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24th session

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RECORD OF DECISIONS OF THE 6TH SESSION OF THE ADMINISTRATIVE COUNCIL

ACTING ON BEHALF OF THE 24TH SESSION OF THE ASSEMBLY

(held from 15 to 19 October 2001)

Chairman: Captain R Malik (Malaysia)

Opening of the session

0.1 It was noted that the Director, as acting Chairman, had attempted to open the 24th session of the Assembly at 2.30 pm on Monday 15 October 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 24th session of the Assembly (document 71FUND/A.24/1). 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 five of the 15 States elected to the Executive Committee by the Assembly at the last session at which it had a quorum (its 4th extraordinary

session, held in April/May 1998) 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 from 15 to 19 October 2001.

0.4 At 2.30 pm on Monday 15 October 2001, the Director, since the States of the delegations of the previous Chairman and both Vice-Chairmen were no longer Members of the 1971 Fund, attempted to open the 24th session of the Assembly. Only the following five 1971 Fund Member States were present at that time:

Cameroon	Nigeria	Syrian Arab Republic
Malaysia	Portugal	

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

0.6 In view of the fact that no quorum was achieved, the acting 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 Chairman, Captain R Malik (Malaysia).

Procedural matters

1 Adoption of the Agenda

The Administrative Council adopted the Agenda as contained in document 71FUND/A.24/1. It was noted that, as indicated in the agenda, two items of the agenda would not be addressed by the Administrative Council, *viz* item 18 (Reports of the Administrative Council) and item 20 (Election of members of the Executive Committee).

2 Election of the Chairman

2.1 The Administrative Council elected the following delegate to hold office until the next regular session of the Assembly:

Chairman: Captain R Malik (Malaysia)

2.2 The Chairman thanked the Administrative Council for the confidence shown in him.

3 Participation

3.1 The following Member States were present:

Cameroon	Nigeria	Syrian Arab Republic
Malaysia	Portugal	United Arab Emirates

3.2 The following former 1971 Fund Member States were represented as observers:

Algeria	India	Poland
Antigua and Barbuda	Ireland	Republic of Korea
Australia	Italy	Russian Federation
Belgium	Japan	Slovenia
Canada	Liberia	Spain
China (Hong Kong Special Administrative Region)	Malta	Sri Lanka
	Marshall Islands	Sweden
Cyprus	Mauritius	Tunisia
Denmark	Mexico	United Kingdom
Finland	Netherlands	Vanuatu
France	New Zealand	Venezuela
Germany	Norway	
Greece	Panama	

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

Argentina	Philippines	Singapore
Latvia	Saudi Arabia	Turkey
Peru		

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

Intergovernmental organisations:
1992 Fund
Commission of the European Community

International non-governmental organisations:
Comité Maritime International
Cristal Ltd
Federation of European Tank Storage Associations
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping
International Group of P & I Clubs
International Salvage Union
International Tanker Owners Pollution Federation Ltd
International Union for the Conservation of Nature and Natural Resources
Oil Companies International Marine Forum

4 Report of the Director

4.1 The Director introduced his report on the activities of the 1971 Fund during the last 12 months, contained in document 71FUND/A.24/2. In his presentation the Director made reference to the fact that the 1971 Fund Convention would cease to be in force on 24 May 2002, since the number of Member States would fall below 25 on that date.

4.2 The Director mentioned that he had continued to review the operation of the Secretariat.

4.3 The Assembly congratulated the Secretariat on the 1992 and 1971 Funds' joint Annual Report for 2000 which had been published in English, French and Spanish.

4.4 The Assembly expressed its gratitude to the Director and the other members of the joint Secretariat for the efficient way in which they administered the 1971 Fund. It also thanked the

staff of the Claims Handling Office established in Kobe following the *Nakhodka* incident, as well as the lawyers and technical experts who had undertaken other work for the 1971 Fund.

Treaty questions

5 Status of the 1971 Fund Convention

The Administrative Council noted that the 1971 Fund Convention would cease to be in force on 24 May 2002 when the number of Member States falls below 25, as set out in document 71FUND/A.23/3.

6 Winding up of the 1971 Fund

6.1 The Director introduced document 71FUND/A.24/4 relating to the winding up of the 1971 Fund.

6.2 The Administrative Council recalled that under Article 43.1 of the original version of the 1971 Fund Convention the Convention would remain in force until the number of States Parties fell below three. It further recalled that in September 2000, a Protocol had been adopted to amend Article 43.1 to the effect that the Convention would cease to be in force when the number of Member States fell below 25. The Council noted that this Protocol had entered into force on 27 June 2001. It was further noted that the 1971 Fund Convention would therefore cease to be in force on 24 May 2002 when the condition set out above would be fulfilled, and would not apply to incidents occurring after this date.

6.3 It was recalled that in October 2000 the 1971 Fund had purchased insurance to cover its liabilities in respect of incidents occurring during the period up to 31 December 2001 (subject to a deductible of £220 000 per incident). The Director informed the Administrative Council that he had used an option to extend this insurance cover to incidents occurring up to 31 October 2002.

6.4 The Administrative Council noted that at its 6th session the 1992 Fund Assembly had decided, since the 1971 Fund Convention would cease to be in force on 24 May 2002, to maintain the existing arrangement under which the 1992 Fund shared a Secretariat with the 1971 Fund and the 1992 Fund Director was also Director of the 1971 Fund, in order to ensure the efficient handling of pending incidents involving the 1971 Fund and the orderly winding up of that Organisation. The Council agreed that the present arrangement should be maintained.

6.5 The question of whether to appoint an eminent person outside the 1971 Fund to oversee the winding up of the Fund was considered. The Council postponed further consideration of this issue to a later session.

7 Replacement of instruments enumerated in Article 5.3 of the 1971 Fund Convention

7.1 The Administrative Council considered the information contained in document 71FUND/A.24/5 on the replacement of instruments enumerated in Article 5.3(a) of the 1971 Fund Convention.

7.2 It was recalled that at its 8th session the Assembly had decided to interpret Article 5.4 of the 1971 Fund Convention so as to allow the inclusion in the list of instruments contained in Article 5.3(a) not only of new conventions but also amendments adopted by a tacit amendment procedure, provided that such amendments were of an important character for the purpose of the prevention of oil pollution (documents FUND/A.8/12 and FUND/A.8/15, paragraph 15.1).

7.3 The Administrative Council decided not to include in the list of instruments the March 2000 amendments to MARPOL 73/78 and the October 2000 amendments to Annex V of MARPOL

73/78 since they were considered not to be of relevance for the purpose of Article 5.3 of the Convention.

7.4 The Council also considered the following amendments to the instruments referred to in Article 5.3(a) of the 1971 Fund Convention:

- the October 2000 amendments to the IBC Code and the BCH Code
- the April 2001 amendments to Annex I of MARPOL 73/78
- the May 1998, December 2000 and June 2001 amendments to SOLAS 74
- the November 1995 amendments to the International Convention on Load Lines, 1966.

Since the above amendments will enter into force after the 1971 Fund Convention ceases to be in force on 24 May 2002, the Council decided not to include them in the list of instruments contained in Article 5.3(a).

Financial matters

8 Report on investments

8.1 The Administrative Council took note of the Director's report on the 1971 Fund's investments during the period July 2000 to June 2001, contained in document 71FUND/A.24/6.

8.2 The Administrative Council noted the number of investments made during the twelve-month period, the number of institutions used by the 1971 Fund for investment purposes, and the significant amounts invested by the 1971 Fund. The Administrative Council stated that it would continue to follow the investment activities closely.

9 Report of the Investment Advisory Body

9.1 The Administrative Council took note of the report of the Investment Advisory Bodies, contained in the Annex to document 71FUND/A.24/7. It also took note of the objectives for the coming year and the Internal Investment Guidelines.

9.2 The Administrative Council expressed its gratitude to the members of the Investment Advisory Body for their work.

10 Financial Statements and Auditor's Report and Opinion

10.1 The Director introduced document 71FUND/A.24/8 containing the Financial Statements of the 1971 Fund for the financial year 2000 and the External Auditor's Report and Opinion thereon. A representative of the External Auditor, Mr Richard Maggs, Director International, introduced the Auditor’s Report and Opinion.

10.2 The Administrative Council noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 71FUND/A.24/8 and that the Auditor had provided an unqualified audit opinion on the 2000 Financial Statements. The Administrative Council also appreciated that the report had gone into great depth and detail.

10.3 The Administrative Council approved the accounts of the 1971 Fund for the financial period 1 January - 31 December 2000.

11 Audit procedures

11.1 It was recalled that at its 2nd extraordinary session, held in June 1996, the 1971 Fund Assembly had considered a proposal by the Chairman that the 1971 Fund should establish an Audit Committee in order to strengthen the involvement of Member States in the monitoring of the operations of the Organisations and to increase the transparency of the latter (document 71FUND/A/ES.2/21/1). It was further recalled that a number of delegations had questioned the need for an Audit Committee and that no decision had been taken on this issue.

11.2 The Administrative Council noted that in February 2001 the External Auditor, the Auditor and Comptroller General of the United Kingdom, had raised again the issue of the establishment of a special body to deal with audit matters, as set out in document 71FUND/A.24/9.

11.3 It was noted that under the Director's proposal, the Audit Body would be composed of five members, namely a Chairman with knowledge and interest in management and financial matters, three persons elected from delegations of Member States and one outside member with expertise in financial matters.

11.4 During the discussions, it was suggested that the number of members of the audit body proposed by the Director was too low, and a figure of seven rather than five was mentioned.

11.5 The Administrative Council took the view that, since the IOPC Funds held significant assets and made compensation payments totalling high amounts, they should ensure maximum transparency in their operations. It was also considered that such a body would enable Member States to have a broader involvement in Fund matters.

11.6 It was noted that the 1992 Fund Assembly had decided to create a joint Audit Body for the 1992 Fund and the 1971 Fund. The Administrative Council agreed with that decision.

11.7 Some delegations considered that the members of the Audit Body should reflect the geographical distribution of Member States. Other delegations suggested appointing members on a rotation basis for a term of four years, non-renewable.

11.8 Some delegations suggested that it could be left to governments to appoint the member for their State, whilst others considered that members should be appointed in their personal capacity according to their expertise.

11.9 It was emphasised that the Audit Body should not control or duplicate the External Auditor's work and should not affect the independence of the External Auditor. It was also suggested that the members of the Audit Body should be independent and should not take instructions from their Governments. The point was made that the Audit Body should not impinge on the Director's general authority as regards the operation of the IOPC Funds. It was also suggested that the Audit Body's role should not be restricted to purely financial matters but should cover also the efficiency of the Secretariat.

11.10 The question arose as to whether the expenses incurred by Audit Body members would be paid by the Funds. Several delegations stated that the Funds should not pay travel expenses and that it should be for the Governments to cover such expenses. Other delegations considered that unless the Funds paid these expenses this would restrict the membership.

