INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971

ADMINISTRATIVE COUNCIL
9th session
Agenda item 23

71FUND/AC.9/20
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RECORD OF DECISIONS OF THE 9TH SESSION OF THE ADMINISTRATIVE COUNCIL

(held from 14 to 18 October 2002)

Chairman: Captain R Malik (Malaysia)

Opening of the session

1 Adoption of the Agenda

The Administrative Council adopted the Agenda as contained in document 71FUND/AC.9/1.

2 Election of the Chairman and Vice-Chairman

2.1 The Administrative Council elected Captain R Malik (Malaysia) as Chairman until the next autumn session of the Council.

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

3 Participation

3.1 The following States having at any time been Members of the 1971 Fund were present:

Algeria	Finland	Norway
Antigua and Barbuda	France	Panama
Australia	Germany	Poland
Bahamas	Greece	Qatar
Barbados	Ireland	Republic of Korea
Belgium	Italy	Russian Federation
Cameroon	Japan	Spain
Canada	Liberia	Sri Lanka
China (Hong Kong Special Administrative Region)	Malaysia	Sweden
	Malta	United Arab Emirates
Colombia	Marshall Islands	United Kingdom
Côte d'Ivoire	Mexico	Vanuatu
Cyprus	Morocco	Venezuela
Denmark	Netherlands	
Fiji	New Zealand	

3.2 The following States which had not at any time been Members of the 1971 Fund were represented as observers:

Angola	Iran, Islamic Republic of	Saudi Arabia
Argentina	Jamaica	Singapore
Belize	Latvia	Trinidad and Tobago
Brazil	Lebanon	Turkey
Chile	Philippines	Uruguay
Dominica	Saint Vincent and the Grenadines	
Grenada		

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

Intergovernmental organisations:
1992 Fund
European Commission

International non-governmental organisations:
Comité Maritime International
Cristal Ltd
International Association of Independent Tanker Owners (INTERTANKO)
International Tanker Owners Pollution Federation (ITOPF)
Oil Companies International Marine Forum (OCIMF)

4 Report of the Director

4.1 The Director introduced his report on the activities of the 1971 Fund during the last 12 months, contained in document 71FUND/AC.9/2. In his presentation the Director made reference to the fact that the 1971 Fund Convention had ceased to be in force on 24 May 2002. He mentioned that most of the former 1971 Fund Member States had ratified the 1992 Fund Convention and that it was hoped that the remaining 15 former Member States would soon do so.

4.2 The Director drew attention to the fact that the failure of a number of Member States to submit oil reports continued to give rise to serious concern.

4.3 The Administrative Council congratulated the Secretariat on the 1992 and 1971 Funds' joint Annual Report for 2001 which had been published in English, French and Spanish and contained an instructive presentation of the activities of the 1992 Fund and 1971 Fund.

4.4 The Administrative Council expressed its gratitude to the Director and the other members of the joint Secretariat for the efficient way in which they administered the 1971 Fund. It also thanked the staff of the Claims Handling Office established in Kobe following the *Nakhodka* incident, as well as the lawyers and technical experts who had undertaken other work for the 1971 Fund.

5 Report on investments

5.1 The Administrative Council took note of the Director's report on the 1971 Fund's investments during the period July 2001 to June 2002, contained in document 71FUND/AC.9/3.

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

6 Report of the Investment Advisory Body

6.1 The Administrative Council took note of the report of the Investment Advisory Bodies, contained in the Annex to document 71FUND/AC.9/4. It also took note of the objectives for the coming year and the Internal Investment Guidelines.

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

7 Appointment of members of the Investment Advisory Body

7.1 The Administrative Council reappointed Mr David Jude and Mr Simon Whitney-Long as members of the Investment Advisory Body for a term of one year. Mr Brian Turner was appointed to replace Mr Clive Ffitch as member of the Investment Advisory Body for one year.

7.2 The Administrative Council expressed its gratitude to Mr Clive Ffitch, who had been a member of the Audit Body since 1997, for his valuable work.

8 Election of members of the Audit Body

8.1 It was recalled that, at their October 2001 session, the governing bodies of the 1971 Fund and 1992 Fund had decided to establish a joint Audit Body for the two organisations (document 71FUND/AC.6/A.24/22, paragraph 11.6). It was further recalled that, at their April/May 2002 sessions, the governing bodies had decided the composition and mandate of the Audit Body as set out in Annex I of document 71FUND/AC.9/6.

8.2 It was noted that the joint Audit Body was to be composed of seven members elected by the governing bodies: 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 Chairmen of the respective governing bodies.

8.3 The Administrative Council recalled that it had decided that of the six members elected from Member States, three should 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 and that when electing members the Council should take into account the desirability of an equitable geographical distribution of the seats (paragraph 2 of the mandate).

8.4 The Administrative Council considered document 71FUND/AC.9/6/1 submitted by the United Kingdom delegation. It was noted that in that delegation's view the mandate as adopted by the governing bodies would add an unnecessary restriction to the choice of nominees. The United Kingdom delegation expressed the view that representatives on the Audit Body should act in an independent and personal capacity. It should not in that delegation's view be the State from which a nominee came that was of prime concern and all nominees should be considered on an equal basis by the Administrative Council. That delegation considered that the opportunity should not be missed to support the appointment of a high calibre nominee simply because of the restrictions that had been established in the composition and mandate of the Audit Body. The United Kingdom delegation proposed that the restriction on the composition of the Audit Body according to the ranking of the contributing States should be removed. This would in that delegation's view ensure that appointments could be made entirely on merit and experience within the Fund while still achieving a wide representation.

8.5 A number of delegations, while supporting in principle the proposal by the United Kingdom delegation to delete the restriction on the composition of the Audit Body, stated that late amendments of the rules were not ideal and that they could only accept such amendments if required in order to reach satisfactory results as to the composition of the Body.

8.6 The Administrative Council decided to delete paragraph 2 of the composition and mandate of the Audit Body. The revised text is reproduced in Annex I.

8.7 It was noted that at its 7th session the 1992 Fund Assembly had taken the same decision in respect of the Mandate of the Audit Body, as that set out in paragraph 8.6 above.

8.8 The United Kingdom delegation also proposed that consideration should be given in the future to paying members of the Audit Body nominated by Member States a modest honorarium, since this might attract a wider geographical distribution of candidates. Most delegations supported that proposal.

8.9 It was decided that the election should be held jointly by the governing bodies of the 1971 and 1992 Funds. It was noted that the election of members of the Audit Body should be by secret ballot in accordance with the Rules of Procedure of the Assembly (cf Rules 32, 38 and 40). It was also decided that all 1992 Fund Member States and all States which had at any time been Members of the 1971 Fund were eligible to vote, provided that each State had only one vote. It was agreed that each voting delegation had to select six candidates, failing which the voting paper would become invalid.

8.10 The 1971 Fund Administrative Council and the 1992 Fund Assembly held a joint session which is covered by paragraphs 8.11 - 8.19 below.

8.11 The Administrative Council and the Assembly elected Professor L S Chai (Republic of Korea) and Mr Paul Nelson (Australia) to scrutinise the votes cast in accordance with Rule 38 of the Rules of Procedure.

8.12 At the joint session, the Administrative Council and the Assembly considered the nominations made by Member States circulated in document 71FUND/AC.9/10/Add.1 and elected the following as members of the Audit Body for a period of three years:

Professor Eugenio Conte (Italy)
Mr Charles Coppolani (France)
Mr Maurice Jaques (Canada)
Mr Heikki Muttilainen (Finland)
Dr Reinhard Renger (Germany)
Professor Hisashi Tanikawa (Japan)

8.13 The Administrative Council and the Assembly expressed their sincere gratitude to all persons nominated for their willingness to serve on the Audit Body, which would operate in the general interests of the Funds.

8.14 The Administrative Council and the Assembly elected Mr Charles Coppolani (France) as Chairman of the Audit Body.

8.15 It was noted that under the mandate and composition of the Audit Body the mandate of three of the six members should not be renewable after three years. It was agreed that this matter should be considered by the Audit Body, that the Body's Chairman should report on this issue to the governing bodies no later than at their autumn sessions in 2004 and that if agreement on this point could not be reached between the members of the Audit Body, the governing bodies would decide.

8.16 The Administrative Council and the Assembly elected Mr Nigel Macdonald as the member of the Audit Body not related to the Organisations ("outsider").

8.17 The Administrative Council and the Assembly decided that the six members of the Audit Body elected from Member States should receive a reasonable honorarium. The Director was instructed to discuss the amount of the honorarium with the members and submit a proposal in this regard to the October 2003 sessions of the governing bodies. It was decided that the honorarium, once determined, would be paid to the members with effect from the date of their appointment.

8.18 The Administrative Council and the Assembly instructed the Audit Body to adopt its own Rules of Procedure and invited the Chairman of the Audit Body to submit, in his first report to the governing bodies at their October 2003 sessions, the Rules of Procedure for endorsement.

8.19 It was noted that most of the nominees were from developed countries although the personal capacities of the nominees were of an excellent and respectful nature. Nevertheless the hope was expressed that in the future more candidates would be nominated from other countries.

9 Financial Statements and Auditor's Report and Opinion

9.1 The Director introduced document 71FUND/AC.9/7 containing the Financial Statements of the 1971 Fund for the financial year 2001 and the External Auditor's Report and Opinion thereon. A representative of the External Auditor, Mr Graham Miller, Director International, introduced the Auditor's Report and Opinion.

9.2 The representative of the External Auditor mentioned that a review had been carried out of the Secretariat's overall financial control systems, particularly in relation to claims payments, contributions income, payroll, administrative expenditure and cash management. He stated that the review found that the Secretariat continued to have satisfactory controls in place and continued to adhere to appropriate control procedures and the Fund's financial and investment policies. He also confirmed that claims had been verified and settled as promptly as possible, and had properly taken into account the interest of the Fund and the claimants.

