



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

Agenda item: 4	IOPC/APR13/4/1/1	
Original: ENGLISH	4 April 2013	
1992 Fund Executive Committee	92EC58	
1971 Fund Administrative Council	71AC30	•
1992 Fund Working Group 6	92WG6/5	
1992 Fund Working Group 7	92WG7/2	

REPORT OF THE CONSULTATION GROUP ON THE WINDING UP OF THE 1971 FUND

Submitted by the Chairman of the Consultation Group

Summary:

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 1971 Fund Administrative Council at its next session.

The Consultation Group has met twice since the October 2012 session of the Administrative Council. In accordance with its mandate, the Administrative Council submits its recommendations as to the steps to be taken to wind up the 1971 Fund.

It should be noted that background information on the issues dealt with by the Consultation Group can be found in the document prepared by the Secretariat on the winding up of the 1971 Fund (document IOPC/APR13/4/1).

Action to be taken: 1971 Fund Administrative Council

- (a) to note the information provided in this document; and
- (b) to give the Consultation Group and the Director such instructions as it may deem appropriate.

1 Introduction

- 1.1 At its October 2012 session, the 1971 Fund Administrative Council noted that, pursuant to Article 43.1 of the 1971 Fund Convention, as amended by the 2000 Protocol thereto, the 1971 Fund Convention had ceased to be in force on 24 May 2002 when the number of States Parties fell below 25.
- 1.2 The Administrative Council also noted that, under Article 44.1 of the 1971 Fund Convention, if the Convention ceases to be in force, the Fund shall nevertheless:
 - (a) meet its obligations in respect of any incident occurring before the Convention ceased to be in force;
 - (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under sub-paragraph (a), including expenses for the administration of the Fund necessary for this purpose.
- 1.3 The Administrative Council further noted that, in accordance with Article 44.2 of the Convention, 'the Assembly shall take all appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund'.

- 1.4 The Administrative Council also noted that the function of the 1971 Fund Assembly had been delegated to the 1971 Fund Administrative Council by virtue of the Resolution N°13 as amended by Resolution N°15.
- 1.5 The Administrative Council noted that the 1971 Fund had made substantial progress in the winding up of the 1971 Fund and that the issues left to resolve were now very few but that some of them might be difficult and might require bold decisions from the 1971 Fund Administrative Council.
- 1.6 The 1971 Fund Administrative Council decided to establish a Consultation Group to work with the Director on the winding up of the 1971 Fund with the mandate and composition which is at the Annex to this document.

2 Meetings of the Consultation Group

2.1 First meeting of the Consultation Group

- 2.1.1 The Consultation Group held its first meeting on 18 October 2012. Mr Alfred Popp (Canada) was elected Chairman with unanimous support from the other members of the Consultation Group.
- 2.1.2 The Chairman recognised that good progress had been made in reducing the number of outstanding 1971 Fund incidents since the 1971 Fund Convention had ceased to be in force on 24 May 2002 and that only five incidents remained to be resolved. He expressed his concern, however, that there was only some £5 million left in the two Major Claims Funds and in the General Fund and that legal fees continued to be incurred. It was his view that the outstanding issues needed to be resolved before the existing funds were exhausted.
- 2.1.3 It was agreed that the Chairman, together with the Director, would draft a document outlining the main issues involved in the winding up of the 1971 Fund and possible options as to how they might be resolved. This document would be circulated for comment to the members of the Consultation Group and would then form the basis for discussion at the second meeting of the Group which would take place in January 2013.
- 2.1.4 The Chairman noted that the Consultation Group would also be consulting the Chairmen of the 1971 Fund Administrative Council and 1992 Fund Assembly and the external expert on the Audit Body as well as involving the International Group of P&I Associations, some of whose member Clubs were involved in four of the remaining incidents.

2.2 Second meeting of the Consultation Group

- 2.2.1 The Consultation Group held its second meeting on 17 January 2013. It considered the paper drafted by the Chairman of the Group which outlined all the issues that needed to be addressed in order to be able to wind up the 1971 Fund, ie the five remaining 1971 Fund incidents, non-submission of oil reports and outstanding contributions. It noted the considerations and options for action to be taken and that only £5 million remained in the 1971 Fund and that some of that amount was already committed.
- 2.2.2 The Consultation Group noted that substantial progress had been made in the winding up of the 1971 Fund since May 2002 but that there remain a number of outstanding items to be resolved.

