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OIL POLLUTION
COMPENSATION
FUND 1971

ADMINISTRATIVE COUNCIL
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ASSEMBLY
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RECORD OF DECISIONS OF THE SEVENTH SESSION OF THE ADMINISTRATIVE COUNCIL

ACTING ON BEHALF OF THE 9TH EXTRAORDINARY SESSION OF THE ASSEMBLY

(held on 29 and 30 April and 2 and 3 May 2002)

Chairman: Captain R Malik (Malaysia)

Opening of the session

0.1 It was noted that the Director had attempted to open the 9th extraordinary session of the Assembly at 2.30 pm on Monday 29 April 2002, 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 9th extraordinary session of the Assembly (document 71FUND/A/ES.9/1). 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 on 29 April 2002.

0.4 At 2.30 pm on Monday 29 April 2002 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 9th extraordinary session of the Assembly. Only the following five 1971 Fund Member States were present at that time:

Colombia	Malaysia	United Arab Emirates
Côte d'Ivoire	Nigeria	

0.5 The Director 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 Cameroon.

0.6 In view of the fact that no quorum was achieved, the Director 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/ES.9/1.

2 Election of Chairman

Since the Assembly's agenda was dealt with by the Administrative Council, this item was not considered.

3 Participation

3.1 The following 1971 Fund Member States were present:

Cameroon	Côte d'Ivoire	Nigeria
Colombia	Malaysia	United Arab Emirates

3.2 The following former 1971 Fund Member States were present:

Algeria	Greece	Norway
Antigua and Barbuda	Ireland	Oman
Australia	Italy	Poland
Belgium	Japan	Republic of Korea
Canada	Kenya	Russian Federation
Cyprus	Liberia	Spain
Denmark	Malta	Sweden
Finland	Marshall Islands	United Kingdom
France	Morocco	Vanuatu
Germany	Netherlands	Venezuela

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

Argentina	Lithuania	Turkey
Congo	Singapore	United States
Ecuador	Trinidad and Tobago	Uruguay
Latvia		

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

Intergovernmental organisations:
International Oil Pollution Compensation Fund 1992
European Community

International non-governmental organisations:
Comité Maritime International (CMI)
Cristal Limited
International Association of Independent Tanker Owners (INTERTANKO)
International Tanker Owners Pollution Federation Limited (ITOPF)
International Union for the Conservation of Nature and Natural Resources (IUCN)
Oil Companies International Marine Forum (OCIMF)

4 Status of Conventions

4.1 The Administrative Council recalled that the 1971 Fund Convention would cease to be in force on 24 May 2002.

4.2 The Council noted that of the present 26 Members of the 1971 Fund, two (Djibouti and United Arab Emirates) were also Members of the 1992 Fund. It was further noted that six States (Brunei Darussalam, Cameroon, Colombia, Portugal, Qatar and Sierra Leone) had deposited instruments of accession to the 1992 Fund Convention.

4.3 The Council invited the remaining 18 Member States to take the necessary measures to accede to the 1992 Fund Convention as quickly as possible, as they would be without protection (except that provided by the shipowner and his insurer under the 1969 Civil Liability Convention) should an oil pollution incident occurring after 24 May 2002 cause pollution damage in any of these States.

5 Audit procedures

5.1 It was recalled that, at its 6th session in October 2001, the Administrative Council had decided to establish a joint Audit Body for the 1992 Fund and the 1971 Fund (document 71FUND/AC.6/A.24/22, paragraph 11.6). The Council further recalled that it had decided to postpone the consideration of the composition and mandate of the Audit Body to a later session.

5.2 After the Council had considered the information set out in document 71FUND/A/ES.9/3, the Chairman submitted a document with a revised proposal for the composition and mandate of the IOPC Funds' Audit Body (document 71FUND/AC.7/A/ES.9/WP.1).

5.3 The Administrative Council accepted the proposal on the composition and mandate of the Audit Body with some amendments as set out in the Annex.

5.4 The Greek delegation stated that it could not agree to members of the Audit Body serving for six years and considered that four years should be the maximum.

5.5 The Council emphasised that the Audit Body should neither duplicate nor control the work of the External Auditor who should continue to carry out his work with total independence. It was also emphasised that the Audit Body should be advisory and that it should not duplicate the work of the Secretariat or engage in the day-to-day management of the Organisations.

5.6 The Council decided that the Audit Body should adopt its own Rules of Procedure and that the Chairman of the Audit Body should, in conjunction with his first report to the Council, submit the Rules of Procedure for endorsement by the Council.

5.7 The Council also decided that it should be made clear at the time of the election which three members of the first Audit Body to be elected should hold office for three years only.

5.8 The Council further decided that the costs of travel and subsistence of the members of the Audit Body would be paid on the basis of the 1992 Fund Staff Rules.

5.9 It was agreed that paragraph 4 of the "Composition and Mandate of the IOPC Funds' Audit Body" as set out in the Annex made it sufficiently clear that Member States should not give instructions to the Members of the Body.

5.10 The Administrative Council noted that corresponding decisions had been taken by the 1992 Fund Assembly at its 6th extraordinary session (document 92FUND/A/ES.6/10, paragraphs 4.3 to 4.9).

6 Winding up of the 1971 Fund

6.1 The Administrative Council considered the information in document 71FUND/A/ES.9/4 regarding the administration of the 1971 Fund after 24 May 2002, when the 1971 Fund Convention would cease to be in force.

6.2 It was recalled that Resolution N°13, adopted by the 1971 Fund Assembly at its 4th extraordinary session held in April/May 1998, gave the Administrative Council the following mandate:

(a) to perform such functions as are allocated to the Assembly under the 1971 Fund Convention or which are otherwise necessary for the proper operation of the 1971 Fund;

(b) to establish a subsidiary body to consider the settlement of claims;

(c) to give instructions to the Director concerning the administration of the 1971 Fund;

(d) to supervise the proper execution of the Convention and of its own decisions;

(e) to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity.

6.3 It was further recalled that under Resolution N°13 decisions of the Administrative Council were taken by the majority vote of those remaining 1971 Fund Member States and former 1971 Fund Member States present and voting, with the proviso in paragraph 7(a) of the Resolution that former 1971 Fund Member States had the right to vote only in respect of issues relating to incidents which occurred while the 1971 Fund Convention was in force for that State.

