



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
19th session
Agenda item 30

71FUND/A.19/30
25 October 1996

Original: ENGLISH

RECORD OF DECISIONS OF THE NINETEENTH SESSION OF THE ASSEMBLY

(held from 22 to 25 October 1996)

Chairman:	Mr C Coppolani (France)
First Vice-Chairman:	Professor H Tanikawa (Japan)
Second Vice-Chairman:	Mr P Gómez-Flores (Mexico)

Opening of the session

The 19th session of the Assembly was opened by Mr C Coppolani (France) in his capacity as representative of the delegation from which the Chairman of the previous session had been elected.

Procedural matters

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document 71FUND/A.19/1.

2 Election of the Chairman and Two Vice-Chairmen

2.1 The Assembly elected the following delegates to hold office until the next regular session of the Assembly:

Chairman:	Mr C Coppolani (France)
First Vice-Chairman:	Professor H Tanikawa (Japan)
Second Vice-Chairman:	Mr P Gómez-Flores (Mexico)

2.2 The Chairman, on behalf of himself and the two Vice-Chairmen, thanked the Assembly for the confidence shown in them.

3 Examination of credentials

3.1 The following Member States were present:

Australia	Indonesia	Norway
Bahamas	Ireland	Poland
Belgium	Italy	Qatar
Canada	Japan	Republic of Korea
Côte d'Ivoire	Kenya	Russian Federation
Cyprus	Kuwait	Slovenia
Denmark	Liberia	Spain
Estonia	Malaysia	Sweden
Fiji	Mexico	Switzerland
Finland	Monaco	Tunisia
France	Morocco	United Arab Emirates
Gabon	Netherlands	United Kingdom
Germany	Nigeria	Venezuela
Greece		

The Assembly took note of the information given by the Director that all Member States participating had submitted credentials which were in order.

3.2 The following non-Member States were represented as observers:

Argentina	Colombia	Panama
Brazil	Ecuador	Peru
Chile	Egypt	Saudi Arabia
China	Latvia	

3.3 The following inter-governmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1992 (1992 Fund)
International Maritime Organization (IMO)

International non-governmental organisations:

Federation of European Tank Storage Associations (FETSA)
International Tanker Owners Pollution Federation Limited (ITOPF)
Oil Companies International Marine Forum (OCIMF)

General review

4 Report of the Director

4.1 The Director introduced his report on the activities of the 1971 Fund since the 18th session of the Assembly, contained in document 71FUND/A.19/2. In his presentation, the Director made reference to the fact that four States had become Members of the 1971 Fund since the Assembly's 18th session, and that the 1971 Fund was now a truly worldwide Organisation. He expressed the view that the expansion of membership demonstrated that the international community had found the system of compensation

created by the 1969 Civil Liability Convention and the 1971 Fund Convention a viable one. He referred to the 1992 Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention, which entered into force on 30 May 1996, and to the creation of a new intergovernmental organisation, the 1992 Fund. The Director stated that it was crucial for the 1971 Fund and 1992 Fund that they continued to enjoy strong support from governments and public bodies, as well as from the various private interests involved in oil spills. He expressed the view that it was an essential task for the 1971 Fund and the 1992 Fund and their joint Secretariat to develop further the international compensation system, so as to ensure that this system continued to meet the needs of society in respect of compensation for oil pollution damage.

4.2 The Assembly expressed its gratitude to the Director and the other members of the Secretariat for the efficient way in which they administered the 1971 Fund. It also thanked the staff in the local claims offices set up in connection with the *Aegean Sea* and *Sea Empress* incidents, as well as the lawyers and technical experts who had carried out work for the 1971 Fund.

4.3 The Assembly noted the appointment of Mr Ranjit Pillai as Finance Officer, with effect from 18 November 1996, to succeed the present incumbent on his retirement in 1997. It welcomed the staff members who had joined the Secretariat since its 18th session.

4.4 The Assembly congratulated the Secretariat on the 1971 Fund's 1995 Annual Report which contained an instructive presentation of the activities of the Organisation.

4.5 It was noted that the Fund Secretariat continued to have a very heavy workload, as a result of several major oil pollution incidents and the establishment of the 1992 Fund. The Assembly acknowledged the need for strengthening the Secretariat's personnel resources.

4.6 The continued growth of the membership of the 1971 Fund was noted by the Assembly with satisfaction.

4.7 The Assembly noted the entry into force of the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention and the decision taken by the 1971 Fund and 1992 Fund Assemblies that the 1971 Fund should for the time being administer also the 1992 Fund.

4.8 The Assembly noted the concerns expressed by the Director and the External Auditor relating to the continued failure of some Member States to submit their reports on contributing oil receipts. It agreed with the Director that the non-submission of these reports constituted a considerable problem. The Assembly drew the attention of Member States to Resolution N°7, adopted at its 11th session, in which Member States were urged to take the necessary steps to ensure that the reports on contributing oil received in their territories were submitted on time and in the manner prescribed in the 1971 Fund's Internal Regulations. The Director was invited to continue his efforts to encourage Member States to submit outstanding reports.

Financial matters

5 Report on investments

5.1 The Assembly took note of the Director's report on the 1971 Fund's investments during the period 1 July 1995 – 30 June 1996, contained in document 71FUND/A.19/3.