11.11 The Administrative Council decided to postpone to its October 2002 session consideration of the composition and mandate of the Audit Body.

12 Appointment of members of the Investment Advisory Body

The Administrative Council reappointed Mr Clive Ffitch, Mr David Jude and Mr Simon Whitney-Long as members of the Investment Advisory Body for a term of one year.

Contribution questions

13 Report on contributions

The Council took note of the Director's report on contributions contained in document 71FUND/A.24/11. It noted that 0.37% of the contributions levied during the period 1978 – 2000 were outstanding. The Administrative Council expressed its satisfaction with the situation regarding the payment of contributions.

14 Non-submission of oil reports

14.1 The Administrative Council considered the situation in respect of the non-submission of oil reports, as set out in document 71FUND/A.24/12. It was noted that since the document had been issued three States (Cameroon, Oman and Slovenia) had submitted oil reports. It was also noted that a total of 30 States therefore still had outstanding oil reports for the year 2000: 28 States in respect of the 1971 Fund and 11 States in respect of the 1992 Fund. It was further noted that a number of States had reports outstanding for many years.

14.2 The Administrative Council considered that the situation regarding the submission of oil reports gave rise to serious concern. It was noted that the situation in respect of the 1992 Fund was likely to deteriorate as States which had outstanding reports in respect of the 1971 Fund became Members of the 1992 Fund.

14.3 A number of delegations drew attention to the fact that the submission of oil reports was part of the treaty obligations that a State had undertaken when ratifying the 1971 Fund Convention and that a failure to submit these reports constitutes a breach of these obligations. The point was made that there should be a balance between treaty obligations and rights under a treaty.

14.4 It was recalled that the issue of the non-submission of oil reports had been considered by the 1992 Fund Assembly at its 3rd session and by the 1971 Fund Executive Committee at its 59th session acting on behalf of the Assembly, in particular as to whether sanctions could be imposed if States did not fulfil their obligations in this regard (documents 92FUND/A.3/27, paragraphs 12.3-12.14 and 71FUND/EXC.59/17/A.21/24, paragraphs 14.1-14.4).

14.5 It was suggested that the Secretariat should try to establish why States had not submitted reports and whether there was anything that the Secretariat could do to assist these States.

14.6 Some delegations considered that it could be useful to raise the issue with delegations from the State concerned in other fora. It was also noted that non-governmental organisations having observer status with the IOPC Funds could play a useful role in encouraging States to submit oil reports. The OCIMF observer delegation stated that the OCIMF member companies had in fact taken steps to this effect and would continue to do so.

14.7 The Administrative Council emphasised that it was crucial for the functioning of the regime of compensation established by the Fund Conventions that States submitted the reports on oil receipts. The Council considered what further measures could be taken to resolve the problem but concluded that in the short term little more could be done than to instruct the Secretariat to make all practicable efforts to obtain reports.

14.8 The Administrative Council decided, however, that a letter should be sent from the Chairman on behalf of the Council to the Governments of States which had outstanding oil reports, emphasising the Council's serious concerns, requesting an explanation as to why reports had not been submitted and explaining the procedure for submission of oil reports. The Director was instructed to prepare such a letter. He was further instructed to report to the Council on the answers received.

14.9 The Administrative Council noted that the issue of non-submission of oil reports had been considered by the 3rd intersessional Working Group set up by the 1992 Fund Assembly and that this issue had been included in the Working Group's revised mandate. It was noted that the 1992 Fund Assembly had agreed that the Working Group should consider what measures could be taken within the scope of the 1992 Fund Convention *vis-à-vis* States which failed to submit oil reports and whether the issue should be dealt with in any future revision of that Convention.

Secretariat and administrative matters

15 Organisation of meetings

15.1 The Administrative Council took note of the information contained in document 71FUND/A.24/13 regarding the organisation of meetings.

15.2 It was recalled that at their January 2001 sessions, the Director had informed the governing bodies that a system ("document server") had been established to enable delegates to access documents for meetings via the internet by using a password. It was also recalled that the question had been raised as to whether it would be necessary to continue to require passwords for access to documents and that it had been agreed that this issue should be considered at the October 2001 sessions of the governing bodies when experience had been gained from the operation of the system.

15.3 The Administrative Council decided that, except as regards restricted documents, access to documents on the document server should be unrestricted and that documents should be accessed via the IOPC Funds' website and not, as at present, via a separate address.

15.4 In view of the limited time available at the meeting, it was decided not to discuss other matters relating to the organisation of meetings further at this stage but to return to these matters at a later session.

16 Working methods and structure of the Secretariat

16.1 The Administrative Council held a session in private, pursuant to Rule 12 of the Rules of Procedure, to consider document 92FUND/A.6/15 on the working methods and structure of the Secretariat. During the closed session, covered by paragraphs 16.1 – 16.5, only the representatives of the Member States of the 1992 Fund or 1971 Fund were present.

16.2 The Administrative Council took the following decisions:

(a) to approve the Director's proposal to establish a network of persons in various regions and sub-regions serving as contact points;
(b) to separate the roles of Technical Adviser and Head of the Claims Department;
(c) to instruct the Director to appoint a Deputy Director;
(d) to amend Internal Regulations 7.13 and 12bis and Financial Regulation 9.2 as set out in the Annex;
(e) to promote on a personal basis the Head of the Claims Department, Mr Joseph Nichols, from grade D1 to grade D2;
(f) to promote on a personal basis the Head of the Finance and Administration Department, Mr Ranjit Pillai, from grade P5 to grade D1; and
(g) to create an additional post in the General Service category in the External Relations and Conference Department;

as regards items (b) – (g) with effect from 1 January 2002.

16.3 The Council instructed the Director to appoint one of the present staff members as Deputy Director. The Council considered that the person to be appointed should have the following qualifications:

- wide experience in the core activities of the Funds, particularly in claims handling;
- wide experience in oil pollution matters;
- management skills;
- expertise complementary to that of the Director.

16.4 The Administrative Council instructed the Director to develop a clear job description for the Deputy Director and inform the Council on this issue at its next session.

16.5 The Assembly authorised the Director to create positions in the General Service category as required provided that the resulting cost would not exceed 10% of the figure for salaries in the budget.

17 Amendment to Financial Regulations

The Assembly took note of the Director's proposal regarding Financial Regulation 7.3 as set out in document 71FUND/A.24/15. Since the 1971 Fund no longer had a Provident Fund, it was decided that Regulation 7.3 should be deleted.[<1>]

Compensation matters

18 Reports of the Administrative Council on its 3rd to 5th sessions

As previously indicated, this agenda item was not considered (cf paragraph 1 above).

19 Incidents involving the 1971 Fund

19.1 Overview

The Administrative Council took note of document 71FUND/A.24/16, which contained a summary of the situation in respect of all 22 incidents dealt with by the 1971 Fund during the past 12 months.

19.2 *Aegean Sea*

19.2.1 The Administrative Council took note of developments since its June 2001 session in respect of the *Aegean Sea* incident, as set out in document 71FUND/A.24/16/1.

19.2.2 The Council recalled that at the June session it had decided to authorise the Director to conclude and sign on behalf of the 1971 Fund an agreement with the Spanish State, the shipowner and his insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), on a global solution of all outstanding issues in the *Aegean Sea* case, provided the agreement contained the elements set out below, and to make payments in accordance with such an agreement (document 71FUND/AC.5/A/ES.8/10, paragraph 5.1.16):

1. In the light of the Court of Appeal's judgements in respect of the distribution of liabilities and the assessment of the losses [as set out in paragraph 3.2 above], the total amount payable by the shipowner, the UK Club and the 1971 Fund would be set at Pts 9 000 million (£34 million).

2. The amount payable to the Spanish State would be calculated as follows:

[<1>] Text inadvertently omitted in the draft Record of Decisions considered by the Administrative Council (document 71FUND/AC.6/A.24/WP.1).

Total amount payable	Pts 9 000 000 000
Less amounts already paid by the shipowner, the UK Club and the 1971 Fund in respect of claims for which agreement on the admissible quantum has been agreed with the Spanish Government	Pts 1 773 559 545
Less payments made through the Joint Claims Office in La Coruña in respect of a number of settled claims	Pts 131 486 228
Less payments to be made by the 1971 Fund to the UK Club for preventive measures	Pts 708 032 614
Payment to be made to the Spanish State by the 1971 Fund	Pts 6 386 921 613 (£24 million)

3. In addition the 1971 Fund would pay to those claimants who have received 40% of their agreed claims through the Joint Claims Office the balance of Pts 121 512 031 (£460 000).

4. The Agreement would be subject to claimants representing at least 90% of the total amount claimed in court (with the exception of the UK Club's claim) accepting the quantum of their losses as agreed between the Spanish Government, the 1971 Fund, the shipowner and the UK Club and withdrawing their claims in court.

5. On the basis of the judgement rendered by the Court of Appeal as regards the distribution of liabilities, the Spanish Government would undertake to pay the claims of the claimants who did not accept the global settlement for the amounts awarded by the courts and to hold the 1971 Fund, the shipowner and the UK Club harmless should these claims be pursued against them.

19.2.3 The Council recalled that as regards the Spanish State the proposed agreement would have to be submitted to the State Council (Consejo del Estado) for a legal opinion and thereafter to the Council of Ministers for approval and that it would have to be approved by the shipowner and the UK Club.

19.2.4 It was also recalled that the 1971 Fund would pay indemnification to the shipowner/UK Club pursuant to Article 5.1 of the 1971 Fund Convention amounting to Pts 278 197 307 (£1 million).

19.2.5 The Council recalled that it had emphasised that the 1971 Fund's offer to conclude a global settlement on the basis of the elements set out in paragraph 19.2.2 was without prejudice to the Fund's position in respect of the issues of distribution of liabilities and time bar.

19.2.6 It was recalled that the Spanish delegation had assured the Council that the Spanish Government would make its best endeavours to fulfil the conditions required under the proposed agreement, ie to obtain acceptance by claimants representing 90% of the total amount claimed in court, that the Spanish Government intended to commence a round of consultations with the claimants as soon as possible and that it would inform the Council of the results of these consultations in due course.

Developments since the Administrative Council's June 2001 session

19.2.7 The Council noted that during July 2001 details of a possible global solution had been discussed at a meeting between representatives of the Spanish Government and the Director and that as a result of these discussions, in a letter dated 27 July 2001, the Director had made a formal offer on behalf of the 1971 Fund to the Spanish Government to conclude an agreement between the Fund, the Spanish State, the shipowner and the UK Club which contained the following elements:

1. The total amount due by the owner of the *Aegean Sea*, the UK Club and the 1971 Fund to the victims as a result of the distribution of liabilities determined by the Audiencia Provincial in La Coruña amounts to Pts 9 000 million.

2. The sum payable by the 1971 Fund to the Spanish State, after deduction of certain sums, amounts to Pts 6 386 921 613.

3. In addition, the 1971 Fund would undertake to pay to the victims whose claims have not been included in those agreed with the Spanish State and who are listed in an Annex to the Agreement, the difference between the total agreed amount of the loss or damage and the amount paid to date, amounting to Pts 121 512 031.