6.4 The Council noted the Director's view that after 24 May 2002 there would no longer be any States Parties to the 1971 Fund Convention and consequently there would not be any 1971 Fund Member States after that date. It was further noted, therefore, that in his view after that date, under Resolution N°13, there would be no States having voting rights on general issues, eg matters relating to election of a Chairman, the winding up of the Organisation or the distribution of any assets remaining when all claims and expenses arising out of pending incidents had been paid, since a former Member State had the right to vote only in respect of issues relating to incidents which occurred while the 1971 Fund Convention was in force for that State. The Administrative Council also noted the Director's view that any changes in respect of the administration of the 1971 Fund would therefore have to be decided by the 1971 Fund Assembly/Administrative Council at the April/May 2002 session.

6.5 The Council noted the Director's view that there were two main options with regard to the future operation of the 1971 Fund, ie:

a) the 1971 Fund Administrative Council would continue to administer the 1971 Fund but all former 1971 Fund Member States would have voting rights on all issues;

b) the administration of the 1971 Fund would be transferred to the 1992 Fund.

6.6 The Administrative Council considered the two options. It was generally considered that there should be a clear distinction between the 1971 and 1992 Funds and that the two Organisations should be seen to be completely separate.

6.7 The Administrative Council decided that it should continue to administer the 1971 Fund.

6.8 Some delegations considered that the distinction between voting rights for general matters and those for specific incidents should be maintained. Other delegations considered that all former Members of the 1971 Fund should have voting rights on all issues. The Administrative Council decided to maintain this distinction.

6.9 One delegation stated that there was no need to amend Resolution N°13 as those States which were Members on 24 May 2002 would remain Members until the 1971 Fund was wound up. However, the Director's view was that on 25 May 2002 all States would be former Member States.

6.10 The Administrative Council decided that in the interest of clarity paragraph 7(a) of Resolution N°13 should be amended.

6.11 The Council adopted a Resolution (1971 Fund Resolution N°15) amending paragraph 7(a) of Resolution N°13 to read:

> "that decisions of the Administrative Council shall be taken by majority vote of all States having at any time been Members of the 1971 Fund present and voting, provided that, in respect of issues relating to incidents, States shall have the right to vote only as regards incidents which occurred when the State in question was a Member of the 1971 Fund;"

6.12 1971 Fund Resolution N°15 is reproduced at Annex II.

6.13 The Council recalled that it had previously considered the issue of whether to appoint an eminent person in order to ensure that the winding up of the 1971 Fund was impartial and equitable (document 71FUND/EXC.63/10). Some delegations stated that it might be appropriate to reconsider this issue at a later stage, whilst most delegations considered that the winding up of the 1971 Fund could easily be carried out by the Secretariat of the 1971 Fund under the scrutiny of the External Auditor, and that the appointment of such a person was not necessary. The Administrative Council decided that it was not necessary to appoint such an eminent person, at least not at this stage.

6.14 The Director was invited to try to persuade those 1971 Fund Member States which had not yet acceded to the 1992 Fund Convention to do so and to make them aware that they would not be able to claim compensation from the 1971 Fund for incidents occurring after 24 May 2002.

6.15 The Director stated that in his view the 1971 Fund Convention would cease to be in force at midnight London time on 24 May 2002, and that it would remain in force for the whole of that day.

7 Appointment of Deputy Director

The Administrative Council noted that the Director had appointed Mr Joseph Nichols as Deputy Director/Technical Adviser and took note of the job description issued by the Director for this post as set out in document 71FUND/A/ES.9/5. It was also noted that the Director had appointed Mr José Maura as Head of the Claims Department.

8 Incidents involving the 1971 Fund

8.1 *Braer*

8.1.1 The Administrative Council took note of the information contained in document 71FUND/A/ES.9/6 concerning the *Braer* incident.

8.1.2 The Administrative Council noted with satisfaction that all the opposed claims but one, that of Shetland Sea Farms, had either been dismissed by the courts or had been withdrawn from the legal proceedings.

Claim by Shetland Sea Farms

8.1.3 As regards the claim by Shetland Sea Farms for £1 428 891, the Council recalled that the Scottish Court of first instance had held that the claim was based on false documents but had allowed nevertheless the claimant to pursue the claim. The Council further recalled that Shetland Sea Farms had not appealed against the position taken by the Court as regards the company's use of false documents and that the Director had decided not to appeal against the Court's decision not to refuse the claim without any further procedure.

8.1.4 The Council noted that as regards the continuation of the proceedings the Court had decided 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 and that that hearing would be held in late April 2002.

Other claims

8.1.5 The Council recalled that a claim for £123 357 in the fishery sector had been rejected by the Court of Session early in 2001 and that the claimants had appealed against the decision to reject the claim. The Council noted, however, that in December 2001 the Appellate Court confirmed its decision to reject the claim.

8.1.6 The Council also noted that a claim for £85 000 for damage to various felt roofs which was pursued in court was settled in February 2002 for £17 500.

Suspension and resumption of payments

8.1.7 The Administrative Council recalled that in October 1995, the Executive Committee of the 1971 Fund had taken note of the total amount of the claims presented so far and had noted that a number of claimants intended to bring legal actions against the shipowner, his P & I insurer (Assuranceforeningen Skuld (the Skuld Club)) and the 1971 Fund. It was also recalled that for this reason the Committee had decided to suspend any further payments of compensation until the question of whether the total amount of the established claims would exceed the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention had been re-examined.

8.1.8 The Council recalled that the shipowner and the Skuld Club were entitled to indemnification under Article 5.1 of the 1971 Fund Convention of £1 211 780. It was noted that the Skuld Club had informed the Director that the shipowner and the Club were prepared to make available the

indemnification amount for payments to claimants, resulting in an additional amount of £1 211 780 being available for compensation payments. It was further recalled that the Skuld Club had undertaken to cover any deficit and to guarantee the payment of the amount, if any, which might be awarded by a final court judgement in respect of the pending claims.

8.1.9 The Administrative Council noted that as a result of the Skuld Club's undertaking, the Director had decided in October 2001 that all established claims could be paid in full and that the payments of the balance of 60% to those claimants who had only received 40% of the approved amount had been made during the period November 2001 - March 2002, as were payments in respect of established claims for which no payments had been made. The Council further noted that these payments totalled £3 948 134. As regards payments totalling £192 050 outstanding in respect of six claims, the Council noted that it was expected that three of these claims would be paid shortly, that it had not been possible to contact one of the claimants, that one claimant was in bankruptcy, and that the remaining claim might be offset against legal costs owed by the claimant to the Fund.

