



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ADMINISTRATIVE COUNCIL
3rd session
ASSEMBLY
6th extraordinary session

71FUND/AC.3/A/ES.6/7
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RECORD OF DECISIONS OF THE THIRD SESSION OF THE ADMINISTRATIVE COUNCIL

ACTING ON BEHALF OF THE 6TH EXTRAORDINARY SESSION OF THE ASSEMBLY

(held on 29 and 30 January 2001)

Chairman: Mr V Knyazev (Russian Federation)
Vice-Chairman: Mr R Musa (Malaysia)

Opening of the session

- 0.1 It was noted that the acting Chairman of the Assembly had attempted to open the 6th extraordinary session of the Assembly at 4.00 pm on Monday 29 January 2001, but that the Assembly had failed to achieve a quorum.
- 0.2 It was recalled that at its 4th extraordinary session the Assembly had adopted 1971 Fund Resolution N°13 whereby, with effect from the first session of the Assembly at which the latter was unable to achieve a quorum, various functions of the Assembly would be delegated to the Executive Committee, thereby enabling the Committee to take decisions in place of the Assembly. It was noted that this Resolution was reproduced in the Annex to the draft annotated agenda for the 6th extraordinary session of the Assembly (document 71FUND/A/ES.6/1). If the Executive Committee should also fail to achieve a quorum, however, the functions of the Committee shall revert to the Assembly. In such a case, the Administrative Council established under Resolution N°13 shall assume the functions of the Assembly (and therefore also of the Executive Committee). It was noted that only seven of the 15 States elected to the Executive Committee by the Assembly at the last ordinary session at which it had a quorum (its 20th session, held in October 1997) remained Members of the 1971 Fund. As the quorum requirement for the Committee is ten States, it would no longer be possible for this Executive Committee to achieve a quorum. It was noted that, for that reason, unless the Assembly achieved

a quorum and elected new members to the Executive Committee, further sessions of the Committee could not be convened, and the functions of the Assembly could not be delegated to the Committee if the Assembly did not achieve a quorum.

0.3 Accordingly, if no quorum was achieved within 30 minutes of the time indicated above for the opening of the Assembly's session, the agenda items set out below should be dealt with by the Administrative Council established under Resolution N°13 and convened on 29 and 30 January 2001.

0.4 At 4.00 pm on Monday 29 January 2001 the Head of the Delegation of the Russian Federation, Mr V Knyazev, acting in his capacity as head of the delegation from which the second Vice-Chairman had been elected at its 4th extraordinary session, attempted to open the 6th extraordinary session of the Assembly. Only the following six 1971 Fund Member States were present at that time:

Cameroon	Côte d'Ivoire	Portugal
Colombia	Malaysia	Russian Federation

0.5 The acting Chairman then adjourned the session for 30 minutes and when the meeting was resumed only seven 1971 Fund Member States were present, the additional State being India.

0.6 In view of the fact that no quorum was achieved, the Chairman concluded the Assembly meeting.

0.7 In accordance with Resolution N°13, the items of the Assembly's agenda were therefore dealt with by the Administrative Council.

0.8 The session of the Administrative Council, acting on behalf of the Assembly, was opened by the Council's Chairman, Mr V Knyazev.

Procedural matters

1 Adoption of the Agenda

The Administrative Council adopted the Agenda as contained in document 71FUND/A/ES.6/1.

2 Participation

2.1 The following Member States were present:

Cameroon	India	Russian Federation
Colombia	Malaysia	United Arab Emirates
Côte d'Ivoire	Portugal	

2.2 The following former 1971 Fund Member States were present:

Algeria	France	Netherlands
Australia	Germany	Norway
Belgium	Greece	Poland
Canada	Ireland	Republic of Korea
China (Hong Kong Special Administrative Region)	Italy	Spain
Croatia	Japan	Sweden
Cyprus	Liberia	United Kingdom
Denmark	Malta	Vanuatu
Finland	Marshall Islands	Venezuela
	Mexico	

- 2.3 The following non-Member States which had not previously been members of the 1971 Fund were represented as observers:

