



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS

<b>Agenda item: 8</b>	IOPC/OCT14/8/2	
Original: ENGLISH	18 August 2014	
1992 Fund Assembly	<b>92A19</b>	
1992 Fund Executive Committee	<b>92EC62</b>	
Supplementary Fund Assembly	<b>SA10</b>	
1971 Fund Administrative Council	<b>71AC33</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 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.

At its 32nd session held in May 2014 the 1971 Fund Administrative Council confirmed the decision which it had taken in October 2013 to dissolve the 1971 Fund at its October 2014 session. At that session, the 1971 Fund Administrative Council adopted the May 2014 Resolution on the Preparation for the Dissolution of the 1971 Fund. It also considered the draft October 2014 Resolution on the Dissolution of the 1971 Fund and instructed the Director to submit the new draft to the October 2014 session of the 1971 Fund Administrative Council.

This document sets out the developments in respect of the winding up of the 1971 Fund as at 18 August 2014. An addendum to this document addressing the financial situation of the 1971 Fund and providing an update on developments will be issued nearer the time of the October 2014 session of the Administrative Council.

The Secretary General of the International Maritime Organization (IMO), in his capacity as depository of the 1971 Fund Convention, has agreed to convene a meeting of all former 1971 Fund Member States to approve the Financial Statements of the 1971 Fund for the 2014 financial year, if requested by the 1971 Fund Administrative Council, and on the understanding that this would entail no financial implications for IMO.

The 1971 Fund has appealed against the freezing order granted in May 2014 by the High Court in London. It is expected that the Court of Appeal will hear the appeal in 2015, after the October 2014 meeting of the 1971 Fund Administrative Council. Should the freezing order remain in force by the October 2014 session of the Administrative Council, which looks very likely, the Council will have to decide in October 2014 how the remaining assets of the 1971 Fund should be handled and paragraph 3 of the draft October 2014 Resolution would have to be amended accordingly. It should be emphasised that the freezing order would not prevent the winding up of the 1971 Fund by the end of 2014.

The 1971 Fund has submitted an application to the High Court in London seeking a declaration that it does not have jurisdiction to hear the claim submitted by the Gard Club against the 1971 Fund also in respect of the *Nissos Amorgos* incident

since, in accordance with the Headquarters Agreement between the United Kingdom (UK) Government and the 1971 Fund, the Fund has immunity from jurisdiction and execution although this immunity is subject to a number of exceptions. A hearing is expected during the week of 6 October 2014 and there may possibly be a judgement given on the 1971 Fund's application in the week just before the October 2014 sessions of the governing bodies. Should this be the case, the Director will submit an additional document to the Council reporting on the judgment rendered by the High Court.

The Director has requested legal advice from the legal team advising the 1971 Fund on the *Nissos Amorgos* litigation on two important issues, namely whether English courts can prevent the dissolution of the 1971 Fund and whether they can order the Administrative Council to levy contributions. Based on the advice he has received, it is the Director's understanding that:

- The decision to dissolve the international legal personality of the 1971 Fund is a decision that is to be made solely by the Administrative Council, the plenary organ of the 1971 Fund, in accordance with the procedures adopted by itself, ie by majority vote of all States, present and voting, having at any time been Members of the 1971 Fund.
- An English court cannot seek to prevent the Administrative Council from taking the decision to dissolve the 1971 Fund at its meeting in October 2014 since the question of dissolution of an international organisation is a non-justiciable issue under English law.
- An English court cannot require the Administrative Council to seek financial contributions from former contributors pursuant to Article 44 (1)(b) of the 1971 Fund Convention in order to satisfy any potential liability the 1971 Fund may have.

**Action to be taken:** 1971 Fund Administrative Council

The 1971 Fund Administrative Council is invited:

- (a) Consider, with a view to adoption, the draft October 2014 Resolution as proposed in Annex IV; and
- (b) Give the Director any other instructions in respect of this matter as it deems necessary.

## **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

<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.

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 Annexes I and II.

- 1.3 At its 31st session held in October 2013, the 1971 Fund Administrative Council decided to dissolve the 1971 Fund as its October 2014 session.
- 1.4 At its 32nd session held in May 2014, the Administrative Council decided to confirm its intention to dissolve the 1971 Fund at its October 2014 session and adopted the May 2014 Resolution on the Preparation for the Dissolution of the International Oil Pollution Compensation Fund (1971 Fund) as set out in Annex III.
- 1.5 Furthermore, the Council considered a draft October 2014 Resolution on the Dissolution of the International Oil Pollution Compensation Fund (1971 Fund) and instructed the Director to submit the new draft, as set out in Annex IV to this document, to the October 2014 session of the 1971 Fund Administrative Council.
- 1.6 In accordance with operative paragraphs 2 and 3 of the May 2014 Resolution, the Director will be writing personally to the Ambassadors/High Commissioners of all former Member States of the 1971 Fund to emphasise the importance of the participation of all former Member States in the 33<sup>rd</sup> session of the 1971 Fund Administrative Council when it is intended that the decision to dissolve the 1971 Fund will be taken by the adoption of a Resolution.

