



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

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Agenda item 16

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## WINDING UP OF THE 1971 FUND

### Note by the Director

**Summary:**

The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date. Before the 1971 Fund can be wound up all pending claims will have to be settled and paid and any remaining assets will have to be distributed in an equitable manner between contributors.

This document deals with certain issues which will have to be addressed during the winding-up period, namely the time scale for the settlement of all remaining claims in respect of pending incidents and for the recourse actions taken by the 1971 Fund in respect of certain incidents and the distribution to contributors of the surpluses on the General Fund, if any, and on certain Major Claims Funds. It also addresses what action should be taken in respect of the contributors in arrears and the problem caused by a number of States not having fulfilled their treaty obligations under the 1971 Fund Convention to submit reports on contributing oil receipts.

**Action to be taken:**

To take such decisions as may be considered appropriate regarding the administration of the 1971 Fund during the winding up period, in particular

- (i) to decide on what basis the remaining assets of the 1971 Fund should be distributed, both as regards the General Fund and as regards Major Claims Funds;
- (ii) what actions should be taken in respect of contributors in arrears, and
- (iii) how to address the problem resulting from States not fulfilling their obligations to submit oil reports.

### **1 Introduction**

- 1.1 Pursuant to Article 43.1 of the 1971 Fund Convention, as amended by the 2000 Protocol thereto, the Convention ceased to be in force on 24 May 2002 when the number of States Parties fell below 25. The Convention does not apply to incidents occurring after that date.

- 1.2 The termination of the 1971 Fund Convention will not in itself result in the winding up of the 1971 Fund, since winding up can only take place once all the claims arising from pending incidents have been settled and all expenses have been paid.
- 1.3 The 1971 Fund Assembly and the 1971 Fund Executive Committee have not been able to achieve a quorum in recent years. Since April 2000 the functions of these bodies have been carried out by a special body, the 1971 Fund Administrative Council, which was established by 1971 Fund Resolution N°13 adopted by the 1971 Fund Assembly in April/May 1998.
- 1.4 In Resolution N°13 the 1971 Fund Assembly gave the Administrative Council *inter alia* the mandate 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.
- 1.5 Under 1971 Fund Resolution N°13, as amended by the Administrative Council at its 7th session, held in April/May 2002, decisions by the Administrative Council are taken by the 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. There is no quorum requirement for the Administrative Council.
- 1.6 The text of Resolution N°13 as amended is at the Annex.
- 1.7 The Director considers it appropriate to deal with some of the issues which in his view will have to be addressed before the 1971 Fund can be wound up. These issues relate *inter alia* to the time scale for the settlement of all remaining claims in respect of pending incidents and for the recourse actions taken by the 1971 Fund relating to certain incidents, the liquidation of the Organisation, including the distribution of any surpluses on the General Fund and Major Claims Funds, what action should be taken in respect of contributors in arrears and the problems caused by a number of States not having fulfilled their treaty obligations under the 1971 Fund Convention to submit reports on receipts of contributing oil. Although some of these issues do not require decisions to be taken at the Administrative Council's October 2002 session, the Director has nevertheless felt it appropriate to bring these matters to the Council's attention at this stage.

## **2 Pending incidents**

- 2.1 As at 25 September 2002, there were 21 incidents involving the 1971 Fund for which there were outstanding issues (claims for compensation and/or indemnification, recourse actions and reconciliation of Major Claims Funds) to be resolved before the winding-up of the 1971 Fund can be accomplished. These incidents are as follows:

