



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
59th session
Agenda item 7

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ASSEMBLY
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**RECORD OF DECISIONS OF THE FIFTY-NINTH SESSION
OF THE EXECUTIVE COMMITTEE**

**ACTING ON BEHALF OF THE ASSEMBLY
IN RESPECT OF THE ASSEMBLY'S TWENTY-FIRST SESSION**

(held from 28 to 30 October 1998)

Opening of the session

0.1 It was recalled that at its 4th extraordinary session the Assembly had adopted 1971 Fund Resolution N°13 whereby, with effect from the first session of the Assembly at which the latter was unable to achieve a quorum, various functions of the Assembly would be delegated to the Executive Committee, thereby enabling the Committee to take decisions in place of the Assembly. It was noted that this Resolution was reproduced in the Annex to the draft annotated agenda for the 21st session of the Assembly (document 71FUND/A.21/1). It was also noted that in accordance with that Resolution, if no quorum was achieved, the agenda items contained therein should be dealt with by the Executive Committee.

0.2 At 2.30 pm on Wednesday 28 October 1998 Mr Jerzy Vonau (Poland), who at the 4th extraordinary session had been elected Chairman of the Assembly, attempted to open the 21st session of the Assembly. Only the following sixteen 1971 Fund Member States were present at that time:

Algeria
Belgium
Cameroon
Canada
China
Côte d'Ivoire

Estonia
Fiji
Indonesia
Italy
New Zealand

Nigeria
Poland
Russian Federation
United Arab Emirates
Venezuela

0.3 The Chairman then adjourned the session for 30 minutes and when the meeting was resumed only eighteen 1971 Fund Member States were present, the additional two States being Colombia and Kenya.

0.4 In view of the fact that no quorum was achieved, the Chairman concluded the Assembly meeting.

0.5 In accordance with Resolution N°13, the items of the Assembly's agenda were therefore dealt with by the Executive Committee.

0.6 The session of the Executive Committee acting on behalf of the Assembly was opened by the Committee's Chairman, Mr Alfred Popp QC (Canada).

0.7 The Italian delegation made the following statement:

The Italian delegation regrets that the 'quorum' for the meeting of the Assembly set in Article 20 of the 1971 Fund Convention was not reached. Nevertheless, the Italian delegation would have expected a greater effort by the Secretariat of the Organisation to urge Member States to attend the meeting as it was well-known the difficulty of the situation, which will grow even worse. Indeed the policy of the Organisation towards membership has brought about growth of the membership but many of the Member countries do not comply with the provision of the Convention for many years, so as to induce the idea that they are self-suspended from the Convention. Now the 'quorum' requested today is not the 'quorum' of countries which comply with their obligations but the 'quorum' of contracting Member States, including those who for two or more years did not submit any declaration on oil receipts or, however, did not comply with their obligation under Article 39 of the 1971 Fund Convention. It seems evident that this situation is not only a matter for this Assembly but underlines a policy which has gone on for years.

The question has been raised by the Director in the Assembly of 1992 Fund, but was never tackled under the 1971 Fund even though it could have been appropriate to use the provision of Article 45.2 of the 1971 Fund Convention in order to avoid the present situation which is highly regrettable.

Of course a Resolution was adopted in a previous 1971 Fund Assembly, with the help of former Member States of the 1971 Fund Convention who have since joined the 1992 Fund Convention, in order to cope with a situation when the 1971 Fund Assembly could find it difficult to reach a 'quorum', but the Resolution was designed to offer an extraordinary means to allow the working of the 1971 Organisation, not to give a means for a 'transitional administration'. On the contrary this is the present situation which we are going to face in the future too. The ill-functioning of the Organisation is self-evident.

0.8 The Director stated that, pursuant to the Assembly's instructions, the Secretariat had in May 1998 sent letters to the Ambassadors and High Commissioners in London of all the remaining 1971 Fund Member States (in some cases to their Ambassadors in Paris), informing the Governments concerned of the developments. He mentioned that he had included in the letter dated 26 July 1998 inviting the Governments of Member States to attend the 1971 Fund Assembly's 21st session a paragraph emphasising the importance of the States concerned attending the session and explaining the consequences if no quorum was achieved. He also mentioned that a second letter had been sent to the Governments concerned on 6 October 1998 with the same contents.

0.9 The Chairman stated that in his view the Secretariat had taken all possible steps to make 1971 Fund Member States attend the Assembly session. A number of delegations and observer delegations agreed with the Chairman's statement.

Procedural matters

1 Adoption of the Agenda

The Executive Committee adopted the agenda as contained in document 71FUND/A.21/1. It was noted that, as indicated in the agenda, two items of the agenda would not be addressed by the Executive Committee, viz item 2 (Election of the Chairman and two Vice-Chairmen) and item 19 (Election of members of the Executive Committee).