9.3 The representative of the External Auditor mentioned that the External Auditor would continue to monitor the going concern issues which related to the 1971 Fund. He also stated that Financial Statements for the 1971 Fund should continue to be produced and audited until such time as all payments in relation to outstanding claims had been made and the 1971 Fund had been wound up.

9.4 The Administrative Council noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 71FUND/AC.9/7, and that the External Auditor had provided an unqualified audit opinion on the 2001 Financial Statements following a

rigorous examination of the financial operations and accounts in conformity with audit standards and best practice.

9.5 The Administrative Council approved the accounts of the 1971 Fund for the financial period 1 January - 31 December 2001.

10 Appointment of the 1992 Fund's and 1971 Fund's External Auditors

The Administrative Council reappointed the Comptroller and Auditor General of the United Kingdom as External Auditor of the 1971 Fund for a term of four years from the financial period 2003.

11 Report on contributions

The Administrative Council took note of the Director's report on contributions contained in document 71FUND/AC.9/9. It noted that only 0.28% of the contributions levied during the period 1978 – 2002 were outstanding. The Council expressed its satisfaction with the situation regarding the payment of contributions.

12 Non-submission of oil reports

12.1 The Administrative Council considered the situation in respect of the non-submission of oil reports, as set out in document 71FUND/AC.9/10 (cf document 92FUND/A.7/12). It was noted that since the document had been issued one State (Oman) had submitted the outstanding oil report. It was also noted that a total of 31 States therefore still had outstanding oil reports for the year 2001: 16 States in respect of the 1971 Fund and 19 States in respect of the 1992 Fund. It was further noted that a number of States had reports outstanding for several years.

12.2 The Administrative Council recalled that at its 6th session in October 2001, it had decided that a letter should be sent from the Chairman on behalf of the Council to the Governments of States which had outstanding oil reports, emphasising the Council's serious concerns, requesting an explanation as to why reports had not been submitted and explaining the procedure for submission of oil reports. The Director reported that letters had been sent to 23 States with outstanding oil reports and that three direct responses had been received, although it was possible that subsequent submissions of oil reports by other States had been a result of these letters. One delegation observed that this level of response was disgraceful.

12.3 The Administrative Council repeated its serious concern as regards the number of Member States which had failed to fulfil their treaty obligations to submit oil reports. The Council also emphasised that it was crucial for the functioning of the regime of compensation established by the Fund Conventions that States submitted the reports on oil receipts.

12.4 The Administrative Council instructed the Director to pursue his efforts to obtain the outstanding oil reports. It was noted however that there was a limit to what the Secretariat could achieve by persistence. The Director noted that the problem seemed to lie more with Governments than with potential contributors.

12.5 Several delegations made suggestions as to organisations which could assist the Secretariat in obtaining outstanding oil reports. The observer delegation of OCIMF stated that it had brought the matter to the attention of its members and would do so again at the meeting of its Executive Committee in November 2002 and thereafter on a regular basis. However, that delegation pointed out that many of the States with outstanding oil reports either were not oil receivers or did not have OCIMF members operating there.

12.6 Some delegations mentioned the possibility of the IOPC Funds' providing technical assistance to the competent authorities in developing countries to assist them in fulfilling their obligations in this regard.

12.7 The Administrative Council recognised that it was its responsibility to find creative solutions to the problem within the constraints of the 1971 Fund Convention and then to support the Secretariat in the implementation of these solutions.

13 Organisation of meetings

13.1 The Administrative Council took note of the information contained in documents 71FUND/AC.9/11 and 71FUND/AC.9/11/1 regarding the organisation of meetings.

Location, timing and duration of meetings

13.2 The Administrative Council decided that it would not be feasible to increase the length of the autumn session and that holding joint meetings of the governing bodies of the two Funds would result in only a marginal saving of time. It was accepted that the difficulties would be alleviated as the operation of the 1971 Fund progressively wound down.

13.3 The Italian delegation suggested that a fixed time limit of, say, 5 minutes for each intervention would help to reduce the time taken over meetings. Other delegations felt that this would not be practical. It was agreed that time could be saved by not introducing at the meeting documents in respect of which no decision was required, unless the Director felt that there was a need to do so.

13.4 It was emphasised that it would be preferable to continue to hold meetings in the IMO building for convenience as well as for cost reasons, recognising that this restricted the number and timing of meetings. There was also support for the existing policy of holding meetings back-to-back with IMO meetings to reduce the amount of travelling for delegations.

13.5 It was agreed that it would be useful for delegations if a provisional timetable was made available to them at the beginning of the meeting week.

Restricted documents

13.6 The Administrative Council decided that in future the Director should be authorised to decide, after consultation with the respective Chairman, whether a particular document should be restricted. It was agreed that this issue would be kept under review.

Content, production and distribution of documents

13.7 The Administrative Council noted the Director's intention to produce shorter documents in future and welcomed this initiative, which would reduce the workload for both Secretariat and delegations. The point was made, however, that documents should contain sufficient information to enable delegations to prepare for the meetings.

13.8 The Administrative Council took note of the Director's comments regarding deadlines for submission of Council documents. It was noted that it would be very useful if documents could in general be available to delegations two weeks before meetings. The Director pointed out, however, that this approach might cause difficulties in particular for incident-related documents, and that in his view it was important that the governing bodies were prepared to consider documents even if they were submitted very late.

13.9 The Administrative Council decided that documents prepared by delegations to the Council or Working Groups should in general be submitted to the Secretariat at least three weeks before the meeting started, to allow them to be distributed to delegations no less than two weeks before the meeting. It was also decided that documents prepared by the Secretariat should in general be available no less that two weeks before the start of a meeting, although a degree of flexibility in this regard should be maintained, especially in respect of incident-related documents.

13.10 Some delegations considered that a core document could be useful for incident documents to avoid repeating background information which had previously been presented. It was stated that it would also be necessary to ensure that access to all relevant previous documents was given through the website. It was suggested that a box could be inserted on incident documents giving a summary of the claims situation, including the amounts paid.

13.11 It was suggested by one delegation that it would be easier if documents had the same number as the agenda item to which they referred. That delegation also suggested that each incident could have a reference number which was unchanged from one session to another, to make referencing of documents easier. The Director undertook to consider these proposals.

13.12 The Administrative Council noted the Director's recommendation that delegations not already using the document server should do so. Delegations were invited to consider whether they could reduce the number of copies received by post or not require any hard copies at all and to inform the Secretariat accordingly.

13.13 It was decided that the issues of the content, production and distribution of documents should be included in the agenda for the October 2003 sessions.

Access to meetings

13.14 With regard to access to meetings by the public, the Administrative Council endorsed the Director's view that meetings of the IOPC Funds' bodies should in general continue to be held in public, in the interest of transparency. The Council decided, however, that the body in question should have the right to decide that a particular meeting, or part of a meeting, should be held in private. It was also decided that even if a meeting of an IOPC Funds' body were held in public, the body in question should have the right to exclude at any time from attendance groups or individuals who interrupted or disturbed the meeting or if the body considered there was a risk that they might do so. It was agreed that a provision to this effect should be inserted in the respective Rules of Procedure.

13.15 It was also decided that the current policy of not allowing filming or recording of the meetings should be maintained.

13.16 The Administrative Council decided to amend the Rules of Procedure for the Assembly as set out below (amendments underlined):

RULES OF PROCEDURE FOR THE 1971 FUND ASSEMBLY

Access to meetings by the public

Rule 12

Sessions of the Assembly shall be held in public unless the Assembly decides otherwise. The Assembly may decide that a particular meeting or part of a meeting shall be held in private. If a meeting or part of a meeting is held in private, any decisions taken shall be reflected in the Record of Decisions. Even if a meeting of the Assembly is held in public, the Assembly may exclude at any time from attendance groups or individuals who interrupt or disturb the meeting or if the Assembly considers there is a risk that they may do so.

Meetings of subsidiary bodies of the Assembly shall be held in private unless the Assembly decides otherwise in any particular case.

14 Working methods of the Secretariat

14.1 The Administrative Council took note of the information in document 71FUND/AC.9/12 regarding the steps taken to improve the efficiency of the Secretariat and the Director's intentions as regards further actions to this effect.

14.2 One delegation asked whether any progress had been made on the suggestion to initiate a quality assurance scheme discussed at the Administrative Council's 2nd session held in October 2000. The Director confirmed that this issue was under consideration and that the Secretariat was working towards improving the quality of the different elements of the Organisations' work before implementing any quality assurance scheme.

14.3 The Administrative Council noted that a Claims Manager position provided for in the existing budget remained vacant. The Administrative Council confirmed that the Director had the authority to change job descriptions of staff and make any other adjustments necessary to make the most effective use of the available resources in the light of changing needs of the Organisations.

14.4 It was agreed that the Director should continue to present a report to the Administrative Council on the working methods of the Secretariat so that the Council would be kept informed of developments, but that a shorter document would be sufficient, showing only follow-up actions and new initiatives, together with any budgetary implications.

14.5 The Administrative Council expressed its appreciation of the IOPC Funds' website and emphasised the importance of its further development.

15 Incidents involving the 1971 Fund

15.1 Overview

The Administrative Council took note of document 71FUND/AC.9/13, which contained a summary of the situation in respect of all 21 incidents dealt with by the 1971 Fund during the past 12 months.

15.2 *Aegean Sea*

15.2.1 The Administrative Council took note of the information contained in document 71FUND/AC.9/13/1 concerning the *Aegean Sea* incident.