4. As a consequence of the distribution of liabilities determined by the Court of Appeal in La Coruña, the Spanish State would undertake to compensate all the victims who may obtain a final judgement by a Spanish court in their favour, which condemns the shipowner, the UK Club or the 1971 Fund to pay compensation as a result of the incident.

19.2.8 It was noted that in his letter the Director had made it a condition for the conclusion of the Agreement that the Spanish State presented to the 1971 Fund a copy of the withdrawals by the victims of their legal actions, in civil proceedings or in the procedure for execution in the criminal proceedings, representing at least 90% of the principal of the loss or damage claimed, except for the claim by the UK Club for preventive measures. It was further noted that the Director had stated that the 1971 Fund was prepared to reach a global agreement with the Spanish State on the settlement of all claims for loss or damage pursuant to the 1969 Civil Liability Convention and the 1971 Fund Convention resulting from the *Aegean Sea* incident in accordance with the text of the proposed Agreement provided that this condition was fulfilled. It was also noted that the Director had stated in the letter that the 1971 Fund undertook to maintain the offer until 30 November 2001, and that the shipowner, the UK Club and the 1971 Fund expressly reserved their rights to defend before the Spanish courts and tribunals their position with respect to the distribution of liabilities and with respect to a group of claims being time-barred.

19.2.9 It was noted that the letter and the text of the proposed Agreement had been approved by the shipowner and the UK Club.

19.2.10 It was finally noted that the Spanish State had not yet obtained the withdrawal by the victims of their legal actions representing at least 90% of the principal of all the losses or damages claimed.

19.2.11 The Spanish delegation stated that the Spanish Government had accepted the conditions set out in the Agreement and in the Director's letter, in order to reach an overall settlement of the incident. That delegation also stated that the Spanish Government was making its best endeavours to reach agreements with claimants in respect of at least 90% of the principal of the loss or damage claimed, as well as to obtain the withdrawals of the associated legal actions. The Spanish delegation stated that the various groups of claimants were participating in the

negotiations with open minds and with a willingness to reach an overall agreement, and that it was hoped that the required conditions would be met by the end of November 2001.

19.3 *Braer*

19.3.1 The Administrative Council took note of the information contained in document 71FUND/A.23/16/2 concerning the *Braer* incident.

19.3.2 The Council recalled that the outstanding court actions related mainly to claims for property damage and a claim by a Shetland-based company, Shetland Sea Farms Ltd, in respect of a contract to purchase smolt from a related company on the mainland.

Property damage claims

19.3.3 The Council recalled that claims were submitted for damage to asbestos cement tiles and corrugated sheets, used as roof coverings for homes and agricultural buildings, which the claimants alleged was a result of pollution. It was recalled that 84 claims in this category, for a total of £8 million, became the subject of legal proceedings, although subsequently 35 claims totalling £5.1 million were withdrawn. It was also recalled that in the view of the Fund's experts, no satisfactory technical evidence had been presented in support of these claims, which were originally based on the assumption that the alleged damage was caused by oil. It was recalled that the claimants' expert later hypothesised, however, that the active component present in the dispersants used to treat the oil was the cause, but that the 1971 Fund's experts had taken the view that the report of the claimants' expert did not provide satisfactory evidence that the dispersants had caused the alleged damage.

19.3.4 The Council further recalled that a four-week hearing was held in the Court of Session commencing in June 1999 in respect of six property damage claims, totalling £170 735, which had been selected to provide a wide geographical spread and variety of types of roof materials.

19.3.5 The Council recalled that the Court had rejected five of the claims and that the sixth claim was rejected on procedural grounds. The Council also recalled that the claimants did not appeal against the judgement.

19.3.6 It was recalled that at the Administrative Council's June 2001 session, the United Kingdom delegation had drawn attention to the fact that one of the obstacles to these claimants withdrawing their actions was that the shipowner's insurer, Assuranceforeningen Skuld (Skuld Club) and the 1971 Fund were requesting each claimant to contribute to the insurer's and the 1971 Fund's legal costs. It was recalled that that delegation had noted that although it was usual practice for the IOPC Funds to pursue such costs he pointed out that these claimants were not companies but were all individuals, some of whom were pensioners, and that many considered themselves badly treated. It was also recalled that the United Kingdom delegation had requested the Council to allow the Director the flexibility not to pursue the Fund's legal costs in this particular instance with a view to reaching a settlement of the *Braer* incident on a global basis.

19.3.7 It was further recalled that the Director had informed the Council that the 1971 Fund and the Skuld Club had in early April 2001 made an offer in writing relating to the claimants' contributions to the Funds' and the Skuld Club's legal costs, that the claimants' solicitors had not replied to this offer and that the 1971 Fund had through its lawyers been trying repeatedly but unsuccessfully to contact the claimants' solicitors with a view to discussing this issue.

19.3.8 The Council recalled that several delegations had expressed concern that the IOPC Funds could be setting a precedent by not seeking to recover its legal costs, but stated that in circumstances such as those described by the United Kingdom delegation the 1971 Fund should show some flexibility when trying to settle the issue of legal costs with claimants.

19.3.9 It was recalled that the Administrative Council had instructed the Director to take a flexible approach on this issue in order to reach agreement with the claimants on the amount they should contribute towards the 1971 Fund's legal costs and urged the claimants or their representatives to contact the 1971 Fund Secretariat to facilitate a resolution of this matter (document 71FUND/AC.5/A/ES.8/10, paragraph 5.8.4).

19.3.10 The Council noted that in July 2001 the claimant's solicitors approached the 1971 Fund regarding the cost issue and that in August 2001 an agreement was reached between the claimants on the one side and the 1971 Fund and the Skuld Club on the other.

19.3.11 It was further noted that in August 2001 the Director had been informed that the remaining 43 claimants in this category had instructed their solicitors that they did not want to pursue their claims and that the claims, some of which included claims for damage other than to asbestos roofs, were withdrawn at a court hearing held on 28 September 2001.

Shetland Sea Farms Ltd

19.3.12 The Council recalled that in 1995 the Executive Committee had considered the company's claim for £2 004 867, later reduced to £1 513 020, in respect of a contract to purchase smolt from a related company on the mainland. It was recalled that the smolt had eventually been sold at 50% of their purchase price to another company in the same group and that the Committee had decided that in the assessment of the claim account should be taken of any benefits derived by other companies in the same group (document 71FUND/EXC.42/11, paragraphs 3.4.5 – 3.4.9).

19.3.13 It was recalled that the experts engaged by the 1971 Fund and the Skuld Club had assessed the proven losses at £58 000, but that attempts to settle the claim out of court had failed and that the company had taken legal action against the shipowner, the Skuld Club, and the 1971 Fund.

19.3.14 The Council recalled that in October 2000 a hearing had taken place in order for the Court to consider whether certain of the documents relied upon by the claimant were genuine.

19.3.15 The Council noted that the Court rendered its decision on 4 July 2001 and that in the decision the Court dealt with two questions, namely whether a responsible officer or officers of the claimant had knowingly presented to the Court false documents in support of a claim for compensation and, in the event that the Court did so decide, whether in those circumstances the claims should be refused without any further procedure.

19.3.16 The Council recalled that there were three companies in the Group, namely Ettrick Trout Company Ltd and the subsidiaries Shetland Sea Farms Ltd and Terregles Ltd, all controlled by a Mr Baxter.

19.3.17 The Council noted that Shetland Sea Farms had produced in support of its claim for compensation two letters from Terregles ordering from Shetland Sea Farms a substantial number of smolts which orders predated the grounding of the *Braer*, with a view to giving the impression that Terregles and Shetland Sea Farms had entered into a forward contract at arm's length to supply Shetland Sea Farms a substantial number of smolts on fixed terms with the quantity and price specified. It was noted that the financial controller of Shetland Sea Farms had specially drawn up two invoices on Terregles letterhead to support the claim that the contract existed between Terregles and Shetland Sea Farms for the supply of these smolts.

19.3.18 It was noted that the Court had answered the first question in the affirmative and had resolved that responsible officers of the claimant had knowingly presented copies of fake letters in support of Shetland Sea Farms' claim for compensation. It was noted that the Court had held that they did so in the knowledge that Shetland Sea Farms had no documentary evidence showing the existence of a contractual commitment on Shetland Sea Farms' part entered into

before the *Braer* incident to take and pay for smolts. It was also noted that the Court had further held that these documents had been put forward with the intent to deceive the Claims Office established by the 1971 Fund and the Skuld Club into believing that the Shetland Sea Farms' alleged contractual commitments were based on contemporary correspondence setting out the terms of the contracts. It was noted that the Court had held that they had done so as part of a scheme to further a substantial claim for compensation and that the claims having been rejected by the Claims Office they had persisted with it on the same false basis.

19.3.19 It was noted that having held that both Mr Baxter and Mr Baird, an employee of Shetland Sea Farms, as responsible officers of the claimant had false documents presented to the Court in support of the Shetland Sea Farms' claim for compensation, the Court had addressed the second question, namely whether as a result of this the claim should be refused without any further procedure.

19.3.20 The Council noted that the 1971 Fund and the Skuld Club had argued that it would be contrary to public policy for the Court to adjudicate upon the claim in these circumstances and that, where the claimant had used the court process to further an unlawful purpose, the claims should be rejected without further procedure. It was also noted that the Fund and Skuld Club had maintained that the Court had an inherent power to prevent misuse of its procedure, where this misuse would be manifestly unfair and would in any event bring the administration of justice into disrepute. It was further noted that the Fund and the Skuld Club had made the point that there had been a deliberate attempt to deceive the Court and that those responsible had falsely denied doing anything wrong.

19.3.21 It was noted that Shetland Sea Farms had argued that to refuse the claim would unfairly penalise the company and that refusing to allow the claim to continue would be out of all proportion to the alleged wrongdoing. It was also noted that Shetland Sea Farms had also advanced an argument under the United Kingdom Human Rights Act that in effect to deny the right to a trial in the circumstances would be a breach of Article 6 (1) of the European Convention on Human Rights which entitled every person to a fair and public hearing. It was further noted that the company had stated that it was now prepared to seek to prove its claim without reference to the false letters.

19.3.22 The Council noted that the Court had acknowledged that it had an inherent power to dismiss the claim where a party has been guilty of an abuse of process but had stated that that was a drastic power. It was noted that the Court had held that there had been a false narrative supported by fabricated documents, that this was clearly an abuse of process, that Shetland Sea Farms had attempted to seek to obtain compensation of over £1.9 million and that the attempt had been aggravated by the fact that those primarily responsible had been "untruthful in denying their responsibility". It was noted that the Court had further held that Shetland Sea Farms had misused the time and resources of the Court and had put the 1971 Fund and the Skuld Club to expense and inconvenience. It was noted that the Court had resolved, however, that as Shetland Sea Farms no longer was going to base its claim on the false letters, the company should be given the opportunity to present a revised case which should not depend on the false letters and that not to allow the claim to proceed in its revised version would be an excessive punishment.