Argentina	Peru	Turkey
Chile	Philippines	Uruguay
Dominican Republic	Singapore	
Georgia	Trinidad and Tobago	

- 2.4 The following intergovernmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1992
International Maritime Organization
European Commission

International non-governmental organisations:

Comité Maritime International
International Chamber of Shipping
International Group of P & I Clubs
International Tanker Owners Pollution Federation Ltd
International Union for the Conservation of Nature and Natural Resources
Oil Companies International Marine Forum

3 Incidents involving the 1971 Fund

3.1 Aegean Sea

- 3.1.1 It was recalled that at its 2nd session the Administrative Council had instructed the Director to continue the discussions with the Spanish Government for the purpose of reaching an agreement with the Government on a global settlement of all outstanding issues to be submitted for consideration to the Assembly (or Administrative Council) at its next session (document 71FUND/AC.2/A.23/22, paragraph 17.2.12).

- 3.1.2 The Director informed the Administrative Council that the discussions with the Spanish Government had continued but that no agreement had so far been reached with the Government on a possible global solution and that the Director had therefore not considered it necessary to submit a document as envisaged in the draft agenda (document 71FUND/A/ES.6/2). He added that progress was being made and that he hoped that a proposal for a global solution could be presented for consideration at the next session of the Assembly or Administrative Council.

3.2 Nissos Amorgos

- 3.2.1 The Administrative Council took note of developments in respect of the *Nissos Amorgos* incident contained in document 71FUND/A/ES.6/3.

General situation

- 3.2.2 The Council noted that claims had been approved for a total of Bs3 751 million (£3.6 million) plus US\$16 million (£10.7 million).

Claim by six shrimp processors and 2 000 fishermen

- 3.2.3 The Council recalled that at its 2nd session it had considered a claim for US\$25 million (£16.8 million) presented by six shrimp processing companies and 2 000 fishermen who had alleged that the oil spilled from the *Nissos Amorgos* in the Gulf of Venezuela on 28 February 1997 had caused a reduction in shrimp catches in Lake Maracaibo in 1998. The Council further

recalled that it had approved the Director's proposal that the claim should be considered admissible in principle, but had stated that in quantifying any losses attributable to the *Nissos Amorgos* incident, account should be taken of other factors as reflected in normal variations from year to year in shrimp catches (document 71FUND/AC.2/A.23/22, paragraph 17.9.10). The Director informed the Council that a settlement agreement had been concluded on 1 December 2000 to the effect that the losses attributable to the *Nissos Amorgos* incident amounted to US\$16 033 389 (£10.8 million) and that on 6 December 2000 the shipowner's insurer and the 1971 Fund had paid to the claimants US\$4 008 347 (£2.7 million), corresponding to 25% of the admissible amount.

Civil proceedings

- 3.2.4 The Council noted that as a result of the settlement of the claims by the six shrimp processors and the 2 000 fishermen referred to in paragraph 3.2.3 above, a number of claims for compensation had been withdrawn from the court proceedings. It was noted that after these withdrawals the following claims for compensation were pending in the Venezuelan courts:
- (a) Republic of Venezuela
 - (i) in the Criminal Court of Cabimas for US\$60 million (£40 million);
 - (ii) in the Civil Court of Caracas for the same amount;
 - (b) Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM)
 - (i) in the Criminal Court of Cabimas for Bs57.7 million (£54 000);
 - (ii) in the Civil Court of Maracaibo for the same amount;
 - (c) Four fish and shellfish processors
 - (i) in the Criminal Court of Cabimas for US\$100 million (£67 million);
 - (ii) in the Civil Court of Caracas for the same amount;

