



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS

<b>Agenda item: 7</b>	IOPC/MAY14/7/1	
Original: ENGLISH	22 April 2014	
1992 Fund Assembly	<b>92AES18</b>	
1992 Fund Executive Committee	<b>92EC61</b>	
1971 Fund Administrative Council	<b>71AC32</b>	•
1992 Fund Working Group 7	<b>92WG7/3</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 31st session held in October 2013 the 1971 Fund Administrative Council, with a view to deciding to dissolve the 1971 Fund at its October 2014 session, instructed the Director, in consultation with the Chairman of the 1971 Fund Administrative Council, to resolve as many of the outstanding issues as possible and to study the legal and procedural issues relating to the winding up of the 1971 Fund further in consultation with the Legal Affairs and External Relations Division of the International Maritime Organization (IMO).

This document sets out the developments in respect of the winding up of the 1971 Fund as at 22 April 2014 and the Director submits two draft Resolutions for consideration by the 1971 Fund Administrative Council.

**Action to be taken:**

1971 Fund Administrative Council

- (a) Consider and approve the draft Resolution as proposed in paragraph 2.8.2 (Annex II); and
- (b) Consider and approve the draft Resolution as proposed in paragraph 2.8.2 (Annex III) and decide that it should be submitted for adoption by the 1971 Fund Administrative Council at its October 2014 session.

### **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 However, 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 incidents occurring 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 Annex I.

- 1.3 At its 31st session held in October 2013, the 1971 Fund Administrative Council took the following decisions:
- (a) to instruct the Director, with a view to deciding to dissolve the 1971 Fund at its October 2014 session, in consultation with the Chairman of the 1971 Fund Administrative Council, to resolve as many of the outstanding incidents as follows:
    - (i) with respect to the *Vistabella* incident, to resolve this outstanding case and to report to the Administrative Council at its next session;
    - (ii) 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;
    - (iii) 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
    - (iv) with respect to the *Nissos Amorgos* incident, to continue his discussions with the Gard Club relating to the accounting position in respect of joint costs and to report to the Administrative Council at its next session.
  - (b) that the 1971 Fund had no legal obligation to reimburse the Gard Club any amounts paid as a consequence of the judgement by the Supreme Court of Venezuela, as already decided by the 1971 Fund Administrative Council in respect of the *Nissos Amorgos* incident;
  - (c) that the claim submitted by the Bolivarian Republic of Venezuela before the Supreme Court (Political Administrative Section) in respect of the *Nissos Amorgos* incident was time-barred *vis-à-vis* the 1971 Fund and not admissible for compensation, and instructed 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;
  - (d) that the claim submitted by three fish processors before the Supreme Court (Political Administrative Section) for loss of income in respect of the *Nissos Amorgos* incident had not been proven, and instructed the Director not to pay any compensation in respect of this claim and to discontinue the defence of the 1971 Fund before the courts;
  - (e) that, in respect of the *Plate Princess* incident, no loss had been proven with regard to the claim submitted by FETRAPESCA and instructed the Director to discontinue the defence of the 1971 Fund before the courts;
  - (f) that the Director had 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;

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<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.

- (g) that the Director should contact the Russian authorities to request their assistance to collect outstanding contributions from two contributors in the Russian Federation for an amount of approximately £43 000; and
- (h) that the Consultation Group on the winding up of the 1971 Fund had already carried out its work and that there was no need for its mandate to be further extended and that it could be dissolved.

1.4 The Administrative Council also decided to instruct the Director to study the legal and procedural issues relating to the winding up of the 1971 Fund further in consultation with the Legal Affairs and External Relations Division of IMO.

## **2 Developments since the October 2013 session of the 1971 Fund Administrative Council**

2.1 In accordance with the instructions received from the 1971 Fund Administrative Council at its October 2013 session, the Director reports below on developments since October 2013.

### **2.2 Vistabella incident**

2.2.1 As reported in document IOPC/MAY14/3/2, a date for a hearing at the Privy Council has been set for 5 June 2014.

2.2.2 Following the instructions given to the Director for the purpose of the winding up of the 1971 Fund, the Director has instructed the 1971 Fund's lawyers to discuss a possible out-of-court settlement with the insurer.

### **2.3 Aegean Sea incident**

2.3.1 The last remaining claim in respect of this incident is that of a fish pond owner. A final judgement was delivered in October 2013, corrected in November 2013 for a minor error, awarding the claimant the amount of some €243 000, which includes principal, interest and costs. Under the global settlement reached between the Spanish Government and the 1971 Fund, the Government undertook to pay any judgement rendered against the Fund in respect of this incident.

2.3.2 As reported in document IOPC/MAY14/3/2, in early April 2014 the Director was informed that the Spanish Government would pay the judgement within three weeks ie, before the May 2014 session of the 1971 Fund Administrative Council. As soon as this payment is made this case can be closed.

### **2.4 Iliad incident**

As reported in document IOPC/MAY14/3/2, despite the unlikelihood of the 1971 Fund being called upon to pay compensation in this case, the Director has discussed with the North of England P&I Club a possible global settlement involving a payment by the 1971 Fund of €250 000 to cover any possible future liabilities that may arise. It is currently being considered by the Club. If the Club were to agree to a possible global settlement, the Director intends to request the Administrative Council to authorise him to conclude a global settlement. As at 22 April 2014 the Club has not responded to the offer made.

### **2.5 Nissos Amorgos incident**

2.5.1 As reported in document IOPC/MAY14/3/10, an examination of the accounting position in respect of the joint costs incurred by the Gard Club and the 1971 Fund in respect of this case has taken place and has been submitted to the Gard Club. The outcome of this examination is that the 1971 Fund owes the Club an amount of US\$344 090. The Director has therefore offered to pay this amount to the Gard Club in respect of the joint costs. This payment would bring an end to the 1971 Fund's involvement in this incident. The Club has responded that it does not accept the offer made stating that, since claims are still pending, the percentages in terms of the distribution of costs could still change.