| <u>Ship</u>           | <u>Date of incident</u> | <u>Place of incident</u> |
|-----------------------|-------------------------|--------------------------|
| <i>Vistabella</i>     | 7 March 1991            | Caribbean                |
| <i>Aegean Sea</i>     | 3 December 1992         | Spain                    |
| <i>Braer</i>          | 5 January 1993          | United Kingdom           |
| <i>Keumdong N°5</i>   | 27 September 1993       | Republic of Korea        |
| <i>Iliad</i>          | 9 October 1993          | Greece                   |
| <i>Sea Prince</i>     | 23 July 1995            | Republic of Korea        |
| <i>Yeo Myung</i>      | 3 August 1995           | Republic of Korea        |
| <i>Yuil N°1</i>       | 21 September 1995       | Republic of Korea        |
| <i>Sea Empress</i>    | 15 February 1996        | United Kingdom           |
| <i>Kriti Sea</i>      | 9 August 1996           | Greece                   |
| <i>Nakhodka</i>       | 2 January 1997          | Japan                    |
| <i>Nissos Amorgos</i> | 28 February 1997        | Venezuela                |
| <i>Osung N°3</i>      | 3 April 1997            | Republic of Korea        |

|                        |                   |                      |
|------------------------|-------------------|----------------------|
| <i>Katja</i>           | 7 August 1997     | France               |
| <i>Evoikos</i>         | 15 October 1997   | Singapore            |
| <i>Pontoon 300</i>     | 7 January 1998    | United Arab Emirates |
| <i>Al Jaziah 1</i>     | 24 January 2000   | United Arab Emirates |
| <i>Alambra</i>         | 17 September 2000 | Estonia              |
| <i>Natuna Sea</i>      | 3 October 2000    | Indonesia            |
| <i>Zeinab</i>          | 14 April 2001     | United Arab Emirates |
| <i>Singapura Timur</i> | 28 May 2001       | Malaysia             |

2.2 All claims arising from the *Vistabella* incident have been settled. The 1971 Fund has taken recourse action against the owner of the *Vistabella* and his insurer. It is uncertain when the recourse proceedings will be terminated and whether the 1971 Fund will succeed in its recovery action.

2.3 It is expected that all claims and expenses will have been paid in respect of the following 12 incidents by 31 December 2003:

*Aegean Sea*  
*Braer*  
*Keumdong N°5*  
*Sea Prince*  
*Yeo Myung*  
*Yuil N°1*  
*Nakhodka*  
*Katja*  
*Evoikos*  
*Natuna Sea*  
*Zeinab*  
*Singapura Timur*

2.4 There are no pending claims against the 1971 Fund in respect of the *Osung N°3* incident.

2.5 The 1971 Fund will not be called upon to pay any compensation or indemnification as regards the *Katja* incident. However, the legal proceedings taken by some claimants against the shipowner, his insurer and the 1971 Fund may not be concluded for some time.

2.6 The *Iliad* and the *Kriti Sea* incidents will probably result in payments of compensation and/or indemnification by the 1971 Fund for some £822 000 and £944 000, respectively. It may take some time before the claims arising from these incidents will have been resolved by the Greek Courts, but it is possible that the Courts will have rendered their decisions by the end of 2003.

2.7 As regards the *Sea Empress* incident there remain only two claims for compensation and a number of claims for costs, for a total amount of some £1 million. It is believed that these claims will be resolved during 2003. However, the 1971 Fund has taken recourse action against the Milford Haven Port Authority to recover the amounts paid by it in compensation and indemnification and the cost of handling the claims arising from that incident. It may take several years before the recourse proceedings are completed. The recourse action will result in significant legal costs.

2.8 With respect to the *Nakhodka* incident the 1971 Fund and the 1992 Fund had taken recourse actions against the shipowner, his insurer and others to recover the amounts which the Funds have paid in compensation. At their April/May 2002 sessions the governing bodies of the two Organisations approved a global settlement of all outstanding issues arising from this incident. The last pending claims, those by the Japanese government agencies and the Japan Maritime Disaster Prevention Centre, were settled on 30 August and were paid in full on 10 September 2002. It is expected that the agreement between the IOPC Funds, the shipowner and his insurer on the global settlement will be formally concluded in early October 2002. It is further expected that all claims arising from this incident will have been paid in full by the end of

November 2002. The global settlement may result in the 1971 Fund recovering a significant amount. In this regard reference is made to document 71FUND/AC.9/18, section 10.

