INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
54th session
Agenda item 5

71FUND/EXC.54/10
17 June 1997

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RECORD OF DECISIONS OF THE FIFTY-FOURTH SESSION OF THE EXECUTIVE COMMITTEE

(held on 16 and 17 June 1997)

Chairman: Mr W J G Oosterveen (Netherlands)

Vice-Chairman: Dr M Babangida Aliyu (Nigeria)

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document 71FUND/EXC.54/1.

2 Examination of credentials

2.1 The following members of the Executive Committee were present:

Australia
Belgium
Canada
Denmark
Finland
Germany
Greece
Netherlands
Nigeria
Republic of Korea
Russian Federation
Spain
United Kingdom

The Executive Committee took note of the information given by the Director that all the above-mentioned members of the Committee had submitted credentials which were in order.

2.2 The following Member States were represented as observers:

Algeria	Italy	Poland
Colombia	Japan	Sweden
Côte d'Ivoire	Liberia	Tunisia
Fiji	Mauritania	Venezuela
France	Norway	

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

Argentina	Panama	Saudi Arabia
China	Peru	

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

Intergovernmental organisations:
International Oil Pollution Compensation Fund 1992 (1992 Fund)
International Maritime Organization (IMO)
United Nations

International non-governmental organisations:
Comité Maritime International (CMI)
Cristal Limited
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P & I Clubs
International Tanker Owners Pollution Federation Limited (ITOPF)
Oil Companies International Marine Forum (OCIMF)

3 Incidents involving the 1971 Fund

3.1 *Nissos Amorgos* incident

3.1.1 The Executive Committee took note of the information contained in documents 71FUND/EXC.54/2 and 71FUND/EXC.54/2/Add.1 on the developments which had taken place in respect of the *Nissos Amorgos* incident since the Committee's 53rd session.

General statements

3.1.2 Referring to the information given by the shipowner and his insurer (Assuranceföreningen Gard, Gard Club) reflected in paragraph 9.2 of document 71FUND/EXC.54/2, the Venezuelan observer delegation stated that the *Nissos Amorgos* had not run aground passing through the Maracaibo channel but some 150 metres outside the channel. The delegation mentioned that some 2 100 ships navigated the channel each year, that many of these ships had the maximum draught permitted by the authorities, but that none had encountered foreign obstacles in the channel. The delegation also stated that an investigation into the cause of the incident was being conducted by the Venezuelan authorities and that the studies so far had not shown submerged objects within the channel boundaries. The delegation made the point that information regarding the conditions in the Maracaibo channel was always available to all shipowners and pilots. This delegation objected to the way in which the shipowner and the Gard Club had made allegations that the conditions in the channel were not of a sufficiently high standard and emphasised that these allegations were untrue.

3.1.3 The Greek delegation expressed its concern regarding the actions taken by the Venezuelan authorities and the Venezuelan Courts relating to the arrest of the *Nissos Amorgos* and the detention of her master. In the view of that delegation the shipowner and the Gard Club had fulfilled their obligations

under the 1969 Civil Liability Convention and the 1971 Fund Convention, and the provision by the Gard Club of a bank guarantee to set up the limitation fund should have been sufficient to secure the release of the ship. This delegation also expressed concern that, by requesting security well above the applicable limitation amount, the Venezuelan State was not acting in conformity with international law regulating oil pollution compensation. The delegation also referred to the fact that the master of the ship had been detained although Article III.4 of the 1969 Civil Liability Convention provided that "no claim for compensation under this Convention or otherwise may be made against the servants or agents of the owner". This delegation invited the Venezuelan Government to respect the international Conventions which formed part of Venezuelan law by releasing both the master and the vessel as soon as possible.

3.1.4 As regards the bank guarantee offered by the Gard Club to the Court in Cabimas referred to in paragraph 10 of document 71FUND/EXC.54/2, the Venezuelan delegation stated that it was conditional because it stated that the vessel had hit an obstacle within the channel and was therefore not acceptable to the Court. The delegation stated that if an unconditional guarantee had been provided initially, or if the original guarantee had been modified immediately when the shipowner and the insurer were made aware of its unacceptability, there would have been no delay in the release of the vessel. The delegation informed the Committee that an unconditional guarantee acceptable to the Court had not been received until 11 June 1997 and that it was expected that the *Nissos Amorgos* would be released during the week of the Committee's session.

3.1.5 The observer delegation of the International Association of Independent Tanker Owners (INTERTANKO) supported the intervention referred to in paragraph 3.1.3 above and expressed the view that the recent events in Venezuela should not be tolerated.

3.1.6 On a more general note, the Executive Committee recalled that one of the purposes for which the regime of liability and compensation governed by the 1969 Civil Liability Convention and the 1971 Fund Convention had been established was to create a uniform framework for dealing with compensation for oil pollution damage, as set out in the preamble to the 1969 Civil Liability Convention. Many delegations stressed the importance of a uniform implementation of the 1969 Civil Liability Convention and 1971 Fund Convention in all States Parties, in accordance with both the terms and the spirit of those Conventions. It was also mentioned that it was the responsibility of the States Parties to ensure that the Conventions were properly implemented and applied. Reference was made to the general rules of interpretation of treaties, as contained in the Vienna Convention on the Law of Treaties, in particular Article 31.3(b) which provided that any subsequent State practice in the application of a treaty should be taken into account for the interpretation of its provisions.

Claims situation and level of payments

3.1.7 It was noted that claims totalling Bs 1 298 million plus US$1.1 million (£2.3 million in all) in respect of clean-up operations, property damage and loss of income in the fishing industry had been submitted to the Claims Agency in Maracaibo established by the 1971 Fund and the Gard Club. The Executive Committee noted also that further claims in these categories, as well as claims from the fish processing and tourism industries, were expected.

3.1.8 The Executive Committee took note of the fact that claims by owners of 23 fishing boats had been approved for the amounts claimed, totalling Bs 11 747 250 (£14 800), and that the Gard Club, after consultation with the Director, had made payments totalling Bs 5 107 500 (£6 450) to the owners of six such boats.

3.1.9 The Executive Committee noted that the State of Venezuela had presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club for an estimated US$20 million (£12.3 million) before a first instance court in Caracas, and that the State had requested that the 1971 Fund should be notified of its action. It was also noted that, at the Venezuelan State's request, the Caracas Court had ordered the arrest of the *Nissos Amorgos* and had ordered the shipowner/insurer to provide security for US$40 million (£24.4 million) plus US$6 million (£3.6 million) for legal costs and expenses.