- 2.5.2 The Gard Club has brought a legal action at the High Court in London against the 1971 Fund. In its action the Gard Club maintains that the Club and the Fund had entered into a binding agreement, partly orally, partly in writing and partly by conduct, to apply practices developed pursuant to the Memorandum of Understanding (MoU) signed in 1980 between the 1971 Fund and the International Group of P&I Clubs to the oil pollution claims arising out of the *Nissos Amorgos* incident.
- 2.5.3 The Gard Club has also made an application to the High Court in London seeking a 'freezing injunction'. The injunction, if granted, would prevent the 1971 Fund from removing from the jurisdiction any assets belonging to the 1971 Fund up to an amount of US\$58 million.
- 2.5.4 The Director has informed the Foreign and Commonwealth Office (FCO) and the Department for Transport of the United Kingdom (UK) Government of the legal action and the application for a 'freezing injunction' brought by the Gard Club against the 1971 Fund and is seeking the assistance of the FCO in order to assert the immunity of the 1971 Fund from jurisdiction under the Headquarters Agreement and to take the necessary steps *vis-à-vis* the High Court in London.
- 2.5.5 The Director intends to contest the claim brought by the Gard Club before the High Court since, in his view, it is unfounded and has no legal basis. The Director shall submit an application to the High Court in London requesting that Court to declare that it has no jurisdiction in respect of the Gard Club's claim and its application for a freezing injunction.
- 2.5.6 The Gard Club has also initiated a legal action against the 1971 Fund before the Maritime Court of First Instance in Caracas. In its action the Club requests the Court to decide that the 1971 Fund is liable to pay to the Bolivarian Republic of Venezuela the amount awarded by the Supreme Court or, in the case that the Bolivarian Republic of Venezuela were to be paid by the Gard Club, the 1971 Fund should reimburse the Club any amount which exceeds the shipowner's limitation of liability up to the Fund's limit.
- 2.5.7 The 1971 Fund, as instructed by the Administrative Council in October 2013, has discontinued its defence before the Venezuelan courts. Although the legal action in Venezuela has not been served on the 1971 Fund, the Director is aware that the Maritime Court in Caracas has requested the Director to attend the court in Caracas to answer the Gard Club's action. In accordance with the instructions to discontinue the defence of the 1971 Fund before the Venezuelan courts, the Director considers that it would serve no practical purpose for him to appear before the Venezuelan courts.
- 2.6 Plate Princess incident
- 2.6.1 The 1971 Fund, in accordance with the instructions given to the Director by the 1971 Fund Administrative Council in October 2013, has also discontinued all legal representation and defence in legal proceedings in Venezuela in respect of the *Plate Princess* incident.
- 2.6.2 In February 2014, the Maritime Court of First Instance in Caracas issued a request to the Courts in the UK for their assistance in serving the judgements rendered by the Venezuelan courts in respect of the claim by the Puerto Miranda Union on the IOPC Funds. The request includes the order of embargo against assets belonging to the IOPC Funds. The request does not specify whether it refers to the 1971 Fund or the 1992 Fund or both. The order has not been served upon the 1971 Fund.
- 2.6.3 The Director has informed the UK Government (FCO and Department for Transport) of the arrest order and is seeking the assistance of the FCO in order to assert the immunity of the 1971 Fund and the 1992 Fund from the jurisdiction of the Court.
- 2.7 Contributions due from the Russian Federation of £43 000
- 2.7.1 At a meeting in February 2014, the Director raised the concern expressed by the 1971 Fund Administrative Council in respect of the contributions of £43 000 due from the Russian Federation with the Permanent Delegation of the Russian Federation to IMO.
- 2.7.2 In March 2014, the Director also met with the Deputy Director of the Ministry of Transport of the

Russian Federation and requested his help in resolving this issue. At the meeting, the Deputy Director stated that he would do his utmost to resolve this issue and would revert before the May 2014 sessions of the governing bodies.

## 2.8 Legal issues relating to the winding up of the 1971 Fund

- 2.8.1 In accordance with the instructions received from the 1971 Fund Administrative Council in October 2013, the Director engaged Dr Rosalie Balkin (former Assistant Secretary-General and Director of Legal Affairs and External Relations of IMO) and Professor Dan Sarooshi (a practising barrister and Professor of Public International Law at the University of Oxford, who has extensive experience in litigation involving governments and international organisations) to study the legal and procedural issues relating to the winding up of the 1971 Fund in close cooperation with the Secretariat.
- 2.8.2 Several meetings have taken place between the Secretariat, Dr Balkin and Professor Sarooshi and two texts of draft 1971 Fund Administrative Council Resolutions relating to the procedural aspects of the winding up of the 1971 Fund have been prepared. The first draft Resolution (May 2014 Resolution) sets out the steps that need to be taken during 2014 and is for consideration and adoption at the May 2014 session of the 1971 Fund Administrative Council. The second draft Resolution (October 2014 Resolution) sets out the actual decision to dissolve the 1971 Fund and is for discussion in May 2014 and for adoption in October 2014. The October 2014 Resolution establishes that the dissolution of the 1971 Fund is to take effect on 31 December 2014.
- 2.8.3 After consulting the Chairman of the 1971 Fund Administrative Council, Captain David Bruce, the Director invited Mr Alfred Popp, who had been Chairman of the Consultation Group on the winding up of the 1971 Fund, to participate in a meeting with the Director in March 2014. At the invitation of the Director, Captain Bruce and Mr Gaute Sivertsen, Chairman of the 1992 Fund Assembly, also attended this meeting.
- 2.8.4 The two draft Resolutions were discussed at this meeting in which Dr Balkin (by video link) and Professor Sarooshi also participated. Some changes were made in the light of comments received and the two draft Resolutions are at Annexes II and III.
- 2.8.5 The 1971 Fund Administrative Council is invited to consider the two draft Resolutions.