5.2 The Chairman drew attention to Annex III of the document, which gave a clear indication of the close scrutiny exercised by the Secretariat in its handling of the Fund's investments.

5.3 The Assembly noted the number of investments made during that period, the large number of institutions used by the 1971 Fund for investment purposes and the significant amounts invested by the Fund. It was recognised that the investment of the 1971 Fund's assets had become an important part

of the Fund's operations. The Assembly stated that it would continue to follow the investment activities closely.

6 Report of the Investment Advisory Body

6.1 The Assembly took note of the report of the Investment Advisory Body, contained in the Annex to document 71FUND/A.19/4.

6.2 The Assembly expressed its gratitude to the members of the Investment Advisory Body for their work since the 18th session of the Assembly.

6.3 The Assembly emphasised that the role of the 1971 Fund was to pay compensation for oil pollution damage, and not to act as a financial institution. It was stressed that the primary objective was that the Fund's investments should not be exposed to undue risks, in order to protect the assets of the Organisation.

6.4 As regards forward contracts, the purchase of options and the purchase of currencies other than pounds sterling, the Assembly stated that the policy followed so far should be maintained (cf document FUND/A.15/28, paragraph 15.5 (c)).

7 Financial Statements and Auditor's Report and Opinion

7.1 The Director introduced document 71FUND/A.19/5 containing the Financial Statements of the 1971 Fund for the period ended 31 December 1995 and the External Auditor's Report and Opinion thereon. A representative of the External Auditor, Mr J Higgins, Assistant Auditor General, introduced the Auditor's Report and Opinion.

7.2 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 71FUND/A.19/5. In particular, the Assembly welcomed the lifting of two qualifications of the 1971 Fund's accounts which in previous years had been made in the External Auditor's Report, namely as regards claims settlements and the procedure for the levying of contributions.

7.3 In response to a question from one delegation, the External Auditor reported that he had undertaken a detailed examination of the 1971 Fund's claims handling procedures, its use of experts and its accounting policies with respect to claims expenditure. He stated that he had also been fully satisfied that the Secretariat's assessments had been supported by experts' advice and that accepted claims had complied with the criteria for the admissibility of claims for compensation.

7.4 The Assembly approved the accounts of the 1971 Fund for the financial period 1 January to 31 December 1995.

8 Appointment of members of the Investment Advisory Body

The Assembly reappointed Mrs M E Beaman Gordon, Mr D Jude and Mr S Whitney-Long as members of the Investment Advisory Body for a term of one year.

9 Audit Committee

9.1 The Assembly considered document 71FUND/A.19/7 which contained some further considerations by the Chairman concerning the advisability of establishing an Audit Committee.

9.2 The Assembly shared the Chairman's view that it was important that there was a consensus in the Assembly on the best way to ensure an effective financial control within the 1971 Fund. It was

therefore decided that an open consultation group should be established, led by the Chairman of the Assembly, with the following mandate:

- (a) to review the system of financial control in the 1971 Fund; and
- (b) to make proposals, if appropriate, for improvements in the system.

9.3 The Assembly invited those delegations who were interested in participating in the consultation group to inform the Secretariat to this effect.

Contribution questions

10 Report on contributions

10.1 The Assembly took note of the Director's report on contributions contained in documents 71FUND/A.19/8 and 71FUND/A.19/8/Add.1. It noted that over 96% of the 1995 annual contributions, due by 1 February 1996, had been paid. The Assembly expressed satisfaction with the situation regarding the payment of contributions.

10.2 The Assembly considered the question of possible sanctions in respect of States which had not submitted their oil reports to the Secretariat, and noted that this matter was being studied within the forum of the 1992 Fund (cf 1992 Fund document 92FUND/A.19/5). It was decided that further consideration of this question within the 1971 Fund should await the outcome of the examination by the 1992 Fund.

10.3 Following interventions from a number of delegations, the Director was invited to study further whether the 1971 Fund could issue invoices to contributors based on the latest oil reports available, or on estimated oil quantities, if the relevant year's reports had not yet been submitted by the authorities of the State in question.

Secretariat and administrative matters

11 Secretariat functions after the transitional period

11.1 The Assembly recalled that it had decided at its 2nd extraordinary session that the 1971 Fund and the 1992 Fund should have a joint Secretariat and had authorised the Secretariat of the 1971 Fund to administer also the 1992 Fund.

11.2 It was noted that the Assembly of the 1992 Fund had decided that the 1992 Fund should establish its own Secretariat from the date on which the transitional period ended, ie the date on which the compulsory denunciations of the 1969 Civil Liability Convention and 1971 Fund Convention would take effect. It was also noted that the compulsory denunciations would probably be triggered within a few weeks, and that the transitional period would therefore end in May 1998.

11.3 It was further noted that the Assembly of the 1992 Fund had decided that the 1992 Fund Secretariat, once established, would be authorised to administer also the 1971 Fund if the Assembly of the Fund were to make a request to this effect.

11.4 The Assembly decided that the 1971 Fund should be administered by the 1992 Fund Secretariat once the latter had been established, and adopted a Resolution to this effect (1971 Fund Resolution N°10, reproduced in the Annex).