19.3.23 The Council noted that Shetland Sea Farms did not appeal against the position taken by the Court as regards the company's use of false documents.

19.3.24 The Council also noted that the Director had considered whether the 1971 Fund should appeal against the Court's decision not to refuse the claim without any further procedure, but had decided that the Fund should not do so.

19.3.25 As regards the continuation of the proceedings it was noted that the Court had decided on 21 August 2001 that the case should proceed to a hearing restricted to the question of whether

Shetland Sea Farms could prove that a contract existed before the *Braer* incident occurred for the supply of smolts to Shetland Sea Farms without reference to false letters and invoices.

Other contested claims pending in court

19.3.26 The Council noted that a fishery claim made directly against the 1971 Fund for £123 357 based on offers made on behalf of the Fund, ie on the basis of contract, had been rejected by the Court earlier in 2001. It was noted that the 1971 Fund had maintained that the offers had expired, since they had not been accepted within a reasonable period of time. It was noted that the Court had accepted the argument advanced by the 1971 Fund and rejected the claim. It was noted that the claimants had previously brought an action under the Merchant Shipping Acts 1971 and 1974 (which implement the 1969 Civil Liability Convention and the 1971 Fund Convention) but this action had been abandoned. It was also noted that the claimants had appealed the decision to reject the claim.

19.3.27 The Council noted that discussions were being held with a claimant in an attempt to settle his claim for £85 000 in respect of damage to various felt roofs.

Claims situation

19.3.28 The Administrative Council recalled that the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention, 60 million Special Drawing Rights (SDR), corresponded to £50 609 280.

19.3.29 The Council noted that there were only three opposed claims pending in court, namely that of Shetland Sea Farms for £1 428 891, the claim in the fishery sector for £123 357 and the claim for damage to felt roofs for £85 000. The Council further noted that so far, the total amount paid in compensation was £48 208 644 (out of which the 1971 Fund had paid £42 926 938 and the Skuld Club £5 281 706) and that there was therefore £2 400 636 available for further compensation payments.

19.3.30 The Administrative Council noted that the shipowner and the Skuld Club were prepared to make available the indemnification amount of £1 211 780 available for payments to claimants and that the total amount available for such payments was therefore £3 612 416.

19.3.31 The Council noted that there remained £3 729 354 unpaid in respect of claims which had been settled and not paid in full and that there would therefore be a deficit of £116 938 plus any amount which might be awarded by the Court in respect of the claim by Shetland Sea Farms and the other two remaining claims. The Council further noted that the Skuld Club had undertaken to make funds available to cover this deficit and to guarantee the payment of the amount, if any, which might be awarded by a final court judgement in respect of the three pending claims.

19.3.32 The Council noted that as a result of the undertaking by the Skuld Club, all established claims could be paid in full and that it was expected that the payments of the balance of 60% to those claimants who have so far only received 40% of the approved amount would start during October 2001, as would payments in respect of established claims for which no payments have been made.

19.3.33 The Council also noted that the Skuld Club was considering how the limitation proceedings are to be terminated.

19.3.34 The Administrative Council expressed its gratitude to the shipowner and the Skuld Club for their undertaking to make available the indemnification amount for payments to claimants and for the Club's undertaking to make available funds to allow full payment of all established

claims. The Council also thanked the United Kingdom Government for the role it played in this incident and for foregoing its claim in court.

19.3.35 The representative of the Skuld Club thanked the 1971 Fund Secretariat and the UK Government for their excellent co-operation and willingness to maintain an open dialogue. He stated that without such co-operation and dialogue it was unlikely that there would have been such a successful outcome from the claimants' point of view.

19.3.36 The United Kingdom delegation thanked the Director and the Skuld Club for all their work towards reaching a final solution to the *Braer* case and for the progress made since the last session of the Administrative Council in June 2001. That delegation further stated that it was important to remember that some claimants felt aggrieved that their claims had been rejected and that it was important to remember that when claims were litigated against the Fund this may be a sign that the Fund had failed.

19.3.37 The United Kingdom delegation stated that it was important to note that the *Braer* case was a defining point for the IOPC Funds, with over 2 000 claims processed, some of which had given rise to discussions on policy issues and points of principle, especially as regards claims for economic loss. That delegation pointed out that many of the decisions reached were to the benefit of victims of subsequent incidents.

19.3.38 The United Kingdom delegation also stated that an important lesson learned was the need for close co-operation between the Funds, the P & I Club involved and the Government of the affected State, and that it was important for governments to play a part in the system and to ensure that the issues were understood by all parties.

19.3.39 The United Kingdom delegation ended by stating that the need to pro-rate claims in the case of the *Braer* incident, and the fact that some claimants with settled claims had to wait five years before payment without interest, showed the need for a third tier of compensation.

19.3.40 The Director agreed with the United Kingdom delegation that the *Braer* incident was a landmark case which had resulted in a number of important precedents on the admissibility of claims.

19.4 *Sea Prince*

19.4.1 The Administrative Council took note of the information contained in document 71FUND/A.23/16/3 concerning the *Sea Prince* incident.

19.4.2 The Council noted that a total of 194 claims totalling Won 5 471 million (£3.0 million) remained the subject of legal actions against the 1971 Fund and that 183 of these claims had been rejected by the 1971 Fund, and that the Court in charge of the limitation proceedings had also rejected these claims. The Council also noted that the Court had agreed with the Fund's assessment of the other 11 claims at a total of Won 95.5 million (£52 000).

Determination of the limitation amount

19.4.3 The Administrative Council recalled that in May 2000 the 1971 Fund had proposed to the shipowner/UK Club that the limitation and indemnification amounts applicable to the *Sea Prince* should be calculated on the basis of the midpoint of the SDR/Won exchange rate on 1 March 1996 (which was representative of rates during the period in which most of the claims were paid by the shipowner/UK Club) and the SDR/Won exchange rate on 9 May 2000 giving a limitation amount of Won 18 308 275 906 (£10.2 million) and an indemnification amount of Won 7 410 928 540 (£4.1 million). The Council recalled that the reason for proposing a midpoint exchange rate was to reach an equitable settlement taking into account the considerable fluctuations in exchange rates that occurred between 1996 and 2000. The Council

noted with satisfaction that the shipowner/UK Club had accepted the 1971 Fund's proposal in April 2001.

Reimbursement of amounts paid by the shipowner and the UK Club

19.4.4 The Administrative Council recalled that in view of the fact that the UK Club had reimbursed the shipowner for an amount in excess of the limitation amount applicable to the *Sea Prince*, the 1971 Fund had agreed to pay the balance of the shipowner's claim in respect of clean-up costs, ie Won 3 281 million (£1.9 million) plus interest of Won 926 million (£528 000).

19.4.5 The Council noted that on the basis of the agreed limitation amount applicable to the *Sea Prince*, the 1971 Fund had, in May 2001, reimbursed the UK Club Won 4 990 million (£2.8 million) plus interest of Won 1 497 million (£800 000) in respect of clean-up costs and preventive measures associated with salvage, and Won 7 411 million (£4.1 million) in respect of indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention.

Limitation proceedings

19.4.6 The Council noted that the limitation amount applicable to the *Sea Prince* was 14 million SDR but the Court had not yet constituted the limitation fund and that the limitation amount in Won had therefore not been fixed. The Council further noted that as a consequence of having agreed the limitation amount applicable to the *Sea Prince* and having settled all outstanding disputed claims in the limitation proceedings, the shipowner/UK Club and the 1971 Fund had requested the Court to render the limitation proceedings void *ab initio*, which was possible under Korean law if all parties agreed.

19.4.7 It was further noted that the claims by 194 claimants referred to in paragraph 19.4.2 above had not been brought in the limitation proceedings and that the claimants had not appealed against the decision of the Court in charge of those proceedings on the assessments of the claims, but had instead filed a separate action against the 1971 Fund. It was noted that these claimants had agreed to join the 1971 Fund and the shipowner/UK Club in making an application before the Limitation Court for the discontinuance of the limitation proceedings, provided that the 1971 Fund made payments of the amounts assessed by that Court, and gave an undertaking that the claimants' rights to pursue their claims against the Fund would not be prejudiced and that the Fund would pay any sums awarded in a final judgement. The Council noted that the Court was expected to give its final judgement at the end of October 2001.

19.4.8 The Council took note of the fact that in May 2001 the 1971 Fund had paid Won 95.5 million (£53 000) in respect of the 11 claims referred to in paragraph 19.4.2 in accordance with the Limitation Court's assessments.

19.4.9 It was noted that the application for the discontinuance of the limitation proceedings had been filed on 21 June 2001, and that the Court was expected to render its decision in early October 2001.

19.5 <u>*Sea Empress*</u>

19.5.1 The Administrative Council took note of the information contained in document 71FUND/A.23/16/4 concerning the *Sea Empress* incident.

19.5.2 The Council noted that 1034 claimants had presented claims for a total of £49.3 million and that payments had been made to 800 claimants totalling £33.1 million, of which £6.9 million had been paid by the shipowner's insurer, Assuranceforeningen Skuld (Skuld Club), and £26.2 million by the 1971 Fund.

19.5.3 The Council noted with satisfaction that a significant number of claims had recently been settled. It noted that 48 claims were being pursued in the limitation proceedings as compared to

194 claims when proceedings had been commenced. The Council further noted that the total amount of outstanding claims was approximately £7.2 million and that the majority of this amount related to items considered by the Skuld Club and the 1971 Fund to be either inadmissible or unsubstantiated.

19.5.4 The Council took note of the developments in respect of the limitation proceedings.

19.5.5 It was further noted that the Director, together with the 1971 Fund's legal advisers, was finalising the claim document in the recourse action, to be issued in the Admiralty Court in the near future.

19.6 *Nakhodka*

19.6.1 The Administrative Council took note of the information contained in document 71FUND/A.24/16/5 concerning the *Nakhodka* incident.

19.6.2 The Council noted that as at 10 October 2001 458 claims totalling ¥26 382 million (£145 million) had been settled at ¥18 467 million (£102 million) and that payments made to claimants amounted to ¥16 738 million (£92 million), including the payments made by the shipowner and his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), totalling US$5 million (£4 million). The Council also noted the situation as regards the assessment of the pending claims, in particular that it was expected that the assessments of all remaining claims would be completed by the end of 2001.

Level of payments

19.6.3 The Administrative Council recalled that as a result of developments and as authorised by the governing bodies the Director had decided in January 2001 to increase the level of payments from 70% to 80% of the amount of the damage actually suffered by the individual claimants (documents 71FUND/AC.3/ES.6/7, paragraph 3.3.5 and 92FUND/EXC.11/6, paragraph 4.1.5).