in both cases as part of a partially withdrawn action;
 - (d) Petroleos de Venezuela (PDVSA) in the Civil Court of Maracaibo for Bs3314 million (£3.6 million);
 - (e) the shipowner and the Gard Club for Bs4 692 million (£4.8 million) ;
 - (f) two fish and shellfish processors in the Supreme Court for US\$20 million (£13 million).
- 3.2.5 The Venezuelan delegation stated that since a substantial number of claims had been withdrawn from the Court, the 1971 Fund could safely increase the level of payments by 20% ie, raising the level from 25% to 45% of the amount assessed by the Fund. That delegation stated that the claim submitted by four fish and shellfish processors before the Criminal Court of Cabimas should not be taken into account since this claim had been considered not admissible by the Court.
- 3.2.6 The Director in his reply stated that he was very pleased with the progress made since the Council's 2nd session and that he hoped that substantial progress would be made in the very near future. He also stated that the situation before the Venezuelan courts was still ambiguous and that the Secretariat was working towards clarifying this situation.
- 3.2.7 Several delegations expressed their satisfaction at the significant progress which had recently taken place in this case. These delegations stated that this was an important case involving the 1971 Fund and that they were hopeful that the Fund would be able to increase the level of payments in the near future.

3.2.8 The Council instructed the Director to continue his discussions with the Venezuelan Government and the claimants aiming at making progress towards resolving the remaining claims pending before the courts in Venezuela. The Council expressed the hope that the claims situation before the courts would continue to improve in the near future, allowing the Council to increase substantially the level of payments at its next session.

3.3 Nakhodka

3.3.1 The Administrative Council took note of developments in respect of this incident contained in document 71FUND/A/ES.6/4 (cf 92FUND/EXC.11/3).

3.3.2 The Council noted that as at 25 January 2001 the total payments made to claimants amounted to ¥14 352 million (£75 million), including the payments made by the shipowner and his P & I insurer totalling ¥66 million (£400 000) plus US\$4.6 million (£3 million).

3.3.3 It was recalled that at their April 2000 sessions the IOPC Funds' governing bodies decided to increase the level of the IOPC Funds' payments from 60% to 70% of the amount of the damage actually suffered by the respective claimants (documents 71FUND/AC.1/EXC.63/11, paragraph 3.6.12 and 92FUND/EXC.7/5, paragraph 3.1.12).

3.3.4 The Administrative Council also recalled that the Director had informed the governing bodies of the IOPC Funds at their October 2000 sessions that he estimated the total exposure of the Funds at some ¥28 468 million (£164 million). The Council further recalled that the governing bodies had decided to authorise the Director to increase the level of payments to 80% of the amount of the damage actually suffered by the individual claimants when the total amount of the settled and pending claims fell below ¥27 800 million (documents 71FUND/AC.2/A.23/22, paragraph 17.8.8 and 92FUND/EXC.9/12, paragraph 3.3.8).

3.3.5 The Council noted that the Director had estimated that as at 22 January 2001 the total exposure of the IOPC Funds was some ¥27 780 million. The Council further noted that in the light of the development the Director had decided, as authorised by the governing bodies, to increase the level of payments to 80% of the amount of the damage actually suffered by the individual claimants. The Committee noted that as a result it was expected that the 1992 Fund would make additional payments totalling ¥2 000 million (£11 .5 million) shortly.

3.3.6 The Japanese delegation endorsed the content of document 92FUND/EXC.11/3 and encouraged the Secretariat to continue its utmost efforts to provide prompt compensation to victims.

4 Any other business

4.1 IOPC Funds' website

The Director informed the Council of recent developments which had taken place to improve the Funds' website and stated that work to this effect would continue.

4.2 Access to documents on the internet

4.2.1 The Director introduced document 71FUND/A/ES.6/5 explaining the procedures to be used by delegates to access the IOPC Funds' documents on the Internet.

4.2.2 A number of delegations expressed their appreciation of the Funds having established a system for access to documents for IOPC Funds' meetings on the Internet.

4.2.3 The question was raised whether it was necessary to require passwords for access to documents. It was agreed that this issue should be considered at the October 2001 session of the IOPC Funds' governing bodies when experience would have been gained from the operation of the system.