2 Election of the Chairman and two Vice-Chairmen

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

3 Examination of credentials

3.1 The following Member States were present:

Members of the Executive Committee:

Algeria	Fiji	Poland
Belgium	Italy	Russian Federation
Canada	New Zealand	United Arab Emirates
Colombia	Nigeria	Venezuela
Côte d'Ivoire		

Other Member States:

Cameroon	Estonia	Kenya
China (Hong Kong Special Administrative Region)	Indonesia	Slovenia

The Executive Committee took note of the information given by the Director that all Member States participating had submitted credentials which were in order.

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

Former Member States:

Australia	Ireland	Norway
Cyprus	Japan	Republic of Korea
Denmark	Liberia	Spain
Finland	Marshall Islands	Sweden
France	Mexico	Tunisia
Germany	Netherlands	United Kingdom
Greece		

Other States:

Brazil	Latvia	Saudi Arabia
Chile	Panama	Singapore
Ecuador	Peru	United States
Egypt	Philippines	Uruguay

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

Intergovernmental organisations:

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

International non-governmental organisations:

Comité Maritime International (CMI)

International Tanker Owners Pollution Federation Limited (ITOPF)

International Union for the Conservation of Nature and Natural Resources (IUCN)

Oil Companies International Marine Forum (OCIMF)

*General review***4 Report of the Director**

4.1 The Director introduced his report on the activities of the 1971 Fund since the 20th session of the Assembly, contained in document 71FUND/A.21/2. In his presentation the Director made reference to the fact that the 1971 Fund Convention had entered into force for Guyana on 10 March 1998, bringing the number of 1971 Fund Member States to 76. The Executive Committee noted that since then instruments of denunciation in respect of 24 States had taken effect and a further eight States had also denounced the 1971 Fund Convention, which would reduce the number of 1971 Fund Member States to 44 by October 1999.

4.2 The Director informed the Executive Committee that, in view of the significant problems which continuing membership of the 1971 Fund would cause, he had written in May 1998 to the Ambassadors and High Commissioners in London of all 1971 Fund Member States, drawing governments' attention to the great urgency of acceding to the 1992 Protocols and denouncing the 1969 Civil Liability Convention and 1971 Fund Convention. The Director informed the Executive Committee that, in addition to the invitation letters for the 21st session of the Assembly which were issued to Ambassadors and High Commissioners, he had sent letters on 6 October 1998 urging them to ensure that their respective States were represented at the meetings, and drawing their attention to the consequences if a quorum could not be achieved.

4.3 The Director referred to the fact that on 16 May 1998 a 1992 Fund Secretariat had been created and since then it had administered both the 1971 Fund and the 1992 Fund. It was noted that the staff of the 1971 Fund Secretariat had transferred to the 1992 Fund Secretariat on that date. He referred to the management consultants' statement in their report that the IOPC Funds' Secretariat could be rightly proud of its reputation with both governments and organisations with which it worked in partnership. The Director looked forward to being able to implement fully the decisions taken by the Assemblies in respect of the increased resources of the Secretariat and the changes in its working methods, so that the efficiency of the Secretariat could be enhanced.

4.4 The Director informed the Executive Committee that revised versions of the Claims Manual had been published to reflect the new situation which had existed since 16 May 1998, following the end of the transitional period.

4.5 The Executive Committee 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 local claims offices operated by the Fund, as well as the lawyers and technical experts who had undertaken work for the 1971 Fund.

4.6 The Committee congratulated the Secretariat on the 1997 Annual Report which contained an instructive presentation of the activities of the 1971 and 1992 Funds.

4.7 It was noted that the submission of reports on contributing oil receipts by 1971 Member States continued to give rise to concern, since to date only 24 of the present 52 Member States had submitted their reports on contributing oil received in 1997.

Treaty questions

5 Status of the 1971 Fund Convention

5.1 The Executive Committee took note of the information contained in document 71FUND/A.21/3 concerning the status of the 1971 Fund Convention. It was noted that there were at present 52 Member States of the 1971 Fund, but that eight of these States had deposited instruments of denunciation of the 1971 Fund Convention which would take effect during the coming twelve months, reducing the number of Member States to 44 by October 1999.

5.2 The Italian delegation stated that the 1971 Fund could not function properly when half of the Member States did not submit their oil reports. That delegation also stressed that the 44 remaining Member States should be contacted and encouraged to comply with the 1971 Fund Convention.

6 Winding up of the 1971 Fund

6.1 The Executive Committee noted that it might take many years before the number of Member States fell below three, resulting in the 1971 Fund Convention ceasing to be in force and the winding up of the 1971 Fund. It was recalled that, under Article 41.3 of the 1971 Fund Convention, a denunciation took effect one year after it was deposited with the Secretary-General of the International Maritime Organization (IMO) and that this period of one year could be reduced by the implementation of a procedure laid down in Article 42 of the Convention.