## **2 Developments since the May 2014 session of the 1971 Fund Administrative Council in respect of outstanding incidents and contributions**

2.1 The Director reports below on developments since May 2014.

### **2.2 *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. An offer of €250 000 in exchange for the Club's undertaking to release and hold harmless the 1971 Fund from any future claim in respect of the incident was rejected by the Club given that, in its view, it was inappropriate to expect the Club to assume that risk in exchange for a payment of that amount. As instructed by the Administrative Council, the Director has continued discussions with the North of England P&I Club and has noted that an offer of €1 million would be acceptable to the North of England P&I Club. He noted that the Club would discuss this offer with the other Clubs in the pooling agreement. If the Club were to agree to a possible global settlement, the Director intends to request the Administrative Council at its October 2014 session to authorise him to conclude a global settlement. As at 18 August 2014, discussions between the North of England P&I Club and the Director are continuing.

### **2.3 *Nissos Amorgos* incident**

2.3.1 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.

- 2.3.2 The Gard P&I Club brought a legal action before the High Court in London against the 1971 Fund in March 2014. 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, by which the 1971 Fund is required to abide by a final reconciliation pursuant to the said agreement so that the total amount paid by the Club in accordance with the judgment rendered by the Venezuelan Criminal Court of First Instance does not exceed the limit under the 1969 Civil Liability Convention (1969 CLC). The Gard Club also maintains that the 1971 Fund is liable to indemnify it under Article V of the 1969 CLC. The 1971 Fund has submitted an application to the High Court in England seeking a declaration that it does not have jurisdiction on this matter.
- 2.3.3 The Gard Club has submitted to the High Court a substantial amount of documentation in support of its claim including witness statements from representatives of the Gard Club, other P&I Clubs involved in previous incidents, the Chairman of the International Group of P&I Clubs and the lawyer engaged by the Gard Club. The 1971 Fund has submitted a statement from one of its lawyers, attaching an attendance note of a meeting he had with Mr Måns Jacobsson who was Director of the 1971 Fund in 1997 when the alleged binding agreement was concluded. The attendance note makes it clear that Mr Jacobsson does not agree with the allegation made by the Gard Club. The hearing on the 1971 Fund's application is scheduled in the week commencing 6 October 2014 and it is likely to last four days. A judgment may possibly be given in the week just before the meeting of the 1971 Fund Administrative Council. Should this be the case, the Director will submit an additional document to the Council reporting on the judgment rendered by the High Court.
- 2.3.4 As reported to the Administrative Council in May 2014, the Gard Club had sought to freeze the remaining assets of the 1971 Fund in order to prevent the Fund from removing from England any of its assets up to the sum of US\$58.2 million until the above-mentioned claim was determined. On 7 May 2014, the High Court rendered a judgment and granted a freezing order over the 1971 Fund's assets. The freezing order does not prevent the 1971 Fund from disposing of its assets in the ordinary course of its administration and operation such as paying compensation and reasonable expenses; however it does prevent the 1971 Fund from distributing the remaining assets even if it decides to dissolve itself.
- 2.3.5 In May 2014 the 1971 Fund appealed against the freezing order. As it currently stands, the appeal against the freezing order is likely to be heard in February/March 2015. This will only be brought forward if an application for expedition is made, and succeeds, the prospects of which are not particularly high. It is very likely that the freezing order will remain in force at the time of the October 2014 session. The freezing order could, however, be lifted in the event that:
- (i) a judgment is given in favour of the 1971 Fund in respect of the jurisdiction application; and
  - (ii) the Gard Club appeals against the judgement and, in addition, requests that the freezing order be continued pending the appeal. If this request is rejected, then the freezing order could be lifted.
- 2.3.6 Should the freezing order remain in force by the time of the October 2014 session of the Administrative Council, the Council will have to decide in October 2014 how the remaining assets of the 1971 Fund should be handled and paragraph 3 of the draft October 2014 Resolution would have to be amended accordingly.
- 2.3.7 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, that the 1971 Fund should reimburse the Club any amount which exceeds the shipowner's limitation of liability up to the Fund's limit.