12 Secretariat resources

12.1 The Assembly considered a document submitted by the Director (document 71FUND/A.19/10) in which he analysed the need to strengthen the resources of the joint Secretariat of the 1971 Fund and the 1992 Fund and set out a number of proposals in this regard. In his presentation the Director pointed out that the two additional staff members referred to in paragraphs 4.10 and 4.11 would only be recruited if he considered that the workload on the Secretariat justified it.

12.2 Some delegations expressed the view that the 1971 Fund should continue its policy of maintaining a small Secretariat and stated that they were reluctant to approve some of the proposed increases without being convinced that they were necessary. A number of delegations stated, however, that the heavy workload on the Secretariat fully justified the increase in staff proposed by the Director.

12.3 The Assembly approved the following changes to the structure of the Secretariat, with effect from 1 January 1997:

- (a) conversion of the present post of Secretary to the Finance Officer (grade G8) to Assistant Finance Officer at grade P1, and promotion of the present holder of the post to this converted post;
- (b) creation a new post of Senior/Principal Clerk-Secretary at grade G5/G6, to assist the Finance Officer and his Assistant; and
- (c) reclassification of the post of Principal Clerk-Secretary (grade G7) as Principal Administrative Assistant and upgrading it to grade G8.

12.4 The Assembly also approved the following proposals by the Director, provided, however, that the posts thus established should be filled only if the Director considered that it was justified in view of the workload of the Secretariat:

- (a) creation of a new post of Claims Clerk at grade G5;
- (b) creation of a new professional post at level P3/P4; and
- (c) creation of a new post of Clerk-Secretary at grade G4.

12.5 The Director was instructed to report to the Assembly in respect of the developments with regard to the recruitment of the posts referred to in paragraph 12.4.

12.6 The Assembly endorsed the revised structure of the Secretariat, as set out in paragraph 4.12 of document 71FUND/A.19/10.

12.7 The Assembly instructed the Director to review the working methods within the Secretariat, possibly with the help of an external consultant, in order to obtain the most efficient and cost effective way of managing the 1971 Fund and the 1992 Fund.

12.8 The Assembly noted with appreciation that the Secretary-General of IMO had made available to the 1971 Fund additional office space which would make it possible to accommodate the additional staff members referred to above.

13 Amendments to the Staff Rules

13.1 The Assembly noted that the Director had implemented, to the extent necessary, in the 1971 Fund's Staff Rules, the changes made to the Staff Rules of IMO.

13.2 The Director stated that he intended to consider further the implication for the Fund Staff Rules of the future transition from a situation in which the Secretariat of the 1971 Fund administered also the

1992 Fund to one in which the Secretariat of the 1992 Fund would administer also the 1971 Fund. It was noted that the Director intended to revert to this matter at a future session of the Assembly.

14 Lease agreement with IMO

The Assembly noted that the Director and the Secretary-General of IMO had agreed on the text of an exchange of letters in order to extend the application of the Lease Agreement, licence to occupy and sublease relating to the premises of the 1971 Fund, so that these documents would cover also the activities of the 1992 Fund.

15 Appointment of a substitute member of the Appeals Board

The Assembly appointed Mr P Escherich (Germany) to replace Mr N Schuldt (Germany) as a substitute member of the Appeals Board until the 20th session of the Assembly.

16 Legal status of the Provident Fund

16.1 The Director introduced document 71FUND/A.19/14 on the question of the legal status of the Provident Fund. It was noted that the United Kingdom Government had recently informed the Director that it would not be possible to grant tax exemption for the proposed Provident Fund Trust.

16.2 The Assembly noted that the Director wished to consider further the best way in which to protect the interests of staff members in this matter and decided to revert to the legal status of the Provident Fund at a later session.

Compensation matters

17 Reports of the Executive Committee on its 45th, 46th, 47th, 48th, 49th and 50th sessions

17.1 The Chairman of the Executive Committee, Mr W Oosterveen (Netherlands), informed the Assembly of the work of the Committee during its 45th, 46th, 47th, 48th, 49th and 50th sessions and reported to the Assembly the decisions taken by the Committee at these sessions.

17.2 In his report the Chairman of the Executive Committee referred to the most important issues dealt with by the Committee since the 18th session of the Assembly. He mentioned in particular the situation in the *Haven* case, which the Committee had again decided to refer to the Assembly.

17.3 The Assembly approved the reports of the Executive Committee and expressed its gratitude to the Chairman of the Executive Committee for the work of the Committee during the particularly busy period of his chairmanship.

17.4 The Assembly considered the situation in respect of the *Haven* incident. In this context the Assembly recalled the following statement made at its 18th session by Professor H Tanikawa of the Japanese delegation (document FUND/A.18/26, paragraph 11.8):

We have heard the report of the Chairman of the Executive Committee. We regret that there has been no further reaction by the Italian Government on the offer of a global settlement made by the shipowner/UK Club and the IOPC Fund. For this reason we interpret this to mean that the offer has not been accepted by the Italian Government. We therefore believe that any future initiative towards a global settlement must be taken by the claimants, including the Italian Government. As already decided by the Assembly, the *Haven* Major Claims Fund remains, but no further contributions have been levied. The terms and conditions of the previous offer of a global settlement are well known. Should the claimants, including the Italian Government, wish to revert to a settlement on

the terms of that offer, then the matter would have to be referred to the Assembly for decision.

17.5 The Assembly recalled that many delegations had supported Professor Tanikawa's statement and that the Assembly had endorsed this statement as the position of the 1971 Fund (document FUND/A.18/26, paragraph 11.9).