- 2.9 The remaining claims arising out of the *Nissos Amorgos* and *Pontoon 300* incidents are, in the Director's view, for the most part inadmissible. However, these claims, which are subject to court proceedings, are for significant amounts, and it is very difficult to estimate the total payments to be made by the 1971 Fund in respect of these incidents. It may take some time before the outstanding claims will be settled.
- 2.10 It is estimated that the *Al Jaziah 1* incident will give rise to payments of compensation and costs by the 1971 Fund not exceeding £600 000.
- 2.11 With respect to the *Alambra* incident, the shipowner's insurer has in court proceedings in Estonia maintained that he is not liable to pay any compensation on the grounds that the shipowner had deliberately failed to maintain the ship in a seaworthy condition. If the insurer's position were to be accepted by the Estonian Courts, there is a risk that the 1971 Fund would have to pay a considerable amount (some £2.1 million) in compensation plus significant legal costs, due to the shipowners being financially incapable of fulfilling his obligations. It is not possible to predict when these issues will be resolved.
- 2.12 In conclusion, it is anticipated that by the end of 2003 there will only be outstanding compensation and indemnification claims in respect of the *Nissos Amorgos* incident and, possibly, in respect of the *Iliad*, *Kriti Sea*, *Pontoon 300* and *Alambra* incidents. It is likely, however, that the 1971 Fund will still be involved in recourse proceedings in respect of the *Sea Empress* incident and, possibly in respect of the *Vistabella* and *Al Jaziah 1* incidents.

### **3 Financial situation in respect of pending incidents**

- 3.1 Of the 12 incidents referred to in paragraph 2.3 above, the following six have already been fully financed through contributions levied to the respective Major Claims Funds:

*Aegean Sea*  
*Braer*  
*Keumdong N°5*  
*Sea Prince*  
*Yeo Myung*  
*Yuil N°1*

- 3.2 The Major Claims Funds established in respect of the incidents referred to in paragraph 3.1 are expected to show a considerable combined surplus in the region of £43 million when all claims and expenses have been paid. Depending upon the decision to be taken by the governing bodies concerning the distribution between the 1971 Fund and the 1992 Fund of the financial benefits of the global settlement in respect of the *Nakhodka* incident, there may in addition be a significant surplus on the *Nakhodka* Major Claims Fund (cf paragraph 2.8 above).
- 3.3 There is a deficit of some £480 000 on the *Vistabella* Major Claims Fund, and contributions will have to be levied to that Fund, unless the recourse action referred to in paragraph 2.2 above were to result in the recovery of a significant amount.
- 3.4 The only outstanding issue in respect of the *Osung N°3* incident is the levy of contributions to the *Osung N°3* Major Claims Fund in order to enable that Major Claims Fund to repay a loan of some £1.5 million taken from the *Aegean Sea* Major Claims Fund. In document 71FUND/AC.9/18, paragraph 12.2.5, the Director has proposed that no levy should be made to the *Osung N°3* Major Claims Fund at this stage but that such a levy should be made in conjunction with the distribution to contributors of the surpluses on some other Major Claims Funds.
- 3.5 Payments in respect of the *Iliad* and *Kriti Sea* incidents (estimated at some £822 000 and £944 000, respectively) will be made from the General Fund.