8.1.10 The United Kingdom delegation expressed its gratitude for the part the Skuld Club had played in settlement of the outstanding claims. That delegation stated that many lessons had been learned as a result of the incident, the most important being the need in future cases to give claimants sufficient advance warning about the limits imposed by time bar.

8.1.11 The Korean delegation also expressed gratitude to the Skuld Club and to the United Kingdom Government which had forgone its own entitlement to compensation in order to ensure that all other legitimate claimants were fully compensated.

8.2 *Sea Empress*

8.2.1 The Administrative Council took note of the information contained in document 71FUND/A/ES.9/7 concerning the *Sea Empress* incident.

Developments in respect of settlement of claims

8.2.2 The Council noted that whereas fifty-nine writs had been issued against the shipowner, the Skuld Club and the 1971 Fund in respect of 194 claimants prior to the expiry of the three-year time bar period, as at 5 April 2002, claims by 155 of these claimants had been settled, discontinued or withdrawn. The Council further noted that of the 39 claimants still pursing their claims in the limitation proceedings, 33 were pursuing only claims for legal and professional fees which had not yet been quantified or in respect of which the amounts offered by the Skuld Club and the 1971 Fund to the claimants had not been accepted and that it was likely that most of these claims would be referred to court for assessment.

8.2.3 The Council noted that there were six remaining claims for compensation that were the subject of legal action and that, as initially presented, these claims totalled £2.3 million. It was noted that two of the claims had been rejected by the 1971 Fund and the Skuld Club, that the remaining four claims had been assessed by the 1971 Fund and the Skuld Club at £735 000 and that, in three cases, interim payments had been made by the 1971 Fund. It was further noted that attempts were being made by the Fund to settle those claims which were considered admissible in principle, but where final agreement had not been reached on the quantum of the losses.

Recourse action

8.2.4 The Administrative Council recalled that at its 62nd session in October 1999, the Executive Committee of the 1971 Fund had decided to instruct the Director to take recourse action on behalf of the 1971 Fund against the Milford Haven Port Authority (MHPA).

8.2.5 It was noted that on 14 February 2002 the 1971 Fund and Skuld Club had commenced proceedings against MHPA in the Admiralty Court in London. It was also noted that the action was brought by the 1971 Fund and Skuld Club in their own names as well as on behalf – and in the names – of 786 claimants to whom compensation had been paid (Group A), and on behalf of – and in the names of – 32 claimants who at that time were still pursuing claims against the 1971 Fund and the Skuld Club and who had expressly authorised the Fund and the Skuld Club to take such actions (Group B). It was further noted that a few claimants whose claims for principal and interest had been settled in full, but who had taken action against the 1971 Fund and the Skuld Club to recover their legal costs had not given such authorisation.

8.2.6 The Council took note that as at 14 February 2002 the total amount paid to the claimants in Group A was £34 117 664 whereas the total amount indicated in respect of the claimants in Group B was £3 933 843 (excluding interest and costs) and that since then a further £1.4 million had either been paid or agreed to be paid to claimants in Group B. It also took note that the 1971 Fund and the Skuld Club had claimed in respect of administrative and legal expenses incurred as a result of the incident (mainly the costs of claims handling) and that these administrative and legal expenses were in the region of £2.6 million.

8.2.7 It was noted that the 1971 Fund had maintained that MHPA had failed to take reasonable care to avoid the risk of a laden tanker grounding and spilling oil and that, in particular, MHPA had failed to give proper consideration to the risk of a laden tanker going aground and causing serious oil pollution and had failed to put in place procedures to control or reduce the risk as much as possible. The Council further noted that the 1971 Fund had set out a detailed claim against MHPA which included the following allegations of negligence and/or breach of duty:

(a) MHPA had failed to put in place a proper system to satisfy itself that the proposed entry of a particular vessel into Milford Haven at a particular time was safe and/or for refusing permission for a vessel to enter the port at such time unless MHPA was so satisfied;

(b) MHPA had failed to have in place an effective and fully operational Vessel Traffic Services facility;

(c) MHPA had failed properly to mark the entrance to the West Channel;

(d) MHPA's system of pilot allocation had been negligent; and

(e) MHPA's system of pilot training had been defective.

It was noted that the 1971 Fund had also alleged that MHPA's response to the grounding of the vessel had been *ad hoc*, improvised and negligent and had resulted in the unnecessary escape into the Haven of some 69 300 tonnes of crude oil.

8.2.8 The Council noted that MHPA had indicated in recent press reports that it was covered by insurance and that the insurers would be vigorously defending the action.

8.2.9 It was noted that the Skuld Club had authorised the 1971 Fund to pursue the recourse action in the Club's name and after consultation to take all decisions relating to the conduct of the proceedings and that an agreement had been reached between the 1971 Fund and the Skuld Club as to the distribution between them of any amount recovered as a result of the recourse action. It was also noted that under that agreement the 1971 Fund would be entitled to retain any sums recovered up to a level at which the Fund had been reimbursed in full for all sums paid by the 1971 Fund to claimants in Groups A and B as well as the costs incurred by the 1971 Fund in relation to the claims handling and the pursuing of the recourse action and that any balance would be passed to the Skuld Club. It was further noted that in addition the 1971 Fund would indemnify the Skuld Club in respect of certain specified legal costs that the Club would incur in connection with and after commencement of the recourse action.

8.2.10 The Council noted that the 1971 Fund had agreed to pay to the Skuld Club the amount due to it by way of indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention, 2 189 832 SDR or £1 835 035, and that indemnification had been paid in April 2002.

8.2.11 In response to a question as to whether MHPA had any grounds to limit its liability, the Director informed the Council that although it might be possible for a port authority to do so in some circumstances, the Fund's legal adviser considered that MHPA would not be able to rely on any such grounds *vis-à-vis* the recourse actions.

8.2.12 The Council endorsed the actions taken by the Director in respect of the recourse action and instructed him to keep the Council informed in respect of future developments.

8.3 *Sea Prince*

8.3.1 The Administrative Council took note of the information contained in document 71FUND/A/ES.9/8 concerning the *Sea Prince* incident.

Limitation proceedings

8.3.2 The Council 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 with effect from the commencement of the proceedings, which would be possible under Korean law if all parties agreed. The Council further noted that the limitation proceedings had been discontinued on 3 January 2002 following payment of Won 95.5 million (£53 000) by the 1971 Fund in respect of 12 outstanding claims.