15.2.2 The Administrative Council recalled that at its 5th session held in June 2001 it had decided to authorise the Director to conclude and sign on behalf of the 1971 Fund an agreement with the Spanish State, the shipowner and his insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club), on a global solution of all outstanding issues in the *Aegean Sea* case, provided the agreement contained the elements set out in paragraph 5.1.16 of document 71FUND/AC.5/A/ES.8/10. It was recalled that in July 2001 the Director made a formal offer on behalf of the 1971 Fund to the Spanish Government to conclude such an agreement.

15.2.3 The Spanish delegation stated that on 4 October 2002 the Spanish State Council had approved the proposed settlement agreement, that the Spanish Government had adopted a decree ('Decreto-Ley') authorising the Minister of Finance to sign on behalf of the Spanish Government an agreement between Spain, the shipowner, the UK Club and the 1971 Fund and that the decree was expected to be approved by the Spanish Parliament on 17 October 2002. The delegation further stated that on the basis of this agreement the Spanish Government would receive €38 386 171 on behalf of the victims of the incident. It was further stated that the Minister of Finance had been authorised to make out-of-court settlements with claimants in exchange for the withdrawal of their court actions. The Spanish delegation stated that these

administrative formalities would allow the agreement to be signed and payments to be made by 31 October 2002. That delegation expressed its gratitude and satisfaction at the outcome of the negotiations, which allowed all victims to be compensated after 10 years of waiting and enabled the Spanish Government to establish its liability in respect of this incident.

15.2.4 The Spanish delegation subsequently informed the Administrative Council that on Thursday 17 October 2002 the Spanish Parliament had approved the decree authorising the Minister of Finance to sign on behalf of the Spanish Government an agreement between Spain, the shipowner, the UK Club and the 1971 Fund.

15.2.5 A number of delegations thanked the Spanish Government for its contribution to the settlement of this long-standing case. The Council expressed its satisfaction that this incident had been settled and that all claims would be paid shortly.

15.3 *Braer*

15.3.1 The Administrative Council took note of the information contained in document 71FUND/AC.9/13/2 in respect of the *Braer* incident.

15.3.2 The Council noted that all claims but one had been settled and paid and that the total compensation paid amounted to £51.9 million, of which the 1971 Fund had paid £45.7 million and the shipowner's insurer, Assuranceforningen Skuld (Skuld Club), £6.2 million.

15.3.3 The Council recalled that in 1995 the Executive Committee had considered a claim for £2 million, later reduced to £1.5 million, by a company based on Shetland, Shetland Sea Farms, in respect of a contract to purchase smolt from a related company on the mainland. It was recalled that the experts engaged by the 1971 Fund and the Skuld Club had assessed the proven losses at £58 000, but that attempts to settle the claim out of court had failed and that the company had taken legal action against the shipowner, the Skuld Club, and the 1971 Fund.

15.3.4 The Council recalled that the Court of session (Court of first instance in Edinburgh) had rendered its decision on 4 July 2001 and that in the decision the Court had dealt with two questions, namely whether a responsible officer or officers of the claimant had knowingly presented to the Court false documents in support of a claim for compensation and, in the event that the Court did so decide, whether in those circumstances the claims should be refused without any further procedure. It was recalled that the Court had answered the first question in the affirmative and had resolved that responsible officers of the claimant had knowingly presented copies of fake letters in support of Shetland Sea Farms' claim for compensation. It was also recalled that the Court had resolved that as Shetland Sea Farms no longer was going to base its claim on the false letters, the company should be given the opportunity to present a revised case which should not depend on the false letters and that not to allow the claim to proceed in its revised version would be an excessive punishment.

15.3.5 The Administrative Council noted that further hearings had been held, that the Court was expected to render its decision in late 2002 and that any amount awarded by a final court judgement would be paid by the Skuld Club.

15.4 *Sea Prince*

15.4.1 The Administrative Council took note of the developments in respect of the *Sea Prince* incident as set out in document 71FUND/AC.9/13/3.

Compensation and indemnification

15.4.2 The Administrative Council recalled that claims for compensation had been settled for a total of Won 50 011 million (£27.1 million) of which the 1971 Fund had paid Won 31 703 million (£17.2 million) and the shipowner's insurer, the UK Club, Won 8 308 million (£9.9 million)

which corresponded to the limitation amount applicable to the *Sea Prince*. The Council also recalled that the 1971 Fund had indemnified the UK Club Won 7 411 million (£4.1 million) in accordance with Article 5.1 of the 1971 Fund Convention.

15.4.3 The Council recalled that a total of 207 claims submitted by 194 claimants totalling Won 5 321 million (£2.8 million) were the subject of legal actions against the 1971 Fund out of which claims from 163 claimants had been dismissed by the Court and the remaining 31 claimants had been awarded a total of Won 1 438 million (£752 000) plus interest.

15.4.4 The Administrative Council recalled that the 1971 Fund had appealed against the judgements awarding compensation in respect of alleged mortality of caged fish and cultivated shellfish and in respect of unlicensed aquaculture farms and an unlicensed fishing boat owner (document 71FUND/AC.7/A/ES.9/14, paragraphs 8.3.4 – 8.3.6). The Council noted that only one claimant, the Yosu Fisheries Co-operative Union, had appealed against the judgement in respect of its claim for lost sales commission.

15.4.5 The Council noted that several hearings of the Appellate Court had taken place and that the 1971 Fund had submitted further scientific evidence in support of its contention that the alleged mortality of caged fish was unlikely to have been due to oil contamination.

15.5 *Sea Empress*

15.5.1 The Administrative Council took note of the information contained in document 71FUND/AC.9/13/4 in respect of the *Sea Empress* incident.

Claims situation

15.5.2 The Council noted that of the 18 claimants still pursuing their claims in the limitation proceedings, 16 were pursuing only claims for legal and professional fees, most of which had not yet been quantified by the claimants. It was noted that it was hoped that the outstanding claims for legal and professional fees would be settled by the end of the year.

15.5.3 It was noted that there were only two remaining claims for compensation totalling approximately £900 000 that were the subject of legal action.

15.5.4 It was recalled that one of the claims, for £645 000, which had been presented by a whelk processor based in Devon, had been rejected by the 1971 Fund and the shipowner's insurer, the Skuld Club, on the grounds of lack of reasonable proximity between the oil pollution and the alleged loss. It was also recalled that the Court of first instance had held in favour of the 1971 Fund and had found that the claim was inadmissible for being secondary, derivative, relational and/or indirect and that this lack of proximity rendered the processor's claim too remote. It was noted that the claimant had lodged an appeal and that the appeal would be heard in January 2003.

15.5.5 The Council noted that the second claim, for £226 196, was in respect of alleged loss of earnings suffered by a windsurfing and water sports school during 1996, 1997 and 1998. It was noted that the Skuld Club and the 1971 Fund had maintained that there was no causative link between the contamination and any losses suffered by the business after 1996. It was also noted that the claimant had agreed that no further action should be taken in respect of his claim pending the decision of the Court of Appeal in respect of the claim by the whelk processor.

Recourse action by the 1971 Fund

15.5.6 The Administrative Council recalled that on 14 February 2002 the 1971 Fund and Skuld Club had commenced proceedings against the Milford Haven Port Authority (MHPA) in the Admiralty Court. The Council further recalled that the 1971 Fund had set out a detailed claim

against the MHPA alleging negligence and/or breach of duty (document 71FUND/AC.8/2, paragraph 4.5).

15.5.7 The Council recalled that the MHPA had submitted a lengthy and detailed defence denying any liability for the incident and the ensuing oil pollution, arguing that it did not owe any duty of care and/or statutory duty to claimants in respect of the economic loss suffered and also denying owing any duty of care to the 1971 Fund.

15.5.8 The Administrative Council noted that the Director had examined, in consultation with the 1971 Fund's legal advisers, the defence as well as the MHPA's request for further information in relation to the particulars of claim. It further noted that on 26 September 2002, the 1971 Fund had submitted its response to that request, in which it provided further details of certain allegations contained in the claim. It was noted that the 1971 Fund had also served on the MHPA a request for further information in respect of the points of defence.

15.5.9 It was noted that the expected next stage in the proceedings would be an initial Case Management Conference at which the Court would make any appropriate procedural orders, which would be likely to include orders relating to disclosure of documents and the future conduct of the Texaco proceedings (see below). It was also noted that the Court might order the use of alternative dispute resolution, such as mediation and conciliation.

15.5.10 The Council instructed the Director to take a flexible approach to a proposal by the Court to use alternative dispute resolution procedures.

Action by Texaco

15.5.11 The Administrative Council noted that in February 2002, Texaco, which operated an oil terminal in Milford Haven, had commenced legal action against the MHPA and Milford Haven Pilotage Limited (MHPL), the company which employed the pilots working in the port of Milford Haven. It further noted that the 1971 Fund had been informed of this action in early July 2002.

15.5.12 It was noted that Texaco had based its claim against the MHPA on similar legal grounds as those that the 1971 Fund had invoked in its action against the same defendant. It was also noted that as regards the Fund's arguments against the MHPA dealing with pilotage allocation and pilot training, Texaco had also raised these arguments against MHPL. It was further noted that Texaco had also argued that the MHPA and MHPL had created or caused a public nuisance resulting in the said losses.

15.6 *Nakhodka*

Claims for compensation

15.6.1 The Administrative Council took note of the information concerning the developments in respect of the *Nakhodka* incident contained in document 71FUNDAC.9/13/5 (cf document 92FUND/EXC.18/4). It was noted that 458 claims totalling ¥36 045 million (£192 million) had been received and that all claims had been settled for a total of ¥26 089 892 682 (£139 million).

15.6.2 It was noted that the claims by Japanese government agencies in respect of clean-up operations had been settled on 30 August 2002 for a total of ¥1 887 million (£10 million), that the claims by the Japan Maritime Disaster Prevention Centre (JMDPC) relating to the construction and removal of a causeway had also been settled on 30 August 2002 at the amount approved by the governing bodies of the 1992 Fund and the 1971 Fund at their April/May 2002 sessions plus interest, ie a total of ¥2 048 million (£11 million). It was further noted that the settlement amounts had been paid in full to the Japanese Government and the JMDPC on

10 September 2002, 80% by the 1992 Fund and 20% by the shipowner's P&I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (UK Club).