6.2 The Italian delegation referred to the statement it had made under agenda item 5 (paragraph 5.2).

6.3 A number of delegations reiterated the many difficulties facing the 1971 Fund with regard to its ability to function in the face of its declining Membership, acknowledging that the problems could only get worse as more States denounced the 1971 Fund Convention. In particular, several delegations feared the situation in which an incident would occur resulting in an obligation for the 1971 Fund to pay compensation to victims when there were no contributors in the remaining Member States. The question of possible State responsibility was raised in this regard.

6.4 It was noted that the Secretariat had participated in an increased number of regional workshops and seminars in order to take advantage of the contacts that could be made on such occasions to inform the representatives of 1971 Fund Member States of the seriousness of the situation. The Director also informed the Executive Committee that he would be using his contacts in other fora to assist the 1971 Fund in this matter.

6.5 The Executive Committee welcomed a number of suggestions made by delegations of ways in which Governments could assist in making States aware of the consequences of remaining in the 1971 Fund, such as through diplomatic channels with neighbouring States and at regional workshops and seminars. The Director was instructed to continue and if possible expand his efforts to ensure that the implications of the situation were fully understood by all 1971 Fund Member States.

6.6 Some delegations were of the view that the Assembly should request that IMO convene a Diplomatic Conference, in accordance with Article 45 of the 1971 Fund Convention, for the purpose of amending the provisions in the 1971 Fund Convention on winding up the Organisation (Article 43) and that such an amendment could immediately be applied provisionally, pursuant to Article 25 of the 1969 Vienna Convention on the Law of Treaties. Those delegations stated that this was a well-established procedure. The Executive Committee instructed the Director to study this option further, in consultation with IMO, the latter being the depositary of the 1971 Fund Convention as well as the Organisation which would convene a Diplomatic Conference.

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

7.1 The Executive Committee considered the information contained in document 71FUND/A.21/5 on the replacement of instruments enumerated in Article 5.3(a) of the 1971 Fund Convention.

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

7.3 The Executive Committee recalled that the Assembly had at previous sessions decided that the following amendments were of an important character for the purpose of the prevention of oil pollution: (a) May 1994 Amendments to SOLAS 1974 (those covered by Conference Resolution 1 and relating to Chapter IX, as well as those covered by Resolution MSC.31(63) and relating to amendments other than Regulations V/8-1 and V/15-1), (b) the June 1996 Amendments to SOLAS 74 adopted by the Maritime Safety Committee of IMO (Resolution MSC.47(66)) and (c) the December 1996 Amendments to SOLAS 1974 adopted by the Maritime Safety Committee of IMO (Resolution MSC.57(67)). The Committee decided that, since these Amendments had all entered into force on 1 July 1998, the reference to the instrument listed in Article 5.3(a)(ii) should be amended to include these Amendments.

7.4 The Committee considered the May 1998 Amendments to SOLAS 1974 adopted by the Maritime Safety Committee of IMO (Resolution MSC.69(69)) and decided that they were of an important character for the purpose of the prevention of oil pollution. The Committee took the view, however, that it was premature to take a decision at the present session on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention, since it was not possible to determine whether these Amendments would enter into force.

7.5 The Executive Committee also considered the September 1997 Amendments to MARPOL 73/78 adopted by the Marine Environment Protection Committee of IMO (Resolution MEPC.75(40)) and decided that they were of an important character for the purpose of the prevention of oil pollution. The Committee decided that, since these Amendments would enter into force on 1 February 1999, the reference to the instrument listed in Article 5.3(a)(i) should be amended to include these Amendments.

7.6 The Executive Committee considered the November 1995 Amendments to the 1966 Load Lines Convention adopted by the Assembly of IMO (Resolution A.784(19)) and recalled that the Assembly had decided at its 19th session that they were of an important character for the purpose of the prevention of oil pollution. The Committee took the view, however, that it was still premature to take a decision on whether to include these Amendments in the list of instruments contained in Article 5.3(a) of the 1971 Fund Convention, since it was not possible to determine whether these Amendments would enter into force.

7.7 In accordance with the above-mentioned considerations, the Executive Committee decided to amend Article 5.3(a) of the 1971 Fund Convention to read as follows, with effect from 1 May 1999:

- (i) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as amended by Resolutions MEPC.14(20), MEPC.47(31), MEPC.51(32), MEPC.52(32) and MEPC.75(40) adopted by the Marine Environment Protection Committee of the International Maritime Organization on 7 September 1984, 4 July 1991, 6 March 1992, 6 March 1992 and 25 September 1997, respectively;
- (ii) the International Convention for the Safety of Life at Sea, 1974, as modified by the Protocol of 1978 relating thereto, and as amended by Resolutions MSC.1(XLV), MSC.6(48), MSC.13(57), MSC.27(61), MSC.31(63), MSC.46(65), MSC.47(66) and MSC.57(67) adopted by the Maritime Safety Committee of the

International Maritime Organization on 20 November 1981, 17 June 1983, 11 April 1989, 11 December 1992, 23 May 1994, 16 May 1995, 4 June 1996 and 5 December 1996, respectively, and as amended by Resolution 1 adopted on 9 November 1988 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on the Global Maritime Distress and Safety System and as amended by Resolution 1 adopted on 24 May 1994 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974;

- (iii) the International Convention on Load Lines, 1966; and
- (iv) the Convention on the International Regulations for Preventing Collisions at Sea, 1972.