Legal proceedings

8.3.3 The Council noted that in December 2001 the Sunchon District Court had rendered judgements in respect of 207 claims by 194 claimants against the 1971 Fund and that the Court had awarded 31 claimants a total of Won 1 438 200 211 (£752 000) plus interest at the rate of 5% per annum from 23 July 1995 until 28 December 2001, and at a rate of 25% per annum from 29 December 2001 until full payment. It was also noted that the Court had dismissed the claims of the remaining 163 claimants.

8.3.4 It was noted that in the case of claims in respect of caged fish culture and aquaculture the Court had held that the oil and/or the dispersant used to treat the oil had resulted in mortality of fish and shellfish, whereas the 1971 Fund had argued that the only losses suffered were property damage to fish cages and additional operating costs due to business interruption in respect of both caged fish culture and aquaculture. The Council endorsed the Director's decision to appeal against this decision.

8.3.5 As regards the decision by the District Court to award compensation to five unlicensed fishermen for pollution damage resulting from the *Sea Empress* incident, the Administrative Council endorsed the Director's decision that, in view of the decision taken by the Appellate Court to reject similar claims arising from the *Keumdong N°5* incident (cf document 71FUND/A/ES.8/4, paragraph 3.14), the 1971 Fund pursue an appeal against this decision.

8.3.6 As regards the claims in respect of inshore fishing vessels, it was noted that the District Court had given a judgement that was contradictory in nature as regards the method to be used to assess the economic losses of owners of inshore vessels. The Council endorsed the Director's decision to appeal against the Court's decision also in respect of one claim which had been admitted by the Court but which had been rejected by the Fund on the ground that the claimant did not have a valid licence.

8.3.7 It was noted that the Court had ordered the 1971 Fund to deposit a total sum of Won 2 060 million (£1.1 million) representing the amount awarded in the judgements plus interest, that the deposit was made in February 2002 and that the Court had subsequently rendered a decision to stay the enforcement of the judgements.

8.3.8 As regards further action by claimants the Council noted that a fishery co-operative union had appealed against the judgement in respect of its claim for lost sales commission, but not in respect of its other claims and that none of the other claimants had appealed against the judgements.

8.4 *Nakhodka*

8.4.1 The Council took note of the developments in respect of the *Nakhodka* incident as contained in document 92FUND/EXC.16/2.

Claims for compensation

8.4.2 The Council noted that as at 22 April 2002, claims totalling ¥29 030 million (£149million) had been settled at ¥20 509 million (£105 million), that the payments made by the Funds to claimants amounted to ¥16 919 million (£87 million) and that the payments made by the shipowner and his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), totalled US$5 million (£4 million).

8.4.3 The Council noted that the claims of two electricity power companies had been settled by the IOPC Funds and the UK Club at ¥341 million (£1.7 million) and ¥1 269 million (£6.5 million), respectively, and that these claims would be paid within a few days at 80% of the settlement amount minus previous provisional payments.

8.4.4 The Council noted that there remained only a few claims, mainly those submitted by the Japanese Government agencies and the Japan Maritime Disaster Prevention Centre (JMDPC).

Level of payments

8.4.5 The Council recalled that in accordance with a decision by the Assembly of the 1992 Fund, the total amount available under the 1971 and 1992 Fund Conventions, ie 135 million SDR, equalled ¥23 164 515 000 (£119 million).

8.4.6 It was recalled that, as a result of the developments and as authorised by the governing bodies, the Director had decided in January 2001 to increase the level of payments from 60% to 80% of the amount of the loss or damage actually suffered by the individual claimants.

8.4.7 The Council noted that, after taking unsettled claims into account, the total exposure of the IOPC Funds could be estimated at ¥27 299 320 000 (£140 million) and that therefore, in the Director's view, the level of payments should be maintained at 80%.

8.4.8 The Council noted that the present level of payments, ie 80% of the amount of damage actually suffered by the respective claimants, would give a total payment of ¥21 839 456 000 (£112 million), which gave the IOPC Funds a certain margin against overpayment but that an increase of the level to 90% would give ¥24 569 388 000 (£126 million), which would exceed the maximum amount available for compensation.

8.4.9 The Japanese delegation suggested that, in order that claimants would receive as much compensation as possible in the near future, the Director should be given the authority to increase the level of payments to 90% if and to the extent that he considered that this could be done without any risk that the payments would exceed the total amount of compensation available. That delegation considered that, in view of the fact that agreement had been reached to a large extent in respect of the claims by JMDPC relating to the construction and removal of the causeway, an increase in the level of payments was justified.

8.4.10 A number of delegations supported the proposal by the Japanese delegation to give the Director authority to increase the level of payments.

8.4.11 The Director accepted that there were relatively few areas of disagreement remaining as regards the causeway claims (cf paragraphs 8.4.13 – 8.4.26 below). He stated, however, that, until a formal settlement had been reached in respect of these claims, it was in his view the claimed amount that had to be taken into account in order to assess the total exposure of the Funds.

8.4.12 The Council decided to authorise the Director to increase the level of payments if and to the extent that he was satisfied that there was no risk that the Funds would face an overpayment situation.

Claims relating to construction and removal of a causeway

8.4.13 The Council took note of the information contained in document 71FUND/A/ES.9/9/Add.1.

8.4.14 The Council recalled that the upturned bow section of the *Nakhodka*, which was thought to have contained 2 800 tonnes of cargo, grounded on rocks some 200 metres from the shore. It was noted that a Japanese salvage company had been contracted by the shipowner to remove the oil remaining in the bow section, but that the operations had been hampered by adverse swell and weather conditions. It was also noted that the Japanese authorities had taken over the operations using the services of two salvage companies, and that some 2 450 m^3 of oil/water mixture had been removed through these operations.

8.4.15 The Council noted that due to concerns that the on-water operations might fail as a result of the adverse conditions, the Japanese authorities had ordered the construction of a temporary causeway to the grounded bow section, which had been intended to allow road tankers to be brought close to the wreck, thereby facilitating the removal of the oil. It was also noted that the causeway had extended 175 metres from the shore and that a large crane had been assembled at its seaward end with a sufficiently long arm to reach the bow section. It was further noted that some 380 m^3 of oil/water mixture had been removed from the bow section via the causeway compared with 2 450 m^3 removed by at-sea operations.

8.4.16 It was recalled that JMDPC had submitted claims totalling ¥3 336 million (£17 million) for the costs in respect of the causeway operation and that the majority of these costs related to the construction and removal of the causeway itself.