2.3.8 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 the Bolivarian Republic of 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 of the Administrative Council in May 2014 the Director will not attend the Maritime Court in Caracas to answer the Gard Club's action. The Director is not aware of any further developments in respect of this legal action.

#### 2.4 Plate Princess incident

2.4.1 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 the Bolivarian Republic of Venezuela in respect of the *Plate Princess* incident.

2.4.2 In February 2014, it was drawn to the attention of the Director that the Maritime Court of First Instance in Caracas had issued a request to the courts in the United Kingdom (UK) for their assistance in serving the judgments 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.

2.4.3 The Director has informed the UK Government (Foreign and Commonwealth Office (FCO) and the 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.

2.4.4 A pack of documents containing a copy of the Venezuelan court order authorising the seizure of the Fund's assets was found outside Portland House in London, where the Headquarters of the IOPC Funds are located, during the week of the May 2014 sessions of the IOPC Funds' governing bodies. The Secretariat has been advised by the 1971 Fund's lawyers in the UK that there is no need for the 1971 Fund to take any action in respect of this pack of documents.

#### 2.5 Contributions due from the Russian Federation of £43 000

2.5.1 At a meeting in February 2014 with the Permanent Delegation of the Russian Federation to IMO, the Director raised the concern expressed by the 1971 Fund Administrative Council in respect of the contributions of £43 000 due from contributors in the Russian Federation. The 1971 Fund has been trying to recover these monies from the contributors through legal proceedings before the courts in the Russian Federation but without success.

2.5.2 In March 2014, the Director 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.

2.5.3 The Administrative Council noted at its May 2014 session, however, that unfortunately no communication had been received from the Ministry of Transport of the Russian Federation.

### **3 Correspondence with the Secretary-General of the International Maritime Organization (IMO)**

3.1 At its May 2014 session, the 1971 Fund Administrative Council noted that if the draft October 2014 Resolution were adopted by the 1971 Fund Administrative Council at its October 2014 session, with effect from the expiry of the last day of the financial year 2014 (31 December 2014) the 1971 Fund would be dissolved and its legal personality would cease to exist. It also noted that the 1971 Fund Administrative Council, which in the past had approved the Financial Statements, would no longer exist as of 1 January 2015.

3.2 At its May 2014 meeting the Council took the view that the Secretary-General of IMO, in his capacity as depositary of the 1971 Fund Convention, should be requested to convene a meeting of all former Member States of the 1971 Fund to approve the Financial Statements for the 2014 financial year. The draft October 2014 Resolution was amended accordingly and now reads as follows:

5 Decides to request the Secretary-General of IMO to convene a meeting of all former Member States of the 1971 Fund to approve the Financial Statements of the 1971 Fund for the 2014 financial year;

3.3 The Director wrote to the Secretary-General of IMO in June 2014 and received his confirmation that he was prepared, in his capacity as depositary of the 1971 Fund Convention, to convene a meeting in 2015 of all former Member States of the 1971 Fund to approve the Financial Statements for 2014, if the 1971 Fund Administrative Council so decides, on the understanding that this would entail no financial implications for IMO. The Director subsequently informed the Secretary-General that an appropriate budget allocation would be put forward for approval by the 1971 Fund Administrative Council at its October 2014 session.

3.4 The Director has been informed by IMO that time will be found during the April 2015 session of the IMO Legal Committee for such a meeting.

#### **4 Meeting with the United Kingdom Foreign and Commonwealth Office (FCO)**

4.1 The Director, as instructed by the Administrative Council at its May 2014 session, had a meeting with the FCO to discuss the implications on the 1992 Fund and the Supplementary Fund of the judgment on the freezing order. The FCO reiterated its understanding that the Order in Council had fully given effect to the Headquarters Agreements and indicated its intention to intervene in the 1971 Fund's appeal against the freezing order on the question of the interpretation of statutory provisions regarding the UK's implementation of the Headquarters Agreement. The Headquarters Agreement between the 1971 Fund and the UK Government is at Annex V.

4.2 As at 18 August 2014, the FCO had not intervened in the 1971 Fund's appeal against the freezing order. It has, however, confirmed that it intends to apply for permission to intervene.

4.3 It is expected that further meetings with the FCO and the Department for Transport will take place.

#### **5 Legal advice on whether English courts can prevent the dissolution of the 1971 Fund and whether they can order the Administrative Council to levy contribution**

5.1 The Director has requested legal advice from the legal team advising the 1971 Fund on the *Nissos Amorgos* litigation on two important issues, namely whether English courts can prevent the dissolution of the 1971 Fund and whether they can order the Administrative Council to levy contributions.