## 3 Meeting with International Group of P&I Associations

- 3.1 In March 2014, a meeting took place with the International Group of P&I Associations to discuss the two outstanding incidents involving P&I Clubs in the International Group. In addition to the Director, this meeting was also attended by Captain Bruce, Mr Popp and Mr Sivertsen.
- 3.2 The Director informed the representatives of the International Group that the outstanding issues relating to the *Vistabella* and *Aegean Sea* incidents would be resolved by the May 2014 meeting of the 1971 Fund Administrative Council.
- 3.3 He recalled that the 1971 Fund, after the accounting position in respect of the joint costs in the *Nissos Amorgos* incident had been made, had offered the Gard Club the sum of US\$344 090 in respect of these costs and that the Club had responded that, since claims were still pending, the percentages in terms of the distribution of costs could change. He also noted the 1971 Fund's position that agreement needed to be reached on the accounting position ahead of the May 2014 meetings in order to allow any remaining assets of the 1971 Fund to be refunded to contributors following the May 2014 meetings and ahead of October 2014.
- 3.4 With respect to the *Iliad* incident, despite the unlikelihood of the 1971 Fund being called upon to pay compensation in this case, the Director also recalled that he had discussed with the North of England P&I Club a possible global settlement involving a payment by the 1971 Fund of €250 000 to cover any possible future liabilities that might arise. It was currently being considered by the Club. Again agreement and payment would be required ahead of the May 2014 meetings.

- 3.5 The representatives of the International Group noted that its position as set out in October 2013, that the *Nissos Amorgos* and the *Iliad* were linked due to the pooling arrangements in place, had not changed since, from the International Group's point of view, very little progress had been made by the 1971 Fund since that time.
- 3.6 The representative of the Gard Club informed the meeting that the Gard Club would regrettably be bringing a claim against the 1971 Fund both in London and Venezuela. The Director stated that he agreed that the decision by the Supreme Court of Venezuela was wrong; however the judgement had not been rendered against the 1971 Fund and the Fund had no legal obligation to pay and therefore could not do so.

#### **4 Legal action by the Gard Club against the 1971 Fund**

##### **4.1 Legal action in the High Court in London**

In March 2014, the Gard Club brought a legal action at the High Court in London against the 1971 Fund. In its action the Gard Club maintained that in 1997 the Club and the Fund had entered into a binding agreement, partly orally, partly in writing and partly by conduct, to apply practices developed pursuant to the MoU signed in 1980 between the 1971 Fund and the International Group of P&I Clubs to the oil pollution claims arising out of the *Nissos Amorgos* incident.

##### **4.2 Application for a freezing injunction**

4.2.1 Also in March 2014, the Gard Club served the 1971 Fund with an application to the High Court in London requesting a 'freezing injunction' which, if granted by the Court, would prevent the 1971 Fund from removing assets (up to an amount of US\$58 million) from the United Kingdom, that is to say it would prevent any possible refund of monies to the 1971 Fund contributors.

4.2.2 As stated in document IOPC/MAY14/3/10, under the Headquarters Agreement between the UK Government and the 1971 Fund, the Fund has immunity from jurisdiction and execution within the scope of its official activities and the Fund's property and assets are immune from any form of provisional judicial constraint.

4.2.3 The Director notes that neither the 1971 Fund nor the 1992 Fund have ever invoked the privileges and immunities provided under the Headquarters Agreement between the United Kingdom Government and the Organisations. This will therefore be the first time this matter will be addressed by the courts in the United Kingdom. The text of the 1971 Fund Headquarters Agreement is at Annex IV.

4.2.4 The Director has met with representatives of the FCO and the Department for Transport of the UK Government to inform them of the legal action brought by the Gard Club in the High Court in London and of the application to the Court seeking a 'freezing injunction'. During the meeting the Director sought the assistance of the FCO to assert the immunity of the 1971 Fund from the jurisdiction of the High Court in London. The Director has written to the FCO requesting its assistance before the High Court and is awaiting a response.

4.2.5 The Director has been advised by the 1971 Fund's lawyers in the UK, as well as by Dr Rosalie Balkin and Professor Dan Sarooshi, that the 1971 Fund can rely on an immunity plea based on the Headquarters Agreement and the implementing UK Statutory Instrument. However, it is not known whether the English courts will accept the 1971 Fund's plea of immunity and declare that they have no jurisdiction to hear the Gard Club's claims or to grant a 'freezing injunction'. The 1971 Fund has never pleaded its immunity before the courts in the United Kingdom and therefore there is no precedent by which the outcome of the challenge of the 1971 Fund can be predicted.

##### **4.3 Legal action brought in Venezuela**

4.3.1 In March 2014, the Gard Club also initiated a legal action against the 1971 Fund before the Maritime Court of First Instance in Caracas. In its action the Club requests the Court to decide that the 1971 Fund is liable to pay to the Bolivarian Republic of Venezuela the amount awarded by the

Supreme Court or, in the case that the Bolivarian Republic of Venezuela were to be paid by the Gard Club, the 1971 Fund should reimburse the Club any amount which exceeds the shipowner's limitation of liability up to the Fund's limit.

- 4.3.2 As at 22 April 2014, the legal action has not been served on the 1971 Fund but it is expected that service will take place through diplomatic channels.