8.4.17 It was recalled that at the June 2001 sessions of the IOPC Funds' 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 IOPC 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 IOPC Funds, although the Funds should exercise great care in the assessment of such big claims. It was further recalled that some delegations had stated that it was important for the IOPC 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.

8.4.18 The Council noted that the claims by JMDPC had been assessed against the criteria for admissibility laid down by the Assemblies, ie whether and up to what point the construction of the causeway was reasonable from an objective technical point of view.

8.4.19 The Council noted that the decision by JMDPC to proceed with the construction of the causeway was taken after examining historical records of sea conditions between 1985 and 1993 off the coast of Fukui Prefecture. It was noted that JMDPC had been advised that salvage operations at sea could only take place in wave conditions of less than one metre, and that during the months of January and February such conditions could only be expected for about three days per month. It

was further noted that JMDPC had been advised that the oil removal operations via the causeway could be carried out in wave conditions of less than two metres, and that these conditions could be expected for about 20 days per month during January and February. It was further noted that the construction companies had estimated that the causeway would require 15 working days to complete at a cost of ¥1 000 million (£5 million), but that in the event it took 27 days to complete the work at twice the estimated costs.

8.4.20 It was noted that in their examination of the claims the Funds had found that on occasions both the at-sea operations and the causeway operations had required the assistance of divers who were only able to work when waves were less than one metre. It was also noted that both operations had therefore been subjected to the same restrictions with regard to sea conditions and the extra potential days said to have been available for causeway operations had not been as great as indicated by JMDPC. The Council noted, however, that the Funds had acknowledged that down time due to bad weather had been greater for the at-sea operations due to the fact that the salvage vessels had to return to Fukui port on these occasions, which involved demobilisation /remobilisation times of several hours, compared with the causeway operations which could be suspended and resumed very quickly.

8.4.21 It was also noted from the chronology of events that the construction of the causeway had proved less straightforward than had been anticipated, and that significant sections had been washed away on 22, 26 and 29 January 1997. The Council noted that the Director considered that JMDPC should have reappraised its decision to construct the causeway in light of these set-backs, since it should have become apparent that the construction companies had underestimated both the time to complete the causeway and the costs involved.

8.4.22 It was noted that at the time of the damage to the causeway on 26 January only 709 m^3 out of a total of 2 450 m^3 had been removed from the bow section by the at-sea operations. Furthermore, it was noted that JMDPC had decided to modify the causeway design following the damage on 26 January. However, it was also noted that in the Director's view, following the damage to the causeway on 29 January 1997 the construction work should have been terminated, and that the claims had therefore been assessed on the basis of the construction costs that would have been incurred up to that date and the subsequent removal costs after that date.

8.4.23 The Council noted that in order to assess the claims the Funds had engaged Japanese civil engineering experts to estimate the costs of construction up to and including 29 January 1997 and the subsequent removal costs after that date. It was noted that the experts had estimated the costs on the basis of information recorded in the daily work reports on the quantities of foundation stones, wave-absorbing blocks and other materials used in the construction of the causeway up to 29 January 1997. It was also noted that the claim in respect of the construction and removal of the causeway had been assessed at ¥1 587million (£8.1 million), which represented 68% of the total construction and removal costs. It was further noted that as regards the other components of the claim, ie oil removal operations via the causeway, subsequent clean-up of the site and JMDPC's own expenses, the Director had assessed these amounts at a total of ¥393 million (£2 million). It was finally noted that the Director considered that the claims should be accepted for ¥2 043 million (£10.4 million), including interest, compared with the claimed amount of ¥3 336 million (£17 million).

8.4.24 Several delegations noted with satisfaction the detailed technical explanation given in document 71FUND/A/ES.9/9/Add.1 setting out the basis of the assessment of the claim in respect of the causeway. They stated that it was sometimes necessary for governments and public bodies to undertake innovative and expensive measures to deal with serious pollution, and that it was important for the IOPC Funds and their experts to consider claims for the costs of such measures at an early stage, particularly where the question of admissibility was an issue.

8.4.25 The Council endorsed the Director's view that the serious risk of pollution from the bow section justified the Japanese authorities' decision to commence the construction of the causeway, but

that the decision should have been reappraised in the light of the difficulties faced as a result of the adverse weather encountered.

8.4.26 The Council decided to approve the causeway claims for a total of ¥2 043 million (£10.4 million).

Legal actions

8.4.27 It was recalled that, pursuant to the governing bodies' decisions, in November 1999 the IOPC Funds brought legal actions in the Fukui District Court against the owner of the *Nakhodka* (Prisco Traffic Limited), Prisco's parent company (Primorsk Shipping Corporation), the UK Club and the Russian Maritime Register of Shipping, to recover any amounts paid by the Funds in compensation.

8.4.28 The Council took note of the developments in respect of the legal proceedings as set out in paragraphs 4.1.1 – 4.3.22 of document 71FUND/A/ES.9/9 and the position of the parties in the proceedings as set out in paragraphs 5.1.1 – 5.4.5 of that document.

Global solution

8.4.29 The Council held a session in private, pursuant to Rule 12 of the Rules of Procedure, to consider whether it would be possible to reach a global solution of all outstanding issues in the legal proceedings. During the closed session covered by paragraphs 8.4.29 – 8.4.40, only the representatives of the Member States of the 1992 Fund and 1971 Fund were present.

8.4.30 The Council recalled that at the October 2001 sessions of the governing bodies, a number of delegations had supported the idea of reaching a global solution and had stressed the need for flexibility, pragmatism and transparency. It was also recalled that at these sessions the Director had been instructed to continue to explore the possibilities of reaching a settlement of all outstanding issues, including those relating to the various recourse actions, that discussions had been held between the UK Club and the IOPC Funds on the possibilities of reaching such a global solution, and that he had been given renewed instructions to this effect at the present sessions. It was noted that discussions had been carried out between the IOPC Funds and the UK Club since the October 2001 sessions and that these discussions had continued during the week of the present sessions.

8.4.31 The Director submitted for consideration by the Council the following proposal for a global settlement made by the UK Club:

1 The compensation payments would be shared between the UK Club and the IOPC Funds on a 42:58 basis in respect of all settled claims.

2 The IOPC Funds would continue to make payments at a level of 80% in respect of all settled claims.

3 The UK Club would pay the 20% balance due to all claimants.

4 The UK Club would reimburse the IOPC Funds approximately ¥5 200 million (£26.7 million), this being the amount payable by the Club to the Funds after payment by the Club of the 20% balance due to claimants.