5.2 From the legal advice received the Director understands the following:

##### *The establishment and dissolution of international organisations*

5.2.1 As a general rule, the establishment and dissolution of international organisations both occur as a result of some form of international agreement between States and that it is relatively rare for a constituent treaty to make provision for the dissolution of the international organisation that it has created. This has not, however, prevented the dissolution of a number of international organisations, whether provision for dissolution was made in their respective constituent treaty or not. Where the constituent treaty makes no provision for dissolution, then the question of whether to dissolve and how to dissolve the organisation is a matter for the discretion of Member States of the organisation. In practice the decision to dissolve an international organisation is often taken by Member States acting through an executive or plenary decision-making organ of the organisation.

*The dissolution of the 1971 Fund*

- 5.2.2 In this regard, the 1971 Fund is an international organisation established by a constituent treaty, the 1971 Fund Convention, and it possesses a domestic legal personality pursuant to the Headquarters Agreement between the Government of the United Kingdom and the 1971 Fund and the implementing Statutory Instrument (the International Oil Pollution Compensation Fund (Immunities and Privileges) Order 1979. This Order recognises the 1971 Fund as being an international organisation “by the reference in the preamble to the 1979 Order being adopted ‘in accordance with section 10(1) of the International Organisations Act 1968’”. This recognition of the 1971 Fund as an international organisation is important since it places the 1971 Fund beyond the jurisdictional reach of the English courts in relation to institutional decisions – including the decision to dissolve the 1971 Fund – that may be taken by the 1971 Fund’s governing body.
- 5.2.3 The 1971 Fund Convention ceased to be in force on 24 May 2002. This did not, however, have the effect of dissolving the 1971 Fund since 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 was able to continue to operate despite its constituent treaty ceasing to be in force as a result of Resolutions N° 10 and 13 (as amended by Resolution N° 15 (see Annex II) which had previously been adopted by the Assembly of the 1971 Fund. This latter Resolution provides for decisions of the Administrative Council to 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’.
- 5.2.4 Article 44(2) of the 1971 Fund Convention authorised the Assembly to take ‘all appropriate measures to complete the winding up of the Fund’. The Assembly had in turn decided to delegate to the Administrative Council the power to make decisions in relation to the dissolution of the 1971 Fund. The responsibility of the Administrative Council for taking such a decision is more clearly aligned with the general preference under international law that as many of the States involved with an organisation should, to the extent possible, participate in its dissolution.
- 5.2.5 The 1971 Fund Administrative Council in October 2012 decided to establish a Consultation Group to facilitate the process of winding up the 1971 Fund. The Consultation Group was of the view that the decision to dissolve the 1971 Fund should be formalised in a written document and the best way to do this would be for the Administrative Council to adopt a Resolution dissolving the 1971 Fund. This approach is entirely consistent with the practice of States in their dissolution of other international organisations.
- 5.2.6 Subsequently, the Administrative Council adopted a Resolution in May 2014 whereby the final decision to dissolve the 1971 Fund would be taken at the October 2014 session of the 1971 Fund Administrative Council.

*The dissolution of the 1971 Fund and the English courts*

- 5.2.7 An English court cannot seek to constrain the 1971 Fund Administrative Council from taking the decision to dissolve the 1971 Fund since this question of dissolution is a ‘non-justiciable’<sup><3></sup> one under English law.
- 5.2.8 The decision to dissolve the 1971 Fund involves foreign sovereign States acting solely on the international plane, and it is well-established that the English courts will not adjudicate upon the acts and transactions of foreign sovereign States acting solely on the international plane.

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<sup><3></sup> The doctrine of non-justiciability in English law provides that a court should decline to exercise its jurisdiction to hear an issue in a case when it lacks intelligible standards by which it can decide the matter or for reasons flowing from the separation of powers between the judiciary and (mainly) the executive.

- 5.2.9 There are no judicial or manageable standards that an English court could apply were it to seek to constrain foreign States from voting in favour of the dissolution of the 1971 Fund. Just as an English court could not, for example, prevent States from denouncing the 1971 Fund Convention, it could not prevent States from deciding to dissolve the 1971 Fund when voting in the Administrative Council.

*Can the English courts require the 1971 Fund Administrative Council to exercise its right to seek contributions pursuant to Article 44(1)(b) of the 1971 Fund Convention?*

- 5.2.10 The 1971 Fund is under no obligation pursuant to Article 44(1)(b) to seek contributions from previous contributors and nor could an English court seek to enforce any such purported obligation and this is for two reasons namely, the language of the provision is clear: the 1971 Fund has an 'entitlement' to exercise its rights to seek contributions under Article 44(1)(b), but it is not 'obliged' to do so and, even if Article 44(1)(b) was to be read as imposing an obligation on the 1971 Fund to seek contributions to meet a potential liability that it may have to the Gard Club, this obligation cannot be enforced by an English court on the ground of non-justiciability.