17.6 The Assembly noted that settlements had been made by the shipowner and his insurer (the UK Club) with a number of claimants, as set out in paragraph 4.10 of document 71FUND/EXC.50/3. It was noted that the 1971 Fund had paid certain claims which were not time-barred vis-à-vis the Fund, as set out in paragraphs 4.14 - 4.20 of that document. It was also noted that the settlements made or envisaged by the shipowner and the UK Club would result in there being only a few remaining claimants, the main one being the Italian Government.

17.7 The Assembly recalled the conditions of the previous offer of a global settlement, and in particular that - without prejudice to the Fund's position on the question of time bar - this would consist of the Fund contributing the difference between the shipowner's limitation fund under the 1969 Civil Liability Convention (14 million SDRs) and the maximum amount payable under the 1971 Fund Convention (60 million SDRs). The Assembly also referred to certain conditions for a global settlement which had been laid down by the Executive Committee (document FUND/EXC.43/7, paragraph 3.20). The Assembly noted the statement made by the Italian delegation at the Executive Committee's 50th session (document 71FUND/EXC.50/17, paragraph 3.2.17).

17.8 The Italian delegation made the following statement:

In the past days the Italian delegation has again stressed the importance of a balanced solution to the *Haven* case which could be beneficial to all concerned. The discussions that have been taking place have emphasised the need to take further steps towards a solution. They have been helpful and we intend to pursue them further in the future.

In this context the Italian authorities, as already made clear, believe that a solution in order to be acceptable must be global, to include the Fund, the Insurers' Consortium and the owners.

The IOPC Fund has been forthcoming in putting forward suggestions and we hope that it will continue to provide its effective support in working out the global settlement we are seeking.

The Italian Government has proved in the past five years in the legal proceedings pending before the Court of Justice that it has advanced no claims in excess of the limits laid down in the 1976 Protocol. The Protocol in this context remains the term of reference for the definition of the *Haven* case with the IOPC Fund in a global settlement which should see an extra effort on the part of the insurers and the owners.

17.9 Professor H Tanikawa of the Japanese delegation made the following statement:

In view of the statement made by the Italian delegation, the Assembly should instruct the Director to explore, with the Italian Government and the UK Club, the possibility of arriving at a global settlement which, as regards the 1971 Fund, falls within the maximum amount of compensation available, ie the difference between 60 million SDRs and 14 million SDRs, minus the amounts which the 1971 Fund has paid or might have to pay to other claimants. The Assembly should also instruct the Director to report the results of such exploratory discussions to the Executive Committee. It should be emphasised that such discussions are without prejudice to the 1971 Fund's position in respect of the time-bar issue.

17.10 Many delegations supported the statement of Professor Tanikawa of the Japanese delegation. The Assembly endorsed the statement made by Professor Tanikawa as the position of the 1971 Fund.

17.11 The Assembly authorised the Executive Committee to approve any global settlement within the limits referred to in paragraph 17.7 above.

18 Election of members of the Executive Committee

The Assembly elected the following Member States as members of the Executive Committee:

Elected under Article 22.2(b)
of the Fund Convention

Australia
Canada
Germany
Netherlands
Republic of Korea
Spain
United Kingdom

Elected under Article 22.2(a)
of the Fund Convention

Belgium
Denmark
Finland
Greece
Malaysia
Morocco
Nigeria
Russian Federation

19 Distribution of documentation for the Executive Committee

19.1 The Assembly took note of the information contained in document 71FUND/A.19/16 on the distribution of documentation for the Executive Committee.

19.2 Some delegations expressed their concern that the text prepared by the Director did not provide that documents should normally be distributed a certain number of days before a session. It was also stated that if delegations received documents only a few days before a session, they did not have sufficient time to prepare the session and to obtain appropriate instructions. Other delegations emphasised, however, that it was important that the Committee was prepared to be flexible on this point, so as to allow claims to be dealt with as promptly as possible. It was stated that the Director should continue to endeavour to issue documents at the earliest possible opportunity, in order to give delegations the maximum time to discuss the questions under consideration and obtain instructions.

19.3 The Assembly approved the following text of Rule (iv) of the Rules of Procedure of the Executive Committee, as proposed by the Director in paragraph 3.8 of document 71FUND/A.19/16:

The provisional agenda for each session shall normally be communicated by the Director to the members of the Executive Committee and to other Member States at least forty-five days before the session. Supporting documents should be distributed as early as possible, taking into account the need for Member States to prepare the sessions, the availability of the necessary information and the importance of claims for compensation and other urgent issues to be dealt with promptly.

19.4 It was pointed out by the Chairman, however, that the Executive Committee could decide, if it considered that there had been insufficient time for reflection, that a matter should be deferred to a later session.

20 Co-operation with P & I Clubs

20.1 The Assembly agreed that it would be appropriate to extend the scope of the 1980 Memorandum of Understanding signed by the International Group of P & I Clubs and the 1971 Fund to cover also co-operation between the P & I Clubs and the 1992 Fund. The Assembly authorised the Director to agree with the International Group on the text of letters to be exchanged to this effect.