Financial matters

8 Report on investments

8.1 The Executive Committee took note of the Director's report on the 1971 Fund's investments during the period 1 July 1997 - 30 June 1998, contained in document 71FUND/A.21/6.

8.2 The Committee noted the number of investments made during the twelve-month period, the large number of institutions used by the 1971 Fund for investment purposes and the significant amounts invested by the Fund. It was recognised that the investment of the 1971 Fund's assets had become an important part of the Fund's operations. It was decided that the Committee should continue to follow the investment activities closely.

9 Report of the Investment Advisory Body

9.1 The Executive Committee took note of the report of the Investment Advisory Body, contained in the Annex to document 71FUND/A.21/7.

9.2 The Committee expressed its gratitude to the members of the Investment Advisory Body for their work since the 20th session of the Assembly.

9.3 It was noted that the Investment Advisory Bodies had expressed the view that the maximum amount to be held in any one financial institution should be increased, since the amounts to be invested had grown and the number of institutions meeting the criteria for investments had been declining. It was recognised that it was likely that the amounts held by the 1971 Fund would decrease significantly during 1999 and beyond and that it was difficult to predict the level of the assets which would be held by the 1971 Fund. The Executive Committee shared the Investment Advisory Bodies' view that the maximum investment which the 1992 Fund and the 1971 Fund could normally hold in any given institution should be increased from £10 million to £15 million.

9.4 The Committee shared the Director's view that since the IOPC Funds had not made investments with discount houses in recent years and the role of these institutions was declining, the reference in the Financial Regulations to making investments with discount houses should be deleted.

9.5 In accordance with the above-mentioned considerations, the Executive Committee decided to amend Financial Regulation 10.4 to read as follows:

10.4 The assets of the 1971 Fund shall be invested by the Director in accordance with Financial Regulation 10.1 and the following principles:

- (a) [Unchanged]

- (b) the assets shall be placed on term deposit with banks or building societies enjoying a high reputation and standing in the financial community; the term of these investments shall not exceed one year;
- (c) the maximum investment in any bank or building society shall not normally exceed 25% of the 1971 Fund's total assets; the investments in any such institution by the 1971 Fund and the 1992 Fund shall not together normally exceed £15 million;
- (d) *[unchanged]*

These principles shall be reviewed from time to time.

9.6 It was noted that the Assembly of the 1992 Fund had at its 3rd session decided to make the corresponding amendments to the 1992 Fund's Financial Regulations.

9.7 It was recalled that Financial Regulation 10.4(a) provided that the Funds' "assets shall be held in pounds sterling or, if the Director considers it appropriate, in the currencies required to meet claims arising out of a specific incident which have been settled or are likely to be settled in the near future". The Executive Committee noted that, in view of the launch of the Euro in January 1999, the Advisory Bodies had considered whether the Funds should consider holding some of their assets in Euros. It was noted that in their opinion the Euro would be, from a sterling perspective, just another currency in which some future claims might be made. The Committee noted that the issue of holding Euros as part of the Funds' normal assets had not been pursued by the Advisory Bodies, but that it might have to be reconsidered at a later stage, in the context of the wider issue of whether the IOPC Funds should hold currencies other than pounds sterling in anticipation of future claims. The Committee took the view that it was premature to consider the question of whether the 1971 Fund should make investments in Euros.

10 Financial Statements and Auditor's Report and Opinion

10.1 The Director introduced document 71FUND/A.21/8 containing the Financial Statements of the 1971 Fund for the financial year 1997 and the External Auditor's Report and Opinion thereon. The Director drew the Executive Committee's attention to some of the changes that had been made to the financial statements and schedules so as to facilitate the understanding of them.

10.2 A representative of the External Auditor, Mr R Maggs, introduced the Auditor's Report and Opinion. He highlighted five issues on which recommendations had been made in the Report: the need for standardised claims handling procedures (including the development of guidelines or a manual for operating local claims offices), the need for increased management by the Secretariat of local claims offices, the need for guidelines to ensure standardised filing of claim documentation, the need to document claims assessment processes and develop guidelines on the assessment documentation presented by experts and the need for improved monitoring of experts' fees. The representative stressed that the key aspect was one of transparency.