5.3 In summary, the Director understands that:

- (i) The 1971 Fund is an international organisation that possesses international legal personality. The 1971 Fund continued to possess a limited degree of international legal personality by operation of Article 44 even after the 1971 Fund Convention ceased to be in force from 24 May 2002.
- (ii) The decision to dissolve the remaining international legal personality of the 1971 Fund is a decision that is to be made solely by the Administrative Council, the plenary organ of the 1971 Fund, in accordance with the procedures adopted by itself, ie by majority vote of all States, present and voting, having at any time been Members of the 1971 Fund.
- (iii) An English court cannot seek to prevent the Administrative Council from taking the decision to dissolve the 1971 Fund at its meeting in October 2014 since the question of dissolution of an international organisation is a non-justiciable issue under English law.
- (iv) An English court cannot require the Administrative Council to seek financial contributions from former contributors pursuant to Article 44(1)(b) in order to satisfy any potential liability the 1971 Fund may have.

## **6 Director's considerations**

- 6.1 The Director understands that although there are legal proceedings pending in the High Court in London, English courts could not prevent the 1971 Fund from dissolving itself if the 1971 Fund Administrative Council decides to do so. From the legal advice he has received, the decision to dissolve the 1971 Fund is a decision to be made solely by the 1971 Fund Administrative Council.
- 6.2 The Administrative Council has taken clear decisions at its October 2013 and May 2014 sessions on the pending incidents. It has decided that there are no longer any incidents in respect of which the 1971 Fund should pay compensation. The legal action brought by the Gard Club against the 1971 Fund is in respect of a claim that the 1971 Fund Administrative Council has repeatedly decided to be inadmissible and in respect of which it has instructed the Director not to pay compensation. The Director is of the view that there was no agreement as alleged by the Gard Club to pay any amount in excess of the 1969 CLC limit, except for the reconciliation of joint costs provided in the Memorandum of Understanding between the International Group of P&I Clubs and the 1971 Fund.
- 6.3 The Director is of the view that postponing the dissolution of the 1971 Fund would not improve the situation of the 1971 Fund. He therefore recommends the 1971 Fund Administrative Council to decide to dissolve the 1971 Fund with effect from 31 December 2014 by adopting a Resolution to that effect.

- 6.4 The Director will issue an addendum to this document addressing the financial situation of the 1971 Fund and providing an update on developments nearer the time of the October 2014 session of the Administrative Council.

**7 Action to be taken**

1971 Fund Administrative Council

The 1971 Fund Administrative Council is invited:

- (a) to consider, with a view to adoption, the draft October 2014 Resolution as proposed in Annex IV;  
and
- (b) 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.

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## ANNEX II

### 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 III

#### **1971 Fund Resolution N°17 – Preparation for the Dissolution of the International Oil Pollution Compensation Fund (1971 Fund)** (May 2014)

**(Adopted at May 2014 session of the 1971 Fund Administrative Council)**

#### **THE ADMINISTRATIVE COUNCIL OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND (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 (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 33rd 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 taken all reasonable steps to meet 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. After the decision to dissolve the 1971 Fund is taken on 24 October 2014, reimbursement shall be made by 15 December 2014 on a *pro rata* basis directly to the contributors who have made contributions to these Major Claims Funds; 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). After the decision to dissolve the 1971 Fund is taken on 24 October 2014, reimbursement shall be made directly to the contributors to the General Fund on a *pro rata* basis by 15 December 2014.

\* \* \*

## ANNEX IV

### **1971 Fund Resolution N°18 – Dissolution of the International Oil Pollution Compensation Fund (1971 Fund)** (October 2014)

[New draft as a result of May 2014 session of the 1971 Fund Administrative Council]

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

**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 N° 17 at its thirty-second session (May 2014), Preparation for the Dissolution of the International Oil Pollution Compensation Fund (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 shall be dissolved and its legal personality shall cease to exist;

- 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 (IMO) 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 to contributors in accordance with Article 44 by 15 December 2014 shall be given to the World Maritime University, the International Maritime Law Institute and the International Maritime Safety, Security and Environment Academy equally;
- 4 Requests the External Auditor to carry out a final audit of the 1971 Fund for the 2014 financial year;
- 5 Decides to request the Secretary-General of IMO to convene a meeting of all former Member States of the 1971 Fund to 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 V

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><4></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><4></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.