15.6.3 The Council also noted that the payments made to claimants by the Funds totalled ¥20 361 million (£111 million) and the payments made by the shipowner and the UK Club amounted to US$5 million (£3.2 million) plus ¥2 867 million (£15 million).

Legal actions in the Japanese Courts

15.6.4 The Council recalled that, pursuant to the governing bodies' decisions, in November 1999 the IOPC Funds had 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.

Global solution

15.6.5 It was recalled that, at their April/May 2002 sessions, the governing bodies had approved 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 (£27.8 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.

15.6.6 It was recalled that the proposed global settlement would result in the IOPC Funds recovering approximately ¥5 203 million (£27.8 million) and making a saving of around ¥2 500 million (£13.3 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.

15.6.7 It was also recalled that the governing bodies had authorised the Director to conclude a Settlement Agreement provided it contained the elements set out in paragraph 15.6.5 above and to agree with the other parties on the details of such an agreement (documents 71FUND/AC.7/A/ES.9/14, paragraph 8.4.36 and 92FUND/EXC.16/6, paragraph 3.1.36). It was further recalled that the governing bodies had decided that the IOPC Funds should withdraw their actions against the Russian Register of Shipping.

15.6.8 The Council noted that a Settlement Agreement would be concluded between the IOPC Funds, Prisco Traffic Limited and the UK Club whereby the UK Club would pay the balance of 20% to all claimants except the Japanese government agencies and the JMDPC which had already been paid in full. It was also noted that the Agreement had not yet been signed by the parties since the conditions for the withdrawal of the Funds' action against Primorsk had yet to be fulfilled.

It was further noted, however, that the UK Club had already commenced paying the 20% balance to claimants and that it was expected that the UK Club's payment to the Funds would be made by 1 November 2002.

Conversion of the maximum amount payable by the 1971 Fund from SDR to Yen

15.6.9 It was recalled that the Administrative Council had decided at its July 2002 session that the conversion of the maximum amount payable by the 1971 Fund (58 412 000 SDR) into Japanese Yen should be made using the rate of exchange between the SDR and Japanese Yen on 19 February 1997, the date on which the 1971 Fund Executive Committee had adopted the Record of Decisions of the session at which it took the decision to authorise the Director to make final settlements of claims (cf document 71FUND/AC.8/6, paragraph 3.3.20), and that using this conversion date, the amount payable by the 1971 Fund (58 412 000 SDR) equalled ¥10 022 856 668.

Distribution between the 1971 and 1992 Funds of any amount recovered on the basis of the global settlement

15.6.10 The Council recalled that at their July 2002 sessions the governing bodies had considered the question as to the basis on which the financial benefits of the global settlement should be shared between the 1992 Fund and the 1971 Fund. It was recalled that the Director had proposed that the financial benefits should be shared between the two Funds in proportion to their maximum liabilities under the respective Conventions, namely 58 412 000 SDR (43.783%) and 75 million SDR (55.217%), respectively.

15.6.11 It was also recalled that a number of delegations, whilst agreeing with the proposal, had expressed concern that its adoption might set a precedent which could result in an inequitable distribution of recovered amounts in future cases. It was further recalled that some delegations had considered that the financial benefits should be shared on the basis of the actual payments made by the respective Funds rather than their maximum liabilities.

15.6.12 The Council recalled that the Japanese delegation had referred to the fact that the *Nakhodka* incident had occurred during the transitional period, ie between the date of the entry into force of the 1992 Fund Convention and the date on which the denunciations provided for in Article 31 of the 1992 Protocol to amend the 1971 Fund Convention had taken effect. It was also recalled that the Japanese delegation had maintained that Article 36 *bis* (b) and (c) of the 1992 Fund Convention provided that the 1992 Fund was only required to pay compensation to the extent that claims exceeded the maximum amounts available under the 1969 Civil Liability Convention, the 1971 Fund Convention and, if applicable, the 1992 Civil Liability Convention, and that a natural interpretation of the provisions would lead to the conclusion that any amount recovered relating to an incident occurring during the transitional period should be reimbursed to the 1992 Fund first.

15.6.13 The Council recalled that another delegation had pointed out that Article 36 *bis* referred only to compensation payments as opposed to the distribution between the two Funds of any amount recovered as a result of a successful recourse action and that a more equitable distribution of amounts recovered would be on the basis of the respective payments made by each Fund.

15.6.14 It was further recalled that the governing bodies had decided to postpone their decisions regarding the distribution of the amounts recovered as a result of the global settlement and had instructed the Director to carry out a further study of the options available and their implications for the two Funds (documents 71FUND/AC.8/6, paragraph 3.3.27 and 92FUND/EXC.17/10, paragraph 3.1.23).

15.6.15 The Administrative Council took note of the information contained in document 71FUND/AC.9/13/5/1 (cf document 92FUND/EXC.18/4/1) submitted by the Japanese

delegation reaffirming that delegation's view that any amount recovered in relation to an incident occurring during the transitional period should be reimbursed to the 1992 Fund first. It was noted that in that delegation's view the word 'distribution' was inappropriate since the 1992 Fund should be considered as a Fund of last resort in respect of compensation payments, the 1992 Fund being required to make payments only if and to the extent that there were insufficient money available from the 1971 Fund to meet all claims.

15.6.16 The Council also took note of the Director's analysis as set out in section 6.2 of document 71FUND/AC.9/13/5 (cf document 92FUND/EXC.18/4). The Council noted the Director's agreement with the statement of one delegation at the July 2002 sessions that Article 36 *bis* referred only to compensation payments as opposed to the distribution between the two Funds of any amount recovered as a result of a successful recourse action and that in his view there were no provisions in the Fund Conventions that were applicable to the question under consideration. The Council also noted that the Director had proposed that the decision should be such as to ensure a fair distribution between the Funds.

15.6.17 It was noted that the IOPC Funds would, but for the global settlement, have paid up to the maximum amount available under the 1992 Conventions, ie 135 million SDR or ¥23 164 515 000, and that out of that amount the 1971 Fund would have paid ¥10 022 856 668 (43.268%) and the 1992 Fund ¥13 141 658 332 (56.732%). The Council also noted that, as a result of the global settlement, the IOPC Funds would pay only ¥20 288 915 844, out of which the 1971 Fund had paid ¥10 022 856 668 (49.401%) and the 1992 Fund ¥10 266 059 176 (50.599%).

15.6.18 It was noted that in the Director's view the approach that had been suggested by some delegations set out in paragraph 15.6.11 above was, as a matter of principle, more appropriate than his original proposal and that if the total amount of the established claims arising from the incident were to fall well below 135 million SDR, that approach would clearly be more equitable than his original proposal. It was however noted that, in the present case, for administrative simplicity the 1992 Fund and the UK Club had agreed that the 1992 Fund should continue to pro-rate payments at 80% and the Club would pay the 20% balance on all settled claims, although strictly speaking, on the basis of the total amount of settled claims, the 1992 Fund should have made pro-rated payments at 88.787% (ie up to the 1992 Fund limit) and the Club should have paid the balance of 11.213%, with the net result that the IOPC Funds would have been reimbursed a greater amount from the Club on the basis of the agreed distribution of liabilities between the UK Club and the Funds (42:58).

15.6.19 The Council took note of the Director's view that whilst both options referred to in paragraph 15.6.18 above would be fair, his original proposal was preferable in this case, ie that the financial benefits of the global settlement should be distributed in proportion to the respective liabilities of the two Funds, resulting in the 1971 Fund receiving 43.268% and the 1992 Fund 56.732% of these benefits.

15.6.20 A number of delegations expressed the view that since the Conventions gave no guidance on how any recovered money should be distributed between the two Funds, it was the Administrative Council's duty to choose the most equitable solution. Those delegations agreed with the Director's proposal on the grounds that all creditors should be treated equally on the basis of the liabilities discharged. However, those delegations also expressed the view that any decision taken in respect of the *Nakhodka* incident should not be taken as a precedent and that future cases would have to be considered on their individual merits.

15.6.21 The delegation which had at the July 2002 session proposed that the financial benefits should be shared on the basis of the actual payments made by the respective Funds agreed that in light of the discussion it was appropriate in this particular case that the money recovered as a result of the global settlement should be distributed in proportion to the respective liabilities of the two Funds.

15.6.22 The Administrative Council noted that the IOPC Funds had incurred costs totalling some £8.9 million relating to the operation of the Claims Handling Office in Kobe, set up jointly by the IOPC Funds and the UK Club, and in general to the claims handling process and that the UK Club had also incurred such costs. It was noted that since these costs were in general joint costs within the meaning of the Memorandum of Understanding signed by the IOPC Funds and the International Group of P&I Clubs, they should, under the global Settlement Agreement, be apportioned between the UK Club and the IOPC Funds on a 42:58 basis. It was also noted that this apportionment would be made as soon as agreement had been reached between the Funds and the Club on the respective amounts of the joint costs. It was further noted that the IOPC Funds and the shipowner/UK Club had incurred considerable expenses in connection with the various legal actions, and that under the global Settlement Agreement each party should bear its own legal costs.

15.6.23 The Council decided that the financial benefits of the global settlement should be distributed in proportion to the respective liabilities of the two Funds, resulting in the 1971 Fund receiving 43.268% and the 1992 Fund 56.732% of these benefits. The Council also decided that all costs borne by the Funds should be apportioned between the two Funds on the same basis.

15.6.24 The Council noted that the 1992 Fund Executive Committee had, at its 18th session, taken the same decision as regards the distribution between the two Funds of the financial benefits of the global settlement (cf document 92FUND/EXC.18/14, paragraph 3.3.23).