## **5 Director's considerations**

- 5.1 The Director has been instructed to resolve as many of the outstanding incidents as possible and to study the legal and procedural issues relating to the winding up of the 1971 Fund so that the 1971 Fund Administrative Council can decide to dissolve the 1971 Fund at its October 2014 session. The Director, following these instructions, has prepared texts of two draft Resolutions that the 1971 Fund Administrative Council can adopt so that the 1971 Fund can be dissolved in 2014.
- 5.2 Out of the outstanding incidents involving the 1971 Fund, the *Vistabella* and the *Aegean Sea* can be resolved before the May 2014 session of the Administrative Council. The Director has received clear instructions in respect of the *Plate Princess* incident and he has acted on them. The Director therefore considers that these three incidents can be closed before the May 2014 session of the Administrative Council.
- 5.3 The two unresolved incidents are the *Iliad* and the *Nissos Amorgos*. In both cases offers have been made to the North of England P&I Club and the Gard Club respectively. In one case no answer has been received, in the other the Club has not agreed with the proposal made by the Director.
- 5.4 The legal actions brought by the Gard Club in the United Kingdom and in Venezuela against the 1971 Fund in respect of the *Nissos Amorgos* incident are an unfortunate development. However, as stated in document IOPC/MAY14/3/10, in the Director's view, these legal actions by the Gard Club are unfounded as there is no agreement, orally, in writing or by conduct, between the Gard Club and the 1971 Fund under which the Fund undertook to reimburse the Club any monies paid in respect of the claim by the Bolivarian Republic of Venezuela.
- 5.5 In respect of the legal action brought in the UK, the Director has been advised that the 1971 Fund can rely on a plea of immunity pursuant to the Headquarters Agreement as explained above in paragraph 4.2.5. However, it is not known whether the English courts will accept that they have no jurisdiction over the 1971 Fund.
- 5.6 The 1971 Fund has never invoked its immunity before the courts in the UK since there have never been circumstances where the Fund had to do so. Provided that the due process has been respected and that there is no fraud, the Fund has always respected final judgements rendered by courts in respect of claims arising under the Conventions, even if the Court did not agree with the decision taken by the Fund's governing bodies. Since this is the first time the 1971 Fund is invoking its immunity from the jurisdiction of the High Court in London, it is not possible to predict what the Court will decide.
- 5.7 In respect of the legal action by the Gard Club against the 1971 Fund in Venezuela, as instructed by the 1971 Fund Administrative Council in October 2013, the 1971 Fund has discontinued its defence before the Venezuelan courts. The Maritime Court in Caracas has requested the Director to attend the court in Caracas to answer the Gard Club's action. The Director considers that it would serve no practical purpose for him to appear before the Venezuelan courts.
- 5.8 The 1971 Fund Administrative Council will have to take a decision in May 2014 as to whether it wishes to continue and wind up the 1971 Fund in 2014 or whether it wishes to delay the winding up until the legal proceedings are finalised or an agreement with the P&I Clubs is reached.
- 5.9 If the Administrative Council were to decide to continue and wind up the 1971 Fund in 2014, there will be legal proceedings pending in a number of countries (Greece, the United Kingdom and the

Bolivarian Republic of Venezuela) which are unlikely to have ended before the dissolution of the 1971 Fund takes place on 31 December 2014.

- 5.10 The 1971 Fund currently has some £4.6 million available in the General Fund and the two Major Claims Funds. The legal defence of the 1971 Fund before the UK courts will require substantial expenditure on lawyers and barristers. It is likely that any decision by the High Court on the 1971 Fund's immunity defence will be appealed by the party who loses the argument and it is possible that the case might even reach the Supreme Court.
- 5.11 It is difficult to estimate how long the amount available in the General Fund and the two Major Claims Funds will last however; if litigation continues it is likely that the 1971 Fund would have to levy contributions to operate beyond summer 2015.
- 5.12 If the Administrative Council were to decide to delay the winding up until all these legal proceedings have been finalised or an agreement with the P&I Clubs has been reached, it is very likely that it will have to decide to levy additional contributions since the legal defence of the 1971 Fund before the courts is likely to be very expensive.
- 5.13 The Director would welcome the views and instructions from the 1971 Fund Administrative Council on the issues raised in this document.

## **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;
- (b) to consider and approve the draft May 2014 Resolution at Annex II as proposed in paragraph 2.8.2;
- (c) to consider the draft October 2014 Resolution as proposed in paragraph 2.8.2 and decide that it should be submitted for approval by the 1971 Fund Administrative Council at its October 2014 session; and
- (d) give the Director any other instructions in respect of this matter as it deems necessary.

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## ANNEX I

### 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.

\* \* \*

## ANNEX II

### **1971 Fund Resolution N°[xx] –Preparation for the Dissolution of the International Oil Pollution Compensation Fund 1971 (1971 Fund)** (May 2014)

[draft]

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

**RECALLING** the adoption on 18 December 1971 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (hereinafter the “1971 Fund Convention”) at an International Conference convened by the Intergovernmental Maritime Consultative Organization at the Palais des Congress, Brussels and the subsequent establishment on 16 October, 1978 of the International Oil Pollution Compensation Fund, 1971 (hereinafter the “1971 Fund”),

**RECALLING FURTHER** that, pursuant to Article 2(a) of the Protocol of 2000 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, the 1971 Fund Convention had ceased to be in force as from 24 May 2002,

**BEARING IN MIND** that this did not result in the dissolution of the 1971 Fund,

**RECALLING** Resolution N°10 of the Assembly of the 1971 Fund (October 1996) whereby, as from the date of the establishment of the Secretariat of the International Oil Pollution Compensation Fund, 1992 (hereinafter “the 1992 Fund Secretariat”), the 1971 Fund including all secretariat functions, has been administered by the 1992 Fund Secretariat,

**RECALLING FURTHER** Resolution N°13 of the Assembly of the 1971 Fund (May 1998) whereby the Director of the 1992 Fund was designated *ex officio* as the Director of the 1971 Fund,

**TAKING INTO ACCOUNT** Resolution N°13 of the Assembly of the 1971 Fund (May 1998), as amended by Resolution N°15 of the Assembly of the 1971 Fund (May 2002), which created the 1971 Fund Administrative Council and authorised it to perform the functions allocated to the Assembly under the 1971 Fund Convention, including the taking of appropriate measures to complete the winding up of the 1971 Fund and the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund,