20.2 It was also decided that the 1985 Memorandum of Understanding between the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) and the 1971 Fund could be replaced by an exchange of letters covering the parts of the text of the Memorandum which were not covered by the Memorandum of 1980 with the International Group. The Assembly authorised the Director to agree with JPIA on the text of such letters.

21 Claims Manual

21.1 The Assembly noted the draft text of a revised Claims Manual, as contained in document 71FUND/A.19/18, to be issued jointly with the 1992 Fund. It was recalled that the Assembly had decided, at its 2nd extraordinary session, that the Claims Manual should be revised only insofar as amendments were needed to reflect the amendments to the 1969 Civil Liability Convention and the 1971 Fund Convention in the 1992 Protocols thereto, and that it would otherwise remain in its present form.

21.2 Delegations were invited to submit to the Secretariat by 30 November 1996 any comments of an editorial nature which they might have on those parts of the draft text which had been amended in relation to the previous edition.

21.3 The Assembly authorised the Director to publish the revised Claims Manual, taking into account any comments submitted by delegations, and after consultation with the Chairman. If comments received should give rise to particular difficulties, the Director was instructed to bring the matter to the attention of the Executive Committee at its 52nd session.

21.4 It was noted that the Assembly of the 1992 Fund had also invited delegations to submit comments by 30 November 1996 on the draft Claims Manual.

21.5 The Assembly also noted that a further revision of the Claims Manual would be required at the end of the transitional period, to reflect the different situation which would then exist.

22 Investigations into the cause of incidents

22.1 The United Kingdom delegation introduced document 71FUND/A.19/19 in respect of investigations into the cause of incidents.

22.2 The Assembly expressed its gratitude to the United Kingdom delegation for leading the correspondence group. It was decided, however, that there was no need for the group to continue its work.

22.3 Some delegations expressed their regret that there had not been a better response to the correspondence group, since, in their opinion, the question of independent investigations into the cause of incidents was of great interest for the functioning of the 1971 Fund. It was suggested that this issue could be taken up again in the near future.

Budgetary matters

23 Sharing of joint administrative costs with the 1992 Fund

23.1 The Assembly approved the Director's proposal that the costs of running the joint Secretariat should for 1997 be distributed with 70% to be paid by the 1971 Fund and 30% by the 1992 Fund.

23.2 It was noted that the Assembly of the 1992 Fund had agreed, at its 1st extraordinary session, to the distribution proposed by the Director.

24 Budget 1997

24.1 The Assembly considered the draft 1997 Budget for the administrative expenses of the 1971 Fund, as proposed by the Director in document 71FUND/A.19/21.

24.2 The Assembly decided that the Director should receive a special allowance for increased duties, corresponding to 5% of his present salary (including post adjustment), subject to contributions to the Provident Fund. The Assembly also decided to increase the Director's representation allowance to £11 000.

24.3 The Assembly adopted the budget appropriations for 1997, with a total administrative expenditure for the joint Secretariat of £1 821 720, as proposed by the Director.

25 Assessment of Annual Contributions

25.1 The Director introduced document 71FUND/A.19/22 which contained proposals for the levy of 1996 annual contributions.

25.2 A number of delegations expressed their concern at the very high level of contributions proposed by the Director. They questioned whether there was a need for the high amount proposed for payment by 1 February 1997, in particular since the 1971 Fund was holding assets of over £100 million. Many delegations, although recognising the need for the 1971 Fund to have sufficient liquid assets to pay claims for compensation promptly, took the view that the amount of contributions to be paid on 1 February 1997 should be significantly reduced. It was also suggested that it might be appropriate to reduce the working capital, in particular in the light of the entry into force of the 1992 Protocols and the ensuing denunciations by a number of States Parties to the 1971 Fund Convention.

25.3 In the light of these discussions, the Director submitted a revised proposal for the levy of 1996 annual contributions, as set out in document 71FUND/A.19/WP.1.

25.4 The Assembly endorsed the Director's revised proposal.

25.5 As regards the General Fund, the Assembly decided not to levy 1996 annual contributions. It further decided to reduce the working capital from £15 million to £10 million, and that the contributors should be credited accordingly.

25.6 In order to enable the 1971 Fund to meet payments in the relevant years for the satisfaction of claims for compensation under Article 4 and for indemnification under Article 5 of the 1971 Fund Convention arising out of the *Keumdong N°5*, *Sea Prince*, *Yeo Myung*, *Yuil N°1* and *Sea Empress* incidents, to the extent that the aggregate amount of the payments made by the Fund in respect of each incident exceeded 1 million Special Drawing Rights (SDRs), the Assembly decided, pursuant to Article 12.2(b) of the 1971 Fund Convention, to raise 1996 annual contributions, to the following three Major Claims Funds:

- (a) a third levy of £5 million to the *Keumdong N°5* Major Claims Fund;
- (b) a second levy of £50 million to the *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund, out of which £30 million related to the *Sea Prince* incident, £5 million to the *Yeo Myung* incident and £15 million to the *Yuil N°1* incident; and
- (c) a levy of £30 million to the *Sea Empress* Major Claims Fund.

25.7 The Assembly decided that part of the levies to the *Sea Prince/Yeo Myung/Yuil N°1* and *Sea Empress* Major Claims Funds, £13 million and £10 million respectively, should be due for payment by 1 February 1997, as indicated in the table in paragraph 25.15 below, and that the balance of these levies and the entire levy to the *Keumdong N°5* Major Claims Fund should be deferred. The Director was

authorised to decide whether to invoice all or part of amounts of the deferred levies for payment during the second half of 1997.