15.6.25 The Council considered how the distribution of the financial benefits of joint recourse actions should be made in a similar, hypothetical case involving the 1992 Fund and the proposed Supplementary Fund. It was agreed that the issue of the distribution of the benefits resulting from a joint recourse action taken by the 1992 Fund and the Supplementary Fund as well as the sharing of the financial burden if the action was unsuccessful could be considered by the respective governing bodies when they decided that recourse action should be taken, in the light of the particular circumstances of the case.

Lessons learned from the Nakhodka incident

15.6.26 The Council took note of the information contained in document 71FUND/AC.9/13/5/2 submitted by the Japanese delegation and document 71FUND/AC.9/13/5/Add.2 presented by the Director.

15.6.27 The Council noted that in its document the Japanese delegation had drawn attention to the need to improve the claims handling and settlement process in the light of the lessons learned from the *Nakhodka* incident. That delegation referred in particular to the need to consider better ways of using surveyors and also proposed that the Claims Manual should contain examples of claims assessments.

15.6.28 The Council noted that the Director in his document had pointed out that reviews of the lessons learned from incidents were Fund policy and that some of the experiences gained from the *Nakhodka* incident had already been taken into account in the organisation of the handling of the claims arising from the *Erika* incident.

15.6.29 A number of delegations welcomed the proposal by the Japanese delegation since in those delegations' view it was important to speed up the claims handling process so as to reduce the burden on claimants as soon as possible after an incident. Some delegations suggested that the Claims Manual might not be the most appropriate publication for providing advice to claimants and that a less formal document might be useful explaining to claimants how claims were assessed by the Funds and why certain documentation was required in order to enable the Funds to carry out those assessments.

15.6.30 One delegation considered that there was need to produce a compendium of the Funds' experience in dealing with claims, which provided potential claimants with practical guidance on the presentation of claims. That delegation also considered that the issue of speeding up the handling of claims could be considered by the Intersessional Working Group, since one way of achieving this was to implement alternative dispute resolution procedures.

15.6.31 Reference was made to the document that had been prepared by the Secretariat in 1993 to the 7th Intersessional Working Group of the 1971 Fund (document FUND/WGR.7/3), which contained a review of the decisions on the admissibility of claims taken during the period 1979-1993. It was suggested that that document should be updated.

15.6.32 One delegation drew attention to the IMO Manual on Oil Pollution, Section IV, Combating Oil Spills, which gave practical advice on the interface between claims and the workings of the Funds.

15.6.33 The Council endorsed the proposal by the Director that he should submit a report to the governing bodies at their October 2003 sessions on the points raised by the Japanese delegation and other related issues after a further examination of what lessons could be learned from the *Nakhodka* incident. The Director was also invited to submit a document to the next meeting of the 3rd Intersessional Working Group of the 1992 Fund on issues which could be usefully considered by the Group.

15.7 *Nissos Amorgos*

15.7.1 The Administrative Council took note of the information contained in document 71FUND/AC.9/13/6 concerning the *Nissos Amorgos* incident.

Claims situation

15.7.2 The Council noted that 214 claims for compensation had been settled for a total of Bs3 751 million (£1.7 million) plus US$16 million (£10.4 million), of which the shipowner's insurer, Assuranceföreningen Gard (Gard Club), had paid Bs1 261 million (£1.8 million) plus US$4 million (£2.7 million) and the 1971 Fund had paid US$3.6 million (£2.4 million).

15.7.3 It was recalled that the incident had given rise to legal proceedings in a Criminal Court in Cabimas, Civil Courts in Caracas and Maracaibo, the Criminal Court of Appeal in Maracaibo and the Supreme Court.

Legal proceedings

15.7.4 The Council noted that, after the withdrawal of a number of court actions, the following claims were pending in the courts:

(a) Republic of Venezuela;
  (i) in the Criminal Court of Cabimas for US$60 million (£40 million);
  (ii) in the Civil Court of Caracas for the same amount;
(b) three fish and shellfish processing companies in the Supreme Court for US$30 million (£20 million);
(c) four experts engaged by a fisheries union, FETRAPESCA, in the Supreme Court for fees for Bs100 million (£46 000);
(d) three lawyers against the Republic of Venezuela for fees for Bs440 million (£200 000);
(e) Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM);
  (i) in the Criminal Court of Cabimas for Bs57.7 million (£26 000);
  (ii) in the Civil Court of Maracaibo for the same amount;

(f) the shipowner and the Gard Club for Bs1 219 million (£560 000) and Bs3 473 million (£1.6 million).

Level of payments

15.7.5 The Council recalled that at its 4th session in March 2001 it had increased the level of payments from 25% to 40% of the actual loss or damage suffered by each claimant as assessed by the experts engaged by the 1971 Fund and the Gard Club, and had also authorised the Director to increase the level of the 1971 Fund's payments to 70% when the 1971 Fund's total exposure in respect of the incident fell below US$100 million or to increase the payments to between 40% and 70% if and to the extent that actions withdrawn from the courts would allow it (document 71FUND/AC.4/A/ES.7/6, paragraph 3.3.9).

15.7.6 The Council noted that in April 2002 representatives of the 1971 Fund had visited Venezuela and had attended various meetings with representatives of the Venezuelan Government to explore the possibilities of a withdrawal of the two court actions presented by the Republic of Venezuela. It was noted that the Government representatives had stated that the Government was examining the possibility of withdrawing at least one of these actions. It was also noted that no further developments had taken place since then.

15.7.7 The Council noted that in view of this situation, the Director had not been able to increase the level of payments.

15.7.8 One delegation suggested that it might be appropriate at some stage for the 1971 Fund to consider offsetting its claim against the Republic of Venezuela against the Republic's own claims against the Fund.

15.7.9 The Administrative Council endorsed the Director's decision to maintain the level of payments at 40%.

15.8 *Evoikos*

15.8.1 The Administrative Council took note of the information contained in document 71FUND/AC.9/13/7 concerning the *Evoikos* incident.

15.8.2 The Council noted that the Court in charge of the limitation proceedings in Singapore had determined the limitation amount applicable to the *Evoikos* at 8 846 948 SDR (£7.6 million). It was also noted that as the admissible claims would not exceed £4.7 million, the Director considered that the 1971 Fund would not be required to make any payments of compensation nor pay any indemnification under Article 5.1 of the 1971 Fund Convention in respect of this incident.

15.9 *Pontoon 300*

15.9.1 The Administrative Council took note of the developments in respect of the *Pontoon 300* incident contained in document 71FUND/AC.9/13/8.

Claims for compensation

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

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

Legal actions

15.9.4 The Council recalled that in September 2000 the Umm Al Quwain Municipality had brought legal action in the Umm Al Quwain Court against the owner of the tug which was towing the *Pontoon* 300 at the time of the incident and against the owner of the cargo on board the *Pontoon 300*. It was also recalled that in December 2000 the UAE Ministry of Agriculture and Fisheries had joined the Umm Al Quwain Municipality's action as a co-plaintiff, claiming Dhs 6.4 million (£1.2 million).

15.9.5 The Council recalled that at a court hearing in September 2001 the 1971 Fund had denied the validity of the assignment of rights authorising the Umm Al Quwain Municipality and the Ministry of Agriculture and Fisheries to act on behalf of the various parties alleged to have suffered losses. It was further recalled that the Fund had also maintained that the claims submitted by the Umm Al Quwain Municipality were time-barred.

15.9.6 It was recalled that in December 2001 the Court had decided to refer the matter to a panel of experts experienced in oil pollution and the environment, to be appointed by the UAE Ministry of Justice. It was also recalled that the Court had further decided to combine all the pleadings relating to issues of jurisdiction, time bar and title to sue and to review these after the experts had submitted their report.

15.9.7 The Council noted that in May 2002 the 1971 Fund had attended a meeting with two of the three experts appointed by the Ministry of Justice in the UAE, together with representatives of the claimants, to discuss the technical merits of the claims. The Council further noted that following that meeting the Fund had written to the experts setting out its position and providing a detailed explanation as to why some claim items were deemed inadmissible and what further documentary evidence was required in support of those claim items that were admissible in principle.

15.9.8 The Council noted that the experts had been expected to submit their report to the Court at a hearing to be held on 12 October 2002, but at the request of the experts the Court had adjourned the hearing until 14 December 2002.

Level of payments

15.9.9 The Administrative Council recalled that at its 58th session, the Executive Committee had increased the level of payments from 50% to 75% of the loss or damage actually suffered by each claimant as assessed by the 1971 Fund's experts (document 71FUND/EXC.58/15, paragraph 3.9.5) and that the Council had decided at its 5th session to maintain the payment level at 75% (document 71FUND/AC.5/A/ES.8/10, paragraph 5.5.15).

Recourse action by the 1971 Fund

15.9.10 The Council recalled that in January 2001, the 1971 Fund had taken legal action against the individual who owned the tug *Falcon 1* maintaining that, since the sinking of the *Pontoon 300* had occurred due to its unseaworthiness and the negligence of the master and owner of the *Falcon 1* during the towage, the tug owner was liable for the ensuing damage.

15.9.11 It was recalled that in December 2000, the Dubai Court of first instance had rendered a judgement in which it had rejected the 1971 Fund's claim against the owner of the tug *Falcon 1*, but had ordered the owner of the cargo on board the *Pontoon 300,* who had allegedly chartered the *Falcon 1*, to pay the Fund Dhs 4.5 million (£840 000).