3 Financial situation of the 1971 Fund

- 3.1 The Consultation Group noted that there was approximately £5.1 million in the 1971 Fund as at 31 December 2012 which was made up as follows:
- General Fund: £2.9 million
 - *Vistabella* Major Claims Fund: -£2 800 (in deficit)
 - *Nissos Amorgos* Major Claims Fund: £2.2 million

- 3.2 Concern was expressed about the difficulties, both legal and practical, that the 1971 Fund would face if it were to levy further contributions. The Group noted that most 1971 Fund former Member States were now Parties to the 1992 Fund Convention and that they would find it very difficult to request its contributors to pay contributions to the 1971 Fund. The Consultation Group therefore considered that it was advisable to accelerate the winding up of the 1971 Fund so that no further levies would be required.
- 3.3 The Consultation Group took the view that the 1971 Fund Administrative Council should instruct the Director to try to resolve as many of the outstanding issues as soon as possible so that the Administrative Council could take the decisions required to wind up the 1971 Fund.

4 Recommendations of the Consultation Group

4.1 Outstanding incidents

Vistabella

- 4.1.1 The Consultation Group noted that leave to appeal to Privy Council in the United Kingdom had been granted and the formalities required to do so had been fulfilled. It noted that, even if the 1971 Fund were successful before the Privy Council (at a possible cost of some £200 000-£250 000) the judgement (for €1.3 million plus interest since 2004) would still have to be enforced in Trinidad and Tobago and that this would take additional time and money.
- 4.1.2 The Group noted that the insurer was a subsidiary of a larger company incorporated in Trinidad and Tobago and that it would appear to have assets to meet the amount awarded to the 1971 Fund.
- 4.1.3 Recommendation: The Consultation Group recommends that the 1971 Fund Administrative Council 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.

Aegean Sea

- 4.1.4 The Consultation Group noted that although there was only one outstanding claim, it might take several more years to resolve. It noted that the obstacle was the requirement in the agreement signed with the Spanish Government in October 2002 that the 1971 Fund could not settle the claims brought until a final judgement was rendered.
- 4.1.5 The Group also noted that in January 2013, at a meeting with the Director, the Spanish Government had agreed that the Government would not object if the 1971 Fund tried to settle the claim with the remaining claimant but that an initial discussion with the claimant had proved unsuccessful.
- 4.1.6 It was further noted that a decision from the Court of Appeal was expected before the summer of 2013.
- 4.1.7 Recommendation: The Consultation Group recommends that the 1971 Fund Administrative Council 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.

Iliad

- 4.1.8 The Consultation Group noted that the risk that the 1971 Fund might be called to pay compensation in respect of this incident is low; however it was very likely that it would take a substantial number of years before the Greek Courts took a decision in this respect.
- 4.1.9 The Consultation Group also noted that the Secretariat had met with the P&I Club concerned to explore a possible solution and that discussions were on-going.

- 4.1.10 Recommendation: The Consultation Group recommends that the 1971 Fund Administrative Council 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.

Nissos Amorgos

- 4.1.11 The Consultation Group noted that some US\$25 million had been paid in compensation but that there were, however, three outstanding claims for compensation. Two claims for environmental damage presented by the Bolivarian Republic of Venezuela against the shipowner and the Gard P&I Club, not against the 1971 Fund, were duplications, were not admissible under the international Conventions and were time-barred.
- 4.1.12 The Consultation Group noted that in one of the claims the Court of Appeal of Maracaibo had denied the shipowner's right to limit its liability and ordered him to pay the full amount of the claim. The Consultation Group was of the view that the 1971 Fund could not pay as the claim was time-barred, the 1971 Fund was not a defendant and, according to the judgement, the shipowner had lost the right to limit its liability. The Group was therefore of the view that it would be up to the Gard P&I Club to decide the course of action to take in respect of this claim.
- 4.1.13 The Consultation Group noted that the third claim was by three fish processors against the 1971 Fund and the Instituto Nacional de Canalizaciones for US\$30 million. It was recalled that the fish processors had not demonstrated any loss. There had been no developments in respect of this claim since August 2003.
- 4.1.14 The Consultation Group also noted that a final reconciliation of joint costs incurred by the Gard P&I Club and the 1971 Fund was still pending and that this was being reviewed by one of the experts engaged by the Club and 1971 Fund.
- 4.1.15 Recommendation: The Consultation Group recommends that the 1971 Fund Administrative Council instruct the Director to conclude the reconciliation of the joint costs and pay to the Gard P&I Club any amount due to it in respect of the joint costs and that he report to the Administrative Council at its October 2013 session.