Claims relating to the construction of the causeway

19.6.4 The Council recalled that the Japan Maritime Disaster Prevention Centre (JMDPC) had submitted claims totalling ¥3 336 million (£18 million) in respect of the costs of the construction and removal of a 175 metre causeway from the shore, which was used to remove the last 380m³ of oil/water mixture from the upturned bow after the on-water operations were stood down.

19.6.5 The Council recalled that at the June 2001 sessions of the governing bodies several delegations had stated that the shipowner's insurer and the IOPC Funds should make every effort to settle these claims and emphasised the importance of the Funds keeping an open mind about claims of this type. It was also recalled that some delegations had made the point that the high amount of the claims should not influence the way in which they were treated by the Funds, although great care should be exercised in the assessment of such claims. It was further recalled that some delegations had stated that it was important for the Funds not to consider the building of the causeway as unreasonable with the benefit of hindsight, since this could discourage national authorities from taking innovative preventive measures in future cases.

19.6.6 The Council noted that meetings had been held in September and October 2001 between the Japanese Government, the IOPC Funds and the UK Club to discuss the technical aspects of the causeway claims in detail. It was further noted that the meetings had also addressed the issue as to whether the claims fulfilled the criteria for admissibility laid down by the governing bodies of the IOPC Funds. It was also noted that progress had been made and that further meetings would be held.

19.6.7 One delegation stated that the settlement of the causeway claim was central to reaching an early and satisfactory conclusion to the incident and that it was important that the Funds reached a pragmatic solution without the benefit of hindsight.

19.6.8 The Japanese delegation stated that the Japanese Government would continue its efforts to settle the causeway claim.

Legal actions

19.6.9 The Council took note of recent developments in respect of legal proceedings set out in paragraphs 4.1 – 4.18 of document 71FUND/A.24/16/5.

Solution of all outstanding issues

19.6.10 The Council recalled that at the June 2001 sessions of the governing bodies, the Administrative Council had instructed the Director to pursue discussions with the Japanese Government, the shipowner and the UK Club on outstanding claims and issues and to explore the possibilities of reaching a global settlement of all outstanding issues. It was also recalled that the Japanese delegation had stated that if the outstanding issues could be resolved to the satisfaction of all parties concerned this could lead to an early global settlement.

19.6.11 The Council noted that discussions had been held between the UK Club and the IOPC Funds on the possibilities of reaching a global solution and that these discussions would continue. It was further noted that the Director and the UK Club had agreed that the objectives of any global settlement should be that all admissible claims were paid in full, that the IOPC Funds recovered a reasonable amount of the compensation paid by them and that all litigation would cease.

19.6.12 The Japanese delegation stated it was premature to authorise the Director to reach a global settlement at this stage, since it was not clear what the basis of a settlement would be. That delegation indicated that any global settlement should relate to the recourse actions.

19.6.13 A number of delegations supported the idea of reaching a global solution and stressed the need for flexibility, pragmatism and transparency. Those delegations agreed that it was premature to authorise the Director to conclude any agreement in this regard or for the Council to discuss any settlement amounts.

19.6.14 The Director was instructed to continue to explore the possibilities of reaching a settlement of all outstanding issues, including those relating to the various recourse actions.

19.7 *Nissos Amorgos*

19.7.1 The Administrative Council took note of the information contained in document 71FUND/A.23/16/6 concerning the *Nissos Amorgos* incident.

Claims situation

19.7.2 The Council noted that claims presented to the Claims Agency had been approved for a total of Bs325 million (£300 000) plus US$24.4 million (£16.6 million), that the shipowner's insurer, Assuranceforeningen Gard (Gard Club), had paid Bs1 261 million (£1.8 million) in respect of these claims and that the 1971 Fund had made two payments totalling Bs16.7 million (£16 340). The Council noted that in addition the Gard Club and the 1971 Fund had paid US$6.4 million (£4.4 million) to fishermen and fish processors.

Court proceedings

19.7.3 The Council noted that, following the withdrawal of a number of court actions, the situation as regards the legal proceedings in respect of the incident in a Criminal Court in Cabimas, Civil

Courts in Caracas and Maracaibo, the Criminal Court of Appeal in Maracaibo and the Supreme Court was as follows:

(a) Republic of Venezuela;
  (i) in the Criminal Court of Cabimas for US$60 million (£40.8 million);
  (ii) in the Civil Court of Caracas for the same amount;
(b) three fish and shellfish processing companies in the Supreme Court for US$30 million (£20.4 million);
(c) four experts engaged by FETRAPESCA in the Supreme Court for fees for Bs100 million (£100 000);
(d) three lawyers against the Republic of Venezuela for fees for Bs440 million (£400 000);
(e) PDVSA in the Civil Court of Maracaibo for Bs3 314 million (£3 million);
(f) ICLAM;
  (i) in the Criminal Court of Cabimas for Bs57.7 million (£53 000);
  (ii) in the Civil Court of Maracaibo for the same amount;
(g) the shipowner and the Gard Club for Bs1 219 million (£1.1 million) and Bs3 473 million (£3.2 million).

Cause of the incident

19.7.4 The Administrative Council recalled that at its 5th session, held in June 2001, it had noted that during a visit by the Director to Venezuela in April 2001 discussions had been held concerning the cause of the incident. It was also recalled that the shipowner and the Gard Club had taken the position that the incident and the resulting pollution were due to the fact that the Maracaibo Channel had been in a dangerous condition due to poor maintenance and that this had been known to the Venezuelan authorities but that its full extent had been concealed and that the arrangements for alerting mariners to the dangers which existed were unreliable. It was also recalled that in October 1999, the Executive Committee had instructed the Director to investigate these issues further in co-operation with the shipowner and the Gard Club to the extent that there was no conflict of interest between them and the Fund. The Council recalled that during the meetings the Venezuelan authorities had indicated that they had significant documentary evidence, which showed that the Maracaibo Channel had been in good condition and that there had been no contributory negligence on the part of the Instituto Nacional de Canalizaciones (INC) and that the Director had invited the Venezuelan authorities to make these documents available so as to enable the 1971 Fund's experts to examine them and the 1971 Fund to take a position on the basis of all relevant facts.

19.7.5 The Council noted with satisfaction that in September 2001, the INC had presented to the 1971 Fund substantial technical documentation on the condition of the channel for navigation and that this documentation was being examined by the 1971 Fund.

Level of payments

19.7.6 The Administrative Council recalled that at its 4th session, held in March 2001, it had decided to increase the level of payments to 40% of the loss or damage actually suffered by each claimant and to authorise the Director to increase the level of payments to 70% when the 1971 Fund's total exposure in respect of the *Nissos Amorgos* incident fell below US$100 million. The Council further recalled that it had also authorised the Director to increase the Fund's payments up to a level of between 40% and 70% if and to the extent the actions withdrawn from the courts would allow it (document 71FUND/AC.4/ES.7/6, paragraph 3.3.9).

19.7.7 The Council noted that the 1971 Fund's total exposure stood at some US$175 million (£119 million) and that the total amount available for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention was 60 million SDR (US$77.1 million or £52.4 million). In view of this situation, the Administrative Council considered that its decision taken at its 5th session on the level of payments should be maintained.

19.7.8 A number of delegations expressed concern that the 1971 Fund was not in a position to revise the level of payments of claims arising from the *Nissos Amorgos* incident at this stage and urged the Republic of Venezuela, the Gard Club and the Director to continue their efforts to resolve the outstanding issues relating to the incident.

Statement by the Venezuelan delegation

19.7.9 The Venezuelan delegation stated that the Republic of Venezuela had made several proposals to the shipowner and the Gard Club in order to reach agreement and to be able to withdraw from Court the claim by the Ministry of Environment so that the level of payments could be increased. That delegation further stated that it had not been possible to reach any such agreement.

19.7.10 The Venezuelan delegation stated that technical staff of the INC had been present at the negotiations to provide expert input on dredging and other related issues. It further stated that since its construction in 1948, more than 150 000 tankers had passed through the Maracaibo Channel without incident and that the channel had never been classed as unsafe for navigation. It also stated the *Nissos Amorgos* had been the only ship to ground and had, in any case, been sailing outside the channel.

19.7.11 The Venezuelan delegation requested an official position from the 1971 Fund as to the safety of the channel in the light of the further information provided by it to the 1971 Fund on 6 September 2001.

19.7.12 The Director stated that it had not yet been possible for the experts engaged by the 1971 Fund to fully review the substantial quantity of information submitted recently and that for that reason the Fund could not take a position at this stage. He mentioned that the matter would be submitted to the Administrative Council as soon as the review of the documentation was completed. He hoped that significant progress could be made in the near future as regards all outstanding issues arising from the incident.

Statement by the Gard Club

19.7.13 The representative from the Gard Club stated that the issues of the investigation into the cause of the incident and the withdrawal of one of the claims by the Republic of Venezuela were interconnected. That representative noted that the INC had recently submitted technical documentation to the 1971 Fund on the condition of the channel, and that arrangements were in hand for this material to be made available to the shipowner and the Gard Club. She stated that until that documentation had been studied by all concerned, it was not possible to say whether the shipowner and the Gard Club would change their position.

19.7.14 The representative of the Gard Club stated that the Venezuelan Government had insisted that, as a condition of withdrawal of the Government's duplicate claim, the shipowner/Gard Club should renounce any claim against the Republic of Venezuela resulting from the incident. The representative of the Gard Club further stated that the shipowner and the Club took the position that, on the basis of the evidence they had so far seen, they had a legitimate recourse claim and that it was appropriate for all potential rights of recourse to be preserved.

19.7.15 The representative of the Gard Club stated finally that the shipowner and the Club fully supported the objective of eliminating duplicate actions in order to allow an increase in the level of payments to parties with legitimate claims and that they remained ready to execute whatever formal documentation might reasonably be required to enable the Government to complete the withdrawal of one of its duplicate actions.

19.8 *Pontoon 300*

19.8.1 The Administrative Council took note of the information contained in document 71FUND/A.23/16/7 concerning the *Pontoon 300* incident.

Claims situation

19.8.2 The Council noted that claims totalling Dhs 7.4 million (£1.4 million) in respect of clean-up operations had been settled for a total of Dhs 6.3 million (£1.2 million) and that the 1971 Fund had paid a total of Dhs 4.8 million (£900 000), corresponding to 75% of the settlement amounts.

19.8.3 The Council recalled that in May 2000 the Municipality of Umm al Quwain had presented claims against the 1971 Fund totalling Dhs 199 million (£39 million) in respect of economic losses, property damage, clean-up and environmental damage suffered by fishermen, tourist hotel owners, private property owners, a marine research centre and the municipality itself.

Legal actions

19.8.4 The Council recalled that at its 5th session, acting on behalf of the 8th extraordinary session of the Assembly, the Administrative Council had considered the question of whether the claims filed by the Umm al Quwain Municipality had become time-barred (document 71FUND/AC.5/A/ES.8/10 paragraphs 5.5.4 - 5.5.13).