3.1.10 The Executive Committee noted that it was not clear what types of damage were covered by the claim presented by the State of Venezuela, nor how the amount claimed had been calculated. It was noted that in the pleadings presented to the Court in Caracas, the State had maintained that it was a very significant incident which had seriously affected the environment and the ecosystem in general, and which had resulted in considerable expenditure being incurred in respect of "pollution damage" and "preventive measures". The Committee also noted that the State had indicated that, for procedural reasons, a prudent estimate of US$20 million had been made on the basis of information available at that time. The Executive Committee further noted the Director's view that it was not possible for him to express any opinion on the admissibility of the claim submitted by the Venezuelan State.

3.1.11 The Committee noted that a fishermen's trade union (FETRAPESCA) had presented a claim against the shipowner, the Gard Club and the master of the *Nissos Amorgos* for an estimated amount of US$130 million (£79 million) plus legal costs, before the same first instance court in Caracas, and that the 1971 Fund's Venezuelan lawyer had been notified of this action. It was further noted that FETRAPESCA had obtained an order by the Court in Caracas for the arrest of the shipowner's property, of the vessels which were not his property but which were under associated management, and of assets belonging to the Gard Club, up to a total of US$292.5 million, plus US$32.5 million in respect of legal costs. It was also noted that, at the request of FETRAPESCA, the Caracas Court had appointed a committee composed of lawyers and technical experts to assess the value of the damage to the environment caused by the spill.

3.1.12 It was further noted that it was not known what types of damage were covered by FETRAPESCA's claim, nor how the amount claimed had been calculated. The Committee noted that, in the pleadings presented to the Court, FETRAPESCA had maintained that the oil spill had prevented the fishermen from fishing, thereby causing loss of earnings. It was also noted that FETRAPESCA had stated that the amount claimed, US$130 million (£79.4 million), was a prudent estimate.

3.1.13 The Committee noted that the 1971 Fund had been given access to a study of the cost of the *Nissos Amorgos* incident, which had been carried out by a professor at the Simon Bolivar University in Caracas. The Committee also noted that the study set out a formula for assessing the ecological damage caused by the oil spill, which led to a total damage of Bs 129 235 million (US$267 million or £163 million) being calculated.

3.1.14 With reference to the claim presented by the Venezuelan State, a number of delegations referred to the policy of the 1971 Fund that claims for damage to the environment *per se* were not admissible under the Conventions. Reference was made to Resolution N°3, adopted by the 1971 Fund in 1980, which stated that the assessment of compensation to be paid by the 1971 Fund was "not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models". It was recalled that this policy on claims for environmental damage had been reaffirmed by the Assembly at its 17th session, when the latter endorsed the report of the 7th Intersessional Working Group. It was also recalled that the Assembly had decided that compensation could be granted only if a claimant had suffered a quantifiable economic loss (cf documents FUND/WGR.7/4, paragraph 7.1, FUND/A.17/23, paragraphs 7.3.5 and 7.3.6 and FUND/A.17/35, paragraph 26.8). Some delegations mentioned that a consequence of large claims for environmental damage being presented to court might be that the payment of compensation to other claimants, eg fishermen, would be delayed.

3.1.15 It was mentioned that some difficulties encountered by the authorities concerned might have been due to lack of experience in dealing with incidents falling within the scope of the Conventions. It was noted that, as instructed by the Committee at its 53rd session, the Director had provided the Venezuelan Ambassador in London with information on the functioning of the regime of liability and compensation established by the 1969 Civil Liability Convention and the 1971 Fund Convention. The Director was instructed to maintain his contacts with the Venezuelan authorities in order to provide further information on these issues.

3.1.16 In conclusion, the Executive Committee emphasised the importance of a uniform interpretation of the Conventions in accordance with the position taken by the Assembly at its 17th session when it endorsed the Report of the 7th Intersessional Working Group. The Committee also reiterated its position that claims for damage to the environment *per se* were not admissible.

3.1.17 The Executive Committee noted that the claims presented in court by the Venezuelan State and FETRAPESCA amounted to a provisional total of US$150 million (£91.6 million). The Executive Committee considered it necessary therefore to exercise caution in the payment of claims. In view of the great uncertainty as to the total amount of the claims, the Committee maintained the position it had adopted at its 53rd session that it was premature to take any decision authorising the Director to make payments.

Possible exoneration of the shipowner from liability

3.1.18 The Executive Committee noted that the shipowner had notified the Director that he reserved the right to seek exoneration from liability for pollution damage arising from the incident, under Article III.2(c) of the 1969 Civil Liability Convention, on the ground that the damage had been caused wholly by the negligence or other wrongful act of a Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

3.1.19 It was noted that the shipowner and the Gard Club maintained that there was clear evidence that the shipowner was entitled to exoneration under Article III.2(c) of the 1969 Civil Liability Convention, although they recognised that it would take some time before this issue could be finally resolved. The Committee noted that the shipowner/Gard Club had stated that, in order to ensure the prompt settlement of legitimate claims, they were prepared to make payments without invoking against the claimants this defence of exoneration from liability. It was noted that they had stated that such payments would be made on the basis (a) that the shipowner acquired by subrogation the rights which the claimants would have had against the 1971 Fund if such payments had not been made, including the right to claim compensation from the 1971 Fund in the event of the shipowner being exonerated from liability under the 1969 Civil Liability Convention and (b) that the shipowner would remain entitled to invoke this defence against the 1971 Fund. It was further noted that the shipowner and the Gard Club maintained that they would be able to recover from the 1971 Fund the amounts paid to claimants if it were established that the shipowner was exonerated from liability under Article III.2(c).

3.1.20 The Executive Committee held a session in private, pursuant to Rule 12 of the Rules of Procedure, to discuss this issue. During the closed session, covered by paragraphs 3.1.21 – 3.1.24, only the representatives of 1971 Fund Member States were present.

3.1.21 The Committee noted that, due to lack of information as to the cause of the incident, it was not possible to take any position as to whether the shipowner would be exonerated from liability. A number of delegations pointed out that it would generally be difficult to prove that the incident was wholly caused by the negligence of an authority.

3.1.22 The Executive Committee shared the Director's view that the shipowner and the Gard Club would be entitled to subrogation with regard to the shipowner's limitation fund and the 1971 Fund in respect of any payment made to a claimant, if it were established by a final judgement that the shipowner was exonerated from his liability under Article III.2(c) of the 1969 Civil Liability Convention. The Committee also considered that, as a result of such subrogation, the shipowner/Gard Club would have the same rights against the 1971 Fund as the claimants whom the shipowner/Club had paid would have had if the payments to them by the shipowner/Club had not been made. The Committee agreed with the Director that this would mean that, if the total amount of the established claims were to exceed the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, and consequently all claims were reduced *pro rata*, the subrogated claims by the shipowner/Gard Club would be reduced correspondingly.

Investigation into the cause of the incident

3.1.23 The Executive Committee noted that the Director was following, through the 1971 Fund's Venezuelan lawyer, the investigation into the cause of the incident which was being carried out by the Venezuelan authorities. The Committee also noted that the Director had engaged a technical expert to investigate the cause of the incident on behalf of the 1971 Fund, so as to enable the 1971 Fund to intervene in future legal proceedings if appropriate.