**BEARING IN MIND** the obligations contained in Article 44(1) and (2) of the 1971 Fund Convention, in the event that the 1971 Fund Convention ceased to be in force,

**MINDFUL** of the decision of the 1971 Fund Administrative Council at its thirty-first session in October 2013 to wind up the 1971 Fund as soon as possible,

**NOTING** that all former 1971 Fund Member States have fulfilled their obligations under the 1971 Fund Convention, including the submission of oil reports,

**COGNISANT** of the absence of any provisions in the 1971 Fund Convention providing for the process for the dissolution of the 1971 Fund,

**RECOGNISING** the need for the 1971 Fund to be dissolved in an orderly and open process,

**TAKING INTO ACCOUNT** the establishment by the 1971 Fund Administrative Council at its twenty-ninth session (October 2012) of a Consultation Group to facilitate the process of winding up the 1971 Fund,

**NOTING** the recommendation of the Consultation Group that the 1971 Fund Administrative Council was empowered under the 1971 Fund Convention to decide to dissolve the 1971 Fund as a legal person,

**RECOGNISING ACCORDINGLY** that the 1971 Fund Administrative Council is the appropriate body to establish procedures for the dissolution of the 1971 Fund,

**MINDFUL** that the Consultation Group was of the view that the decision to dissolve the 1971 Fund should be formalised in a written document and that the best way to do this would be for the 1971 Fund Administrative Council to adopt a resolution to dissolve the 1971 Fund,

**MINDFUL ALSO** of the intention of the 1971 Fund Administrative Council at its thirty-first session (October 2013) to decide to dissolve the 1971 Fund at its October 2014 session,

**CONSIDERING** Resolution N°13 of the Assembly of the 1971 Fund (May 1998) concerning the absence of any quorum requirement for participation in sessions of the 1971 Fund Administrative Council,

**NOTING** that, pursuant to Resolution N°13, as amended by Resolution N°15, the decisions of the 1971 Fund Administrative Council should be taken by majority vote of all States having at any time been Members of the 1971 Fund present and voting,

**NOTING ALSO** that the Consultation Group took the view that, since Resolution N°13 already provided that no credentials were required but that States invited to a session of the 1971 Fund Administrative Council shall inform the Director of the person or persons who will attend (notification), the 1971 Fund Administrative Council should maintain the rule that notifications to the Director of the person or persons who will attend were sufficient,

**CONSIDERING IT DESIRABLE** to ensure the participation by as many former Member States of the 1971 Fund Convention as possible in the decision to dissolve the 1971 Fund,

**MINDFUL** of the decision of the 1971 Fund Administrative Council at its thirty-first session (October 2013) instructing the Director to study the legal and procedural issues relating to the dissolution of the 1971 Fund,

- 1 Agrees that the procedures as set out in this resolution be adopted in connection with the dissolution of the 1971 Fund;
- 2 Strongly encourages as many former Member States of the 1971 Fund as possible to participate in any decision to dissolve the 1971 Fund;
- 3 To this end instructs the Director to issue an invitation to all former Member States of the 1971 Fund to participate in the [.....] session of the 1971 Fund Administrative Council to be held in October 2014 when the decision to dissolve the 1971 Fund is intended to be taken by adoption of a resolution;
- 4 Agrees that the voting, notifications and quorum procedures as specified in Resolution N°13, as amended by Resolution N°15, shall be applied;
- 5 Decides that the 1971 Fund has met its obligations under Article 44(1) of the 1971 Fund Convention,
- 6 Decides that any surplus monies in the Major Claims Funds shall be reimbursed in accordance with Regulations 4.4 and 4.5 of the 1971 Fund's Financial Regulations. Up until 31 August 2014, reimbursement shall be made *pro rata* directly to the contributors who have made contributions to these Major Claims Funds. After 1 September 2014, any undistributed monies shall be paid to former Member States together with details of contributors to whom monies were not distributed, to enable the States to reimburse the contributors; and

- 7 Further decides that any surplus monies in the General Fund shall be reimbursed in accordance with the decision of the 1971 Fund Administrative Council at its fifteenth session (October 2004). Up until 31 August 2014, reimbursement shall be made directly to the contributors to the General Fund. After 1 September 2014, any undistributed monies shall be paid to former Member States, together with details of contributors to whom monies were not distributed, to enable the States to reimburse the contributors.

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### ANNEX III

#### **1971 Fund Resolution N°[xx] –Dissolution of the International Oil Pollution Compensation Fund 1971 (1971 Fund)** (October 2014)

[draft]

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

**RECALLING** the adoption on 18 December 1971 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (hereinafter the “1971 Fund Convention”) at an International Conference convened by the Intergovernmental Maritime Consultative Organization at the Palais des Congress, Brussels and the subsequent establishment on 16 October, 1978 of the International Oil Pollution Compensation Fund, 1971 (hereinafter the “1971 Fund”)

**RECALLING FURTHER** that, pursuant to Article 2(a) of the Protocol of 2000 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, the 1971 Fund Convention had ceased to be in force as from 24 May 2002,

**BEARING IN MIND** that this did not result in the dissolution of the 1971 Fund,

**RECALLING** Resolution N°10 of the Assembly of the 1971 Fund (October 1996) whereby, as from the date of the establishment of the Secretariat of the International Oil Pollution Compensation Fund, 1992 (hereinafter “the 1992 Fund Secretariat”), the 1971 Fund, including all secretariat functions, has been administered by the 1992 Fund Secretariat,

**RECALLING FURTHER** Resolution N°13 of the Assembly of the 1971 Fund (May 1998) whereby the Director of the 1992 Fund was designated ex officio as the Director of the 1971 Fund,