- 3.6 There are deficits on the *Nissos Amorgos* and *Pontoon 300* Major Claims Funds and contributions will have to be levied to these Funds.
- 3.7 With the exception of the *Al Jaziah 1*, *Alambra*, *Natuna Sea*, *Zeinab* and *Singapura Timur* incidents, the incidents referred to in paragraph 2.1 occurred before the end of the transitional period, on 15 May 1998, when the denunciation of the 1971 Fund Convention by 24 States took effect. A sufficient contribution base exists therefore as regards these incidents, should it be necessary to levy further contributions to any of the respective Major Claims Funds.
- 3.8 It is expected that the 1971 Fund will not be called upon to pay any compensation or indemnification payments in respect of the *Natuna Sea* incident.
- 3.9 With respect to the *Alambra* incident payments would be made from the General Fund for a total of £917 680 and any payments in excess of that amount from a Major Claims Fund.
- 3.10 As mentioned above, the 1971 Fund's payments relating to the *Al Jaziah 1* incident is estimated not to exceed £600 000, to be paid from the General Fund.
- 3.11 In October 2000 the 1971 Fund purchased insurance covering its liabilities in respect of incidents occurring during the period 25 October 2000 – 24 May 2002, subject to a deductible of 250 000 Special Drawing Rights per incident. The insurance will be used in respect of the *Zeinab* and *Singapura Timur* incidents (14 April 2001 and 28 May 2001, respectively). The maximum amount to be borne by the 1971 Fund in respect of each of these incidents is the deductible, to be paid from the General Fund, which for the *Zeinab* incident will be £220 325 and for the *Singapura Timur* incident £221 283, converted on the basis of the SDR/Pounds sterling rate of exchange on the date of the respective incident as decided by the Administrative Council (cf document 71FUND/AC.8/6, paragraph 3.5.5).

#### **4 Distribution of the 1971 Fund's remaining assets**

- 4.1 The distribution of the 1971 Fund's remaining assets is dealt with in Article 44.2 of the 1971 Fund Convention which reads:

The Assembly shall take all appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund.

- 4.2 The Assembly has delegated this function to the Administrative Council, as set out in paragraph (e) of the Council's mandate referred to in paragraph 1.4 above.
- 4.3 The remaining assets will consist of the balance on the General Fund, if any, and the balances on certain Major Claims Funds.

#### *Major Claims Funds*

- 4.4 As set out in paragraph 3.2 above, it is expected that there will be surpluses on the *Aegean Sea*, *Braer*, *Keumdong N°5*, *Sea Prince*, *Yeo Myung* and *Yuil N°1* Major Claims Funds, together estimated at some £43 million. As for the *Nakhodka* incident, the question of whether or not there will be a surplus depends on the decisions by the governing bodies relating to the distribution between the 1971 and 1992 Funds of the amount to be recovered from the shipowner and his insurer (cf document 71FUND/AC.9/18, paragraphs 10.2.6-10.2.8). On the other hand, it is expected that there will be deficits on the *Vistabella*, *Sea Empress*, *Nissos Amorgos*, *Osung N°3* and *Pontoon 300* Major Claims Funds, together estimated at some £31 million.
- 4.5 The distribution of any surplus on the Major Claims Funds is governed by Financial Regulation 4.4. If, after the period for bringing legal actions under Article 6 of the 1971 Fund Convention in respect of a particular incident has expired and all claims and expenses arising out of that incident have been paid, there remains a substantial amount on that Major Claims Fund,

the Assembly shall decide whether that amount shall be reimbursed *pro rata* to the persons who made contributions to that Major Claims Fund, or whether the amount shall be credited to the accounts of these persons. The same shall apply if, after the settlement of all claims known to the 1971 Fund, the Executive Committee (now the Administrative Council) is satisfied that no more claims in respect of that incident will be made against the 1971 Fund and no more expenses will have to be met.

- 4.6 The Director proposes that the issue of distribution of the surpluses on certain Major Claims Funds should be considered by the Administrative Council in October 2003 when the situation will have become clear in respect of the incidents in question.