3.1.24 The Director was instructed to make an independent investigation into the cause of the incident by the use of suitable experts.

Claims by unlicensed fishermen

3.1.25 The Executive Committee noted that claims had been submitted by fishermen who did not hold proper licences and considered the question of whether claims by such fishermen were admissible for compensation. It was recalled that the question of the admissibility of claims from unlicensed fishermen had been dealt with previously by the 1971 Fund in the *Aegean Sea* case (Spain) and in the *Braer* and *Sea Empress* cases (United Kingdom).

3.1.26 It was noted that the 1971 Fund's Venezuelan lawyer had informed the Director that Venezuelan law required permanent fishing boats with more than three crew members to be licensed, that a person who carried out fishing activities without a licence would be subject to administrative sanctions (a small fine) imposed by an administrative authority under the Law on Administrative Procedure (not by a court under criminal law) and the confiscation of his catches, and that more severe sanctions would be imposed by a criminal court on a commercial fisherman who carried out fishing activities in areas where fishing was prohibited or during periods when fishing was not allowed. It was also noted that the lawyer had informed the Director that there was no legislation or jurisprudence in Venezuela as to whether unlicensed fishermen were entitled to compensation for loss of income, and that jurisprudence required the claimant to prove that he was a fisherman and that he had suffered an economic loss.

3.1.27 The Venezuelan delegation pointed out that Venezuelan law did not require artisanal fishing to be licensed.

3.1.28 It was recalled that, in the *Aegean Sea* case, the Executive Committee had considered whether fishermen, shellfish gatherers and operators of mussel rafts would be entitled to compensation only if they held a valid licence. It was also recalled that the Committee had taken the position that, since the question of whether a claimant was entitled to compensation was governed by civil law, the decisive criterion should be whether the claimant had suffered an actual economic loss and that the right of compensation should not depend upon whether or not a licence was held (document FUND/EXC.36/10, paragraph 3.3.3).

3.1.29 In respect of the *Braer* case, the Executive Committee recalled that in the United Kingdom it was a criminal offence to carry out fishing without a proper licence. It was also recalled that the Committee had taken the view that claims for compensation presented by professional fishermen could be accepted only if the claimant held a licence, since the 1971 Fund should not pay compensation for the loss of proceeds from criminal activities. It was noted that some delegations, while agreeing with that position, had questioned whether this would not lead to inconsistency in comparison with the position taken by the 1971 Fund in accepting claims from unlicensed fishermen and shellfish gatherers in the context of the *Aegean Sea* incident, since the admissibility of a claim should not, in their view, depend on the categorisation of the offence under national law, for example as a criminal offence or as a breach of administrative law (document FUND/EXC.39/8, paragraphs 3.3.12 and 3.3.13). It was further noted that in the light of that decision, the 1971 Fund had in the *Sea Empress* case rejected claims by fishermen who did not hold a proper licence.

3.1.30 In the consideration of the claims arising out of the *Nissos Amorgos* incident, a number of delegations questioned whether, in the assessment of the admissibility of claims by unlicensed fishermen, a distinction should be made between administrative and criminal law, ie whether fishing without a licence was a criminal offence or a breach of administrative provisions. A number of delegations took the view that the 1971 Fund should not pay compensation for losses arising out of illegal activities, and that this principle should apply whether the activities were a breach of administrative provisions or of criminal law. The point was made that the requirement for fishermen to have a licence was very often established in order to protect fishery resources. It was also pointed out that if, as in Venezuela, illegal catches were subject to confiscation, it would not be correct to compensate for losses of catches which might have been confiscated. A number of delegations also referred to the fact that making distinctions between criminal and administrative law would result in inconsistency in the decisions by the 1971 Fund between different Member States, and they emphasised the need for a uniform application of the Conventions in all Member

States. Several delegations considered it necessary to distinguish between commercial fishing and non-commercial (eg subsistence) fishing.

3.1.31 Some delegations considered that the 1971 Fund should in the *Nissos Amorgos* case take the same position as it had done in the *Aegean Sea* case as set out in paragraph 3.1.28. In particular, the Spanish delegation stated that it was essential to maintain the current 1971 Fund policy as it was, and to let unlicensed fishermen receive compensation in cases where the sanction involved was only administrative and the compensation was governed by civil law.

3.1.32 In conclusion, the Executive Committee decided that compensation should not be payable in the *Nissos Amorgos* case to fishermen who, although required under Venezuelan law to hold a valid licence, did not do so. It was further decided that compensation should be payable to fishermen who were not subject to licence requirements under Venezuelan law, provided that the claimant showed that he had suffered an economic loss as a result of the incident.

3.1.33 The Executive Committee recognised that the issue of compensating unlicensed fishermen was an important one and that the Committee's decision had significant ramifications. For this reason, the Committee instructed the Director to study this issue further so that the Committee could re-examine, at a later session, the 1971 Fund's policy in respect of such claims. The Committee drew attention to the fact that it was necessary to take into account the differing circumstances in various Member States, particularly in developing countries, but also acknowledged the importance of consistency in the 1971 Fund's decisions in respect of claims in various Member States. The Committee noted that *inter alia* the following elements could be considered: the type and severity of sanctions, the type of fishing (eg commercial or subsistence), and the reason for the requirement to have a licence, eg whether to protect fish stocks or for statistical purposes. Member States were invited to provide the Secretariat with information on the subject.

3.2 *Sea Empress* incident

3.2.1 The Executive Committee took note of the information contained in document 71FUND/EXC.54/3 on the developments which had taken place in respect of the *Sea Empress* incident since the Committee's 53rd session.

Claims situation

3.2.2 It was noted that as at 13 June 1997, 814 claimants had presented claims for compensation to the Claims Handling Office established by the 1971 Fund and the shipowner's P & I insurers (Assuranceföreningen Skuld, Skuld Club). The Committee noted that the Skuld Club and the 1971 Fund had approved claims for a total of £9 899 300 and that payments had been made to 500 claimants, totalling £6 880 983. It was further noted that cheques for £169 999 were awaiting collection by claimants. It was also noted that most of these payments corresponded to 75% of the approved amounts and that payments of up to 100% of the approved amounts had been made by the Skuld Club in a number of cases where the amount of compensation was small or where the claimant had been able to demonstrate that a payment of more than 75% was necessary to avoid immediate financial hardship.

Claim by a civil engineering contractor

3.2.3 The Executive Committee considered a claim presented by a civil engineering contractor, Salvex Ltd, based in Pembrokeshire, relating to losses resulting from contracts allegedly lost due to the *Sea Empress* incident. It was noted that the claimant alleged that the company was dependent on work carried out for local authorities, but that such work had not been forthcoming in the months following the incident because the authorities were concentrating on the clean-up operations and did not place any orders due to lack of funds.