15.9.12 It was also recalled that the basis of the rejection of the claims against the owner of the *Falcon 1* was that under the terms of the charter party the master of the tug had been under the control of the charterer. The Council noted that the 1971 Fund had appealed against the judgement,

contesting the validity of the charter party, and maintaining that in any event the charter party was only binding upon the parties thereto and not on the Fund. It was noted that in February 2002 the Dubai Court of Appeal had upheld the judgement of the Court of first instance against the same parties but had amended the amount awarded to the 1971 Fund to Dhs 4.7 million (£880 000). It was further noted that the Fund had appealed to the Dubai Court of Cassation against the Court of Appeal's judgement on the grounds that under UAE maritime law, even if the cargo owner had chartered the tug, the management of the tug would remain under the control of the tug owner unless the charter party specified otherwise. It was noted that the Fund had further maintained that since the tug had relied on an illegible photocopy of the charter party it was impossible to verify whether the cargo owner had assumed responsibility for the management and operation of the tug and tow.

15.9.13 The Council noted that in his pleadings to the Court of Cassation, the tug owner had maintained that the original charter party was submitted in the criminal proceedings and that he could therefore only submit a photocopy thereof in connection with the recourse action, and that since the Criminal Court had accepted the validity of the original charter party, it should be deemed valid for the purpose of the recourse action.

15.9.14 The Council noted that in a judgement on 6 October 2002 the Court of Cassation had allowed the 1971 Fund's appeal and referred the matter back to the Dubai Court of Appeal for it to reconsider the matter.

15.10 *Al Jaziah 1*

15.10.1 The Administrative Council took note of the information contained in document 71FUND/AC.9/13/9 (cf document 92FUND/EXC.18/6) concerning the *Al Jaziah 1* incident.

Claims for compensation

15.10.2 The Council noted that claims in respect of pollution prevention operations had been settled for US$595 000 (£385 000) and that claims totalling US$1.4 million (£893 000) had been provisionally assessed at US$621 000 (£402 000).

Possible recourse action by the IOPC Funds

15.10.3 The Council recalled that criminal proceedings had been brought against the master of the *Al Jaziah 1* by the Abu Dhabi Public Prosecutor. It was also recalled that in a statement given to the Public Prosecutor the master had stated that the vessel had been designed as a water carrier and was in a dangerous condition and badly maintained. The Council further recalled that the Court had held, *inter alia*, that the vessel had caused damage to the environment and that it did not fulfil basic safety requirements, was not fit to sail, had many holes in the bottom and had not been authorised by the UAE Ministry of Communications to carry oil. It was further recalled 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 (£890) for causing damage to the environment.

15.10.4 It was recalled that the IOPC Funds' lawyers 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. It was also recalled that the Director had concurred with the Funds' lawyers. It was further recalled that the Director had expressed the view that the shipowner must have known or ought to have known that the ship was unseaworthy, that the sinking of the vessel was due to the fault or privity of the shipowner and that pursuant to Article V.2 of the 1969 Civil Liability Convention the shipowner was not therefore entitled to limit his liability and that any attempt by the shipowner to limit his liability should be opposed by the Funds.

15.10.5 The Council further recalled that the governing bodies had decided, at their July 2002 sessions, that if investigations by the Funds' lawyers revealed that the entity registered as the owner of the *Al Jaziah 1* or the individual (a UAE national) owning that entity at the time of the incident had significant assets, the Funds should take recourse action against them (documents 71FUND/AC.7/A/ES.9/14, paragraph 8.5.7 and 92FUND/EXC.16/6 paragraph 3.3.7).

15.10.6 The Council noted that the UAE national referred to in paragraph 15.10.5 above worked for the Abu Dhabi National Oil Co in its Administration Department and that this person had ownership of or substantial shares in four separate companies. It was noted that three of these companies either did not have valid trading licences or their trading records were unreliable. It was also noted that the fourth company was a limited liability company engaged in the storage and transportation of oil and that the person was reported to hold 50% of the shares. The Council further noted that the Funds' lawyers had indicated that in the event of the IOPC Funds obtaining a judgement against the person in question, the Funds might be able to execute it against the dividends payable from his 50% share holding in the company or by obtaining a judicial sale of the shares under the UAE Commercial Companies Law. It was noted, however, that the Funds' lawyers had been unable to establish whether these assets would be sufficient to satisfy the amount which the Funds may be awarded in a final judgement, that the value of the shares in the company in question was uncertain and that it would not be possible to prevent the disposal of the company's assets during the litigation period.

15.10.7 The Council noted that the Director had been advised by the Funds' UAE lawyers that there were reasonably good prospects for the Funds to obtain a favourable judgement against the person in question and that it was likely that he would not be entitled to limit his liability. It was noted, however, that the Funds' lawyers had also advised the Director that the Funds might encounter considerable difficulties in enforcing a judgement against the assets of the defendant and that it was in any event uncertain whether the defendant would have sufficient assets to enable the Funds to recover any substantial amount.

15.10.8 Most delegations expressed the view that the question of whether or not to pursue a recourse action against the shipowner raised an important issue of principle and that the IOPC Funds should play a part in discouraging the operation of sub-standard ships and enforcing the 'polluter pays' principle. In recommending that the IOPC Funds should pursue a recourse action those delegations recognised that the prospects of enforcing a favourable judgement were limited, but that it was in their view nevertheless important for the Funds to take a stand. Some delegations considered, however, that the Funds should be realistic and not pursue a recourse action if the shipowner had no assets.

15.10.9 The Council decided that the 1971 Fund should pursue recourse action against the shipowner.

15.10.10 The Council noted that the 1992 Fund Executive Committee had, at its 18th session, decided that the 1992 Fund should pursue recourse action against the shipowner (cf document 92FUND/EXC.18/14, paragraph 3.5.9).

15.10.11 The Council recognised that the decision to pursue a recourse action in this particular case represented a deviation from the Funds' policy of basing their decisions in part on the prospects of recovery in the event of a favourable judgement.

15.11 *Alambra*

15.11.1 The Administrative Council took note of the information contained in document 71FUND/AC.9/13/10 concerning the *Alambra* incident, which occurred in Estonia on 17 September 2000.

Claims for compensation

15.11.2 The Council recalled that claims for clean-up costs had been submitted to the shipowner and his insurer, the London Steamship Owners Mutual Insurance Association Ltd (London Club), by the Tallinn Port Authority for EEK 6.5 million (£250 000) and by the Estonian State for EEK 4 million (£160 000).

15.11.3 The Council also recalled that a claim for EEK 45.1 million (£1.8 million) was being pursued against the shipowner by the Estonian State. The Council noted that this amount, which had the character of a fine or charge, appeared to have been calculated on the basis of the estimated quantity of oil spilled and could not therefore be considered a claim for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention.

15.11.4 The Council also recalled that a claim for US$100 000 (£69 000) was being pursued against the shipowner and the London Club by a charterer of a vessel said to have been delayed whilst clean-up operations were undertaken. The Council further recalled that the owner of the berth in the Port of Muuga at which the *Alambra* was loading cargo at the time of the incident and a company contracted by the owner of the berth to carry out oil loading activities had submitted claims to the shipowner and the London Club for EEK 29.1 million (£1.1 million) and EEK 9.7 million (£379 000) respectively for loss of income due to the unavailability of the berth whilst clean-up operations were undertaken.

Legal actions

15.11.5 The Council recalled that in November 2001 the owner of the berth in the Port of Muuga and the company it had contracted to carry out oil loading operations had taken legal actions against the shipowner and the London Club and had requested the Court to notify the 1971 Fund of the proceedings in accordance with Article 7.6 of the 1971 Fund Convention. The Council further recalled that having been notified of the actions in February 2002, the 1971 Fund had instructed lawyers in Estonia to represent the Fund in the proceedings. The Council also recalled that in the context of these legal actions, the question had arisen as to whether the 1969 Civil Liability Convention and the 1971 Fund Convention had been correctly implemented into Estonian national law.

15.11.6 The Council recalled that on 1 December 1992 Estonia had deposited its instruments of ratification of the 1969 Civil Liability Convention and the 1971 Fund Convention with the Secretary-General of the International Maritime Organization and that, as a result, the Conventions had entered into force for Estonia on 1 March 1993.

15.11.7 The Administrative Council recalled that the lawyers acting for the shipowner and the London Club, as well as the lawyers acting for the 1971 Fund, had drawn attention to the fact that, under the Estonian Constitution, ratification of the Conventions should not have taken place before the Estonian Parliament had given its approval and adopted the necessary amendments to the national legislation, that the Conventions had not been submitted to Parliament and that the necessary amendments to national law had not been made. The Council further recalled that for these reasons the 1969 Civil Liability Convention and the 1971 Fund Convention did not, in the view of these lawyers, form part of national law and could not be applied by the Estonian courts and that the shipowner and the London Club had raised this issue in their pleadings in the court. It was also recalled that the 1971 Fund had also raised this issue in its submission to the court in order to protect its position, pending the Council's consideration of this matter.

15.11.8 The Administrative Council recalled that in the Director's view, it appeared that the procedure for ratification of international treaties laid down in the Estonian Constitution, which had entered into force on 3 July 1992, had not been observed and that it was possible therefore that the 1969 and 1971 Conventions would be considered by the Estonian courts as not forming part

of Estonian law. It was also recalled that in the Director's view it could not be ruled out that the courts might find that the Conventions were nevertheless applicable.

15.11.9 The Council noted that in a Bill submitted to the Estonian Parliament in 2002, containing a proposal for a new Maritime Act, it was stated that the 1969 Civil Liability Convention was a treaty that needed parliamentary approval, since it required amendments to Estonian national law. The Council noted that the point was made that accession to the Convention had been made in contradiction to the Constitution. It was noted, however, that at the international level, Estonia was deemed to be a party to the 1969 Civil Liability Convention. The Council further noted that it was stated in the Bill that the same problem arose in respect of the 1971 Fund Convention, which required ratification by Parliament, although it did not require amendments to national law.

