. Further meetings with the International Group of P&I Associations and the Gard Club have taken place in August and September 2013. Discussions are on-going.
- 5.6 Plate Princess
- 5.6.1 There are two pending claims in this incident, one by the Puerto Miranda Union and the other by FETRAPESCA, both fishermen's unions. The 1971 Fund is not a defendant in either case and was notified of the two claims more than six years after the incident occurred. In 2006 the 1971 Fund Administrative Council decided that both claims were time-barred.

- 5.6.2 With regard to the claim by the Puerto Miranda Union, the Venezuelan Courts have rendered a judgement ordering the 1971 Fund to pay Puerto Miranda Union BsF 400 million (£42 million<sup><3><4></sup>). The legal proceedings in respect of the claim by the Puerto Miranda Union both on liability and quantum of compensation came to an end before the Venezuelan Courts when the Constitutional Section of the Supreme Court rejected the 1971 Fund's appeal on the quantum in August 2012.
- 5.6.3 In December 2012 Banco Venezolano de Credito filed a cheque for BsF 2 844 982.95 (£301 222) at Court, corresponding to the amount of the guarantee issued to cover the limitation fund.
- 5.6.4 Also in December 2012 the Puerto Miranda Union requested the Court to decree an embargo over the assets belonging to the 'Fund' in Venezuela, specifically over the contributions (some £65 000) due to the 1992 Fund from Petróleos de Venezuela SA (PDVSA), Venezuela's State-owned oil company. The 1971 Fund filed pleadings opposing the request but in late January 2013 the Maritime Court of First Instance rejected the 1971 Fund's arguments on the basis that the 1971 Fund should respond in relation to compensation matters and that the 1992 Fund was an interested party in relation to the eventual decision regarding contributions owed by PDVSA.
- 5.6.5 In February 2013 the Maritime Court of First Instance ordered the embargo of contributions owed by PDVSA to the Fund (the Court does not specify which Fund) up to a limit of BsF 412 646 862.50 (£43.3 million), which corresponds to the amount awarded against the 1971 Fund ie BsF 400 628 021.85 plus execution costs. It appears that PDVSA has not yet been notified of this decree.
- 5.6.6 Also in February 2013 the Maritime Court of First Instance issued an order of embargo of any assets the Fund (without specifying which Fund) might have in Venezuela, up to a limit of BsF 921 444 450.20 (£96.6 million), ie double the amount awarded against the 1971 Fund plus 30%. However, the Court states in the order that if the embargo is applied to cash assets, the limit will be BsF 520 816 428.40 (£54.6 million), ie the amount awarded against the 1971 Fund (see above) plus 30%. In this order the Court refers expressly to the ratification by Venezuela not only of the 1971 Fund Convention but also of the 1992 Protocol. The 1971 Fund has appealed against this order. There have been no developments in respect of this appeal.
- 5.6.7 With regard to the claim by FETRAPESCA, in a judgement rendered in 2009 the Court of First Instance ordered the shipowner and the master to pay compensation in an amount to be assessed by court experts. The 1971 Fund was only notified of the judgement in September 2012 at which time the 1971 Fund entered an appeal against the judgement. The litigation is still pending before the Court of First Instance as the Court rejected an application to withdraw the claim submitted by FETRAPESCA.
- 5.6.8 In October 2012 the 1971 Fund Administrative Council decided to maintain its decision taken in March 2011, which had been reconfirmed subsequently in October 2011 and April 2012, to instruct the Director not to make any payments in respect of this incident and to oppose any enforcement of the judgement. The 1971 Fund Administrative Council also instructed the Director to continue to defend the interests of the 1971 Fund in any legal court actions in Venezuela.

## **6 Non-submission of oil reports**

The Director is pleased to report that all former 1971 Fund Member States have now submitted oil reports in fulfilment of their obligations under the 1971 Fund Convention.

<3>

The exchange rate used in this document (as at 1 August 2013) is £1 = BsF 9.5392

<4>

In January 2008 the Bolivar Fuerte (BsF) replaced the Bolivar (Bs) at the rate of 1 BsF = 1000 Bs. Until December 2011 the Bolivarian Republic of Venezuela used the term Bolivar Fuerte (BsF) to distinguish the new currency from the old currency or Bolivar (Bs). However, since the old currency was taken out of circulation in January 2012, the Venezuelan Central Bank decided that the use of the word 'Fuerte' was no longer necessary. Therefore, the name of the actual Venezuelan currency is now Bolivar (Bs). To avoid any confusion, we will continue to use the term Bolivar Fuerte (BsF) to distinguish the actual Venezuelan currency (from 2008) from the previous currency (pre 2008).