3.2.4 The Executive Committee considered that the claimant's loss was only indirectly caused by contamination. The Committee noted that the alleged loss was suffered as a result of local authority decisions based on financial constraints, and not as a result of the contamination itself. In the light of

these circumstances, the Executive Committee took the view that there was not a sufficient degree of proximity between the claimant's loss and the contamination resulting from the *Sea Empress* incident. The Committee therefore rejected this claim.

Level of payments

3.2.5 The Executive Committee recalled that it had decided at its 48th session to limit the Director's authority to make payments in the *Sea Empress* case to 75% of the damage actually suffered by the respective claimant, since the total amount of the claims arising out of the incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. It was also recalled that the Committee had decided at its 49th, 50th, 52nd and 53rd sessions to maintain the limit of 75% (documents FUND/EXC.48/6, paragraph 3.4.7, FUND/EXC.49/12, paragraph 3.8.21, 71FUND/EXC.50/17, paragraph 3.12.16, 71FUND/EXC.52/11, paragraph 3.6.22 and 71FUND/EXC.53/12, paragraph 3.5.8).

3.2.6 It was recalled that in previous cases the Executive Committee had taken the position that it was necessary to exercise caution in the payment of claims if there was a risk that the total amount of the claims arising out of the particular incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. It was also recalled that the Committee had expressed the view that it was necessary to strike a balance between the importance of the 1971 Fund's paying compensation as promptly as possible to victims of oil pollution damage and the need to avoid an over-payment situation.

3.2.7 The Director presented the following estimate of the total amount of the claims arising from this incident:

> The cost of the clean-up operations was estimated at £23 million. Fishery claims had been approved for £5.5 million and pending or rejected fishery claims amounted to £7 million. Further claims in the fishery sector might be submitted. Claim forms had recently been requested in respect of two hitherto unknown trawlers. It had been suggested that the incident might have caused damage to juvenile stocks of certain species, although no claims for such damage had been received. The fishery claims might total £15 million, but there was still a considerable degree of uncertainty concerning the total amount of the claims in this sector. With regard to the tourism sector, claims had been approved for £750 000 and claims for £627 000 were being examined. The Claims Handling Office had sent letters to 580 potential claimants in the tourism sector who had requested claim forms but had not yet submitted claims; 288 of the potential claimants had replied, out of whom 155 had stated that they intended to present a claim and 133 had stated that they did not. It was estimated that the tourism claims would not exceed £4 million. It was not known whether a claim for costs relating to the salvage of the *Sea Empress* and her cargo would be presented, and if so, in what amount. There might be certain payments in respect of interest which, if final settlements were delayed, could be for significant amounts. There might also be payments in respect of fees of advisers and experts engaged by the claimants, but it was not possible to give an estimate of the total amounts of such payments. These estimates led to a total amount of £42 million, plus a possible salvage claim, interest and advisers' fees.

3.2.8 The Executive Committee noted the Director's view that there was still a degree of uncertainty as to the total amount of the claims, relating in particular to potential claims from the fishery and tourism sectors and to the potential salvage claim. The Committee took note of the Director's position that, if no account were taken of money which might be available under CRISTAL (cf paragraph 3.2.10 below), he could not recommend increasing the level of the 1971 Fund's payments.

3.2.9 The United Kingdom delegation introduced document 71FUND/EXC.54/3/1 which contained two estimates of the total amount of the claims, one low estimate of £32 million and one high estimate of £41 million. The delegation stated that it saw no evidence to support the Director's estimate of £15 million in respect of the fishing industry, since the total annual value of the whole southwest Wales and Bristol Channel fishing amounted to £15 million, and had instead used an estimate of £10 million. The

United Kingdom delegation remained of the view that the total amount of claims following the *Sea Empress* incident would not exceed the maximum amount available under the Conventions. The delegation considered that, putting aside the question of whether an additional £20 million was available to claimants from Cristal Ltd (cf paragraph 3.2.10 below), the estimate of the total claims allowed the Executive Committee to increase the level of payments to 100% of admissible claims.

3.2.10 The Committee noted that, in accordance with the information provided by Cristal Ltd, there would be available an amount of 45 786 592 SDR (£39 million) for distribution to those claimants who might not be fully compensated under the 1969 Civil Liability Convention and the 1971 Fund Convention, and to the parties to the CRISTAL Contract as a reimbursement of their contributions to the 1971 Fund. The Director informed the Committee that, after discussion with Cristal Ltd, and assuming that all contributors to CRISTAL were also paying contributions to the 1971 Fund in respect of the *Sea Empress* Major Claims Fund, he estimated that the maximum amount to be received by those parties would be £20 million. It was noted that, on this assumption, if the amounts available under the 1969 Civil Liability Convention and the 1971 Fund Convention were insufficient, there would therefore be available approximately £19 million for distribution amongst claimants whose admissible claims might not be paid in full under the Conventions.

3.2.11 On the basis of information provided by Cristal Ltd, the Director had informed the Executive Committee in document 71FUND/EXC.54/3 (paragraph 3.4) that the 1971 Fund would be entitled to make subrogated claims against Cristal Ltd for reimbursement in respect of payments made by the Fund in excess of the total amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), provided that proper notification was made to Cristal Ltd within two years of the date of the incident. It was also noted that, in his statement at the Executive Committee's 53rd session and in his discussions with the Director, the President of Cristal Ltd had indicated that Cristal Ltd was prepared to accept a generally worded notification from the 1971 Fund on behalf of the claimants.

3.2.12 The Executive Committee noted that Cristal Ltd had informed the 1971 Fund on 12 June 1997 that the Board of Cristal Ltd had decided that it required further legal advice as to whether the 1971 Fund could give notice on behalf of the claimants, since the 1971 Fund was not entitled to make a claim under the CRISTAL Contract. It was noted that Cristal Ltd had stated that it might require notice from the claimants themselves or their appointed representatives, and that the 1971 Fund would not in fact be entitled to present subrogated claims to Cristal Ltd in respect of claims which it had paid. The Committee noted that notification had been made directly to Cristal Ltd by the representatives of a number of fishermen. The Executive Committee also noted the Director's view that this revised position taken by Cristal Ltd created a quite different scenario from that on which he had based his analysis in document 71FUND/EXC.54/3.

3.2.13 The Executive Committee noted that it could not be ruled out that new claims might be submitted to the 1971 Fund after the expiry of the two year time bar period laid down in the CRISTAL Contract. It was also noted that there was no guarantee that all claimants who had presented claims to the 1971 Fund within that period would in fact notify Cristal Ltd of their claims. It was further noted that no payments would be made by Cristal Ltd until final settlements had been reached or final judgements had been rendered in respect of all claims. The Committee recognised that this meant that, should some claims be subject to court proceedings, it might take many years before Cristal Ltd made any payments. It was noted that, under the Rules of the CRISTAL Contract, the payment of interest was at the discretion of Cristal Ltd. It was also noted that Cristal Ltd could reject a claim which had been properly notified on the ground that it was not admissible for compensation under the CRISTAL Contract.