10.3 The Executive Committee noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 71FUND/A.21/8 which went into great depth and detail. In particular, the Committee welcomed the 'value-for-money' audit which had been carried out for the first time and agreed with the External Auditor that this type of audit should be continued.

10.4 A number of delegations addressed various issues dealt with in the External Auditor's Report.

10.5 The Italian delegation referred to paragraph 56 of the Auditor's Report which dealt with the reimbursement by the Italian authorities of VAT paid by the 1971 Fund in Italy. In that delegation's view paragraph 56 was in contradiction to paragraph 54 of the Auditor's Report. He made the point that the amount of the VAT payments would be covered by the global settlement in the *Haven* case.

10.6 The Director stated that, in his view, the issue of the repayment of VAT fell outside the scope of the global settlement.

10.7 The Executive Committee noted that a number of the points raised by the External Auditor had been addressed by the management consultants in their review of the Secretariat's working methods and that the Director had already implemented or commenced implementing many of the changes dealt with in the Auditor's recommendations (cf document 92FUND/A.3/27, paragraph 14.2).

10.8 The Committee invited the Director to report to the Assembly on the implementation of the External Auditor's recommendations in due course.

10.9 The Committee approved the accounts of the 1971 Fund for the financial period 1 January to 31 December 1997.

11 Appointment of the 1971 Fund's Auditors

The Executive Committee 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 1999.

12 Appointment of members of the Investment Advisory Body

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

Contribution questions

13 Report on contributions

13.1 The Executive Committee took note of the report on contributions contained in document 71FUND/A.21/11. It noted that over 93% of the 1997 annual contributions had been paid. The Committee expressed its satisfaction with the situation regarding the payment of contributions.

13.2 The Director introduced document 71FUND/A.21/11/1 in respect of two contributors in liquidation, one in Germany, the other in the Netherlands. The Executive Committee noted the agreement which had been reached with the German contributor and also noted the information regarding the status of the 1971 Fund's claim in respect of the Dutch contributor.

14 Submission of oil reports: consideration of sanction mechanisms

14.1 The Executive Committee noted that the Assembly of the 1992 Fund had at its 3rd session considered possible ways of determining the quantities of oil received in States which did not submit oil reports. It was noted that the 1992 Fund Assembly's consideration of this question had been based on a note (document 92FUND/A.3/10) which largely mirrored the document which had been submitted by the Director for the 1971 Fund's consideration (document 71FUND/A.21/12).

14.2 The Executive Committee shared the view of the 1992 Fund Assembly that the non-submission of oil reports by a number of Member States was a matter of serious concern to other Member States and in particular to the contributors in those States.

14.3 The Committee noted the 1992 Fund Assembly's deliberations, as set out in section 12 of document 92FUND/A.3/27. In particular, it endorsed the instruction to the Director that, if a State did not submit its oil reports, he should make contacts with that State and emphasise the concerns expressed by the Committee in this regard. The Director was also instructed to inform the competent persons of the States concerned that the Assembly would review individually each State which had not

submitted its report and that it would then be for the Assembly to decide on the course of action to be taken for each State.

14.4 One delegation suggested that Member States which were up-to-date with the submission of oil reports might wish to consider whether contacts through diplomatic channels with neighbouring States could be used to help bring the problem of non-reporting to the attention of the relevant persons in the States concerned.

Secretariat and administrative matters

15 Implementation of organisational changes within the Secretariat

15.1 The Executive Committee noted that the Assembly of the 1992 Fund had at its 3rd session considered the Director's implementation of the decisions of the 1971 and 1992 Fund Assemblies with regard to the new structure of the Secretariat, the introduction of new working methods and the strengthening of Fund activities in certain fields. It was noted that the 1992 Fund Assembly's consideration of this subject had been based on a note (document 92FUND/A.3/12) which mirrored the document which had been submitted by the Director for the 1971 Fund's consideration (document 71FUND/A.21/13).

15.2 The Committee noted the 1992 Fund Assembly's deliberation of this subject, as set out in paragraphs 14.1-14.3 of document 92FUND/A.3/27, and endorsed the position taken by that Assembly.

15.3 The Executive Committee noted that the 1992 Fund Assembly had also considered the Secretariat's need for additional office space on the basis of document 92FUND/A.3/12/1, which mirrored the document submitted by the Director for the 1971 Fund's consideration (document 71FUND/A.21/13/1).

15.4 The Committee noted the 1992 Fund Assembly's deliberation of this subject, as set out in paragraphs 14.4-14.15 of document 92FUND/A.3/27. In particular it was noted that the Assembly of the 1992 Fund had authorised the Director to use £400 000 in 1999 for expenses in connection with relocation and the increased cost of running the Secretariat as a result thereof and that it had been decided that an appropriation to that effect should be included in a new Chapter VII of the 1999 budget, the amount to be split 50:50 between the two Organisations.