#### *General Fund*

- 4.7 There are no provisions in the Financial Regulations on the distribution of the surplus on the General Fund, if any. The contributions to the General Fund have been made over a period of 24 years by various contributors and on the basis of varying quantities of contributing oil. In the Director's view there is no obvious method for the distribution of this surplus. Several options could be considered.
- 4.8 In the Director's view, however, the most equitable solution would be to distribute the surplus on the General Fund between the contributors in the 76 States which were members of the 1971 Fund at the end of the transitional period (15 May 1998), ie the date on which the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention took effect for those 1971 Fund Member States which had ratified the 1992 Fund Convention. These 76 States include all States which at any time had been Members of the 1971 Fund, except Guyana for which the 1971 Fund Convention entered into force on 10 March 1998. However, no contributions have been made in respect of Guyana. The Director further proposes that the distribution should be made among the contributors in these 76 States for which contributing oil has been reported as having been received during 1997 (which under Article 12.2(a) of the 1971 Fund Convention was the basis for the levy of 1998 annual contributions to the General Fund) and that the distribution should be based on the quantities reported for 1997 (cf document 71FUND/EXC.59/17/A.21/24, paragraph 24.8). The Director estimates that there will only be a relatively small surplus on the General Fund, in the region of £1 - £2 million.

## **5 Non-submission of oil reports**

- 5.1 The non-submission of oil reports by a number of 1971 Fund Member States has been a serious problem for a number of years. This issue is considered under agenda item 12 (document 71FUND/AC.9/10).
- 5.2 The Administrative Council may wish to consider whether the reimbursement of surpluses referred to in paragraph 4.4 from any of the Major Claims Fund (after offset has been made against any arrears) should be postponed in respect of all contributors in Member States which have oil reports outstanding which would have been used as a basis for levying contributions to the General Fund or to any Major Claims Funds. If outstanding reports have not been submitted when all pending incidents have been resolved and all claims and expenses have been paid so that the 1971 Fund can be wound up, the question will arise as to what actions the 1971 Fund should take as regards the contributors in defaulting States who would be entitled to reimbursement on the basis of the reports submitted.

## 6 Contributors in arrears

- 6.1 The contributions to the 1971 Fund have over the years largely been paid. However, with some 400 contributors it is inevitable that there will be some arrears. The situation in respect of unpaid contributions has been reported annually to the 1971 Fund governing bodies at their October sessions. A detailed report on the present situation will be given to the Administrative Council in document 71FUND/AC.9/9.
- 6.2 As at 15 September 2002, there were 27 contributors in arrears for a total of some £938 000. Some of these arrears relate to contributions invoiced many years ago. Under the Internal Regulation 3.10 interest is charged on unpaid annual contributions. Although interest on the arrears cannot be calculated until the date of payment is known, it is estimated that accrued interest on the arrears totalled some £485 000 as at 1 September 2002.
- 6.3 The arrears relate to the contributors in various States as set out below:

| Member States                                   | No of contributors | Total amount of arrears (excluding interest) |
|---|--------------------|--|
| Algeria   | 1                  | 4 227.79                                     |
| Benin   | 1                  | 31 030.72                                    |
| Germany   | 1                  | 8 945.94                                     |
| Ghana   | 1                  | 5 279.36                                     |
| Greece  | 1                  | 25 042.54                                    |
| Hong Kong <sup>&lt;1&gt;</sup>                  | 1                  | 3 623.69                                     |
| Indonesia                                       | 1                  | 108 500.15                                   |
| Italy   | 1                  | 1 306.85                                     |
| Japan   | 1                  | 3 300.05                                     |
| Kenya   | 3                  | 76 042.71                                    |
| Kuwait  | 1                  | 30 962.35                                    |
| Morocco   | 2                  | 20 786.24                                    |
| Netherlands                                     | 1                  | 56 742.51                                    |
| Nigeria   | 1                  | 225 610.54                                   |
| Russian Federation                              | 2                  | 75 595.19                                    |
| Former USSR <sup>&lt;2&gt;</sup>                | 5                  | 133 207.80                                   |
| Former Socialist Federal Republic of Yugoslavia | 3                  | 127 293.40                                   |
| <b>Total</b>                                    | <b>27</b>          | <b>937 497.83</b>                            |