3.2.14 The United Kingdom delegation stated that it would have preferred a solution along the lines set out in paragraph 3.2.11 above reached between the 1971 Fund and Cristal Ltd, which would have been to the benefit of all parties involved, in particular to claimants. The delegation stated that the United Kingdom Government could in the very near future present to the 1971 Fund and the Skuld Club the Government's claim, which would amount to approximately £10-11 million and would cover the costs of the Department of Transport, the Welsh Office, the Ministry of Agriculture, Fisheries and Food, and the Marine Pollution Control Unit (MPCU). The delegation reiterated its previous statement that the Government would, whilst not waiving its claim against the 1971 Fund, the shipowner and the Skuld Club, stand last in the queue. The delegation also stated that Cristal Ltd could be notified simultaneously of the same claim. The delegation asked whether Cristal Ltd might be prepared to acknowledge that this notification was sufficient to prevent the claim from becoming time-barred under the CRISTAL contract

and whether Cristal Ltd would be prepared to confirm that it would not invoke against the United Kingdom Government's claim the fact that, by standing last in the queue as regards the shipowner, the Skuld Club and the 1971 Fund, the Government would not be able to receive from the Fund/Club the amount to which it would have been entitled, had they competed in a normal way with other claimants.

3.2.15 The observer delegation of Cristal Ltd confirmed that Cristal Ltd was prepared to acknowledge a notification made by the United Kingdom Government of its claim before the expiry of the two-year period as valid for the purpose of preventing its claim from becoming time-barred under the CRISTAL Contract up to the amount so notified. The delegation stated that Cristal Ltd would not invoke against the Government's claim the fact that the Government had "stood last in the queue" as set out in paragraph 3.2.14. The delegation also stated that Cristal Ltd would, if so requested, confirm its position on the latter point in writing to the United Kingdom Government, the 1971 Fund and the Skuld Club. The Cristal Ltd delegation added that the Board of Cristal Ltd endeavoured to apply the 1971 Fund's criteria for the admissibility of claims.

3.2.16 In the light of the statements of the United Kingdom delegation and the Cristal Ltd observer delegation, the Executive Committee considered whether the amount available under the CRISTAL Contract in respect of the United Kingdom Government's claim would constitute sufficient security against overpayment by the 1971 Fund and, if so, whether the Committee would be prepared to authorise the Director to increase the 1971 Fund's payments to 100% of the damage actually suffered by the claimant as assessed by the experts engaged by the 1971 Fund and the Skuld Club, subject to the Director being satisfied that the United Kingdom Government had submitted its claim to the Fund and had notified Cristal Ltd, and that Cristal Ltd had confirmed in writing its position on the points set out in paragraph 3.2.15 above.

3.2.17 In reply to a question, the Director stated that in his view the proposed solution would give the 1971 Fund a reasonable safeguard against overpayment.

3.2.18 The Executive Committee took the view, however, that there remained a considerable degree of uncertainty as to the total amount of the claims (as referred to in paragraph 3.2.7), particularly since more than 18 months remained in which claims could be submitted against the 1971 Fund. For this reason, the Committee decided to maintain the level of 75% for the 1971 Fund's payments.

3.2.19 The Executive Committee instructed the Director to endeavour to get as much information as possible on the amount of outstanding and potential claims so as to enable the Committee to reconsider the level of payment at its 55th session. He was also instructed to pursue discussions with Cristal Ltd for the purpose of arriving at a practical solution to the problem of notification of claims under the CRISTAL Contract.

3.3 *Jeong Jin N°101* incident

3.3.1 The Executive Committee took note of the information contained in document 71FUND/EXC.54/4 in respect of the *Jeong Jin N°101* incident. It was noted that claims totalling Won 493 million (£341 000) had recently been presented by the Marine Police and six clean-up contractors and that further claims were expected.

3.3.2 It was recalled that, at the Executive Committee's 53rd session, some delegations had expressed concern as to whether the 1969 Civil Liability Convention and the 1971 Fund Convention applied to this incident. The Committee also recalled that attention had been drawn to the fact that the Conventions applied only to oil spills from ships actually carrying oil in bulk as cargo, that the definition of oil referred to "oil carried on board a ship", and that, given the relatively large quantity that had been spilled, a number of delegations had considered that the circumstances of the incident should be thoroughly investigated. It was further recalled that, since only limited information was available at the time of the 53rd session as to the circumstances surrounding the incident, the Committee had deferred any decision in respect of the settlement and payment of claims until its next session (document 71FUND/EXC.53/12, paragraph 3.10.4).

3.3.3 The Executive Committee noted the information provided by the 1971 Fund's Korean lawyer, who had investigated the sequence of events leading to the spill. It was noted that it appeared from this

investigation that the oil had entered into hold n°2 and then overflowed from the hatch of that hold. The Committee shared the Director's view that, since the oil had entered the hold, it should be considered as fulfilling the criterion of being carried on board as cargo.

3.3.4 In the light of the position taken by the 1971 Fund in previous cases, the Executive Committee shared the Director's view that the *Jeong Jin N°101* incident fell within the scope of application of the 1969 Civil Liability Convention and the 1971 Fund Convention.

3.3.5 The Executive Committee authorised the Director to settle and pay all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee.

3.3.6 Some delegations reiterated their concern about the large quantity of oil which had been spilled and questioned whether the oil terminal was at least partly liable for the incident. The Director was therefore instructed to investigate whether there were grounds for the 1971 Fund to take recourse action against the oil terminal.

3.4 *Nakhodka* incident

3.4.1 The Executive Committee took note of the information contained in documents 71FUND/EXC.54/5 and 71FUND/EXC.54/5/Add.1 on the developments which had taken place in respect of the *Nakhodka* incident since the Committee's 53rd session.

Level of payments

3.4.2 The Executive Committee noted that only a limited number of claims for compensation had been received. It was recognised, however, that the claims relating to clean-up operations and preventive measures would be significant, as would the claims for the cost of the disposal of collected oily waste. The Committee noted that the shipowner was expected to claim for the cost of contracting a salvor to attempt to tow the bow section before it grounded, as well as for costs relating to the removal of the oil from the grounded bow section, and for costs prior to and during the bow lifting operations. It was noted that claims might be submitted for the costs incurred by the Japanese authorities in the construction of the causeway leading to the bow section, and for additional costs incurred by the Maritime Safety Agency (MSA) for aerial surveillance and offshore clean-up operations, and incurred by the Self Defence Force for aerial surveillance, offshore clean-up operations and assistance in the removal of oil from the shoreline. It was further noted that claims would be presented for loss of income in the fishing, aquaculture and tourism industries.