## **7 Contributors in arrears**

- 7.1 At its April 2013 session, the Administrative Council followed a recommendation made by the Consultation Group and decided to write off contributions due from contributors in succession states of the former USSR (excluding the Russian Federation) and former Socialist Federal Republic of Yugoslavia. In accordance with this decision, these contributions plus interest on the contributions have been written off.
- 7.2 The only outstanding contributions are in respect of two contributors in the Russian Federation for an amount of approximately £43 000 plus interest. The 1971 Fund took legal actions against the two contributors in arrears in the national courts of the Russian Federation. The Russian Government was a third party in the legal proceedings. In July 2012 the Federal Arbitration Court of the Far Eastern Circuit had rendered judgements on the two cases, both of which denied liability by the contributors by virtue of the time bar applicable under civil law. The 1971 Fund appealed to the Highest Arbitration Court, which is the final Court in the Russian Federation. In both cases the Highest Arbitration Court found in favour of the contributors.
- 7.3 At its April 2013 session, the Director was instructed to raise again the matter of outstanding contributions from the two contributors in the Russian Federation with the Russian Government given that the Fund had sent invoices to contributors in accordance with oil reports submitted by the Government, and to report back to the October 2013 session of the Administrative Council.
- 7.4 To this end, the Director visited the Russian Federation in August 2013 and held a meeting with the Deputy Minister of Transport and the Deputy Director of the Department of State Policy for Maritime and River Transport. He noted their view that the Russian legal system was not based on precedent decisions (unlike the common law legal system) and that they encouraged the 1971 Fund to continue with its legal actions against contributors. He also noted that they agreed that the Ministry of Transport would help the Fund and that a senior civil servant would be visiting the companies concerned in September 2013 and would raise the issue with them.

## **8 Refund of VAT in respect of Italian incidents**

- 8.1 Since 1991, a number of invoices in respect of the *Haven*, *Patmos* and *Agip Abruzzo* incidents received from Italian law firms had been paid inclusive of Italian value added tax (VAT). In 1994 a request was made by the 1971 Fund to the Italian Government for reimbursement for an amount of Lit 882 357 596 (€456 643).
- 8.2 A final judgement was issued by the Supreme Court dated 8 May 2013 and the Court has decided to uphold the appeal filed by the Agenzia delle Entrate. The 1971 Fund has therefore no right to obtain a refund of the VAT. The decision by the Supreme Court was conveyed to the Italian delegation.
- 8.3 Since the refund of the Lit 882 357 596 (€456 643) is not reflected in the 1971 Fund accounts as receivable, the Director considers that no further action is required.

## **9 Contributors with credit balances**

- 9.1 As at 2 September 2013, an amount of £175 255 is due to contributors and is held in the “contributors’ account” for 11 contributors. In accordance with Internal Regulation 3.11, any credit balance on a contributor’s account bears interest. These funds would need to be reimbursed to the respective contributors from the General Fund before any assets are distributed to those who contributed to the 1971 Fund.
- 9.2 The amount due to contributors is shown annually in the 1971 Fund’s Financial Statements.



**10 Concerns expressed by the International Group of P&I Associations at the April 2013 session of the 1971 Fund Administrative Council**

- 10.1 At the April 2013 session of the 1971 Fund Administrative Council, the observer delegation of the International Group made the following statement which has been included in its entirety:

This delegation's paper presents the position of the International Group on the winding up of the 1971 Fund, which is of direct relevance to the International Group given that there remain claims in court against International Group Clubs in three of the outstanding 1971 Fund cases.

As our paper states, the International Group does not agree that a decision should be taken at this stage to wind up the 1971 Fund, partly for this very reason that there remains outstanding claims against International Group Clubs.

In the *Nissos Amorgos* and the *Iliad* incidents the amounts paid by the Clubs exceed their individual retention levels in the International Group pooling system, and any further amounts they may be required to pay will fall on all International Group Clubs. In the other case, the *Plate Princess*, there is a risk of such exposure, which likewise affects all International Group Clubs.

As has been noted, in the *Iliad* case there is potential claim against the 1971 Fund for indemnification. Furthermore any exposure incurred by any of the Clubs in excess of the relevant CLC limit, as a consequence of making interim payments whilst remaining exposed to further claims in court, will create the need for a financial adjustment between the Club and the 1971 Fund to ensure that the overall amount of compensation paid is correctly apportioned. Such an adjustment is based both on subrogation rights and on normal practices followed within the framework of cooperation between the Clubs and the Funds, as mentioned by the Director in his intervention albeit only in relation to joint costs in the *Nissos Amorgos*. The position with regard to the *Nissos Amorgos* incident was described by this delegation at last October's Fund meetings in document [IOPC/OCT12/3/3/1](#). The Clubs have noted the views to the effect that the Fund might not be obliged to make any further payment to the Club in the *Nissos Amorgos* case for compensation paid, but the International Group respectfully does not agree with these views.