25.8 It was recalled that the *Sea Prince*, *Yeo Myung* and *Yuil N°1* incidents had occurred in the same Member State within a period of two months, that the contributors to Major Claims Funds in respect of these three incidents were the same, and that the levy for all three incidents was based on the quantities of contributing oil received in 1994.

25.9 The Assembly took note of the fact that all claims and expenses arising out of the *Taiko Maru* and *Toyotaka Maru* incidents had been paid. Since the amounts remaining in these Major Claims Funds were considered to be substantial, the Assembly decided, pursuant to Financial Regulation 4.4, that £3 500 000 and £4 700 000 should be reimbursed to the contributors to each of those Major Claims Funds, respectively, on the date of payment of the deferred levy, if and to the extent that such a levy was made later in 1997, and the respective balances should be transferred to the General Fund.

25.10 The Assembly shared the Director's view that any decision to levy annual contributions to the *Vistabella* Major Claims Fund should be postponed until the total cost of the incident to the 1971 Fund could be established.

25.11 As regards the *Haven* incident, the Assembly decided that it was inappropriate to make any further levy of annual contributions to the *Haven* Major Claims Fund.

25.12 The Assembly agreed with the Director that no further levy in the form of 1996 annual contributions should be made to the *Aegean Sea* or *Braer* Major Claims Funds.

25.13 The Assembly also agreed with the Director that it was premature to make any decision regarding the levy of annual contributions to a *Honam Sapphire* or *N°1 Yung Jung* Major Claims Fund.

25.14 The Assembly noted the situation in respect of the surplus on the *Senyo Maru* Major Claims Fund.

25.15 The Assembly noted that its decisions in respect of the levy of the 1996 annual contributions and reimbursement to contributors could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (tonnes)	Total levy £	Estimated levy per tonne £	Payment by 1 February 1997		Maximum deferred levy	
					Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
<i>Keumdong N°5</i>	1992	1 077 109 184	5 000 000	0.0046421			5 000 000	0.0046421
<i>Sea Prince/Yeo Myung/Yuil N°1</i>	1994	1 202 454 127	50 000 000	0.0415816	13 000 000	0.0108112	37 000 000	0.0307704
<i>Sea Empress</i>	1995	1 185 867 257	30 000 000	0.0252979	10 000 000	0.0084326	20 000 000	0.0168653
Total			85 000 000		23 000 000		62 000 000	
Fund	Oil year	Estimated total oil receipts (tonnes)	Total reimbursement £	Estimated reimbursement per tonne £	Credit on 1 February 1997		Deferred reimbursement	
					Reimbursement £	Estimated reimbursement per tonne £	Reimbursement £	Estimated reimbursement per tonne £
General	1995	1 185 867 257	-5 000 000	-0.0042163	-5 000 000	-0.0042163		
<i>Taiko Maru</i>	1992	1 077 109 184	-3 500 000	-0.0032494			-3 500 000	-0.0032494
<i>Toyotaka Maru</i>	1993	1 102 085 806	-4 700 000	-0.0042646			-4 700 000	-0.0042646
Total			-13 200 000		-5 000 000		-8 200 000	
Grand total			71 800 000		18 000 000		53 800 000	

Treaty questions

26 Replacement of instruments enumerated in Article 5.3 of the Fund Convention

26.1 The Assembly decided, in accordance with Article 5.4 of the 1971 Fund Convention, to include the May 1995 Amendments to SOLAS 74 covered by Resolution MSC.46(65) in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention, with effect from 1 May 1997. The reference to the instrument listed in Article 5.3(a)(ii) was amended to read:

- (ii) the International Convention for the Safety of Life at Sea, 1974, as modified by the Protocol of 1978 relating thereto, and as amended by Resolutions MSC.1(XLV), MSC.6(48), MSC.13(57), MSC.27(61) and MSC.46(65) and, as regards Regulations V/8-1 and V/15-1, by Resolution MSC.31(63) adopted by the Maritime Safety Committee of the International Maritime Organization on 20 November 1981, 17 June 1983, 11 April 1989, 11 December 1992, 16 May 1995 and 23 May 1994 respectively, and as amended by Resolution 1 adopted on 9 November 1988 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on the Global Maritime Distress and Safety System and as amended by Resolution 1 adopted on 24 May 1994 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974;

26.2 The Assembly decided not to include the November 1994 Amendments to MARPOL 73/78 adopted by the Conference of Parties to that Convention and the November 1995 Amendments to SOLAS 74 adopted by the Conference of Contracting Governments to that Convention in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention, because they were not considered relevant for the purposes of Article 5.3 of the Convention.

26.3 The Assembly also considered: (a) the November 1995 Amendments to the International Convention on Load Lines 1966 adopted by the IMO Assembly (Resolution A.784(19)), and (b) the June 1996 Amendments to SOLAS 74 adopted by the Maritime Safety Committee of IMO (Resolution MSC.47(66)). The Assembly decided that these Amendments were of an important character for the purpose of the prevention of oil pollution. However, the Assembly took the view that it was premature to take a decision at the present session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention, since it was not possible to determine whether these Amendments would enter into force.