3.4.3 The Executive Committee recalled that, at its 52nd session, it had authorised the Director to make final settlements on behalf of the 1971 Fund of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee. It was also recalled that the Committee had decided to authorise the Director to make payments on behalf of the 1971 Fund in respect of claims arising from the *Nakhodka* incident. It was further recalled that, in view of the uncertainty as to the level of the total amount of the claims, the Committee had decided that the payments to be made by the 1971 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/UK Club at the time when the payment was made (document 71FUND/EXC.52/11, paragraph 3.7.14). It was also recalled that the Executive Committee had decided at its 53rd session to maintain the percentage fixed by the Committee at its 52nd session (document 71FUND/EXC.53/12, paragraph 8.3.6). It was noted that at its 2nd extraordinary session, held in April 1997, the Assembly of the 1992 Fund had decided to authorise the Director to make payments on behalf of the 1992 Fund in respect of claims arising from the *Nakhodka* incident. However, in view of the uncertainty as to the level of the total amount of the claims, the 1992 Fund Assembly had decided that the payments to be made by the 1992 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/his insurer at the time when the payment was made (document 92FUND/A/ES.2/6, paragraph 3.1.16).

3.4.4 In the light of the continuing uncertainty as to the level of the total amount of the claims arising from the *Nakhodka* incident, the Executive Committee decided to maintain the percentage fixed by the Committee at its 52nd session. The Director was instructed to obtain as much additional information as possible on the estimated total amount of the claims, so that the percentage could be reviewed at the Committee's next session.

Purchase of Japanese Yen

3.4.5 The Executive Committee recalled that, at its 52nd session, it had considered whether, in view of the estimated level of claims arising out of the *Nakhodka* incident, the 1971 Fund should at that stage purchase Japanese Yen to be used for the payment of these claims. It had been recalled that Financial Regulation 10.4 allowed the Director to hold assets in the currencies required to meet claims arising out of a specific incident which had been settled or were likely to be settled in the near future. It had also been noted that, under Internal Regulation 3.4, contributors in Japan could be required to pay their contributions to the 1971 Fund in Japanese Yen.

3.4.6 It was recalled that, noting that the Pound was at that time very strong in the currency market, whereas the Yen was comparatively weak, the Executive Committee had agreed with the Director that it was appropriate for the 1971 Fund to purchase Yen in the following few weeks, in order to protect the 1971 Fund against a strengthening of the Yen vis-à-vis the Pound. It had been stressed, however, that since the 1971 Fund was neither a financial institution nor an investment bank, Yen should be purchased only to provide funds for the payment of claims in the *Nakhodka* case, and not for general investment purposes. It had been recommended that the Director should seek appropriate expert advice on the matter.

3.4.7 The Director informed the Executive Committee that, after having consulted the 1971 Fund's Investment Advisory Body and the Organisation's bankers, the 1971 Fund made three purchases of Yen during the period 5 March - 1 May 1997, for a total of ¥3 597.5 million and at a cost of £18 million. The Committee noted that to purchase that amount of Yen at the rate on 2 June 1997 would have cost £18 870 350.

Interest on loans made by the Government to JMDPC

3.4.8 The Executive Committee noted that the Japanese Government had made funds available to the Japan Marine Disaster Prevention Centre (JMDPC) in the form of a loan, thereby enabling JMDPC to make payments to those who had participated in the clean-up operations, pending payments from the shipowner/UK Club and the 1971/1992 Funds. It was also noted that, in a letter to the IOPC Funds, the Maritime Safety Agency (MSA) had informed the Funds that JMDPC would have to pay interest on this loan to the Government and that JMDPC intended to include such interest in its claim against the Funds. The Committee noted that MSA had expressed the view that the amount thus paid in interest by JMDPC would be admissible for compensation and had requested that the IOPC Funds should inform MSA of its position on this issue.

3.4.9 The Committee recalled that the question of whether interest on agreed claims should be paid by the 1971 Fund had been discussed at the 5th Intersessional Working Group in 1980, and that most participating delegations had expressed the opinion that interest was in principle an acceptable item of a claim. It was recalled that, whilst there was a strong wish for a harmonised approach to the issue, the Working Group had taken the view that, if interest was admissible under national law, the 1971 Fund would be obliged to follow the applicable national law, although the rate and period of interest could be agreed between claimants and the Fund during negotiations. It was further recalled that, at its 4th session, the Assembly had generally endorsed the results of the Working Group's discussions. It was noted that this policy on interest had been reaffirmed by the Assembly at its 17th session (document FUND/A.17/35, paragraph 2.6.8), when the latter endorsed the report of the 7th Intersessional Working Group (document FUND/A.17/23, paragraph 7.24) which had, in the document which formed the basis of its deliberations, referred to the position taken at the 5th Intersessional Working Group (document FUND/WGR.7/3, paragraph 4.5).

3.4.10 It was noted that the 1971 Fund's Japanese lawyer had informed the Director that, under Japanese law, a claimant was in principle entitled to interest on the amount of compensation from the date when he suffered the loss or damage. It was also noted that JMDPC would have to pay interest to the Government on the loan at 0.625% per annum.

3.4.11 The Japanese delegation informed the Committee that JMDPC was an independent legal person who carried out operations as instructed by the Government and to this end requested shipowners to undertake clean-up operations. The delegation stated that JMDPC contracted fishermen and others to carry out such operations, and as a result thereof JMDPC was under a contractual obligation to pay these parties for their services. The delegation also mentioned that, in the *Nakhodka* case, JMDPC had obtained the funds necessary to pay for these operations by means of loans from the Government for which the Government charged a nominal interest.

3.4.12 In the light of the information given by the Japanese delegation, the Executive Committee took the view that JMDPC would be entitled to interest at 0.625% per annum on the amounts of the respective loans from the date when each amount was paid to the persons who had participated in the clean-up operations until the date when the corresponding amount was paid by the 1971 Fund to JMDPC.

3.5 *Osung N°3* incident

3.5.1 The Executive Committee took note of the information contained in document 71FUND/EXC.54/6 on the developments which had taken place in respect of the *Osung N°3* incident since the Committee's 53rd session.

Applicability of the Conventions

3.5.2 It was noted that, at the time of the *Osung N°3* incident, the Republic of Korea was not Party to the 1992 Civil Liability Convention and the 1992 Fund Convention, and that the amount available for compensation for damage caused in Korea was therefore to be determined pursuant to the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR (approximately £51 million).

3.5.3 The Committee noted, however, that Japan was Party to the 1992 Conventions at the time of the incident, and that the maximum amount available for damage in Japan would be determined in accordance with those Conventions, ie 135 million SDR (£114 million), including any payments made to Korean and Japanese claimants under the 1969 Civil Liability Convention and the 1971 Fund Convention. It was noted that, if the total amount of the claims arising out of the incident for damage in the Republic of Korea and Japan were to exceed 60 million SDR and payment under the 1971 Fund Convention had to be pro rated, Japanese claimants would be entitled to additional compensation under the 1992 Fund Convention. The Committee noted that, since the *Osung N°3* was registered in the Republic of Korea, the limit of the shipowner's liability would be that laid down in the 1969 Civil Liability Convention.