Clearly further payment would not be possible if the 1971 Fund is wound up. The Group, and the individual Clubs themselves involved in the outstanding cases, understand the position of the 1971 Fund and the desire to wind up the Fund as soon as possible. The Group and the Clubs concerned are open to discussions as to how this can best be achieved to the satisfaction of all paying parties and would be willing to discuss further with the Fund Secretariat and the Consultation Group depending on the discussions today and the recommendation of the Administrative Council in this regard.

- 10.2 Meetings took place between the Director and the International Group of P&I Associations in August and September 2013. Discussions are on-going.

**11 Legal and procedural issues in respect of the winding up of the 1971 Fund**

- 11.1 At its April 2013 session, the 1971 Fund Administrative Council instructed the Director to study the legal issues relating to the winding up of the 1971 Fund, in consultation with the Legal Affairs and External Relations Division of IMO.
- 11.2 In accordance with this instruction, the Director has held meetings with the Legal Affairs and External Relations Division of IMO on the legal and procedural aspects in respect of the winding up of the 1971 Fund. These issues were also discussed with the Consultation Group at its September 2013 meeting and will be addressed in the document submitted by the Chairman of the Consultation Group.

## 12 Director's considerations

- 12.1 The Director is pleased to note that since the October 2012 and April 2013 sessions of the 1971 Fund Administrative Council several of the issues that were previously outstanding at that time have been resolved: all outstanding oil reports have been received and there are now only two contributors with outstanding contributions.
- 12.2 He is, however, disappointed to note that none of the five outstanding incidents have been resolved although a decision is expected from the Court of Appeal in respect of the *Aegean Sea* incident before the end of 2013. A decision from the Privy Council is also expected in respect of the *Vistabella* incident later in 2014.
- 12.3 The Director has noted that in the report by the Chairman of the Consultation Group on the winding up of the 1971 Fund, the Consultation Group recommends the Administrative Council to decide on an accelerated winding up of the 1971 Fund. The Director agrees with the Consultation Group that as many outstanding issues as possible should be resolved before a decision is made to dissolve the 1971 Fund.
- 12.4 The Director also notes that the 1971 Fund Administrative Council in April 2013 instructed him to put forward proposals for the winding up of the 1971 Fund for consideration by the Council in October 2013.
- 12.5 The Director therefore proposes that, should the 1971 Fund Administrative Council decide to dissolve the 1971 Fund, he should be instructed, in consultation with the Chairman of the Consultation Group:
- (a) With respect to the *Vistabella* incident, to resolve this outstanding case and to report to the Administrative Council at its next session;
  - (b) With respect to the *Aegean Sea* incident, to continue his discussions with the Spanish Government in order to resolve this outstanding case and to report to the Administrative Council at its next session;
  - (c) With respect to the *Iliad* incident, to continue his discussions with the North of England P&I Club, with the assistance of the International Group of P&I Associations, and to resolve this outstanding case and to report to the Administrative Council at its next session; and
  - (d) With respect to the *Nissos Amorgos* incident, to continue his discussions with the Gard Club, with the assistance of the International Group of P&I Associations, and to report to the Administrative Council at its next session.
- 12.6 In addition, in respect of the *Nissos Amorgos* incident the Administrative Council would have to decide :
- that the 1971 Fund has no legal obligation to reimburse the Gard Club any amounts paid as a consequence of the judgement by the Supreme Court of Venezuela;
  - that the claim submitted by the Bolivarian Republic of Venezuela before the Supreme Court (Political Administrative Section) is time barred *vis-à-vis* the 1971 Fund and not admissible for compensation, and to instruct the Director not to pay any compensation or reimbursement in respect of this claim and to discontinue the defence of the 1971 Fund before the courts; and
  - that the claim submitted by three fish processors before the Supreme Court (Political Administrative Section) for loss of income has not been proven, and to instruct the Director not to pay any compensation in respect of this claim and to discontinue the defence of the 1971 Fund before the courts.