19.8.5 The Council recalled that in September 2000, ie well before the expiry of the three-year time bar period, the Umm al Quwain Municipality had brought legal action in the Umm al Quwain Court against the owner of the tug *Falcon 1* which was towing the *Pontoon* 300 at the time of the incident and against the owner of the cargo on board the *Pontoon 300*. It was further noted that the total amount claimed in the legal action was Dhs199 million (£39 million) and that the claims corresponded to those referred to in paragraph 19.8.3 above. The Council recalled that the 1971 Fund had not been joined as a defendant in the proceedings, nor had the Fund been formally notified of the proceedings. It was further noted that the plaintiffs had requested the Court to notify the 1971 Fund through diplomatic channels in accordance with Article 7.6 of the 1971 Fund Convention and through the Undersecretary of the Ministry of Justice according to Article 9, paragraph 7 of the United Arab Emirates law of Civil Procedure. It was recalled however, that notification under Article 7.6 could be made only in respect of actions against the shipowner liable under the 1969 Civil Liability Convention or his insurer. It was noted that actions against any other parties would fall outside that Convention. It was further noted that since none of the defendants listed in the Municipality's writ was the shipowner or his insurer, the action could not be based on the 1969 Civil Liability Convention and Article 7.6 of the 1971 Fund Convention was not applicable.

19.8.6 The Council recalled that in December 2000 the Ministry of Agriculture and Fisheries had joined in the Umm al Quwain Municipality's action as a co-plaintiff claiming Dhs 6.4 million (£1.2 million), which corresponded to the claim by the marine resources research centre referred to in paragraph 19.8.3 above. It was also recalled that the Ministry had joined the 1971 Fund as a co-defendant in its action.

19.8.7 The Administrative Council recalled that claims against the 1971 Fund had become time-barred on or around 8 January 2001. The Council also recalled that the question had arisen as to whether the claims that were the subject of the legal action by the Umm al Quwain Municipality had become time-barred. The Council recalled that the Umm al Quwain Municipality had not taken the measures laid down in the 1971 Fund Convention to prevent the claims becoming time-barred since the action which the Municipality had taken was not against the registered owner of the *Pontoon 300* or his insurer and the Municipality had not taken legal action against the 1971 Fund.

19.8.8 It was recalled that a number of delegations had stated that the question of time bar was an important one and that the 1971 Fund should maintain its policy that the provisions on time bar in the 1971 Fund Convention should be strictly observed.

19.8.9 It was further recalled that the delegation of the United Arab Emirates had stated that under the law of the Emirates, international treaties took precedence over domestic law and that the issue of time bar should be decided in accordance with the Conventions.

19.8.10 The Council recalled that although the action by the Ministry of Agriculture and Fisheries had not yet been served on the 1971 Fund, the Director took the view that this claim was not time-barred, since the 1971 Fund had been brought in as defendant in this action before the expiry of the three-year time bar period. The Council recalled that it had agreed with the Director's view in respect of this claim.

19.8.11 The Council recalled that the question had also arisen as to the Ministry of Agriculture and Fisheries' and Umm al Quwain Municipality's standing to sue in respect of the alleged damages covered by the claims, since neither of them had any right to claim against the 1971 Fund or anyone else on behalf of any other parties unless a power of attorney or other legal authority was provided by the individual or entity who had suffered the alleged loss. It was recalled that the Ministry and the Municipality could still present documents showing that they had the power to represent the victims in question.

19.8.12 The Council noted that at a hearing on 8 September 2001 the 1971 Fund's lawyers denied the validity of the assignment of rights to the Umm al Quwain Municipality and the Ministry of Agriculture and Fisheries and pleaded that the claims submitted by Umm al Quwain Municipality were time-barred. It was also noted that the lawyers acting for the Municipality had requested an adjournment of the proceedings in order to prepare a response and that the next hearing was scheduled for 20 October 2001.

Level of the 1971 Fund's payments

19.8.13 The Council recalled that in view of the uncertainty as to whether the total amount of the claims might exceed the total amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR, corresponding to approximately £52.5 million), the Executive Committee had decided at its 57th session to limit the 1971 Fund's payments to 50% of the loss or damage actually suffered by each claimant as assessed by the 1971 Fund's experts at the time the payment was made (document 71FUND/EXC.57/15, paragraph 3.11.9). It was also recalled that at its 58th session, the Committee had increased the level of payments to 75% (document 71FUND/EXC.58/15, paragraph 3.9.5) and that the Administrative Council had decided at its 1st and 2nd sessions to maintain the payment level at 75% (documents 71FUND/AC.1/EXC.63/11, paragraph 3.7.4 and 71FUND/AC.2/A.23/22, paragraph 17.11.5).

19.9 *Al Jaziah 1*

19.9.1 The Administrative Council took note of the information contained in document 71FUND/A.24/16/8 concerning the *Al Jaziah 1*.

19.9.2 The Administrative Council noted that claims in respect of clean-up costs totalling US$1.3 million (£920 000) had been submitted to the IOPC Funds by two local oil companies that had been engaged in the clean-up response. It was also noted that these claims had been provisionally assessed at US$461 000 (£330 000) pending further details from the claimants. The Council further noted that one of the oil companies had submitted a further claim for US$98 000 (£68 000).

19.9.3 The Council noted that the Federal Environment Agency (FEA) had submitted a claim for Dhs 2 million (£380 000) in respect of operations undertaken by a local salvage company to

stem leaks and remove oil from the sunken wreck, and to refloat the wreck and tow it into the Abu Dhabi Free Port. It was further noted that this claim had been settled for the amount claimed in May 2001.

19.9.4 The Council noted that claims for US$40 000 (£28 400) and Dhs 47 000 (£9 200) had also been submitted by the FEA in respect of operations to remove the oil residues remaining in the wreck after it had been refloated. It was further noted that these claims had been settled in May 2001 in the amounts of US$29 000 (£20 358) and Dhs 47 000 (£9 200) respectively.

19.10 *Zeinab*

19.10.1 The Administrative Council took note of the developments in respect of the *Zeinab* incident, as contained in document 71FUND/A.24/16/8.

19.10.2 The Council noted that on 14 April 2001, the Georgian–registered vessel *Zeinab*, suspected of smuggling oil from Iraq, had been arrested by the multi-national Interception Forces. The Council further noted that the vessel was being escorted to a holding area in international waters when the vessel had lost its stability about 16 miles from the Dubai coastline and sank in 25 metres of water. It was further noted that the vessel was reported to have been carrying a cargo of 1500 tonnes of fuel oil, of which it was estimated that some 400 tonnes had been spilled at the time of the incident. It was also noted that some 1100 tonnes of cargo had remained in the unbreached tanks and that this cargo had been successfully removed from the sunken vessel without further significant spillage of oil. The Council noted that it appeared that the *Zeinab* had not been entered with any classification society and had not been covered by any liability insurance.

Definition of 'ship'

19.10.3 The Council recalled that at its 13th session in June 2001 the 1992 Fund Executive Committee had decided that, since the *Zeinab* was actually carrying oil in bulk as cargo at the time of the incident, it should be considered a ship for the purpose of the 1969 Civil Liability Convention and the 1971 Fund Convention. It was further recalled that the *Zeinab* was clearly capable of carrying oil in bulk as cargo, and had been frequently used for carrying oil in the region. It was recalled that the Committee had considered that it would be difficult to argue that it was not a ship for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention. It was further recalled that the Committee had therefore taken the view that the *Zeinab* fell within the definition of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention (document 92FUND/EXC.13/7, paragraph 3.4.6).

19.10.4 The Council also recalled that at its 5th session in June 2001 the 1971 Fund Administrative Council had also decided that the *Zeinab* fell within the definition of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention (document 71FUND/AC.5/ES.8/10, paragraph 5.6.6).

Applicability of the Conventions

19.10.5 The Administrative Council recalled that at its 13th session, the 1992 Fund Executive Committee had decided that since the United Arab Emirates was at the time of the *Zeinab* incident a Party to both the 1969/1971 Conventions and the 1992 Conventions, which had been implemented into national law, both sets of Conventions applied to the incident (document 92FUND/EXC.13/7, paragraph 3.4.8).

19.10.6 The Council further recalled that at its 5th session the 1971 Fund Administrative Council had also decided that both sets of Conventions applied to the *Zeinab* incident, but that the United Arab Emirates would be under a treaty obligation to apply the 1969 Civil Liability Convention

in respect of the shipowner's liability (document 71FUND/AC.5/A/ES.8/10, paragraphs 5.6.8 and 5.6.9).

Distribution of liabilities between the 1971 and 1992 Funds

19.10.7 The Council recalled that the 1992 Fund Executive Committee and the 1971 Fund Administrative Council had decided that the liabilities arising out of the *Zeinab* incident should be distributed between the 1971 Fund and the 1992 Fund on a 50:50 basis (documents 71FUND/AC.5/A/ES.8/10, paragraph 5.6.11 and 92FUND/EXC.13/7, paragraph 3.4.11).

Claims for compensation

19.10.8 The Council noted that the Dubai Ports Authority had submitted claims totalling US$480 000 (£343 000) in respect of costs of preventive measures and clean-up. It was also noted that further claims were expected.

Settlement of claims

19.10.9 The Administrative Council recalled that at the June 2001 sessions of the governing bodies of the IOPC Funds one delegation had referred to Article 4.2(a) of the 1971 and 1992 Fund Conventions under which the Funds were exonerated from paying compensation for pollution damage resulting from *inter alia* an act of war or hostilities. It was recalled that that delegation had expressed the view that this defence was worth exploring more closely.

19.10.10 It was recalled that some delegations had considered that the multi-national interception forces were merely carrying out policing duties to ensure that sanctions imposed by the United Nations Security Council were respected. It was also recalled that those delegations had considered that even if the sinking of the *Zeinab* had been due to a deliberate act, this would be a matter for a possible recourse action by the Fund rather than constituting a defence under Article 4.2(a).

19.10.11 It was also recalled that the United Arab Emirates delegation had stated that the area in question was no longer under war and that observation of the United Nations Resolutions had no bearing on the right to compensation for oil pollution damage.

19.10.12 It was further recalled that a number of delegations had expressed concerns about authorising the Director to settle claims until the exact circumstances surrounding the sinking of the *Zeinab* were known.

19.10.13 It was recalled that the Council and the 1992 Fund Executive Committee had at their June 2001 sessions decided that in view of the reservations expressed by a number of delegations it was premature to authorise the Director to settle claims for compensation arising from the incident and that the matter should be given further consideration at their October 2001 sessions (documents 71FUND/AC.5/A/ES.8/10, paragraph 5.6.20 and 92FUND/EXC.13/7, paragraph 3.4.20).