Plate Princess

- 4.1.16 The Consultation Group noted that the claim by FETRAPESCA had not progressed since October 2012.
- 4.1.17 The Consultation Group also noted that, in respect of the Puerto Miranda Union claim, the bank had filed a cheque for some £300 000 in Court. The issue would then be whether the Court would pay this amount to the Puerto Miranda Union or whether it would await until the FETRAPESCA claim had reached a final Court decision. It was also noted, with concern, the attempts to arrest the contributions due to the 1992 Fund in the Bolivarian Republic of Venezuela.
- 4.1.18 The Group noted that in October 2012 the 1971 Fund Administrative Council had decided to maintain its decision taken in March 2011, and 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.
- 4.1.19 Recommendation: The Consultation Group noted that the decision has already been taken by the 1971 Fund Administrative Council to instruct the Director not to pay any compensation in respect of this incident. The Group therefore considers that no recommendation in respect of this incident is required.

4.2 Outstanding oil reports

Guyana

- 4.2.1 The Consultation Group noted that the Secretariat had continued its efforts to obtain the outstanding oil reports from Guyana for the years 1997-2001 and that, in addition, attempts were being made to arrange a meeting with the High Commission for Guyana in London.
- 4.2.2 Recommendation: The Consultation Group recommends to the 1971 Fund Administrative Council to instruct the Director to continue his efforts to obtain the outstanding oil reports.

Kenya

- 4.2.3 The Consultation Group noted that there had been two issues in respect of Kenya: outstanding oil reports for two contributors and credit balances totalling some £21 000 owed to two contributors in Kenya.
- 4.2.4 The Group noted that one oil report had been received and that the Director was in touch with the Kenyan authorities to obtain the other oil report. The Group also noted the decision taken by the 1971 Fund Administrative Council in 2003 that reimbursement to contributors of any surpluses from any Major Claims Funds should be postponed until all oil reports for that State had been submitted.
- 4.2.5 Recommendation: The Group recommends to the 1971 Fund Administrative Council to instruct the Director to continue his discussions with the Kenyan authorities to obtain the outstanding oil report.

4.3 Contributors in arrears

- 4.3.1 The Consultation Group noted that in respect of the former Union of Soviet Socialist Republics (USSR) and the former Socialist Federal Republic of Yugoslavia it would be very difficult to collect the contributions in arrears from the successor States as they were not Parties to the 1971 Fund Convention.
- 4.3.2 With respect to the two contributors in the Russian Federation, it noted that the 1971 Fund had taken legal action before the Russian Courts but that the Highest Arbitration Court of the Russian Federation had found in favour of the contributors. It also noted that the 1971 Fund had issued invoices in accordance with the information provided in the oil reports submitted by the Russian authorities and that the Russian Government was a third party in the legal proceedings.
- 4.3.3 Recommendations: The Consultation Group recommends that the 1971 Fund Administrative Council decide to write off contributions due from contributors in succession states of the former USSR and former Socialist Federal Republic of Yugoslavia. With regard to the contributors in the Russian Federation, as it was a Party to the 1971 Fund Convention, it is recommended that the 1971 Fund Administrative Council instruct the Director to raise the matter 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.

5 Considerations of the Consultation Group

- 5.1 The Consultation Group believes that if the 1971 Fund had to wait until all incidents and legal proceedings came to an end, it would take a long time before the 1971 Fund could be wound up. Incidents such as the *Vistabella* or the *Iliad* have shown that legal proceedings could still take many years before final decisions are reached. In addition, the cost of legal fees is likely to far exceed the positive benefits.
- 5.2 The Consultation Group is concerned that it will be difficult, both from a legal and from a practical point of view, for the 1971 Fund to levy further contributions. Most former Member States of the

1971 Fund are now Parties to the 1992 Fund Convention and they would find it very difficult to request their contributors to pay contributions to the 1971 Fund.