5 The joint costs incurred by the UK Club and the IOPC Funds would also be apportioned between them on a 42:58 basis.

6 All legal actions arising from the incident would cease.

7 The IOPC Funds, Prisco Traffic Limited, Primorsk Shipping Corporation and the UK Club should each bear their own legal costs.

8.4.32 The Director expressed the view that the proposed global settlement represented a fair compromise taking into account the uncertainty that was inherent in any litigation involving complex issues. He stated that it would have the great advantage that all established claims would be paid in full promptly and would result in the IOPC Funds being reimbursed for a considerable part of their compensation payments. He therefore recommended that the Council should approve the proposed global settlement and authorise him to conclude a global settlement agreement containing the elements set out in paragraph 8.4.31 and agree with the other parties on the details of such an agreement.

8.4.33 The Council noted that the proposed global settlement would result in the IOPC Funds recovering approximately ¥5 203 million (£26.7 million) and making a saving of around ¥2 500 million (£13.1 million) as a result of not having to increase their payments over 80% of the settlement amounts, and that the Funds would get a contribution to joint costs of some £3.9 million.

8.4.34 All members of the Council present and a large number of observer delegations unanimously supported the Director's proposal for a global settlement. It was considered that the proposed global settlement represented a balanced compromise with the main advantages that all claimants would be paid in full, that the IOPC Funds would not have to be involved in protracted legal proceedings and that the Funds would recover a significant portion of the amounts paid in compensation which would benefit the contributors to the Funds. The point was also made that the proposed settlement would facilitate the winding up of the 1971 Fund.

8.4.35 A number of delegations expressed their satisfaction that the Japanese delegation, representing the State affected by the incident, endorsed the Director's proposal.

8.4.36 The Council approved the proposed global settlement and authorised the Director to conclude a settlement agreement provided it contained the elements set out in paragraph 8.4.31. It also authorised the Director to agree with the other parties on the details of such an agreement.

8.4.37 The Council emphasised that the acceptance of the proposed settlement should not be interpreted to mean that the IOPC Funds had any doubts as to the strength of their position in the proceedings.

8.4.38 The Council further decided that the IOPC Funds should withdraw their actions against the Russian Register of Shipping.

8.4.39 The Council also stated that the acceptance of the proposed settlement and the withdrawal of the action against the Russian Register should not be interpreted in any way as a change in the IOPC Funds' policy in respect of recourse actions, namely that the Funds should take recourse action whenever appropriate to recover any amounts paid by it from shipowners or other parties on the basis of the applicable national law.

8.4.40 The Council expressed its gratitude to the Director and the Secretariat, to the UK Club and to their respective lawyers and experts who had contributed to the successful outcome of the negotiations.

Geographical terminology

8.4.41 The delegation of the Republic of Korea referred to the naming of the body of water, 'Sea of Japan', in paragraph 5.1.3 of document 71FUND/A/ES.9/9. That delegation stated that the geographical name of the sea between the Korean Peninsula and the Japanese archipelagos (the *Nakhodka* incident having occurred in that area) was in dispute and that this issue had not been resolved between the two States concerned. That delegation also stated that it was the strong wish of the Korean Government that the names 'East Sea' and 'Sea of Japan' should be used simultaneously in references to the aforementioned sea area until a final resolution had been concluded between the States concerned, as recommended in Resolution No. III/20(1977) by the

United Nations Conference on the Standardisation of Geographical Names. That delegation strongly requested the Director not to cause similar problems in the future.

8.4.42 The Japanese delegation objected to the intervention by the Korean delegation on the grounds that the name 'Sea of Japan' was well established.

8.4.43 The Director stated that this matter had been discussed at the 1971 Fund Executive Committee's 59th and 62nd sessions (documents 71FUND/EXC.59/17, paragraphs 3.8.11 – 3.8.13 and 71FUND/EXC.62/14, paragraphs 3.7.20 – 3.7.22). He also stated that he had investigated the position taken within the United Nations on this point. He mentioned that the policy of the Cartographic Section of the United Nations was that the name 'Sea of Japan' would continue to be used, as the most common and widespread denomination for the body of water in question, until a negotiated solution was found by the parties concerned. He stated that it was for this reason that that denomination would be used in documents prepared by the IOPC Funds' Secretariat, unless the governing bodies gave instructions to the contrary.

8.5 *Al Jaziah 1*

8.5.1 The Administrative Council took note of the information contained in document 71FUND/A/ES.9/11 concerning the *Al Jaziah 1* incident.

Criminal proceedings

8.5.2 The Council noted that criminal proceedings had been brought against the master of the *Al Jaziah 1* by the Abu Dhabi Public Prosecutor and that at the trial the master had stated that the vessel was designed as a water carrier and was in a dangerous and bad condition. It further noted that the Court had held that, *inter alia*, the vessel did not fulfil basic safety requirements, was not fit to sail, had many holes in the bottom and was not authorised by the Ministry of Communications of the United Arab Emirates to carry oil. It also noted that the Court had concluded that the sinking of the vessel was due to these deficiencies and that the master had been fined Dhs 5 000 (£950) for causing damage to the environment.

Possible recourse action by the IOPC Funds

8.5.3 The Administrative Council recalled that the *Al Jaziah 1* held a certificate of provisional registration issued by the registry of Honduras, which had not ratified the 1992 Civil Liability Convention and was Party only to the 1969 Civil Liability Convention. It recalled that for this reason the United Arab Emirates would be under a treaty obligation to apply the 1969 Civil Liability Convention in respect of the shipowner's right of limitation (cf document 92FUND/EXC.8/8, paragraph 4.2.8).

8.5.4 The Council noted that the Funds' legal advisers in the UAE had expressed the view that the findings of the criminal court regarding the vessel's unseaworthiness would be persuasive in any civil action filed against the shipowner in the UAE and that the Director concurred with that view. The Council further noted that the Director took the view that the shipowner must have known or ought to have known that the ship was unseaworthy and that the sinking of the vessel was due to the fault or privity of the shipowner and that for this reason, pursuant to Article V.2 of the 1969 Civil Liability Convention, the shipowner was not entitled to limit his liability and that any attempt by the shipowner to limit his liability should be opposed by the Funds.

8.5.5 The Council took note that the registered owner of the *Al Jaziah 1* at the time of the incident was Al Jazya Marine Services, an entity which had been licensed to trade by the authorities in Abu Dhabi (United Arab Emirates) and that the sole proprietor of the entity at the time of the incident was a UAE national living in Abu Dhabi. It noted that under the law of the United Arab Emirates, this type of entity, known as "sole proprietorship", did not have assets or liabilities separate from its owner.