Recent developments

19.10.14 The Council noted that the Funds' lawyers had been in contact with the United States Navy Maritime Liaison Office in Bahrain requesting copies of documents recovered from the *Zeinab*. It was further noted that in response to that request the US Navy had provided copies of the Certificates of Ownership and Navigation issued by the Georgian Maritime Administration and a brief report by the Boarding Officer of the US Navy. It was also noted that the Certificate of Ownership dated 7 June 2000 gave the name of the owner and an address of his representative in Dubai. The Council further noted that the Certificate of Registration, also issued on 7 June 2000, indicated that the *Zeinab* was a cargo vessel of 2 178 GT and that no IMO number was given on the Certificate.

19.10.15 The Council noted that the Boarding Officer had stated in his report *inter alia* that measurements and soundings of upper tanks had indicated that there was 1 300 tonnes of fuel oil onboard. It was noted that it is was also stated that the boarding team had not been able to access the lower tanks due to the sounding tubes being welded shut. It was further noted that the boarding team had estimated that had the lower tanks been full, the total quantity of oil on board would have been about 3 000 tonnes. It was also noted that the boarding team had found old fuel receipts indicating that up to 3000 tonnes of oil had been loaded and discharged on previous occasions and that on the basis of this the boarding team had decided to divert the vessel.

19.10.16 The Council noted that the Funds' technical expert had also been in contact with the United States Navy Maritime Liaison Office in Bahrain requesting information regarding the sequence of events leading up to the sinking of the vessel. It was noted that no progress had been made in obtaining such details. It was also noted that the Funds' lawyers were trying to obtain information from the United Arab Emirates Ministry of Foreign Affairs and Ministry of Interior.

19.10.17 The Council noted that the Funds' expert had recently reviewed a video taken by an observer on the United States Navy arresting vessel of the *Zeinab* sinking and an underwater video of the sunken vessel taken by divers who assisted in the oil removal operations.

19.10.18 The Council noted that the underwater video showed clearly that the majority of the tank openings had been removed, which would have allowed seawater to flow directly into the tanks thereby decreasing the vessel's overall freeboard. It was further noted that the Funds' expert had considered that under the prevailing conditions of 2 metre waves, this would have been sufficient to contribute to the ingress of water into the tanks. It was also noted that since the vessel was not equipped with pumps capable of removing large volumes of seawater, the loss of freeboard could have resulted in the flooding of the machinery spaces and the forepeak, which would have been sufficient to sink the vessel. The Council noted that according to the expert the videos did not show any structural deformation or collision damage.

19.10.19 It was recalled that at its 1st session in October 1998, the 1992 Fund Executive Committee had considered the applicability of the 1992 Conventions to the *Milad 1* incident (document 92FUND/EXC.1/8). It was further recalled that this vessel had been intercepted by a United States Coast Guard contingent of the multi-national maritime interception forces in international waters some 25 nautical miles north-east of Bahrain. It was also recalled that the vessel, which was carrying 1500 tonnes of mixed diesel/crude oil, was found by the Coast Guard to have a crack in its hull, allowing seawater to enter a ballast tank. It was further recalled that throughout the consideration of the *Milad 1* incident neither the issue of the circumstances which gave rise to the crack in the vessel's hull nor that of whether the interception could be invoked as a defence under Article 4.2(a) of the 1992 Fund Convention had been raised.

19.10.20 In respect of the *Zeinab* incident, a number of delegations, including those that had previously expressed reservations, stated that in the light of the new information obtained by the Director they no longer took the view that this incident could be considered as an "an act of war, hostilities, civil war or insurrection".

19.10.21 One delegation pointed out that the defence provided in Article 4.2(a) of the Fund Convention was also available to the shipowner under the 1969 Civil Liability Convention and that if the 1971 Fund were to invoke the defence this might send the wrong message to the owner of the *Zeinab*.

19.10.22 The Council agreed with the Director that the interception by the multi-national maritime interception forces in respect of the *Zeinab* incident could not be considered as "an act of war, hostilities, civil war or insurrection", and that the 1992 Fund should therefore not invoke the defence provided in Article 4.2(a). The Council agreed with the Director that if, in light of his

subsequent investigations, it transpired that the sinking of the *Zeinab* had been a deliberate act, this might be a matter for a possible recourse action by the Funds.

19.10.23 The Council decided to authorise the Director to make final settlements on behalf of the 1971 Fund of all claims arising out of the *Zeinab* incident to the extent that the claims did not give rise to questions of principle which had not previously been decided by any of the governing bodies of the 1971 Fund or the 1992 Fund.

19.10.24 The Council noted that as regards the 1971 Fund claims for compensation for pollution damage arising from this incident would be covered by the insurance taken out by the 1971 Fund in October 2000 to the extent that the total established claims against the 1971 Fund exceeded 250 000 SDR.

19.11 *Natuna Sea*

19.11.1 The Administrative Council took note of the information contained in document 71FUND/A.24/16/9 concerning the *Natuna Sea* incident, which occurred on 3 October 2000 in the Singapore Strait off Batu Behanti (Indonesia).

19.11.2 The Council noted that the vessel had been carrying a cargo of 70 000 tonnes of Nile Blend crude oil at the time of the incident, that an estimated 7 000 tonnes of crude oil had been spilled as a result of the grounding and that the vessel had been lightened of its remaining cargo and refloated on 12 October 2000 without significant further spillage. It was also noted that the oil had affected Indonesia, Malaysia and Singapore.

Applicability of the Conventions

19.11.3 It was noted that Singapore was Party to the 1992 Civil Liability Convention and to the 1992 Fund Convention, that Indonesia was Party to the 1992 Civil Liability Convention but not Party to the 1992 Fund Convention and that Malaysia was Party to the 1969 Civil Liability Convention and the 1971 Fund Convention but not the 1992 Conventions. The Council noted that as a consequence of two different regimes being applicable to the incident, the shipowner might be required to establish two limitation funds, one in Malaysia and one in Singapore or Indonesia. The Council also noted that the limitation amount applicable to the *Natuna Sea* under the 1992 Civil Liability Convention was approximately 22.4 million SDR (£17 million) and under the 1969 Civil Liability Convention approximately 6.1 million SDR (£5.4 million).

Claims for compensation

19.11.4 The Council recalled that at their October 2000 sessions the 1971 Fund Administrative Council and the 1992 Executive Committee had authorised the Director to make final settlements on behalf of the 1971 Fund and the 1992 Fund of all claims arising out of the *Natuna Sea* incident to the extent that claims did not give rise to questions of principle which had not been decided by any of the governing bodies of the 1971 Fund or 1992 Fund.

Likelihood of involvement of the 1971 Fund and 1992 Fund

19.11.5 The Council noted that all claims for oil pollution damage in Malaysia had been settled at a total of some £462 000. It was further noted that the limitation amount applicable to the *Natuna Sea* under the 1969 Civil Liability Convention was estimated at £5.4 million. It was also noted that the 1971 Fund would therefore not be called upon to make any payments in respect of compensation or indemnification under Article 5.1 of the 1971 Fund Convention.

19.11.6 The Council noted that the claims submitted in Singapore totalled US$10.3 million and S$4.75 million (£9.1 million) and that the claims submitted in Indonesia totalled Rp 2 181 000 million (£127 million).

19.11.7 The Council noted that there was therefore a possibility that the total admissible claims for pollution damage in Singapore and Indonesia would exceed the limitation amount applicable to the *Natuna Sea* under the 1992 Civil Liability Convention and that the 1992 Fund might be called upon to make payments in respect of pollution damage in Singapore.

19.11.8 One delegation drew attention to the uniqueness of the *Natuna Sea* incident, which might require the shipowner to establish two limitation funds, one in respect of the 1969 Civil Liability Convention and the other in respect of the 1992 Civil Liability Convention.

19.11.9 The Director agreed that the establishment of two limitation funds could have given rise to complications, but that in view of the fact that the claims for pollution damage in Malaysia had been settled for relatively small amounts, it was unlikely that the shipowner would need to establish a limitation fund under the 1969 Civil Liability Convention.

19.11.10 On the question of the legal implications for the 1992 Fund as regards the claims for pollution damage in Indonesia, the Director stated that if the Indonesian claims were to be settled for significant amounts it was likely that the 1992 Fund would be required to make payments in respect of pollution damage in Singapore.

19.12 *Singapura Timur*

19.12.1 The Administrative Council took note of the information contained in document 71FUND/A.24/16/10 concerning the *Singapura Timur* incident.

19.12.2 The Council noted that at the request of the Malaysian authorities the cargo owner had mobilised a tug with pollution response equipment, including equipment of the Malaysian oil industry co-operative (PIMMAG), and that the clean-up response, which primarily involved the application of chemical dispersants, had ended on 1 June 2001 when it was established that the remaining oil at sea did not pose a threat to the Malaysian coastline.

19.12.3 The Council noted that the limitation amount applicable to the *Singapura Timur* was estimated at 102 000 SDR (£90 000).

19.12.4 The Council recalled that at its 5th session held in June 2001 it had authorised the Director to make final settlements on behalf of the 1971 Fund of all claims arising out of the *Singapura Timur* incident to the extent that the claims did not give rise to any questions of principle which had not previously been decided by any of the governing bodies of the 1971 Fund or the 1992 Fund (document 71FUND/AC.5/A/ES.8/10, paragraph 5.7.5).

19.12.5 It was noted that whilst it was not yet possible to make a full evaluation of the total amount of the claims for compensation, it was anticipated that clean-up costs would exceed the limitation amount applicable to the ship under the 1969 Civil Liability Convention and that claims were being assessed by the Japan P & I Club and its experts in consultation with the 1971 Fund.

19.12.6 The Director informed the Council that the claims for compensation for pollution damage arising from this incident would be covered by the insurance taken out by the 1971 Fund in October 2000 to the extent that the total established claims exceed 250 000 SDR.

19.13 Other incidents

19.13.1 The Administrative Council noted the information contained in document 71FUND/A.24/16/11 in respect of the following incidents: *Vistabella, Iliad, Kriti Sea, Plate Princess, Maritza Sayalero, Yeo Myung , Yuil N°1, Osung N°3, Katja, Keumdong N°5* and *N°1 Yung Jung*.

19.13.2 The Director informed the Committee that the Secretariat would make strenuous efforts to close these 1971 Fund incidents.

19.14 *Evoikos*

19.14.1 The Administrative Council took note of the information contained in document 71FUND/A.24/16/12 concerning the *Evoikos* incident.

19.14.2 It was recalled the Cypriot tanker *Evoikos* (80 823 GRT) collided with the Thai tanker *Orapin Global* (138 037 GRT) whilst passing through the Strait of Singapore on 15 October 1997. It was further recalled that the *Evoikos*, which had carried approximately 130 000 tonnes of heavy fuel oil, had suffered damage to three cargo tanks, and that an estimated 29 000 tonnes of heavy fuel oil had been subsequently spilled, but that the *Orapin Global*, which was in ballast, had not spilt any oil.

19.14.3 It was recalled that the spilt oil had initially affected the waters and some southern islands of Singapore, but that later oil slicks had drifted into the Malaysian and Indonesian waters of the Malacca Strait. It was also recalled that in December 1997 oil had come ashore in places along a 40 kilometre length of the Malaysian coast in the Province of Selangor.