15.5 The Italian delegation expressed the view that the 1971 Fund should not bear any of the budgetary implications of relocating the Secretariat.

15.6 Other delegations pointed out that the Secretariat served both the 1992 Fund and the 1971 Fund, that work relating to the 1971 Fund's activities occupied a major part of the Secretariat's time and that for this reason it was fair that the 1971 Fund should bear half the cost of relocation.

15.7 In line with the decision of the 1992 Fund Assembly, the Executive Committee authorised the Director to use £400 000 in 1999 for expenses in connection with relocation and the increased cost of running the Secretariat as a result thereof. It was decided that an appropriation to that effect should be included in a new Chapter VII of the 1999 budget, the amount to be split 50:50 between the two Organisations.

16 Delegation of Director's authority

16.1 The Executive Committee noted that the Assembly of the 1992 Fund had at its 3rd session considered the delegation of authority by the Director to a senior staff member to act on his behalf whenever he was on mission or otherwise unable to act, as well as other increased delegation to officers. It was noted that the 1992 Fund Assembly had made amendments to the Internal and Financial Regulations of the 1992 Fund to allow for such delegation (cf document 92FUND/A.3/27, section 15).

16.2 The Committee was invited to make the corresponding amendments to the 1971 Fund's Internal and Financial Regulations.

16.3 The Italian delegation expressed the view that it was not necessary to make the changes to the 1971 Fund's Internal and Financial Regulations as proposed in document 71FUND/A.21/14.

16.4 Other delegations stressed that it was essential to maintain consistency between the Regulations of the 1971 Fund and those of the 1992 Fund in order for the joint Secretariat to operate smoothly. It was pointed out that this was particularly important in respect of an incident such as the *Nakhodka* in which both Organisations were involved.

16.5 The Executive Committee decided, therefore, to insert a new Regulation 12*bis* in the 1971 Fund's Internal Regulations to allow for the general delegation to the Legal Counsel or the Head of the Claims Department to act on behalf of the Director whenever the latter was on mission or otherwise unable to act, to read as follows:

Internal Regulation 12bis

Delegation of authority in the absence of the Director

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

16.6 The Executive Committee decided to amend Internal Regulations 7.13 and 7.14 to read as follows:

Internal Regulation 7.13

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

- (a) in respect of the Head of the Claims Department, be limited to approvals not exceeding £500 000 for a particular claim; and
- (b) in respect of other officers:
 - (i) be given only in respect of claims arising out of a specific incident and only to an officer who is responsible for dealing with claims arising out of that incident;
 - (ii) be limited to approvals not exceeding £75 000 for a particular claim.

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

Internal Regulation 7.14

Any settlements made under Internal Regulation 7.13(a) shall be reported to the Director and those made under Regulation 7.13(b) to the Head of the Claims Department.

16.7 The Committee decided to insert a new Regulation 13bis in the 1971 Fund's Internal Regulations to allow the Director to authorise other Officers to make commitments on behalf of the 1971 Fund up to a maximum of £50 000, to read as follows:

Internal Regulation 13bis

The Director may authorise other officers to make commitments on behalf of the 1971 Fund in connection with the procurement of goods and services. The conditions and extent of such delegation, which shall not exceed £50 000, shall be laid down in Administrative Instructions issued by the Director.

16.8 The Committee decided to amend Financial Regulation 9.2 to read as follows:

Financial Regulation 9.2

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

- (a) for any sum up to £10 000, by any officer from category A, B or C;
- (b) for any sum in excess of £10 000 up to £25 000, by an officer from category A or by any two officers from category B or C;
- (c) for any sum in excess of £25 000 up to £100 000, by any two officers from category A, B or C;
- (d) for any sum in excess of £100 000, by one officer from category A or B plus one officer from category A, B or C.

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

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

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

16.9 The Director was instructed to inform the Assembly or the Executive Committee of any delegation of authority and of the conditions of such delegation which would be laid down in Administrative Instructions.

16.10 The Executive Committee agreed with the Director that there was no need for any amendment to Financial Regulations 10.5 which governed the authority to invest the 1971 Fund's assets.

17 Winding up of the 1971 Fund's Appeals Board

17.1 The Executive Committee recalled that since 16 May 1998 the 1971 Fund had been administered by the 1992 Fund Secretariat, that from that date all staff members of the 1971 Fund Secretariat had ceased to be employed by the 1971 Fund and had become employed by the 1992 Fund and that consequently the 1971 Fund had no staff members from that date. It was recognised that no further cases could be brought before the 1971 Fund's Appeals Board, as a request to the Director to withdraw or amend a decision had to be made within 30 days of the staff member being notified of the Director's decision, in order to entitle a claimant to bring the matter before the Board.