8.5.6 It was noted that the vessel did not have any liability insurance and that it was not known whether the entity registered as owner of the *Al Jaziah 1* or the individual in question had any significant assets against which a judgement could be enforced.

8.5.7 The Council decided that if the investigations by the 1971 Fund's legal advisers revealed that the entity registered as the owner of the *Al Jaziah 1* or the individual in question had significant assets, the 1971 Fund should take recourse action. The Director was instructed to keep the Council informed of any developments so as to enable it to reassess the 1971 Fund's position, if required.

8.6 *Singapura Timur*

8.6.1 The Administrative Council took note of the information contained in document 71FUND/A/ES.9/13 concerning the *Singapura Timur* incident.

Environmental risk posed by the cargo and fuel oil remaining on board the vessel

8.6.2 The Administrative Council noted that the Malaysian Department of Environment (DOE) had decided to conduct a study to ascertain whether the bitumen cargo remaining on board the *Singapura Timur*, which was lying in a depth of 47 metres in the Malacca Straits, posed a threat to the environment, ie sensitive coastal resources, including coral reefs, mangroves and mariculture facilities which lie at 8 nautical miles from the wreck and if so whether the cargo should be removed. The Council noted that the 1971 Fund and its experts had assisted the DOE in preparing the terms of reference of the study.

8.6.3 The Council also noted that the DOE had considered that the remaining bunker oil posed a significant threat to the environment and had decided to engage a salvor to remove the bunker fuel oil at the earliest opportunity. It was noted that whilst the 1971 Fund agreed that such measures were necessary, it had suggested that the DOE should, in view of the fact that the study referred to in paragraph 8.6.2 above would require a detailed diving survey of the wreck, consider combining this survey with the operation to remove the bunker fuel in order to avoid duplication of effort and reduce costs.

8.6.4 In response to a query from one delegation regarding the possible threat posed by the bitumen cargo, the Director stated that the pollution risks associated with the bitumen cargo were considered to be minimal. It was noted, however, that the proposed diving survey would enable the stability and structural integrity of the vessel to be established and at the same time enable a sample of the cargo to be obtained for an analysis of its properties in order to ascertain its likely fate and effects if released from the wreck.

Limitation of liability

8.6.5 The Administrative Council recalled that Malaysia was a Party to the 1969 Civil Liability Convention and the 1971 Fund Convention and that the limitation amount applicable to the *Singapura Timur* under the 1969 Civil Liability Convention had been indicated by the shipowner's P & I insurer, the Japan Shipowners' Mutual Protection and Indemnity Association (Japan P & I Club) at 95 760 SDR (£77 050).

8.6.6 The Council noted that there was no reason to believe that the shipowner would not be entitled to limit his liability under the 1969 Civil Liability Convention and that the Japan P & I Club had requested that the 1971 Fund should in this case waive the requirement under Article V.3 of that Convention for the constitution of the limitation fund.

8.6.7 The Administrative Council recalled that the 1971 Fund Executive Committee had decided previously that the 1971 Fund normally required the establishment of the limitation fund in order to be able to pay compensation, and that this requirement could be waived only in exceptional

cases. It further recalled that in several cases in Japan, the Committee had waived this requirement in view of the disproportionately high legal cost that would be incurred in establishing the limitation fund compared with the low limitation amounts under the 1969 Civil Liability Convention in these cases. It was also recalled that when making these decisions, the Committee had taken into account that, under the Memorandum of Understanding signed on 25 November 1985 by the Japan P & I Club and the 1971 Fund, the Club undertook to repay in full any amount paid by the 1971 Fund in compensation if it was held by the competent court that the shipowner was not entitled to limit his liability under the1969 Civil Liability Convention and that in these cases, the Committee had agreed that the 1971 Fund could, as an exception, pay compensation without the limitation fund having been established (cf documents FUND/EXC.49/10 and FUND/EXC.49/12, paragraph 3.9.2).

8.6.8 The Council took note of the Director's view that, although not expressly stated in the Memorandum of Understanding, the undertaking by the Japan P & I Club should be considered restricted to incidents occurring in Japan, since the undertaking referred to the Japanese Law on Compensation for Oil Pollution Damage. The Council decided that the 1971 Fund should nevertheless grant the request of the Japan P & I Club, in view of the relatively low limitation amount applicable to the *Singapura Timur*, and noted that the 1971 Fund would in any event not make any compensation payments until the shipowner/Club had paid up to the limitation amount.

Recourse action

8.6.9 The Administrative Council recalled that any action against the *Rowan* interests would as regards the right of limitation be governed by the conventions dealing with this matter in general, namely the 1957 Convention relating to the Limitation of the Liability of Owners of Sea-going Ships or the 1976 Convention on Limitation of Liability for Maritime Claims. It further recalled that Malaysia was a party to the 1957 Convention, whereas Japan was a party to the 1976 Convention, and that the limitation amount under the 1976 Convention was significantly higher than that under the 1957 Convention. It was noted that the limit applicable to the *Rowan* under the 1976 Convention was estimated at £3.7 million whereas the limit under the 1957 Convention was estimated at £768 000. It was also noted that the test for breaking the shipowner's right to limitation was much stricter in the 1976 Convention than in the 1957 Convention.

8.6.10 The Council noted that in December 2001, the *Singapura Timur*'s interests (P & I and hull insurers) had commenced proceedings in Japan against the *Rowan* interests in order to recover the costs they had incurred and the costs they would incur as well as the costs that the 1971 Fund might incur as a result of this incident but that the Director had informed the Japan P & I Club that the 1971 Fund reserved its position with regard to recourse action, as the extent of the liability of the Fund had not been established.

8.6.11 The Council noted that the *Rowan* interests had commenced proceedings in Malaysia against the *Singapura Timur* and its owner *in rem* and against the owner in person and in limitation and that the Japan P & I Club had contested the action *in rem* on the ground that such an action could only be taken against a ship and not against a wreck. It was also noted that the Club had further contested the action against the owner in person and in limitation on the ground that Malaysian courts did not have jurisdiction in this case.

8.6.12 The Council noted that the total losses incurred by the *Singapura Timur*'s interests (Japan P & I Club and the hull insurers) were in the region of US$4.8 million (£3.4 million), which was less than the limitation amount applicable to the *Rowan* under the 1976 Convention.