- 6.4 The total amount levied in contributions to the 1971 Fund during the period 1978–2002 is £330 million. The arrears therefore represent 0.28% of the total amount levied.
- 6.5 Of the defaulting contributors, five were at the time of the levies of contributions located in what was then the Union of Soviet Socialist Republic (USSR) but are now located in States which do not form part of the Russian Federation, namely two in Azerbaijan, one in Georgia (which is now a Member of the 1992 Fund) and two in Turkmenistan. These arrears total £133 000. Contributions are not payable by States but by entities (public or private) which receive contributing oil after transport by sea in a State which was Party to the 1971 Fund Convention. The contributions are based on the oil quantities received during the year preceding that when a levy was decided by the Assembly in respect of the General Fund and, as regards Major Claims Funds, on the basis of the oil quantities received during the year before the incident in question

<sup><1></sup> Previously dependent territory of the United Kingdom, now Special Administrative Region, People's Republic of China

<sup><2></sup> To the extent not part of the Russian Federation

occurred. With respect to these five contributors, the decisions to levy the contributions were taken by the Assembly in October 1991 and were based on oil quantities received in 1989 and 1990, i.e. before the dissolution of the USSR on 24 December 1991. In the Director's view the obligation of these contributors to pay the contributions levied in respect of a year before the dissolution of the USSR remains.

- 6.6 Three contributors in arrears were at the time of the levies of the contributions located in the Socialist Federal Republic of Yugoslavia. One of them is now located in Bosnia and Herzegovina and two in the Federal Republic of Yugoslavia. These arrears total £127 000. As regards the contributor in Bosnia, the decision to levy contributions was taken by the Assembly in October 1991 and was based on oil quantities received in 1989 and 1990. With respect to the contributors in the Federal Republic of Yugoslavia, the decision to levy the contributions was taken in October 1992. This decision related to Major Claims Funds in respect of incidents which occurred in 1990 and 1991 and was based on oil quantities received in 1989 and 1990.
- 6.7 During 1991 and 1992 the Socialist Federal Republic of Yugoslavia underwent a process of dissolution and five succession States came into existence. In a note submitted on 27 December 2001 by the Secretary-General of the United Nations to the President of the General Assembly it is mentioned that the Arbitration Commission of the International Conference on the Former Yugoslavia expressed the view that the dates on which Bosnia and Herzegovina and the Federal Republic of Yugoslavia came into existence were as follows:

|                                |               |
|--------------------------------|---------------|
| Bosnia and Herzegovina         | 6 March 1992  |
| Federal Republic of Yugoslavia | 27 April 1992 |

These successor States have advised the Secretary-General, in his capacity of depositary of multilateral treaties, of the same dates of succession.

- 6.8 With respect to the defaulting contributors in Bosnia and Herzegovina and the Federal Republic of Yugoslavia, the levies were based on oil quantities received in the years prior to the dissolution of the Socialist Federal Republic of Yugoslavia. For the reason set out in paragraph 6.5 above, the Director takes the view that the three contributors in Bosnia and the Federal Republic of Yugoslavia are under an obligation to pay the contributions in question.
- 6.9 As mentioned in paragraph 4.4 above, there will be significant surpluses on a number of Major Claims Funds. The surpluses should be distributed to the contributors. The repayments will however be set off against any arrears. This would result in many of the contributors in arrears having their outstanding balance substantially reduced. It is estimated that this set off will result in seven contributors having their arrears (including accrued interest) eliminated. The Director considers that there could be a small surplus on the General Fund when the 1971 Fund is wound up. The distribution of this surplus, if any, would also be set off against any arrears.
- 6.10 Contributors are reminded at least twice annually by telefax or letter of their outstanding contributions and requested to pay the amount in arrears plus interest. The Director sometimes makes direct contact with persons within defaulting entities to press for payments. Assistance has also been given by members of the delegations of the States concerned to the governing bodies. The Director will continue his efforts to make those contributors who are in arrears pay the amounts due, including interest accrued up to the date of payment.
- 6.11 The question arises, however, what action should be taken against the contributors who, in spite of repeated reminders, do not pay the invoiced amounts (plus interest). The Administrative Council may wish to consider whether the 1971 Fund should take legal action against these defaulting contributors who are expected still to be in arrears after the distribution of the surpluses on the Major Claims Funds. However, the amounts owed by many of these contributors are relatively small, and the costs incurred to pursue legal actions may exceed the amount due. The Council may wish to consider whether legal action should not be taken against the contributor whose arrears (including accrued interest) fall below a certain amount, say £25 000. It is expected that the arrears (including interest) of 15 contributors will fall below that amount and the arrears