26.4 The Assembly instructed the Director to notify Governments of Member States of its decision to amend the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention.

27 Status of the 1992 Civil Liability Convention and 1992 Fund Convention and related matters

27.1 The Assembly took note of the information contained in document 71FUND/A.19/24 concerning the ratification situation in respect of the 1992 Civil Liability Convention and the 1992 Fund Convention.

27.2 The Director drew the attention of delegations to the procedure for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention. He mentioned that, under the 1992 Protocol to the 1971 Fund Convention, States Parties to this Protocol as well as States which have deposited their instruments of ratification in respect of that Protocol would have to denounce the 1969 Civil Liability Convention and the 1971 Fund Convention within six months of the date when the figure of 750 million tonnes of contributing oil was reached. The Director indicated that if, as expected, the requirements for compulsory denunciation were fulfilled during November 1996, the denunciations would take effect during May 1997. The Assembly noted that at such time, the Parties to the 1992 Fund Convention would cease to be Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention.

27.3 The delegation of the Netherlands informed the Assembly that its instrument of accession to the 1992 Protocols would be deposited in the near future. The delegation of the Republic of Korea informed the Assembly that the Korean Parliament was considering accession to the 1992 Protocols as a matter of urgency, and that it was expected that the process would be completed by the end of 1996, so that the Republic of Korea could accede to the 1992 Protocols early in 1997. The delegation of Tunisia stated that the ratification of the 1992 Protocols was being considered by Parliament.

Other matters

28 Date of next session

The Assembly decided to hold its next ordinary session during the week of 20 to 24 October 1997.

29 Any other business

29.1 Delegation of Director's authority

Authority to make payments

29.1.1 The Assembly decided to authorise the Director to empower two other officers jointly to authorise payments both as regards administrative expenses and the payment of claims up to £30 000. Financial Regulation 9.2 was therefore amended to read:

The 1971 Fund's bankers shall be empowered to accept payment instructions on behalf of the 1971 Fund as follows:

- (a) if signed by the Director, for any sum up to £15 000;
- (b) if signed by the Director and countersigned by another authorised officer, for any sum in excess of £15 000;
- (c) if signed by another officer empowered by the Director, for any sum up to £5 000;
- (d) if signed jointly by two other officers empowered by the Director, for any sum up to £30 000;
- (e) for the payment of salaries, if signed jointly by two other officers empowered exceptionally by the Director, in circumstances where he is unable to sign himself, for any sum up to £60 000.

Authority to make investments

29.1.2 The Assembly decided that instructions concerning the 1971 Fund's investments should always be given or confirmed in writing by two duly authorised persons. Financial Regulation 10.5 was therefore amended to read:

Instructions relating to the 1971 Fund's investments shall be given by the Director. Such instructions shall be given or confirmed in writing by him. The Director may empower another officer or officers to act, if necessary, on his behalf. Any instructions relating to the transfer of funds from one financial institution to another should be confirmed in writing

- (a) by the Director and countersigned by another authorised officer; or
- (b) jointly by two other officers empowered by the Director.

Authority to settle claims

29.1.3 The Assembly decided to empower the Director to delegate the authority to settle claims, in certain well-defined cases and up to a specified amount, to an officer or officers responsible for the handling of claims arising out of a particular incident. As a result, the Assembly decided to insert the following new provisions in the Internal Regulations:

7.13 The Director may authorise another officer or other officers to make final or partial settlement of claims or to make provisional payments when he is away from the office or otherwise unable to approve claims. Such authority shall:

- (a) be given only in respect of claims arising out of a specific incident and only to an officer who is responsible for dealing with claims arising out of that incident;
- (b) be restricted to claims which do not give rise to any question of principle which has not previously been decided by the Executive Committee or the Director in respect of the particular incident, where there is no doubt as to the admissibility of the claim and where the assessment of the quantum of the loss or damage does not give rise to any particular difficulties; and
- (c) be limited to approvals not exceeding £30 000 for a particular claim.

7.14 Any settlements made under Internal Regulation 7.13 shall be reported to the Director.

29.2 Emergency payments in cases of financial hardship

29.2.1 The United Kingdom delegation introduced document 71FUND/A.19/27 on the question of emergency payments in cases of financial hardship.

29.2.2 A number of delegations stated that they shared the concerns expressed by the United Kingdom delegation that a solution must be found to enable the 1971 Fund to make prompt payments to victims suffering financial hardship. Several delegations stressed that the system of compensation established under the 1969 Civil Liability Convention and the 1971 Fund Convention did not fulfill its purpose unless payments were made in these situations. It was stated that it was not acceptable that the Government of the Member State where an incident occurred should feel obliged to intervene and make payments. It was also suggested that any solution necessitated the involvement of the P & I Clubs.

29.2.3 Some delegations stressed that provisional payments could be made only within the scope of the Conventions, and that it was important to ensure that the principle of equal treatment of victims laid down in Article 4.5 was maintained. Although recognising the problem raised by the United Kingdom delegation, several delegations expressed doubts as to whether it would be possible to solve this problem within the framework of the Conventions.

29.2.4 The Assembly decided that an informal Working Group, to be led by the United Kingdom delegation in co-operation with the Director, should be established in order to consider this matter further. It was also decided that the International Group of P & I Clubs should be invited to participate in the Working Group.