**TAKING INTO ACCOUNT** Resolution N°13 of the Assembly of the 1971 Fund (May 1998), as amended by Resolution N°15 of the Assembly of the 1971 Fund (May 2002), which created the 1971 Fund Administrative Council and authorised it to perform the functions allocated to the Assembly under the 1971 Fund Convention, including the taking of appropriate measures to complete the winding up of the 1971 Fund and the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund,

**CONSIDERING** that the aforementioned measures envisaged by Resolution N°13 and Resolution N°15 have been taken and the remaining assets have been distributed to contributors in an equitable manner to the extent possible,

**NOTING** that all former 1971 Fund Member States have fulfilled their obligations under the 1971 Fund Convention, including the submission of oil reports,

**BEARING IN MIND** the obligations contained in Article 44(1) and (2) of the 1971 Fund Convention, in the event that the 1971 Fund Convention ceased to be in force,

**CONSIDERING** that the 1971 Fund has now met its obligations under Article 44(1) and (2),

**CONSIDERING FURTHER** that there is no longer any need for the 1971 Fund to exist as a legal person pursuant to Article 44(3) of the 1971 Fund Convention,

**MINDFUL** of the decision of the 1971 Fund Administrative Council at its thirty-first session in October 2013 to wind up the 1971 Fund as soon as possible,

**RECALLING** the procedures for dissolution of the 1971 Fund adopted by the 1971 Fund Administrative Council by Resolution [17] at its thirty-second session (May 2014), Preparation for the Dissolution of the International Oil Pollution Compensation Fund 1971 (1971 Fund) (May 2014),

- 1 Resolves that, with effect from the expiry of the last day of the financial year 2014 (31 December 2014), the 1971 Fund and its legal personality shall be dissolved;
- 2 Agrees that the Director shall inform all States having at any time been Members of the 1971 Fund, as well as the Secretary-General of the International Maritime Organization in his capacity as Depositary of the 1971 Fund Convention, and all other relevant organisations, as well as the Government of the United Kingdom of Great Britain and Northern Ireland of the dissolution of the 1971 Fund, with effect from the expiry of the last day of the financial year 2014 (31 December 2014);
- 3 Agrees that any monies not distributed by the date of this Resolution shall be given to [the World Maritime University and the International Maritime Law Institute equally];
- 4 Requests the External Auditor to carry out a final audit of the 1971 Fund for the 2014 financial year;
- 5 Decides that [.....] shall consider and approve the Financial Statements of the 1971 Fund for the 2014 financial year;
- 6 Requests that States having at any time been Members of the 1971 Fund be informed of the approval of the Financial Statements of the 1971 Fund for the 2014 financial year; and
- 7 Decides to transfer full title to the archives of the 1971 Fund to [the 1992 Fund].

\* \* \*

## ANNEX IV

Text as from 28 November 1996

**Headquarters Agreement  
between the Government of the United Kingdom  
of Great Britain and Northern Ireland and the  
International Oil Pollution Compensation Fund 1971**

The Government of the United Kingdom of Great Britain and Northern Ireland and the International Oil Pollution Compensation Fund;

Desiring to define the status, privileges and immunities of the Fund and persons connected with it;

Have agreed as follows:

Article 1

*Use of terms*

For the purpose of this Agreement:

- (a) “Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage signed at Brussels on 18 December 1971<sup><1></sup>;
- (b) “Fund” means the International Oil Pollution Compensation Fund;
- (c) “Government” means the Government of the United Kingdom of Great Britain and Northern Ireland;
- (d) “representatives” means representatives of Contracting States to the Convention, and in each case means heads of delegations, alternates and advisers;
- (e) “premises of the Fund” means the buildings or parts of buildings and the land ancillary thereto used for the official purposes of the Fund;
- (f) “official activities of the Fund” includes its administrative activities and other activities undertaken pursuant to the Convention; and
- (g) “staff member” means the Director and all persons appointed or recruited for full-time employment with the Fund and subject to its staff regulations, other than persons in the domestic service of the Fund and persons recruited locally and assigned to hourly rates of pay.

Article 2

*Interpretation*

This Agreement shall be interpreted in the light of the primary objective of enabling the Fund at its Headquarters in the United Kingdom fully and efficiently to discharge its responsibilities and fulfill its purposes and functions.

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<sup><1></sup> Treaty Series No. 95 (1978), Cmnd. 7383.

Article 3

*Legal personality*

The Fund shall have legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable and immovable property and to be a party in legal proceedings.

Article 4

*Premises*

(1) The Government shall take all appropriate steps to protect the premises of the Fund against any intrusion or damage and to prevent any disturbance of the peace of the Fund or impairment of its dignity.

(2) The Government undertake to assist the Fund in the acquisition of premises by gift, purchase or lease or in the hire of premises at such time as they may be needed.

(3) The Government shall do their utmost to ensure that the premises shall be supplied with necessary public services including electricity, water, sewerage, gas, post, telephone, telegraph, drainage, collection of refuse and fire protection and that such public services be supplied on reasonable terms. In case of interruption or threatened interruption of any such services, the Government shall take all reasonable steps to ensure that the Fund is not prejudiced.

Article 5

*Immunity*

(1) Within the scope of its official activities the Fund shall have immunity from jurisdiction and execution except:

- (a) to the extent that the Fund waives such immunity from jurisdiction or immunity from execution in a particular case;
- (b) in respect of actions brought against the Fund in accordance with the provisions of the Convention;
- (c) in respect of any contract for the supply of goods or services, and any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation;
- (d) in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Fund or in respect of a motor traffic offence involving such a vehicle;
- (e) in respect of civil action relating to death or personal injury caused by an act or omission in the United Kingdom;
- (f) in the event of the attachment, pursuant to the final order of court of law, of the salaries, wages or other emoluments owed by the Fund to a staff member of the Fund;
- (g) in respect of the enforcement of an arbitration award made under Article 23 of this Agreement; and
- (h) in respect of a counter-claim directly connected with proceedings initiated by the Fund.