of 12 contributors over that amount. Such recovery actions may in many States take several years, and it could sometimes be difficult to enforce a judgement in favour of the 1971 Fund against the assets of the defaulting contributor.

**7 Appointment of an eminent person**

7.1 At its 7th session, held in April/May 2002, the Administrative Council reconsidered a proposal by the Director to appoint an eminent person in order to ensure that the winding up of the 1971 Fund was impartial and equitable. 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 (document 71FUND/AC.7/A/ES.9/14, paragraph 6.13).

7.2 The Director is of the view that there is still no need to appoint such an eminent person, at least not at this stage.

**8 Action to be taken by the Administrative Council**

The Administrative Council is invited:

- (a) to take note of the information contained in this document;
- (b) to decide on what basis the remaining assets of the 1971 Fund should be distributed, both as regards the General Fund and as regards Major Claims Funds;
- (c) to consider whether any reimbursements from surpluses on Major Claims Funds or the General Fund should be postponed as regards contributors in those States which have oil reports outstanding
- (d) to consider what action should be taken against contributors in arrears;
- (e) to consider whether to appoint an eminent person to oversee the winding up of the 1971 Fund (paragraph 7); and
- (f) to take such other decisions as it may deem appropriate to ensure the proper winding up of the 1971 Fund.

\* \* \*

ANNEX

**1971 Fund Resolution N°13:**

**Operation of the 1971 Fund from 16 May 1998**

**Adopted by the 1971 Fund Assembly at its 4th extraordinary session, held in May 1998 as amended by the Administrative Council at its 7th session (acting on behalf of the Assembly's 9th extraordinary session) held in April/May 2002**

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

**NOTING** that there are 76 States Parties to the 1971 Fund Convention;

**AWARE** that 24 of these States will cease to be Members of the 1971 Fund from 16 May 1998 and that a number of other States will in the near future also cease to be Members of the 1971 Fund,

**RECOGNISING** that, as a result of these States leaving the 1971 Fund, it is likely, despite considerable efforts to be made by the Director, that the Assembly of the Organisation will no longer be able to achieve a quorum and that the same may in the near future apply to its Executive Committee,

**ACKNOWLEDGING** that this would result in the 1971 Fund's being unable to operate in a normal way,

**MINDFUL** that the 1971 Fund's objective is to pay compensation to victims of oil pollution damage in Member States,

**RECALLING** that it is the task of the Assembly, under Article 18.14 of the 1971 Fund Convention, to perform such functions as are necessary for the proper operation of the 1971 Fund,

**AWARE** that the Assembly may allocate functions to the Executive Committee in accordance with Article 26.1(c) of the 1971 Fund Convention,

**NOTING** that, under Article 44.2, the Assembly should take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund,

**CONSCIOUS** of the need to establish a structure which will permit the 1971 Fund to operate from 16 May 1998 until such time as it is wound up,

**RECOGNISING** that it is the general responsibility of the Assembly to ensure the proper operation of the 1971 Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,

**CONSIDERING** that it is important to ensure that the interests of States which remain Members of the 1971 Fund are protected,