17.2 The Executive Committee therefore decided to wind up the 1971 Fund's Appeal Board.

Compensation matters

18 Haven incident

18.1 The Executive Committee noted that a Bill authorising the Italian Government to conclude an Agreement on a global settlement had been approved by the Italian Parliament and that the Act in question had been promulgated on 16 July 1998. It was noted that representatives of the Italian State, the shipowner, his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club) and the 1971 Fund had met in Rome in July 1998 and in London in early September 1998 and had elaborated the text of the agreement for a global settlement.

18.2 The Committee noted that the Agreement had not yet been signed by the parties, since the Italian Government had considered it appropriate to obtain an opinion of the Consiglio di Stato confirming the conformity of the proposed Agreement with the terms of the Act.

19 Election of members of the Executive Committee

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

20 Applicability of the 1969 Civil Liability Convention and the 1971 Fund Convention to floating storage units (FSUs) and floating production storage and offloading units (FPSOs)

It was noted that the 1992 Fund Assembly was considering the issue of the applicability of the 1992 Civil Liability Convention and the 1992 Fund Convention to FSUs and FPSOs (document 92FUND/A.3/18). It was decided that the 1971 Fund should postpone its consideration of this issue until the 1992 Fund Assembly had taken a decision on the applicability of the 1992 Conventions, although it was recognised that the definition of 'ship' in the 1992 Conventions was wider than that in the 1969 and 1971 Conventions.

Budgetary matters

21 Sharing of joint administrative costs with the 1992 Fund

21.1 The Executive Committee noted that the Assembly of the 1992 Fund had agreed at its 3rd session to the Director's proposal that the costs of running the joint Secretariat for 1999 should be distributed with 50% to be paid by the 1971 Fund and 50% 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 1999 (cf document 92FUND/A.3/27, paragraph 15).

21.2 The Italian delegation expressed the view that the distribution of costs between the two Funds should reflect the respective quantities of contributing oil received in the Member States of each Organisation, or should be based on the actual costs incurred but not on an arbitrary figure. It was pointed out that much of the work carried out by the 1971 Fund was in the interest of the 1992 Fund Member States. That delegation suggested that the issue of distribution should be considered in more depth in the future.

21.3 Most delegations were of the view that a 50:50 distribution between the two Organisations should be accepted and some delegations added that this distribution could not be considered unfavourable to the 1971 Fund in view of the amount of time being spent by the Secretariat on the work of the 1971 Fund.

21.4 Accordingly, the Executive Committee agreed to the 50:50 distribution of joint administrative costs as proposed by the Director, 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 1999.

22 Budget for 1999

22.1 The Executive Committee noted that the Assembly of the 1992 Fund had decided at its 3rd session to adopt the budget appropriations for 1999 with a total administrative expenditure for the joint Secretariat of £2 792 360 (cf document 92FUND/A.3/27, paragraph 23.3).

22.2 The Committee adopted the same budget appropriations for 1999, with a total administrative expenditure for the joint Secretariat of £2 792 360 (including the new Chapter VII) as reproduced in Annex I.

22.3 The Executive Committee noted the 1992 Fund Assembly's decisions regarding the procedure to be applied for determining the salary levels of staff members and for promotions, as set out in paragraphs 23.6 and 23.7 of document 92FUND/A.3/27.

23 Working capital

The Executive Committee decided to maintain the working capital of the 1971 Fund at £5 million.

24 Assessment of annual contributions

24.1 The Director introduced document 71FUND/A.21/22, which contained proposals for the levy of 1998 annual contributions.

24.2 The Executive Committee decided to levy annual contributions of £1.7 million in respect of the 1997 General Fund.

24.3 To enable the 1971 Fund to meet payments in the relevant years for the satisfaction of claims for compensation under Article 4 and for indemnification under Article 5 of the 1971 Fund Convention arising out of the *Yuil N°1*, *Sea Empress*, *Nakhodka*, *Osung N°3* and *Evoikos* incidents, to the extent that the aggregate amount of the payments made by the 1971 Fund in respect of each incident exceeded 1 million Special Drawing Rights (SDR), the Executive Committee decided, pursuant to Article 12.2(b) of the 1971 Fund Convention, to raise 1998 annual contributions to the following five Major Claims Funds:

- (a) a levy of £2.5 million to the *Sea Prince/Yeo Myung/Yuil N°1* Major Claims Fund in respect of the *Yuil N°1* incident;
- (b) a levy of £7 million to the *Sea Empress* Major Claims Fund;
- (c) a levy of £7.5 million to the *Nakhodka* Major Claims Fund;
- (d) a levy of £6 million to the *Osung N°3* Major Claims Fund; and
- (e) a levy of £2 million to the *Evoikos* Major Claims Fund.

24.4 The Executive Committee decided that the entire levies to the General Fund and the *Nakhodka* Major Claims Fund should be due for payment by 1 February 1999, whereas the entire levies in respect of the *Yuil N°1*, *Sea Empress*, *Osung N°3* and *Evoikos* incidents should be deferred, as indicated in the table in paragraph 24.8 below. The Director was authorised to decide whether to invoice all or part

of the amounts of the deferred levies for payment during the second half of 1999, if and to the extent required.