(2) The Fund's property and assets wherever situated shall be immune from any form of administrative or provisional judicial constraint, such as requisition, confiscation, expropriation or attachment, except insofar as may be temporarily necessary in connection with the prevention of, and investigation into, accidents involving motor vehicles belonging to, or operated on behalf of, the Fund.

Article 6

*Archives*

The Archives of the Fund shall be inviolable. The term archives includes all records, correspondence, documents, manuscripts, photographs, films and recordings belonging to or held by the Fund.

Article 7

*Flag and emblem*

The Fund shall be entitled to display its flag and emblem on the premises and means of transport of the Fund and of the Director.

Article 8

*Exemption from taxes*

(1) Within the scope of its official activities, the Fund, its property and assets, and its income including contributions made to the Fund under the Convention, shall be exempt from all direct taxes including income tax, capital gains tax and corporation tax. The Fund shall be granted relief from municipal rates levied on its official premises with the exception of the proportion which, as in the case of diplomatic missions, merely constitutes payment for specific services rendered. Municipal rates shall in the first instance be paid by the Government and the proportion which represents payments for specific services rendered shall be recovered by them from the Fund.

(2) The Fund shall be accorded a refund of car tax and value added tax paid on the purchase of new motor cars of United Kingdom manufacture and, where it is readily identifiable, value added tax paid on the supply of goods or services of substantial value, necessary for the official activities of the Fund. In this connection it is envisaged that claims for refund will be made only in respect of goods or services supplied on a recurring basis or involving considerable quantities of goods or services or involving considerable expenditure. No refund shall be made in respect of any claim for goods or services where the value of the goods or services does not amount in the aggregate to £100 sterling or more.

Article 9

*Exemption from customs and excise duties*

(1) Goods whose import or export by or on behalf of the Fund is necessary for the exercise of its official activities shall be exempt from all customs and excise duties and other charges (except mere payments for services) and from all prohibitions and restrictions on import or export.

(2) The Fund shall be accorded a refund of the customs and excise duties and value added tax paid on the importation of hydrocarbon oils purchased by it and necessary for the exercise of its official activities.

Article 10

*Exemption from taxes and duties*

Exemption in respect of taxes or duties under Article 8 or Article 9 of this Agreement shall not be granted in respect of goods or services which may be purchased or imported for the personal benefit of a staff member of the Fund.

Article 11

*Re-sale*

Goods which have been acquired under Article 8 or imported under Article 9 of this Agreement shall not be given away, sold, hired out or otherwise disposed of unless the appropriate authorities have been notified in advance and any necessary duties and taxes paid.

Article 12

*Funds, currency and securities*

Without prejudice to Article 34(7) of the Convention, the Fund may receive, acquire, hold and dispose of freely any kind of funds, currencies or securities.

Article 13

*Communications*

(1) The Government shall permit and protect unrestricted communication on the part of the Fund for all official purposes. The Fund may employ all appropriate means of communication, including messages in code or cypher. However, the Fund may install and use a wireless transmitter only with the consent of the appropriate authorities. The Director shall permit the inspection of wireless transmitting apparatus at all reasonable times by the appropriate authorities.

(2) No censorship shall be applied to official communications of the Fund by whatever means of communication.

Article 14

*Circulation of publications*

The circulation of publications and other information material sent by or to the Fund within the scope of its official activities shall not be restricted in any way.

Article 15

*Representatives*

- (1) Representatives shall enjoy, while exercising their functions and in the course of their journeys to and from the place of meeting, the following privileges and immunities:
- (a) immunity from arrest and detention and from seizure of their personal luggage, except when found committing, attempting to commit, or just having committed an offence;
  - (b) immunity from jurisdiction (even after the termination of their mission) in respect of acts, including words written or spoken, done by them in the exercise of their functions; this immunity shall not however apply in the case of a motor traffic offence committed by a representative nor in the case of damage caused by a motor vehicle belonging to or driven by him;
  - (c) inviolability for all their official papers and documents;
  - (d) exemption for themselves and their spouses from all measures restricting entry, from charges for visas and from registration formalities for the purpose of immigration control;
  - (e) unless they are residents of the United Kingdom for the purpose of exchange control, the same exchange control treatment as is accorded to diplomatic agents; and

(f) the same facilities as regards their personal luggage as are accorded to officials of foreign Governments on temporary official missions.

(2) The provisions of the preceding paragraph shall be applicable irrespective of the relations existing between the Governments which the persons referred to represent and the Government of the United Kingdom and are without prejudice to any special immunities to which such persons may be entitled.

(3) The privileges and immunities described in paragraph (1) of this Article shall not be accorded to any representative of the Government or to any citizen of the United Kingdom and Colonies.

(4) Privileges and immunities are accorded to representatives in order to ensure complete independence in the exercise of their functions in connection with the Fund. It is expected that a Member State will waive the immunity of its representative where the immunity would impede the course of justice and where it can be waived without prejudicing the purposes for which it was accorded.

(5) In order to assist the Government to implement the provisions of this Article, the Fund shall as far as possible inform the Government of the names of representatives in advance of their arrival in the United Kingdom.

#### Article 16

##### *Director*

In addition to the privileges and immunities provided for in Article 17 of this Agreement, the Director, unless he is a citizen of the United Kingdom and Colonies or a permanent resident of the United Kingdom, shall enjoy the privileges and immunities (other than priority for telecommunications) to which a diplomatic agent in the United Kingdom is entitled.