- 5.3 The Consultation Group is aware that the 1971 Fund has now some £5.1 million available to resolve all the outstanding incidents and there is a risk that the monies available might not be enough unless the 1971 Fund Administrative Council took bold decisions to speed up the winding up of the 1971 Fund.
- 5.4 It is for these reasons that the Consultation Group considers that it would be wise now to accelerate the winding up of the 1971 Fund so that no further levies are required.
- 5.5 The Consultation Group takes the view that the 1971 Fund Administrative Council should 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.
- 5.6 The Consultation Group recommends, therefore, that the Director be instructed to speed up the winding of the 1971 Fund by trying to advance in as many issues as possible as set out in section 4 above.
- 5.7 The Consultation Group also recommends that the Director be instructed 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.
- 5.8 Since the mandate of the Consultation Group expires at the April 2013 session of the 1971 Fund Administrative Council and there are issues which may still require further work by the Group, it recommends that its mandate be amended so that it can continue its work until the October 2013 session of the Administrative Council.
- 5.9 In addition, the Group is of the view that the Administrative Council may wish to decide in October 2013, in light of legal and technical issues which remain to be addressed, whether the Consultation Group should continue its work and, if so, what should be its composition and mandate.

6 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; and
- (b) to give the Consultation Group and the Director such instructions as it may deem appropriate.

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ANNEX

MANDATE AND COMPOSITION OF THE CONSULTATION GROUP ON THE WINDING UP OF THE 1971 FUND

The 1971 Fund Administrative Council, at its October 2012 session, noted that, pursuant to Article 43.1 of the 1971 Fund Convention, as amended by the 2000 Protocol thereto, the 1971 Fund Convention had ceased to be in force on 24 May 2002 when the number of States Parties fell below 25.

The Council also noted that, under Article 44.1 of the 1971 Fund Convention, if the Convention ceases to be in force, the Fund shall nevertheless:

- (a) meet its obligations in respect of any incident occurring before the Convention ceased to be in force;
- (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under sub-paragraph (a), including expenses for the administration of the Fund necessary for this purpose.

The Council further noted that, in accordance with Article 44.2 of the Convention, 'the Assembly shall take all appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund'.

The Council also noted that the function of the 1971 Fund Assembly had been delegated to the 1971 Fund Administrative Council by virtue of the Resolution N°13 as amended by Resolution N°15.

The Council noted that the 1971 Fund had made substantial progress in the winding up of the 1971 Fund and that the issues left to resolve were now very few but that some of them might be difficult and might require bold decisions from the 1971 Fund Administrative Council.

The 1971 Fund Administrative Council decided to establish a Consultation Group to work with the Director on the winding up of the 1971 Fund with the following mandate and composition:

Mandate

1. To examine the outstanding issues which need to be resolved before the 1971 Fund can be wound up, in particular with respect to pending incidents, outstanding oil reports and contributions in arrears, as indicated in document [IOPC/OCT12/8/3](#);
2. To identify the possible steps to be taken by the 1971 Fund Administrative Council to resolve the outstanding issues and facilitate the process of winding up the 1971 Fund; and
3. To make recommendations as to the steps to be taken to wind up the 1971 Fund to the next session of the 1971 Fund Administrative Council.

Composition

1. The Consultation Group shall be composed of :
Rear-Admiral Cristiano Aliperta (Italy)
Ms Susana Garduño-Arana (Mexico)
Colonel Khalil Loudiyi (Morocco)
Mr Alfred Popp (Canada)
Mr Noriyoshi Yamagami (Japan)
 2. The Consultation Group may also wish to consult with the Chairman of the 1971 Fund Administrative Council, the Chairman of the 1992 Fund Assembly, the external expert on the joint Audit Body and any other stakeholders as determined by the Chairman of the Consultation Group.
 3. The Consultation Group will elect its own Chairman.
 4. The Consultation Group will conduct its work in English and no interpretation facilities will be provided.
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