15.11.10 The Council further recalled that, since the purpose of the 1971 Fund was to compensate victims of oil pollution damage, the Fund should, in the Director's view, normally not take a formalistic approach in dealing with claims for compensation and that for this reason he considered that, if the claims in the *Alambra* case were settled out of court, the issue of the non-applicability of the Conventions should not be raised by the Fund. However, the Council also recalled that in this case this issue had been raised by the shipowner and the London Club in the legal proceedings and that if the courts were to hold that the claims against the shipowner and the Club could not be pursued under the Conventions but only under other provisions in Estonian national law, the question would arise as to the basis of the 1971 Fund's obligation to pay compensation.

15.11.11 The Council noted that the Director had pursued discussions with the London Club since the July 2002 session for the purpose of reaching out-of-court settlements in respect of at least those claims, which, in his view, fell within the scope of application of the Conventions but that no progress had been made in these discussions.

15.11.12 The Council noted that in September 2002 the London Club had filed pleadings in court maintaining that the shipowner had deliberately failed to make the necessary repairs to the *Alambra* resulting in the ship becoming unseaworthy and that therefore under the insurance contract as well as under the Estonian Merchant Shipping Act, the Club was not liable to pay compensation for the damage resulting from the incident.

15.11.13 The Council noted that at a court hearing held on 17 September 2002, the 1971 Fund and the claimants requested the postponement of the proceedings to enable them to consider the position taken by the London Club as regards the alleged unseaworthiness of the *Alambra* and the legal consequences thereof. It was also noted that the Court had postponed the proceedings until 17 December 2002 and that the final hearing was to be held in January 2003.

15.11.14 It was noted that the Director would examine any documentation or other evidence presented by the insurer to support this allegation, assisted by technical experts as required. The Council further noted that until this examination had been carried out, the Director was not able to express any opinion as to whether the London Club was entitled to be exonerated from its liability. The Council noted that in the meanwhile, the Director would take any steps in the court proceedings required to protect the 1971 Fund's interest.

15.11.15 During the Council's consideration one delegation stated that it was premature to make any decision on the legal issues until the Estonian courts had considered the matter. However, in that delegation's view, the 1971 Fund should advise all the claimants of the need to pursue their claims against the shipowner and his insurer.

15.11.16 In response to a question as to whether the *Alambra* carried insurance in respect of the 1969 Civil Liability Convention, the Director stated that although this had not been confirmed he had no reason to doubt that the vessel was insured. The Director further stated that, because the

insurer had maintained that the 1969 Civil Liability Convention did not apply to the incident, the insurer had not invoked the defence of wilful misconduct on the part of the shipowner, which the1969 Civil Liability Convention entitled him to do, and had therefore argued that it was on the basis of the insurance contract and the Estonian Merchant Shipping Act that the insurer was not liable to pay compensation.

15.11.17 Another delegation stated that although the *Alambra* incident was an extraordinary case, similar problems had arisen in the past in respect of other Conventions in other States. That delegation further stated that from the viewpoint of international law compensation should be based upon domestic law, and since domestic law did not exist in this case, it would be difficult to apply the Conventions to the claims for pollution damage. It was that delegation's view that there was no concrete solution to this case and that the most effective solution should be sought for all the parties concerned. That delegation stated, however, that since the insurer had received a premium in respect of the insurance cover it could at least be argued that he could not invoke any defence on the basis of an error by the State to enact the Conventions into domestic law.

15.12 *Natuna Sea*

15.12.1 The Administrative Council took note of the information contained in document 71/FUND/AC.9/13/11 (cf document 92FUND/EXC.18/9) concerning the *Natuna Sea* incident, which occurred in October 2000 in the Singapore Strait off Batu Behanti (Indonesia) and had affected Indonesia, Malaysia and Singapore.

15.12.2 The Council recalled that Singapore was a Party to the 1992 Civil Liability Convention and to the 1992 Fund Convention, that Indonesia was a Party to the 1992 Civil Liability Convention but not to the 1992 Fund Convention and that Malaysia was a Party to the 1969 Civil Liability Convention and the 1971 Fund Convention, but not to the 1992 Conventions.

15.12.3 It was noted that since all claims for pollution damage in Malaysia had been settled the 1971 Fund would not be called upon to make any payments in respect of compensation or indemnification under Article 5.1 of the 1971 Fund Convention.

15.13 *Zeinab*

The Administrative Council took note of the developments in respect of the *Zeinab* incident, as contained in document 71FUND/AC.9/13/12 (cf document 92FUND/EXC.18/11).

15.14 *Singapura Timur*

15.14.1 The Administrative Council took note of the information contained in document 71FUND/AC.9/13/13 concerning the *Singapura Timur* incident. The Council recalled that the *Singapura Timur* had sunk in the Strait of Malacca (Malaysia) after colliding with another tanker, the *Rowan.*

15.14.2 The Council noted that the limitation amount applicable to the *Singapura Timur* under the 1969 Civil Liability Convention had been estimated by the Japan P & I Club at 95 760 SDR (£82 000).

Claims for compensation

15.14.3 The Council noted that the shipowner's insurer, the Japan Ship Owners' Mutual Protection and Indemnity Association (Japan P & I Club), had paid claims totalling US$104 000 (£67 000) in respect of clean-up and preventive measures and that a further claim by an oil industry co-operative engaged in the clean-up for US$154 000 (£100 000) had been agreed in principle at US$53 000 (£35 000). The Council also noted that when the claim by the industry co-operative was settled and paid, the total payments made by the Japan P & I Club would have exceeded the limitation amount applicable to the *Singapura Timur* under the 1969 Civil Liability Convention

and that the 1971 Fund would therefore be liable for any further claims for compensation. It was further noted that the 1971 Fund would also be liable to pay indemnification to the shipowner in accordance with Article 5.1 of the 1971 Fund Convention.

15.14.4 It was recalled that the 1971 Fund's liability in the *Singapura Timur* case was covered by the insurance purchased by the Fund, less a deductible of 250 000 SDR. The Administrative Council endorsed the Director's proposal that the relevant date for the conversion of this amount into pounds sterling should be the date of the incident (28 May 2001). It was noted that the SDR:pound sterling exchange rate on 25 May 2001 (26, 27 and 28 May being non-banking days) was 1 SDR = £0.88513, giving a deductible of £221 283.

Removal of the remaining bunker fuel from the wreck and study to determine the environmental risk posed by the bitumen cargo

15.14.5 The Council recalled that in view of the temporary nature of the measures that were undertaken to prevent the escape of bunker fuel from the vessel, the Malaysian Department of Environment (DOE) had concluded that the remaining bunkers posed a threat to nearby coastal resources and had therefore decided to engage a contractor to remove the bunker fuel oil. It was also recalled that the DOE had decided to conduct a study to ascertain whether the bitumen cargo remaining onboard the wreck posed a threat to these resources. It was noted that the 1971 Fund and its experts had provided technical advice to the authorities during the planning of the bunker removal operation and the proposed study. The Council noted that the DOE had agreed to the 1971 Fund's suggestion of combining the fieldwork associated with the study with the operation to remove the bunker fuel in order to reduce costs.

15.14.6 The Council noted that the Director had informed the DOE that claims for the costs of the oil removal operation and the environmental risk study, which were due to be commenced during the week of 21 October 2002, would be assessed by the Fund in the usual way on the basis of the Fund's criteria.

Recourse action

15.14.7 The Council recalled that the Director had considered that a proposal by the Japan P & I Club to take action against the *Rowan* interests in Japan had merit, since it might enable the 1971 Fund to recover at least part of any compensation payments made by the Fund without having to incur any substantial litigation costs. It was recalled that, in the Director's view, a condition of an agreement with the Club in this regard should 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 following which the money in the escrow account would be distributed on a *pro rata* basis. It was noted that the hull underwriters of the *Singapura Timur* were not prepared to enter into such an agreement.

15.14.8 The Director was instructed to continue discussions with the *Singapura Timur*'s interests.

15.15 Other incidents

The Administrative Council noted the information contained in document 71FUND/AC.9/13/14 in respect of the following incidents: *Vistabella, Keumdong N°5, Iliad, Yeo Myung, Yuil N°1, Kriti Sea, Osung N°3 and Katja.*

16 Winding up of the 1971 Fund

16.1 The Administrative Council took note of the information in document 71FUND/AC.9/14 regarding the winding up of the 1971 Fund.

16.2 The Council noted that the Director anticipated that by the end of 2003 there would 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 was noted that it was likely, however, that the 1971 Fund would 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.

Distribution of the 1971 Fund's remaining assets

16.3 The Council considered how the remaining assets of the 1971 Fund should be distributed. It was recalled that under Article 44.2 of the 1971 Fund Convention the Assembly should 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. It was further noted that the Assembly had delegated this function to the Administrative Council (paragraph (c) of the Council's Mandate as set out in Resolution N°13).

General Fund

16.4 The Administrative Council considered a proposal by the Director that any surplus on the General Fund should be distributed between the contributors in the 76 States that were Members of the 1971 Fund at the end of the transitional period (15 May 1998), on the basis of the quantities of contributing oil reported as having been received during 1997.

16.5 One delegation stated that the issue of reimbursement of funds was an important one to contributors and that its preference was for a more perfect system, preferably by taking into account the amounts actually paid by individual contributors over the lifetime of the 1971 Fund. Some delegations considered that every effort should be made to find the most equitable solution. One delegation suggested that in addition to basing reimbursements to contributors on the quantities of oil reported for 1997, a weighting factor to reflect the number of years that contributors had been paying into the General Fund could be introduced.

16.6 The Director stated that while it would be possible to go back through the 1971 Fund's records this would be a difficult task and it was likely that a significant number of contributors that had made contributions in the early years of the 1971 Fund no longer existed.

16.7 The Administrative Council instructed the Director to carry out a study of the different options for distributing the surplus on the General Fund and the ramifications for contributors, and to report to the Council at its October 2003 session.