#### Article 17

##### *Staff members*

Staff members of the Fund:

- (a) shall have (even after they have left the service of the Fund) immunity from jurisdiction in respect of acts done by them in the exercise of their functions, including words written or spoken; this immunity shall not however apply in the case of a motor traffic offence committed by a staff member nor in the case of damage caused by a motor vehicle belonging to or driven by him;
- (b) shall, together with members of their families forming part of their households, be exempt from any obligations in respect of military service, provided that this exemption shall not apply to any person who is a citizen of the United Kingdom and Colonies;
- (c) shall enjoy inviolability for all their official papers and documents;
- (d) shall enjoy exemption from all measures restricting immigration, from charges for visas and from registration formalities for the purpose of immigration control; and members of their families forming part of their households shall enjoy the same facilities;
- (e) Unless they are citizens of the United Kingdom and Colonies or permanently resident in the United Kingdom shall be accorded the treatment in matters of exchange control which is accorded to a diplomatic agent in the United Kingdom: and

- (f) unless they are citizens of the United Kingdom and Colonies or permanently resident in the United Kingdom, shall, at the time of the first taking up of their post in the United Kingdom, be exempt from customs and excise duties and other such charges (except mere payments for services) in respect of import of their furniture and personal effects (including one motor car each) in their ownership or possession or already ordered by them and intended for their personal use or for their establishment. Such goods shall normally be imported within three months of their first entry into the United Kingdom, but in exceptional circumstances an extension of this period may be granted. The privilege shall be subject to the conditions governing the disposal of goods imported into the United Kingdom free of duty and to the general restrictions applied in the United Kingdom to all imports.

#### Article 18

##### *Experts*

In the exercise of their functions in connection with the Fund or in carrying out missions for the Fund, experts, other than staff members, shall enjoy the following to the extent necessary for the carrying out of their functions, including during journeys made in carrying out their functions and in the course of such missions:

- (a) even after they have ceased to be employed by the Fund immunity from jurisdiction in respect of acts done by them in the exercise of their functions, including words written or spoken, except in the case of a motor traffic offence committed by an expert or in the case of damage caused by a motor vehicle belonging to or driven by him;
- (b) inviolability for all their official papers and documents; and
- (c) unless they are citizens of the United Kingdom and Colonies or permanently resident in the United Kingdom, the treatment in matters of exchange control which is accorded to a diplomatic agent in the United Kingdom.

#### Article 19

##### *Income tax*

(1) From the date on which a tax is imposed by the Fund for its benefit on salaries and emoluments paid by the Fund to staff members, such salaries and emoluments shall be exempt from United Kingdom income tax; the Government shall retain the right to take these salaries and emoluments into account for the purpose of assessing the amount of taxation to be applied to income from other sources.

(2) In the event that the Fund operates a system for the payment of pensions and annuities to its former staff members, the provisions of paragraph (1) of this Article shall not apply to such pensions and annuities.

#### Article 20

##### *Social security*

When the Fund has established its own social security scheme or has joined that of another international organization under conditions laid down in the staff regulations of the Fund, those staff members of the Fund who are not citizens of the United Kingdom and Colonies or permanently resident in the United Kingdom, shall with respect to services rendered for the Fund be exempt from the provisions of any social security scheme established by the law of the United Kingdom.

Article 21

*Object of privileges and immunities*

*Waiver*

(1) The privileges and immunities accorded in this Agreement to staff members and experts are provided solely to ensure in all circumstances the unimpeded functioning of the Fund and the complete independence of the persons to whom they are accorded.

(2) The Director has the right and the duty to waive such immunities (other than his own) when he considers that such immunities are preventing the carrying out of justice and when it is possible to dispense with them without prejudicing the interests of the Fund. In respect of the Director, the Assembly or the Executive Committee may waive his immunities.

Article 22

*Co-operation*

The Fund shall co-operate at all times with the appropriate authorities in order to prevent any abuse of the privileges and immunities and facilities provided for in this Agreement. The right of the Government to take all precautionary measures in the interests of its security shall not be prejudiced by any provision in this Agreement.

Article 23

*Arbitration*

The Fund shall, at the instance of the Government, submit to an arbitration tribunal any dispute, other than one between the Fund and a staff member:

- (a) arising out of damage caused by the Fund or involving any other non-contractual responsibility of the Fund, in respect of which the Fund can claim immunity from jurisdiction under this Agreement and that immunity has not been waived; or
- (b) involving a staff member or expert of the Fund, in which the person concerned can claim immunity from jurisdiction under this Agreement and that immunity has not been waived.

Article 24

*Notification of appointment. Identity cards*

(1) The Fund shall inform the Government when a staff member or expert takes up or relinquishes his post. Furthermore the Fund shall from time to time send to the Government a list of all staff members and experts. In each case the Fund shall indicate whether a staff member is a citizen of the United Kingdom and Colonies or permanently resident in the United Kingdom.

(2) The Government shall issue to all staff members and experts on notification of their appointment, a card bearing the photograph of the holder and identifying him as a staff member. This card shall be accepted by the appropriate authorities as evidence of identity and appointment. The Fund shall return the card to the Government when the holder relinquishes his duties.

Article 25

*Modification*

At the request either of the Government or of the Fund consultations shall take place respecting the implementation, modification or extension of this Agreement. Any understanding, modification or extension may be given effect by an Exchange of Letters between a representative of the Government and the Director (after approval by the Assembly).

Article 26

*Disputes*

Any dispute between the Government and the Fund concerning the interpretation or application of this Agreement or any question affecting the relations between the Government and the Fund which is not settled by negotiation or by some other agreed method shall be referred for final decision to a panel of three arbitrators. One of those arbitrators shall be chosen by Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs, one shall be chosen by the Director and the third, who shall be the Chairman of the Tribunal, shall be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within one year of their own appointment, the third arbitrator, at the request of the Government or of the Fund, shall be chosen by the President of the International Court of Justice.

Article 27

*Entry into force and termination*

(1) This Agreement shall enter into force on signature.

(2) This Agreement may be terminated by agreement between the Government and the Fund. In the event of the Headquarters of the Fund being moved from the territory of the United Kingdom, this Agreement shall, after the period reasonably required by such transfer and the disposal of the property of the Fund in the United Kingdom, cease to be in force.