Claims situation

3.5.4 The Committee noted that, as regards the Republic of Korea, claims totalling Won 728 million (£503 000) had been presented by a number of contractors and public authorities for participation in the clean-up operations and the inspection of the sunken vessel. It was noted that claims might be submitted in respect of the fishery and mariculture sectors in the Republic of Korea.

3.5.5 It was noted that claims would be submitted for clean-up operations carried out in Japan, and that claims were also expected from a number of Japanese fishery co-operative associations for loss of income caused by the oil spill.

Level of the 1971 Fund's payments

3.5.6 The Executive Committee noted that there was only limited information available as to the cost of the clean-up operations in the Republic of Korea, and that claims might be submitted by the Korean fishery and mariculture sectors. It was noted that it was not possible to make any estimate of the cost of

operations which might be undertaken to prevent further release of oil or for wreck removal. The Committee also noted that there was no information as to the cost of clean-up operations in Japan, nor as to potential fishery claims in Japan.

3.5.7 In view of the great uncertainty resulting from the fact that a significant quantity of oil remained in the wreck, representing a serious pollution risk, the Executive Committee shared the Director's view that it was not possible to make any reasonable estimate as to the total amount of the claims arising out of the *Osung N°3* incident. The Committee considered that it was necessary to strike a balance between the need to exercise caution in payment of claims and the importance of the 1971 Fund being able to make payments at an early stage, noting that the limitation amount applicable to the *Osung N°3* was very low. The Committee therefore decided that, for the time being, the Director was authorised to make payments of 25% of the damage or loss actually suffered by each claimant, as assessed by the experts of the 1971 Fund at the time the payment was made.

3.5.8 The Director was instructed to obtain as much additional information as possible on the estimated total amount of the claims, so that the percentage could be reviewed at the Committee's next session.

Removal of the wreck: requests for assistance

3.5.9 The Director informed the Executive Committee that the 1971 Fund had received requests from the Korean authorities, from the shipowner and from the owner of the cargo that the 1971 Fund should take measures to remove the wreck or the oil or guarantee the payment of such measures. The Committee was also informed that the 1971 Fund had received enquiries from salvage companies about the 1971 Fund's position as regards the payment of the cost of oil removal operations. It was noted that, in reply to these requests, the Director had explained the role of the 1971 Fund and the criteria for the admissibility of claims for compensation, ie that the 1971 Fund could assist the Korean authorities only with expert advice and could not become involved in the operations to inspect the ship, make repairs to prevent further escape of oil or remove any oil from the ship, that the 1971 Fund could not guarantee to pay the costs of any such operations, but that these costs would have to be presented as a claim for compensation which would be subject to an assessment as to admissibility on the basis of the criteria laid down by the Assembly and Executive Committee.

3.5.10 The Executive Committee noted that in a communication to the Director, the Korean Ministry of Maritime Affairs and Fisheries had referred to Articles 4.7 and 4.8 of the 1971 Fund Convention which dealt with credit facilities. It was recalled that the criteria for the extension of credit facilities were laid down in Internal Regulations 10.1 and 10.2.

3.5.11 The Executive Committee noted that, in his reply to the Ministry of Maritime Affairs and Fisheries, the Director had stated that the dispatch to the Republic of Korea of an expert engaged by the 1971 Fund had *inter alia* the purpose of assisting the Korean authorities. It was noted that the Director had also stated that, if the Korean authorities were to request suggestions of appropriate contractors to carry out any operations envisaged by the Korean authorities, the 1971 Fund would be prepared to respond to this request. The Director informed the Committee that he had stated that, as regards the reference to Article 4.8 of the 1971 Fund Convention, it was clear from the legislative history of that Article that the provision had been inserted in the Convention for the purpose of assisting developing countries. The Committee noted that the Director had mentioned that this was also clearly understood by the Assembly of the 1971 Fund, which had adopted the Internal Regulations in question. It was noted that the Director had stated that, for this reason, he did not feel authorised to grant credit facilities to the Government of the Republic of Korea or to any other Korean authority in respect of the *Osung N°3* case.

3.5.12 The Executive Committee endorsed the position taken by the Director with regard to the granting of credit facilities to the Korean Government or any other Korean authority in respect of this case.

3.6 *Plate Princess* incident

3.6.1 The Executive Committee took note of the information contained in document 71FUND/EXC.54/7 on the *Plate Princess* incident, which had occurred in Venezuela on 27 May 1997.

3.6.2 The Committee considered that, if it were confirmed that the spilt oil was the same Lagotreco crude as was being loaded on to the *Plate Princess*, then it would appear that the oil which escaped via a defective coupling in the ballast line had first been loaded into the cargo tanks. The Committee shared the Director's view that the incident would therefore fall within the scope of the Conventions, as the oil was carried on board as cargo.

3.6.3 It was noted that it appeared unlikely that the established claims would exceed the limitation amount applicable to the shipowner. The Executive Committee authorised the Director to make final settlements as to the quantum of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee, and to make payments.

3.7 *Aegean Sea* incident

3.7.1 The Spanish delegation introduced document 71FUND/EXC.54/8 on certain aspects of the *Aegean Sea* incident.

3.7.2 The Executive Committee noted that the Spanish Government had decided on 30 May 1997 to grant additional loans of up to Pts 12 500 million (£52 million) with low interest to the Spanish claimants in the *Aegean Sea* incident.

3.7.3 The Spanish delegation stated that it was unfortunate that the Spanish Government had had to adopt this mechanism for providing payments since compensation by the P & I Club involved and the 1971 Fund had been delayed for almost five years. The delegation referred to the criticism it had made in statements at the Executive Committee's 49th and 50th sessions, in which the delegation had expressed the disappointment of the Spanish administration with the insufficient payments made to the Spanish claimants. The delegation stated that from a Spanish perspective, the assessments made by the 1971 Fund's experts in the *Aegean Sea* case were excessively low and the request for evidence to substantiate the claimants' losses had been out of proportion. The delegation stated that the Criminal Court had to some extent corrected the Fund's assessment. It was stated that the Spanish administration was of the opinion that the delay in payment had not been reasonable and that the course of action taken by the 1971 Fund's experts had been completely wrong. This delegation stated that the Spanish administration considered that the Fund's experts had dealt with the *Aegean Sea* incident in a biased manner. The delegation also made the point that the Spanish administration considered that the decision to grant loans had to be taken because of a breach by the 1971 Fund of the principle that "compensation should be prompt and fair to be meaningful".