8.6.13 The Council further noted that the Japan P & I Club and the hull underwriters of the *Singapura Timur* had sought the agreement of the 1971 Fund to their proceeding against the *Rowan* interests in Japan or any other State that was Party to the 1976 Convention and that the Director considered that the proposal by the Japan P & I Club to take action against the *Rowan* interests in Japan had merit, since it would ensure that the 1971 Fund would recover at least part of any compensation

payments made by it without having to incur any substantial litigation costs. It was noted that, in the Director's view, a condition of an agreement with the Club in this regard should in his view be that any amount paid as a result of a judgement or settlement would be placed in an escrow account until the liabilities of the Japan P & I Club, the hull underwriters and the 1971 Fund had been established and that once the liabilities of all the parties had been determined, the money in the escrow account would be distributed on a *pro rata* basis. It was also noted that a further condition of such an agreement should be that the 1971 Fund would waive its rights to pursue any further claim against the owner of the *Rowan* to recover any amounts the Fund had paid in compensation.

8.6.14 In response to a query regarding the grounds for pursuing *Rowan* interests under the 1976 Convention in Japan, the Director stated that he understood that, since Japan was a party to that Convention, the interested parties had taken these steps in order to avail themselves of the higher limitation amount under that Convention.

8.6.15 The Administrative Council endorsed the Director's position as regards proceedings against the *Rowan* and instructed him to continue discussions with the *Singapura Timur*'s interests.

9 Any other business

9.1 Convening of future sessions

The Chairman reminded delegations that the Administrative Council had decided, at its 6th session held in October 2001, that since the 1971 Fund Convention would cease to be in force on 24 May 2002 and there would no longer be any 1971 Fund Member States, it would be 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 (document 71FUND/AC.6/A.24/22, paragraph 26).

9.2 Next session

It was noted that it might be necessary for the Administrative Council to hold a session during the week commencing 1 July 2002.

10 Adoption of the Record of Decisions

The draft Record of Decisions of the Administrative Council, as contained in document 71FUND/AC.7/A/ES.9/WP.3, was adopted, subject to certain amendments.

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ANNEX I

COMPOSITION AND MANDATE OF THE IOPC FUNDS' AUDIT BODY

1 The Audit Body shall be composed of seven members elected by the 1971 Fund Administrative Council: one named Chairman nominated by Member States, five named individuals nominated by Member States and one named individual not related to the Organisations ("outsider"), with expertise and experience in audit matters nominated by the Chairman of the 1971 Fund Administrative Council. Nominations, accompanied by the curriculum vitae of the candidate, should be submitted to the Director at least six weeks in advance of the session at which the election will take place.

2 Of the six members to be elected from Member States, three shall be elected from the eleven Member States in the territory of which the largest quantities of oil were received during the preceding calendar year, and three from the other Member States. When electing members of the Audit Body, the Administrative Council shall take into account the desirability of an equitable geographical distribution of the seats of the Audit Body.

3 Members of the Audit Body shall hold office for three years, once renewable. Of the first Audit Body to be elected, the term of three of those elected from Member States shall not be renewable.

4 The members of the Audit Body shall perform their functions independently and in the interest of the Organisations as a whole. The members elected from Member States shall not receive any instructions from their Governments.

5 Travel and subsistence expenses of the six members of the Audit Body elected from Member States shall be paid by the Organisations. The member not related to the Organisations ("outsider") shall be paid travel expenses and an appropriate fee.

6 The Audit Body shall:

(a) review the effectiveness of the Organisations regarding key issues of financial reporting, internal controls, operational procedures and risk management;

(b) promote the understanding and effectiveness of the audit function within the Organisations, and provide a forum to discuss internal control issues, operational procedures and matters raised by the external audit;

(c) discuss with the External Auditor the nature and scope of each forthcoming audit;

(d) review the Organisations' financial statements and reports;

(e) consider all relevant reports by the External Auditor, including reports on the Organisations' financial statements; and

(f) make appropriate recommendations to the Assemblies.

7 The Audit Body shall normally meet at least twice a year. The Chairman of the Audit Body and the External Auditor may request that additional meetings should be held. The meetings shall be convened by the Director, in consultation with the Chairman of the Audit Body.

8 The External Auditor, the Director and the Head of the Finance and Administration Department shall normally be present at the meetings.

9 The Chairman of the Audit Body shall report on its work to each regular session of the Assemblies.

10 Every three years the functioning of the Audit Body and its mandate shall be reviewed by the Assemblies on the basis of an evaluation report from the Chairman of the Audit Body.

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ANNEX II

1971 Fund Resolution N°15 - Operation of the 1971 Fund after 24 May 2002

THE ADMINISTRATIVE COUNCIL OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 (1971 FUND) ACTING ON BEHALF OF THE ASSEMBLY,

RECALLING Resolution N°13 of the Assembly of the 1971 Fund creating the Administrative Council,

NOTING that paragraph 7(a) of Resolution N°13 provides that "decisions of the Administrative Council shall be taken by the majority vote of those 1971 Fund Member States and former 1971 Fund Member States present and voting, provided that a former 1971 Fund Member State shall have the right to vote only in respect of issues relating to incidents which occurred while the 1971 Fund Convention was in force for that State",

AWARE that on 24 May 2002 the 1971 Fund Convention shall cease to be in effect,

NOTING ALSO that, in the circumstances, there will be no States with the right to vote in the Administrative Council on issues relating to the winding up of the 1971 Fund, pursuant to paragraph 7(a) of Resolution N°13,

ACKNOWLEDGING that such a situation will make it impossible for the Administrative Council to take decisions relating to such issues,

RECOGNISING that the mandate of the Administrative Council is, *inter alia*, "to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity",

MINDFUL of the need to establish an arrangement which will permit the completion of the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund,

BEARING IN MIND that it is appropriate for measures to be taken to ensure that the necessary decisions on these matters can be taken in the Administrative Council,

CONSCIOUS of the need to ensure that the interests of the persons who have contributed to the 1971 Fund are protected,

CONSIDERING that, for these reasons, it is necessary to amend the provisions on voting rights in the Administrative Council, as contained in paragraph 7(a) of Resolution N°13,

RESOLVES to amend paragraph 7(a) of Resolution N°13 to read as follows:

> "that decisions of the Administrative Council shall be taken by majority vote of all States having at any time been Members of the 1971 Fund present and voting, provided that, in respect of issues relating to incidents, States shall have the right to vote only as regards incidents which occurred when the State in question was a Member of the 1971 Fund;"

FURTHER RESOLVES that this amendment shall take effect on 25 May 2002.