29.2.5 The United Kingdom delegation invited interested Member States to make written observations on this subject to prepare for the Working Group.

29.3 SUMED Pipeline question

29.3.1 The Assembly considered a request by the observer delegation of the Arab Republic of Egypt that the 1971 Fund should reconsider whether Article 10.1 of the 1971 Fund Convention would apply to oil passing through the SUMED pipeline.

29.3.2 It was recalled that the Assembly had considered this issue at its 16th session, on the basis of documents presented by the Director and the Government of Egypt (documents FUND/A.16/24 and FUND/A.16/14/Add.1, respectively). It was also recalled that the Assembly had concluded that there was not a majority in favour of the request made by the Government of Egypt that the oil passing through the SUMED pipeline should not be considered as received for the purpose of Article 10.1 of the Fund Convention and should not, therefore, be subject to contributions. It was noted that several delegations had expressed the opinion that a compromise solution should be sought and that the Assembly had decided, therefore, that this question should be re-examined if a firm compromise proposal were made or new arguments advanced.

29.3.3 The Egyptian delegation introduced document 71FUND/A.19/28 setting out the activities of the Arab Petroleum Pipelines Company (SUMED) and explaining why the company was of the view that oil passing through the SUMED pipeline should not be considered as contributing oil. It was maintained in particular that it was not economically possible for SUMED to pay contributions to the 1971 Fund, since the total quantity transported through the pipeline exceeded 100 million tonnes per year. It was maintained that transport through the pipeline was much safer from an environmental point of view than alternative transport routes. This delegation proposed that, given the company's unique method of operation, a committee or working group should be set up to study the nature of the company's activities, to establish whether there were similarities between SUMED and other oil receivers who were liable to pay contributions to the 1971 Fund.

29.3.4 The Chairman thanked the Egyptian delegation for its clear presentation of SUMED's activities.

29.3.5 Some delegations stated that they understood the position of SUMED, and some delegations supported the idea of a further study of this matter. A number of delegations stated, however, that they were opposed to studying this matter further at this stage, but that the matter could be reconsidered provided new elements were made available.

29.3.6 The Assembly decided that, since no new elements had been presented and this subject had been discussed at length during previous sessions of the Assembly, the matter should not be considered further at this stage.

29.4 Grant of observer status

29.4.1 The Assembly considered a request of the World Wide Fund for Nature (WWF) for observer status with the 1971 Fund, as set out in document 71FUND/A.19/29.

29.4.2 It was noted that the request for observer status with the 1971 Fund had been received only a few days before the Assembly's session. A number of delegations stated that they had not been provided with sufficient details concerning WWF and that for this reason they could not decide whether WWF fulfilled the criteria for granting observer status laid down by the Assembly.

29.4.3 The Assembly decided that it was not in a position to grant WWF observer status with the 1971 Fund.

29.5 1971 Fund's privileges and immunities

The United Kingdom delegation informed the Assembly that the United Kingdom Government had submitted a bill to Parliament proposing legislation which would ensure that the privileges and immunities

of the 1971 Fund would be maintained after the United Kingdom had ceased to be a Member of the Organisation.

29.6 Scheduling of Fund meetings

The Director recalled that in both June 1996 and October 1996 three sessions (namely sessions of the 1971 Fund Assembly, the 1992 Fund Assembly and the 1971 Fund Executive Committee) had been held during a one week period. He expressed doubts as to whether it would be appropriate to continue to hold three sessions in the same week. He stated that he intended to discuss with the Chairmen of the Assembly and the Executive Committee whether in the future the meetings of the 1971 and 1992 Fund bodies should be scheduled differently.

30 Adoption of the Record of Decisions of the 19th session

The draft Record of Decisions, as contained in document 71FUND/A.19/WP.2, was adopted, subject to some amendments.

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ANNEX

Resolution N°10 – Administration of the 1971 Fund by the 1992 Fund Secretariat

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

RECALLING that the 1971 Fund and 1992 Fund are at present administered by a joint Secretariat,

NOTING that the 1992 Fund has authorised the 1992 Fund Secretariat to administer also the 1971 Fund,

NOTING ALSO that the Assembly of the 1992 Fund has decided to establish its own Secretariat from the date on which the compulsory denunciations of the 1969 Civil Liability Convention and 1971 Fund Convention take effect,

RECOGNISING that, after the compulsory denunciations take effect, the 1992 Fund will become the more important of the two Organisations in terms of receipts of contributing oil,

ACKNOWLEDGING that it would be impractical for two separate Secretariats to operate concurrently,

RECALLING ALSO the Resolution adopted by the Assembly of the 1992 Fund (Resolution N°1 of the 1992 Fund, as contained in Annex I to document 92FUND/A.1/34) on the position of members of the 1971 Fund Secretariat whereby, when the 1992 Fund establishes its own Secretariat, the personnel employed by the 1971 Fund will, if they so wish, be transferred to the 1992 Fund Secretariat and in such a case will receive treatment no less favourable, as regards the terms and conditions of their service, as a result of the change of legal personality of their employer,

RESOLVES that, from the date of the establishment of the 1992 Fund Secretariat, the 1971 Fund shall be administered by the 1992 Fund Secretariat,

AND DECLARES that the functions which, under the 1971 Fund Convention, are entrusted to the Secretariat shall be performed by the Secretariat of the 1992 Fund.