- 12.7 In addition, the Administrative Council would have to decide in respect of the *Plate Princess* incident that no loss has been proven with regard to the claim submitted by FETRAPESCA and to instruct the Director to discontinue the defence of the 1971 Fund before the courts.
- 12.8 The Director has already received instructions from the 1971 Fund Administrative Council not to make any payment in respect of the *Plate Princess* incident and to oppose the enforcement of the judgement.
- 12.9 In addition, the Director is of the view that, following the recommendation made by the Consultation Group that the 1971 Fund Administrative Council should decide in October 2014 to dissolve the 1971 Fund (see document IOPC/OCT13/8/3/1), he should be instructed to write off the outstanding contributions due from two contributors in the Russian Federation for an amount of approximately £43 000.
- 12.10 The Director notes that if the 1971 Fund Administrative Council were to instruct him in accordance with his recommendations listed in paragraph 12.5 above, the procedural aspects in relation to the winding up of the 1971 Fund should be included in a 1971 Fund Administrative Council Resolution. With that in view, the Director proposes that he be instructed to study the legal and procedural issues relating to the winding up of the 1971 Fund further.

### **13 Action to be taken**

#### 1971 Fund Administrative Council

The 1971 Fund Administrative Council is invited:

- (a) to take note of the information contained in this document;
- (b) to give the Director such instructions as it deems necessary in respect of paragraphs 12.5, 12.9 and 12.10;
- (c) to take decisions in respect of the *Nissos Amorgos* and *Plate Princess* incidents as proposed in paragraphs 12.6 and 12.7; and
- (d) to give the Director any other instructions it deems necessary.

\* \* \*

## ANNEX

### **1971 Fund Resolution N°13 - Operation of the 1971 Fund from 16 May 1998** (May 1998)

#### **THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 (1971 FUND),**

**NOTING** that there are 76 States Parties to the 1971 Fund Convention;

**AWARE** that 24 of these States will cease to be Members of the 1971 Fund from 16 May 1998 and that a number of other States will in the near future also cease to be Members of the 1971 Fund,

**RECOGNISING** that, as a result of these States leaving the 1971 Fund, it is likely, despite considerable efforts to be made by the Director, that the Assembly of the Organisation will no longer be able to achieve a quorum and that the same may in the near future apply to its Executive Committee,

**ACKNOWLEDGING** that this would result in the 1971 Fund's being unable to operate in a normal way,

**MINDFUL** that the 1971 Fund's objective is to pay compensation to victims of oil pollution damage in Member States,

**RECALLING** that it is the task of the Assembly, under Article 18.14 of the 1971 Fund Convention, to perform such functions as are necessary for the proper operation of the 1971 Fund,

**AWARE** that the Assembly may allocate functions to the Executive Committee in accordance with Article 26.1(c) of the 1971 Fund Convention,

**NOTING** that, under Article 44.2, the Assembly should take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund,

**CONSCIOUS** of the need to establish a structure which will permit the 1971 Fund to operate from 16 May 1998 until such time as it is wound up,

**RECOGNISING** that it is the general responsibility of the Assembly to ensure the proper operation of the 1971 Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,

**CONSIDERING** that it is important to ensure that the interests of States which remain Members of the 1971 Fund are protected,

**RECALLING** Resolution N°11 of the 1971 Fund on co-operation between the 1971 Fund and its former Member States, in which it is recognised that former States Parties which have been affected by incidents covered by the 1971 Fund Convention but in respect of which settlements have not yet been finalised, should be entitled to present their views on pending cases in the competent bodies of the 1971 Fund,

1 **INSTRUCTS** the Director to convene a regular session of the Assembly of the 1971 Fund once every calendar year, and in the invitations to urge States to make every effort to be represented at the meeting, and to draw attention to the consequences of a quorum not being achieved.

2 **RESOLVES** that, in addition to those functions which are allocated to the Executive Committee pursuant to Article 26.1 of the 1971 Fund Convention, the following functions of the Assembly shall be delegated to the Executive Committee with effect from the first session of the Assembly at which the latter is unable to achieve a quorum, on the condition that if the Assembly were to achieve a quorum at a later session or sessions, the Assembly would resume the functions previously allocated to the Committee:

- (a) to adopt the annual budget and fix the annual contributions;
- (b) to appoint auditors and approve the accounts of the 1971 Fund;