**RECALLING** Resolution N°11 of the 1971 Fund on co-operation between the 1971 Fund and its former Member States, in which it is recognised that former States Parties which have been affected by incidents covered by the 1971 Fund Convention but in respect of which settlements have not yet been finalised, should be entitled to present their views on pending cases in the competent bodies of the 1971 Fund,

- 1 **INSTRUCTS** the Director to convene a regular session of the Assembly of the 1971 Fund once every calendar year, and in the invitations to urge States to make every effort to be represented at the meeting, and to draw attention to the consequences of a quorum not being achieved.
- 2 **RESOLVES** that, in addition to those functions which are allocated to the Executive Committee pursuant to Article 26.1 of the 1971 Fund Convention, the following functions of the Assembly shall be delegated to the Executive Committee with effect from the first session of the Assembly at which the latter is unable to achieve a quorum, on the condition that if the Assembly were to achieve a quorum at a later session or sessions, the Assembly would resume the functions previously allocated to the Committee:
  - (a) to adopt the annual budget and fix the annual contributions;
  - (b) to appoint auditors and approve the accounts of the 1971 Fund;
  - (c) to supervise the proper execution of the 1971 Fund Convention and of its own decisions;
  - (d) to perform such other functions as are otherwise necessary for the proper operation of the 1971 Fund;
  - (e) to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund;
- 3 **RESOLVES ALSO** that, whenever the Executive Committee fails to achieve a quorum, all functions undertaken by the Committee (ie those allocated by the Assembly and those allocated in accordance with the 1971 Fund Convention) shall revert to the Assembly;
- 4 **HEREBY CREATES** a body to be known as the Administrative Council, which shall have the following mandate:
  - (a) to perform such functions as are allocated to the Assembly under the 1971 Fund Convention or which are otherwise necessary for the proper operation of the 1971 Fund;
  - (b) to establish a subsidiary body to consider the settlement of claims;
  - (c) to give instructions to the Director concerning the administration of the 1971 Fund;
  - (d) to supervise the proper execution of the Convention and of its own decisions;
  - (e) to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity;
- 5 **FURTHER RESOLVES** that the Administrative Council shall assume its functions whenever the Assembly fails to achieve a quorum after the functions allocated to the Executive Committee in accordance with paragraph 2 have reverted to the Assembly pursuant to paragraph 3, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;
- 6 **DECIDES** that the following States and organisations shall be invited to take part in sessions of the Administrative Council:
  - (a) 1971 Fund Member States;
  - (b) former 1971 Fund Member States;

- (c) other States which would be invited to attend sessions of the 1971 Fund Assembly as observers; and
- (d) intergovernmental organisations and international non-governmental organisations which have observer status with the 1971 Fund;

7 **FURTHER DECIDES:**

- (a) that decisions of the Administrative Council shall be taken by majority vote of all States having at any time been Members of the 1971 Fund present and voting, provided that, in respect of issues relating to incidents, States shall have the right to vote only as regards incidents which occurred while the 1971 Fund Convention was in force for that State;
- (b) that there shall be no quorum requirement for the Administrative Council;
- (c) that the Administrative Council shall meet at least once every calendar year at thirty days' notice upon convocation by the Director, either at his own initiative or at the request of its Chairman;
- (d) that the Rules of Procedure of the Administrative Council shall be those of the Assembly, to the extent applicable;
- (e) that the States invited to a session of the Administrative Council shall inform the Director of the person or persons who will attend; and
- (f) that the sessions of the Administrative Council shall be held in public, unless the Council decides otherwise;

- 8 **FURTHER RESOLVES** that the Director of the 1971 Fund shall *ex officio* be the person who holds the post of Director of the 1992 Fund, provided that the Assembly of the 1992 Fund agrees thereto and that the Director of the 1992 Fund agrees to carry out the functions of the Director of the 1971 Fund also, or, if these conditions are not met, that the Director shall be appointed by the Executive Committee in accordance with paragraph 2 above, or by the Administrative Council in accordance with paragraph 4 above.