3.7.4 The Spanish delegation stressed that there was a need for further negotiations between the 1971 Fund and the claimants to try to unblock the situation, with the aim of arriving at out-of-court settlements for the main group of claimants. The delegation stated that in the Spanish view the intervention of the 1971 Fund in the Spanish Courts had brought the negotiations to a standstill and had prevented further payments. The Spanish delegation invited the Executive Committee to instruct the Director to continue negotiations with the claimants in a very active manner and to make better assessments and further payments before the final court decision was rendered.

3.7.5 In response to the criticism made by the Spanish delegation, the Director referred to his statements at the Executive Committee's 49th and 50th sessions (documents FUND/EXC.49/12, paragraphs 3.2.15 - 3.2.19 and 71FUND/EXC.50/17, paragraphs 3.3.9 - 3.3.12). With regard to the judgement of the Criminal Court, the Director stated that in his view the Court had generally agreed with the 1971 Fund as regards the requirement that the claimants should produce evidence to substantiate their claims. The Director recognised that the assessment of fishery claims was not an exact science and that there would very often be different opinions as to the correct assessment of the damage. For this reason, it was in his view quite normal that claimants did not agree with the assessment made by the experts engaged by the 1971 Fund. He took exception, however, to the allegation that the experts had acted in a biased manner and emphasised that there was no indication that the experts had acted in such a way. He made the point that the experts had acted within the framework of the policy of the 1971 Fund as laid down by the Assembly and the Executive Committee, and in particular that a claimant had to provide evidence to substantiate his loss. As regards the request by the Spanish delegation that the Director should be instructed to pursue

negotiations with the claimants, the Director drew attention to the fact that, since the judgement had been rendered by the Criminal Court, very little further evidence had been submitted by the claimants. He considered that unless the evidence required by the Court was presented, it would not be possible to make any progress towards out-of-court settlements.

3.7.6 A number of delegations expressed their regret at the statement made by the Spanish delegation. They referred to the interventions made at the Committee's 49th session in support of the way in which the Director and the Secretariat had handled the *Aegean Sea* case and to the Committee's conclusions at that session (document FUND/EXC.49/12, paragraphs 3.2.20-3.2.25). These delegations reiterated their full confidence in the experts engaged by the 1971 Fund.

3.7.7 A number of delegations stated that they agreed that the 1971 Fund should show flexibility in its assessment of claims. They emphasised, however, that claims could be accepted by the Fund only to the extent that the claimants provided evidence of the quantum of the economic losses actually suffered. Many delegations referred to the fact that the Criminal Court in La Coruña had in general agreed with the position taken by the 1971 Fund that each claimant had to substantiate his loss by supporting documents or other evidence.

3.7.8 The Executive Committee concluded that there was no indication that the 1971 Fund's experts had dealt with the incident in a biased manner.

3.7.9 The Executive Committee decided that the instructions previously given to the Director should be maintained, ie that the Director should investigate the possibility of reaching out-of-court settlements with claimants covered by the judgement of the Criminal Court on the basis of the requirements of evidence laid down by the Court in the judgement.

4 Any other business

4.1 Denunciation of the 1969 Civil Liability Convention and 1971 Fund Convention by Parties to the 1992 Fund Protocol

4.1.1 The Executive Committee noted that all 24 Contracting States to the 1992 Fund Protocol as at 15 May 1997 had deposited instruments of denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention by that date. It was noted that these denunciations would take effect twelve months after that date, ie on 15 May 1998.

4.1.2 The Director informed the Executive Committee that he was continuing his efforts to encourage States - both those which were Members of the 1971 Fund and those which were not - to accede to the 1992 Fund Protocol and thereby become Members of the 1992 Fund. The Committee noted that States which were already Members of the 1971 Fund were being advised to deposit instruments of denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention on the same date as they deposited instruments of accession to the 1992 Protocols. It was also noted that such States would thus leave the 1971 Fund and become Members of the 1992 Fund on the same day one year after such instruments were deposited with the Secretary-General of the International Maritime Organization.

4.1.3 The Executive Committee noted that from 16 May 1998 (the date when 24 Member States would be leaving the 1971 Fund), the total quantity of contributing oil in the 1971 Fund Member States would be reduced from 1 235 million tonnes received to 322 million tonnes. It was noted that this could result in a significantly increased cost for the oil industry in those States which remained Members of the 1971 Fund (a four-fold increase in their respective share of the total contributions levied), since the financial burden would be spread among fewer contributors.

4.2 Status of Hong Kong

4.2.1 The observer delegation of the People's Republic of China made the following statement:

> In accordance with the Joint Declaration of the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong signed on 19 December 1984 (hereinafter referred to as the "Joint Declaration"), the People's Republic of China will resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997. Hong Kong will, with effect from that date, become a Special Administrative Region of the People's Republic of China and will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government of the People's Republic of China.
>
> It is provided both in Section XI of Annex I to the Joint Declaration, "Elaboration by the Government of the People's Republic of China of Basic Policies Regarding Hong Kong", and Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, which was adopted on 4 April 1990 by the National People's Congress of the People's Republic of China, that international agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region.
>
> The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage adopted on 18 December 1971 (FUND 1971) and the Protocol to this Convention adopted on 19 November 1976 (FUND 1976), which applies to Hong Kong at present, will continue to apply to Hong Kong Special Administrative Region with effect from 1 July 1997.
>
> Within the above ambit, the responsibility for the international rights and obligations of a party to the Convention and the Protocol will be assumed by the Government of the People's Republic of China.

4.2.2 The Executive Committee took note of the declaration of the Government of the People's Republic of China as set out in paragraph 4.2.1 above.

4.2.3 The United Kingdom delegation drew the Committee's attention to the fact that the Foreign and Commonwealth Office of the United Kingdom had written to the Secretary-General of the International Maritime Organization stating that:

> in accordance with the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong signed on 19 December 1984, the Government of the United Kingdom will restore Hong Kong to the People's Republic of China with effect from 1 July 1997. The Government of the United Kingdom will continue to have international responsibility for Hong Kong until that date. Therefore, from that date the Government of the United Kingdom will cease to be responsible for the international rights and obligations arising from the application of the 1971 Fund Convention and the 1976 Fund Protocol to Hong Kong.

4.2.4 The Executive Committee noted that the Director would refer the question of the position of Hong Kong to the 1971 Fund Assembly for consideration at its 20th session.

5 Adoption of the Record of Decisions

The Executive Committee adopted the parts of the Record of Decisions contained in documents 71FUND/EXC.54/WP.1 and 71FUND/EXC.54/WP.1/Add.1 (paragraphs 1 - 3.4.7 and 3.7.1 - 3.7.9), subject to certain amendments. The Committee authorised the Director to prepare the remaining part of the Record of Decisions (paragraphs 3.4.8 - 3.6.3, 4 and 5), in consultation with the Chairman.