- (c) to supervise the proper execution of the 1971 Fund Convention and of its own decisions;
  - (d) to perform such other functions as are otherwise necessary for the proper operation of the 1971 Fund;
  - (e) to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund;
- 3 **RESOLVES ALSO** that, whenever the Executive Committee fails to achieve a quorum, all functions undertaken by the Committee (ie those allocated by the Assembly and those allocated in accordance with the 1971 Fund Convention) shall revert to the Assembly;
- 4 **HEREBY CREATES** a body to be known as the Administrative Council, which shall have the following mandate:
- (a) to perform such functions as are allocated to the Assembly under the 1971 Fund Convention or which are otherwise necessary for the proper operation of the 1971 Fund;
  - (b) to establish a subsidiary body to consider the settlement of claims;
  - (c) to give instructions to the Director concerning the administration of the 1971 Fund;
  - (d) to supervise the proper execution of the Convention and of its own decisions;
  - (e) to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity;
- 5 **FURTHER RESOLVES** that the Administrative Council shall assume its functions whenever the Assembly fails to achieve a quorum after the functions allocated to the Executive Committee in accordance with paragraph 2 have reverted to the Assembly pursuant to paragraph 3, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;
- 6 **DECIDES** that the following States and organisations shall be invited to take part in sessions of the Administrative Council:
- (a) 1971 Fund Member States;
  - (b) former 1971 Fund Member States;
  - (c) other States which would be invited to attend sessions of the 1971 Fund Assembly as observers; and
  - (d) intergovernmental organisations and international non-governmental organisations which have observer status with the 1971 Fund;
- 7 **FURTHER DECIDES:**
- (a) that decisions of the Administrative Council shall be taken by majority vote of all States having at any time been Members of the 1971 Fund present and voting, provided that, in respect of issues relating to incidents, States shall have the right to vote only as regards incidents which occurred while the 1971 Fund Convention was in force for that State;
  - (b) that there shall be no quorum requirement for the Administrative Council;
  - (c) that the Administrative Council shall meet at least once every calendar year at thirty days' notice upon convocation by the Director, either at his own initiative or at the request of its Chairman;
  - (d) that the Rules of Procedure of the Administrative Council shall be those of the Assembly, to the extent applicable;
  - (e) that the States invited to a session of the Administrative Council shall inform the Director of the person or persons who will attend; and

(f) that the sessions of the Administrative Council shall be held in public, unless the Council decides otherwise;

8 **FURTHER RESOLVES** that the Director of the 1971 Fund shall *ex officio* be the person who holds the post of Director of the 1992 Fund, provided that the Assembly of the 1992 Fund agrees thereto and that the Director of the 1992 Fund agrees to carry out the functions of the Director of the 1971 Fund also, or, if these conditions are not met, that the Director shall be appointed by the Executive Committee in accordance with paragraph 2 above, or by the Administrative Council in accordance with paragraph 4 above.

**1971 Fund Resolution N°15 – Operation of the 1971 Fund after 24 May 2002** (May 2002)

**THE ADMINISTRATIVE COUNCIL OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 (1971 FUND) ACTING ON BEHALF OF THE ASSEMBLY,**

**RECALLING** Resolution N°13 of the Assembly of the 1971 Fund creating the Administrative Council,

**NOTING** that paragraph 7(a) of Resolution N°13 provides that “decisions of the Administrative Council shall be taken by the majority vote of those 1971 Fund Member States and former 1971 Fund Member States present and voting, provided that a former 1971 Fund Member State shall have the right to vote only in respect of issues relating to incidents which occurred while the 1971 Fund Convention was in force for that State”,

**AWARE** that on 24 May 2002 the 1971 Fund Convention shall cease to be in effect,

**NOTING ALSO** that, in the circumstances, there will be no States with the right to vote in the Administrative Council on issues relating to the winding up of the 1971 Fund, pursuant to paragraph 7(a) of Resolution N°13,

**ACKNOWLEDGING** that such a situation will make it impossible for the Administrative Council to take decisions relating to such issues,

**RECOGNISING** that the mandate of the Administrative Council is, *inter alia*, “to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity”,

**MINDFUL** of the need to establish an arrangement which will permit the completion of the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund,

**BEARING IN MIND** that it is appropriate for measures to be taken to ensure that the necessary decisions on these matters can be taken in the Administrative Council,

**CONSCIOUS** of the need to ensure that the interests of the persons who have contributed to the 1971 Fund are protected,

**CONSIDERING** that, for these reasons, it is necessary to amend the provisions on voting rights in the Administrative Council, as contained in paragraph 7(a) of Resolution N°13,

**RESOLVES** to amend paragraph 7(a) of Resolution N°13 to read as follows:

“that decisions of the Administrative Council shall be taken by majority vote of all States having at any time been Members of the 1971 Fund present and voting, provided that, in respect of issues relating to incidents, States shall have the right to vote only as regards incidents which occurred when the State in question was a Member of the 1971 Fund;”

**FURTHER RESOLVES** that this amendment shall take effect on 25 May 2002.