Major Claims Funds

16.8 It was decided that the Administrative Council should consider the distribution of the surpluses on certain Major Claims Funds at its October 2003 session when the situation would have become clearer in respect of the incidents in question.

Non-submission of oil reports

16.9 The Administrative Council considered the question of whether the reimbursement of surpluses from any Major Claims Funds (after offset had been made against any arrears) should be postponed in respect of all contributors in Member States that had oil reports outstanding.

16.10 The Council also considered what action should be taken in the event that outstanding reports had not been submitted by the time all pending incidents had been resolved and the 1971 Fund should be wound up.

16.11 A number of delegations expressed the view that reimbursements should be postponed in respect of contributors in Member States with outstanding oil reports, that a deadline should be set for submission of these reports, and that in the event that reports were not forthcoming, the share of the contributors in those States should be distributed amongst the other contributors. Some delegations expressed the view, however, that the contributors were legally entitled to be

reimbursed and it would therefore not be possible to refuse repayment when the 1971 Fund was finally wound up. It was emphasised that the Director should continue to exert pressure on States to submit their outstanding reports.

16.12 In response to a question the Director stated that it was difficult to estimate how much money was likely to be involved in respect of Member States which had not submitted oil reports, but that in many cases these States did not receive any contributing oil.

Contributors in arrears

16.13 The Administrative Council considered the Director's analysis in respect of the obligations of defaulting contributors that were previously located in the former Union of Soviet Socialist Republics (USSR) and the former Socialist Federal Republic of Yugoslavia. The Council decided that these contributors were under an obligation to pay their outstanding contributions.

16.14 The Council considered what action should be taken against the 31 contributors in arrears, 27 of which were for the principal of contributions and four for interest only. It was noted that the amount owed by many of these contributors was relatively low. Consideration was given as to whether the 1971 Fund should write off debts which were for less than a specific amount, say £25 000, including interest. It was noted that in many cases the costs that the Fund would incur if attempts were made to recover small amounts would exceed the amount of the debt. It was considered, however, that simply writing off small debts would send the wrong message to the defaulters and that before adopting such an approach, further efforts should be made to recover the amounts due and the States where the defaulting contributors were located should exercise pressure on them to pay.

16.15 It was generally considered that in the final analysis a pragmatic solution would have to be found. One delegation suggested that the current status of each of the 31 defaulting contributors should be investigated, since it was possible that a number of them were insolvent or no longer existed, and that the 1971 Fund should focus its efforts on those that were still operating, particularly those that owed substantial sums of money.

16.16 The Council invited the Director to investigate each of the defaulting contributors and to make a judgement as to which ones should be pursued in court for arrears on the basis of a cost benefit analysis. The Director was authorised to take legal action against defaulters where appropriate and to present a report to the Council giving reasons why others should not be pursued.

Appointment of an eminent person

16.17 The Council decided that there was no need at this stage to appoint an eminent person to ensure that the winding up of the 1971 Fund was impartial and equitable.

17 Sharing of joint administrative costs between the 1992 Fund and the 1971 Fund

17.1 The Administrative Council approved the Director's proposal that the costs of running the joint Secretariat for 2003 should be distributed with 20% to be paid by the 1971 Fund and 80% by the 1992 Fund, with the proviso that this distribution would not apply to certain items in respect of which it was possible to make a distribution based on the actual costs incurred by each Organisation as set out in the explanatory notes to the draft budget for 2003 (document 71FUND/AC.9/17).

17.2 It was noted that the Assembly of the 1992 Fund had agreed at its 7th session to the distribution proposed by the Director.

18 Working capital

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

19 Budget for 2003 and assessment of contributions to the General Fund

19.1 The Administrative Council considered the draft 2003 Budget for the administrative expenses of the 1971 Fund and 1992 Fund and the assessment of contributions to the General Fund as proposed by the Director in document 71FUND/AC.9/17.

19.2 The Administrative Council adopted the budget for 2003 for the administrative expenses for the joint Secretariat with a total of £3 012 857 plus an additional amount of £250 000 (Chapter VII) to cover costs specifically relating to the winding up of the 1971 Fund, as reproduced in Annex II to this document.

19.3 It was noted that the Assembly of the 1992 Fund had at its 7th session adopted the same budget appropriations for the administrative expenses for the joint Secretariat.

19.4 The Administrative Council renewed its authorisation to the Director to create positions in the General Service category as required provided that the resulting cost would not exceed 10% of the figure for salaries in the budget.

19.5 The Administrative Council decided not to levy contributions to the General Fund.

20 Assessment of contributions to Major Claims Funds

20.1 The Director introduced document 71FUND/AC.9/18 which contained proposals for the levy of 2002 contributions to Major Claims Funds.

20.2 In order to enable the 1971 Fund to make payments of claims for compensation and indemnification arising out of the *Nissos Amorgos* incident, the Administrative Council decided to raise 2002 contributions to the *Nissos Amorgos* Major Claims Fund for £21 million.

20.3 The Council decided that the entire levy to the *Nissos Amorgos* Major Claims Fund should be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 2003, if and to the extent required.

20.4 The Administrative Council decided to postpone any decision in respect of the *Vistabella* incident until the final total cost of the incident could be established.

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

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

20.7 The Administrative Council noted that its decisions in respect of the levy of 2002 contributions could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment by 1 March 2003		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
General Fund	2001		0	0	0	0	0
Nissos Amorgos	1996	1 229	21 000 000	0	0	21 000 000	0.0170871
Total			21 000 000	0	0	21 000 000	0.0170871

21 Future sessions

21.1 The Administrative Council decided to hold its next autumn session during the week of 20 - 24 October 2003.

21.2 It was noted that the weeks of 3 February 2003 and 6 May 2003 were available for IOPC Fund meetings.

22 Any other business

Observer status

22.1 It was recalled that the 1971 Fund Assembly had, at its 1st extraordinary session in October 1980, granted observer status to the European Economic Community (document FUND/A/ES.1/13, paragraph 2).

22.2 It was noted that the European Commission had requested that the name to be used in referring to the observer in the IOPC Funds should be the European Commission. The Commission pointed out that this would be in line with the situation in the International Maritime Organization.

22.3 The Administrative Council decided that the name to be used should be the European Commission.

23 Adoption of the Record of Decisions

The draft Record of Decisions of the Administrative Council, as contained in documents 71FUND/AC.9/WP.1 and 71FUND/AC.9/WP.1/Add.1 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 1992 Fund Assembly: 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 1992 Fund Assembly. 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 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.

3 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.

4 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.

5 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.

6 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.

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

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

9 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

2003 ADMINISTRATIVE BUDGET FOR 1992 FUND AND 1971 FUND

	STATEMENT OF EXPENDITURE	Actual 2001 expenditure for 1971 and 1992 Funds		2001 budget appropriations for 1971 and 1992 Funds		2002 budget appropriations for 1971 and 1992 Funds		2003 budget appropriations			
								Total		Distribution	
										1992 Fund	1971 Fund
	SECRETARIAT	£		£		£		£		£	£
I	**Personnel**										
(a)	Salaries	*1 005 922*		*1 115 240*		1 190 291		1 275 816		1 033 864	241 952
(b)	Separation and recruitment	*113 658*		*113 658*		55 000		35 000		28 000	7 000
(c)	Staff benefits, allowances and training	*342 835*		*439 022*		481 922		523 341		418 673	104 668
	Sub-total		***1 462 415***		***1 667 920***		***1 727 213***		**1 834 157**	**1 480 537**	**353 620**
II	**General Services**										
(a)	Rent of office accommodation (including service charges and rates)	*215 797*		*223 950*		240 450		249 700		199 760	49 940
(b)	Office machines, including maintenance	*45 851*		*71 500*		71 500		71 500		57 200	14 300
(c)	Furniture and other office equipment	*7 079*		*24 500*		17 500		17 500		14 000	3 500
(d)	Office stationery and supplies	*21 350*		*22 000*		20 000		20 000		16 000	4 000
(e)	Communications (telephone, telefax, telex, postage)	*48 741*		*56 151*		65 500		65 000		52 000	13 000
(f)	Other supplies and services	*34 449*		*34 449*		38 000		41 000		32 800	8 200
(g)	Representation (hospitality)	*15 308*		*16 500*		16 500		22 500		18 000	4 500
(h)	Public Information	*67 454*		*220 000*		180 000		180 000		149 000	31 000
	Sub-total		***456 029***		***669 050***		***649 450***		**667 200**	**538 760**	**128 440**
III	**Meetings**										
	Sessions of the 1992 and 1971 Fund Governing Bodies and Intersessional Working Groups		***95 950***		***126 500***		***126 500***		**126 500**	**88 000**	**38 500**
IV	**Travel**										
	Conferences, seminars and missions		***66 172***		***70 000***		***70 000***		**70 000**	**56 000**	**14 000**
V	**Miscellaneous expenditure**										
(a)	External audit	*40 936*		*50 000*		50 000		50 000		30 000	20 000
(b)	Payment to IMO for general services (included in II (a) above)	*0*		*6 500*		6 500		0		0	0
(c)	Consultants' fees	*64 645*		*100 000*		100 000		125 000		100 000	25 000
(d)	Audit Body	*0*		*0*		0		50 000		25 000	25 000
(e)	Investment Advisory Bodies	*27 000*		*27 000*		27 000		30 000		15 000	15 000
	Sub-total		***132 581***		***183 500***		***183 500***		**255 000**	**170 000**	**85 000**
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		***0***		***60 000***		***60 000***		**60 000**	**48 000**	**12 000**
Total Expenditure I-VI			***2 213 147***		***2 776 970***		***2 816 663***		**3 012 857**	**2 381 297**	**631 560**
VII	Expenditure relating only to 71Fund		***8 200***		***250 000***		***250 000***				**250 000**