19.14.4 It was recalled that at the time of the incident, Singapore was Party to the 1969 Civil Liability Convention but not to the 1971 Fund Convention or the 1992 Protocols, whereas Malaysia and Indonesia were Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention, but not to the 1992 Protocols thereto.

Claims for pollution damage in Singapore

19.14.5 It was noted that claims relating to clean-up operations and preventive measures had been submitted by the Maritime and Port Authority of Singapore (MPA) for a total amount of S$4.5 million (£1.7 million) but that the claims had later been reduced to S$3.1 million (£1.2 million). It was also noted that contractors appointed by MPA had presented claims for a total of S$12.8 million (£4.8 million). It was noted that the shipowner's insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club), had made a provisional payment to the MPA of S$500 000 (£190 000). It was also noted that the MPA had commenced proceedings against the shipowner for oil pollution damage under section 3(1) of the Merchant Shipping (Oil Pollution) Act. It was further noted that the UK Club had informed the Director that these claims would be settled shortly.

19.14.6 It was noted that the UK Club had settled claims by clean-up contractors appointed by the Club on behalf of the shipowner amounting to some S$4 million (£1.5 million).

19.14.7 It was also noted that the UK Club had received a claim from another contractor for clean-up operations for US$5 308 000 (£2 million) and that the UK Club had informed the Director that this claim would be settled shortly.

19.14.8 It was noted that claims for property damage totalled S$1.8 million (£670 000) and that these included claims for the cleaning of a number of ships' hulls that were contaminated by oil escaping from the *Evoikos*. It was noted that three claims for the cleaning of ships' hulls had been settled and paid by the UK Club at US$67 000 (£47 800). It was also noted that two companies involved in the development of an island had submitted claims totalling S$948 000 (£365 000) for the cost of clean-up operations on the island.

19.14.9 The Council recalled that the shipowner and the UK Club had indicated that they might maintain that the operations carried out in Singaporean waters (or at least part thereof) were undertaken to prevent or minimise pollution damage in Malaysia or Indonesia and that the costs thereof would therefore qualify for compensation under the 1971 Fund Convention. It was also recalled that claims for salvage operations might be submitted not only under Article 13 of the 1989 International Convention on Salvage but also under Article 14 of that Convention. It was

recalled that the Executive Committee had taken the view that it was premature for the Committee to take any position on these issues.

Claims for compensation for pollution damage in Malaysia

19.14.10 The Council noted that claims for clean-up costs totalling RM 1 736 684 (£ 305 943) had been settled by the UK Club at RM 1 424 197 (£250 894), and that fishery claims totalling RM 1 805 962 (£318 147) had been settled by the Club at RM 1 172 260 (£206 511). It was noted that there were no further claims in Malaysia.

19.14.11 It was noted that the shipowner and the UK Club had commenced proceedings against the 1971 Fund on 13 October 2000 in Malaysia and that this action had been stayed in July 2001 by mutual consent.

Claims for compensation for pollution damage in Indonesia

19.14.12 The Council noted that the Indonesian authorities had submitted a claim to the shipowner and the UK Club for US$3.4 million (£2.1 million). It was further noted that the claim, which was not supported by detailed documentation, related to pollution of mangroves (US$2 million), pollution of sand (US$1.2 million), fishermen's loss of income (US$11 000) and the cost of clean-up operations (US$152 000). It was noted that this daim had been presented in the limitation proceedings in Singapore. It was also noted that the Indonesian authorities had been invited by the UK Club to provide further documentation.

19.14.13 It was noted that in view of the paucity of information available in respect of the claims by the Indonesian authorities, the 1971 Fund had not been able to express any opinion on the admissibility of the claims, although the Director had expressed the view that it appeared that the amounts claimed under the items relating to pollution of mangroves and pollution of sand were based on abstract calculations and that these items were therefore inadmissible.

19.14.14 It was noted that the shipowner and the UK Club had commenced proceedings against the 1971 Fund in Jakarta on 13 October 2000, each claiming £50 000 from the Fund. It was noted that the Fund's lawyers had confirmed that by commencing the proceedings the shipowner and the UK Club had prevented their subrogated claims and a claim for the shipowner's indemnification from becoming time-barred. It was noted that the Fund's lawyers were attempting to stay the Indonesian proceedings by mutual consent until the shipowner and the UK Club had dealt with the Indonesian authorities' claims.

Legal proceedings in the United Kingdom

19.14.15 It was noted that in October 2000, the shipowner and the UK Club had commenced legal proceedings against the 1971 Fund in London to prevent any claims against the 1971 Fund from becoming time-barred. It was noted that, in the Director's view, these legal proceedings were not necessary as legal proceedings were subsequently taken in Malaysia and Indonesia and that it was doubtful whether the United Kingdom courts had jurisdiction in this case in the light of the provisions of Article 7.3 of the 1971 Fund Convention.

Payments by the 1971 Fund

19.14.16 In view of the uncertainty as to the total amount of the claims, the Council reaffirmed its decisions at previous sessions that the Director was not authorised to make any payments of claims for the time being.

20 Election of members of the Executive Committee

As previously indicated, this agenda item was not considered (cf paragraph 1 above).

Budgetary matters

21 Sharing of joint administrative costs with the 1992 Fund

21.8 The Administrative Council approved the Director's proposal that the costs of running the joint Secretariat for 2002 should be distributed with 30% to be paid by the 1971 Fund and 70% by the 1992 Fund, with the proviso that this distribution would not apply to certain items in respect of which it was possible to make a distribution based on the actual costs incurred by each Organisation as set out in the explanatory notes to the draft budget for 2002 (document 71FUND/A.24/18).

21.9 It was noted that the Assembly of the 1992 Fund had agreed at its 6th session to the distribution proposed by the Director.

22 Working capital

The Administrative Council decided to maintain the working capital of the 1971 Fund at £5 million.

23 Budget for 2002 and assessment of contributions to the General Fund

23.8 The Administrative Council considered the draft 2002 Budget for the administrative expenses of the 1971 Fund and 1992 Fund and the assessment of contributions to the General Fund as proposed by the Director in document 71FUND/A.24/20.

23.9 The Administrative Council adopted the budget for 2002 for the administrative expenses for the joint Secretariat with a total of £2 816 663 plus an additional amount of £250 000 (Chapter VIII) to cover costs specifically relating to the winding up of the 1971 Fund.

23.10 It was noted that the Assembly of the 1992 Fund had at its 6th session adopted the same budget appropriations for the administrative expenses for the joint Secretariat.

23.11 The Administrative Council decided to levy contributions to the General Fund for £3.2 million, with the entire levy to be deferred.

24 Assessment of contributions to Major Claims Funds

24.8 The Director introduced document 71FUND/A.24/21 which contained proposals for the levy of 2001 contributions to Major Claims Funds.

24.9 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 5.1 of the 1971 Fund Convention arising out of the *Nissos Amorgos* incident to the extent that the aggregate amount paid by the 1971 Fund exceeded 1 million SDR, the Administrative Council decided to raise a levy in the form of 2001 contributions to the *Nissos Amorgos* Major Claims Fund for £21 million.

24.10 The Administrative Council decided that the entire levy to the *Nissos Amorgos* Major Claims Fund should be deferred.

24.11 The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 2002, if and to the extent required.

24.12 The Administrative Council considered it premature to take any decisions in respect of the *Vistabella* and *Braer* incidents.

24.13 It was decided that the deficits on the *Vistabella*, *Sea Empress*, *Osung N°3* and *Pontoon 300* Major Claims Funds should be covered by means of internal loans from those Major Claims Funds which have a surplus.

24.14 It was agreed that there was no need to take any decision at this stage regarding the *Aegean Sea*, *Keumdong N°5*, *Sea Prince*, *Yeo Myung* and *Yuil N°1* Major Claims Funds.

24.15 The Administrative Council noted that its decisions in respect of the levy of 2001 contributions could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment by 1 March 2002		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
General Fund	2000	76	3 200 000	0	0	3 200 000	0.0415760
Nissos Amorgos	1996	1 234	21 000 000	0	0	21 000 000	0.0170135
Total			24 200 000	0	0	24 200 000	

Other matters

25 Future sessions

25.8 The Administrative Council decided to hold its autumn session during the week of 14 - 18 October 2002.

25.9 The Council decided that it may hold further sessions during the weeks of 11 February, 29 April and 1 July 2002, if required.

26 Any other business

The Council noted that since the 1971 Fund Convention would cease to be in force on 24 May 2002 there would no longer be any 1971 Fund Member States. For this reason the Council considered it unnecessary to convene the 1971 Fund Assembly for sessions after that date and that any business should be dealt with directly by the Administrative Council.

27 Adoption of the Record of Decisions

The draft Record of Decisions of the Administrative Council, as contained in documents 71FUND/AC.6/A.24/WP.1, 71FUND/AC.6/A.24/WP.1/Add.1 and 71FUND/AC.6/A.24/WP.1/Add.2 , was adopted, subject to certain amendments.

* * *

ANNEX

Amendments to the Internal Regulations

(Proposed amendments underlined)

Internal Regulation 7.13

The Director may authorise another officer or other officers to make final or partial settlement of claims or to make provisional payments. Such authority shall:

(a) in respect of the Deputy Director and the Head of the Claims Department, be limited to approvals not exceeding £500 000 for a particular claim; and

(b) in respect of other officers:

(i) 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; and

(ii) be limited to approvals not exceeding £75 000 for a particular claim.

The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director.

Internal Regulation 12bis

The Director may authorise the Deputy Director, the Legal Counsel or the Head of the Claims Department to act on his behalf in the fulfilment of the functions set out in Article 29 of the 1971 Fund Convention, and to be the legal representative of the 1971 Fund. The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director. Delegation made in accordance with this Regulation overrides any limitation of the authority of the above-mentioned officers contained elsewhere in these Regulations or in the Financial Regulations.

Amendments to the Financial Regulations

(Proposed amendments underlined)

Financial Regulation 9.2

The Director may authorise one or more officers to act as signatories on behalf of the 1971 Fund in giving payment instructions. The 1971 Fund's bankers shall be empowered to accept payment instructions on behalf of the 1971 Fund when signed as follows:

(a) for any sum up to £10 000 by any officer from category A, B or C;

(b) for any sum in excess of £10 000 up to £25 000, by an officer from category A or by any two officers from category B or C;

(c) for any sum in excess of £25 000 up to £100 000, by any two officers from category A, B or C;

(d) for any sum in excess of £100 000, by one officer from category A or B plus one officer from category A, B or C.

For the purposes of this Regulation, the categories are as follows:

Category A	Director
Category B	Deputy Director, Legal Counsel and Head of the Claims Department
Category C	Other officers

Further conditions in respect of the delegation of authority under this Regulation shall be laid down by the Director in Administrative Instructions