- 4.2.4 In reply to a question, the Director stated that consideration would be given to adding the Records of Decisions of all previous IOPC Funds' meetings on the Internet, but that it would not be cost-effective to add all other documents from previous meetings.
- 4.2.5 It was noted that it was not intended that the system should replace the distribution of documents by mail, although Member States as well as States and Organisations having observer status might wish to take the opportunity to review the number of copies of documents which they currently receive.
- 4.3 Status of Conventions
- 4.3.1 The Director presented document 71FUND/A/ES.6/6 regarding the current status of the 1971 Fund Convention. It was noted that Djibouti had deposited an instrument of accession to the 1992 Fund Convention on 8 January 2001, but had not denounced the 1971 Convention at the same time. It was also noted that Papua New Guinea had denounced the 1969 Civil Liability Convention and the 1971 Fund Convention and acceded to the 1992 Protocols thereto on 23 January 2001.
- 4.3.2 It was recalled that the Administrative Council had noted at its 2nd Session that a Diplomatic Conference held from 25 - 27 September 2000 under the auspices of IMO had adopted a Protocol to amend Article 43.1 of the 1971 Fund Convention. It was also recalled that under the amended text, the 1971 Fund would cease to be in force on the date on which the number of 1971 Fund Member States fell below 25 or 12 months following the date on which the Assembly (or any other body acting on its behalf) noted that the total quantity of contributing oil received in the remaining Member States fell below 100 million tonnes, whichever was the earlier. It was further recalled that the Protocol would enter into force on 27 June 2001 unless at least one third of the remaining Contracting States had lodged opposition to its entering into force by 27 March 2001. It was also noted that the total quantity of contributing oil would have fallen below 100 million tonnes by 21 June 2001 (when the denunciation by India took effect).
- 4.3.3 The Council noted that there were at present 34 Members of the 1971 Fund and that the number would have decreased to 26 by 23 January 2002.
- 4.3.4 The delegation of the United Arab Emirates informed the Administrative Council that the internal procedures for denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention were nearly completed and that the instruments of denunciation of these Conventions would be deposited in the near future.
- 4.3.5 The Director stated that subject to any instructions the Administrative Council may give him, and provided the 2000 Protocol would enter into force on 27 June 2001, and unless by mid-May 2001 two more States had denounced the 1971 Fund Convention, he intended to convene an extraordinary Assembly of the 1971 Fund to be held on Friday 22 June 2001 at which the Assembly would be invited to note that the total quantity of contributing oil had fallen below 100 million tonnes and that as a consequence the 1971 Fund Convention would cease to be in force on 22 June 2002.
- 4.3.6 The Administrative Council recalled that, as approved by the Council, the Director had purchased insurance to cover the 1971 Fund's liability for incidents occurring during the period from 25 October 2000 to 25 October 2001 and that the 1971 Fund had the option to extend the insurance cover up to 31 October 2002.
- 4.3.7 The Director mentioned that when he had negotiated the terms of the insurance he had expected that the number of 1971 Fund Member States would have fallen below 25 by 31 December 2001 but that it had become clear that this would not be the case and that the 1971 Fund Convention would continue to be in force until some time in 2002 but in any event not beyond the end of June 2002, unless a sufficient number of objections to the entry into force of the 2000 Protocol

had been lodged with IMO by 27 March 2001. The Director stated that, in view of this situation, he intended to use the option to extend the 1971 Fund's insurance cover up to 31 October 2002.

4.3.8 The Council agreed that the Director should convene an extraordinary session of the Assembly on 22 June 2001 in the situation referred to in paragraph 4.3.5.

4.4 Sea Empress incident

The delegation of the United Kingdom reported that the United Kingdom Government had recently reached an amicable settlement with the 1971 Fund of its claim in respect of clean-up operations undertaken following the *Sea Empress* incident. That delegation stated that important lessons had been learnt, in particular the need for thorough record-keeping of events and the importance of following the Funds' criteria with regard to the admissibility of claims for at-sea recovery operations. The delegation also stated that the United Kingdom Government had funded extensive studies on the impact of the *Sea Empress* oil spill and although reimbursement of these costs had not been sought under the old Conventions, they would have been under the 1992 Conventions. Attention was also drawn to the fact that despite the ranking of the *Sea Empress* oil spill as one of the biggest on record, the total claims for pollution damage had remained well within the 1971 Fund limit.

5 Adoption of the Record of Decisions

The draft Record of Decisions of the Administrative Council, as contained in document 71FUND/AC.3/A/ES.6/WP.1, was adopted, subject to minor amendments.