24.5 It was agreed that there was no need to take any decisions at this stage regarding the *Vistabella* and *Pontoon N°300* Major Claims Funds.

24.6 The Executive Committee considered it premature to take any decisions in respect of the *Haven* and *Yeo Myung* Major Claims Funds.

24.7 The Committee took the view that there was no need to levy further contributions at this stage in respect of the *Aegean Sea*, *Braer*, *Keumdong N°5*, *Sea Prince* and *Nissos Amorgos* incidents.

24.8 The Assembly noted that its decisions in respect of the levy of 1998 contributions could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment by 1 February 1999		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
General	1997	740	1 700 000	1 700 000	0.0022973	0	0.0000000
Yuil N°1 as part of Sea Prince/Yeo Myung/Yuil N°1	1994	1 200	2 500 000	0	0.0000000	2 500 000	0.0020833
Sea Empress	1995	1 200	7 000 000	0	0.0000000	7 000 000	0.0058333
Nakhodka	1996	1 220	7 500 000	7 500 000	0.0061475	0	0.0000000
Osung N°3	1996	1 220	6 000 000	0	0.0000000	6 000 000	0.0049180
Evoikos	1996	1 220	2 000 000	0	0.0000000	2 000 000	0.0016393
Total			26 700 000	9 200 000	0.0084448	17 500 000	0.0144740

24.9 The observer delegation of the Oil Companies International Marine Forum (OCIMF) expressed the oil industry's appreciation of the improved quality and content of the document submitted by the Director on the assessment of contributions, as well as of the documents relating to the accounts and the budget and welcomed the increased transparency.

Other matters

25 Future sessions

The Executive Committee decided that the next session of the Assembly should be convened during the week of 18-22 October 1999.

26 Any other business

Definition of 'contributing oil'

26.1 The Executive Committee noted that the Assembly of the 1992 Fund had decided at its 3rd session that, to maintain consistency with the 1971 Fund Assembly's decision at its 16th session that 'contributing oil' should be limited to 'persistent oil', the list of 'contributing oil' and 'non-contributing oil' attached to the oil reporting form annexed to the Internal Regulations should be amended to the effect that the classification of condensates was made dependent on whether the type of oil in question was persistent. It was noted that a revised list had been approved by the 1992 Fund Assembly (cf document 92FUND/A.3/27, paragraphs 28.2.5 and 28.2.6 and Annex II).

26.2 It was also noted that the 1992 Fund Assembly had instructed the Director to review further the list of 'contributing oil' and 'non-contributing oil' attached to the oil reporting form annexed to the Internal Regulations.

26.3 The Executive Committee decided to amend the list of 'contributing oil' and 'non-contributing oil' attached to the oil reporting form annexed to the 1971 Fund's Internal Regulations, as set out in Annex II.

26.4 It was noted that, in accordance with previous practice, the amendment to the list should not lead to amendments of previous reports on contributing oil receipts and should be taken into consideration only for future reports.

26.5 The Executive Committee instructed the Director to review further the list of 'contributing oil' and 'non-contributing oil' attached to the oil reporting form annexed to the Internal Regulations.

27 Adoption of the Record of Decisions of the session

The draft Record of Decisions of the Executive Committee acting on behalf of the Assembly, as contained in document 71FUND/EXC.59/A.21/WP.1 was adopted, subject to some amendments.

* * *

1999 GENERAL FUND BUDGET FOR 1992 FUND AND 1971 FUND

STATEMENT OF EXPENDITURE		Actual 1997 expenditure for 1971 and 1992 Funds		1997 budget appropriations for 1971 and 1992 Funds		1998 budget appropriations for 1971 and 1992 Funds		1999 budget appropriations			
								Total		Distribution	
										1992 Fund	1971 Fund
A	SECRETARIAT	£		£		£		£		£	£
I	Personnel										
(a)	Salaries	612 762		652 140		780 980		838 050		419 025	419 025
(b)	Separation and recruitment	106 318		131 020		59 215		69 800		34 900	34 900
(c)	Staff benefits and allowances	175 703		246 530		270 200		343 750		171 875	171 875
(d)	Temporary assistance	38 158		30 000		30 000		40 000		20 000	20 000
(e)	Staff Training	12 753		10 000		15 000		35 000		17 500	17 500
	Sub-total		945 694		1 069 690		1 155 395		1 326 600	663 300	663 300
II	General Services										
(a)	Rent of office accommodation (including common services, security services and rates)	91 841		100 580		111 700		132 500		66 250	66 250
(b)	Office machines, including maintenance	43 422		38 000		52 500		60 000		30 000	30 000
(c)	Furniture and other office equipment	11 423		12 000		24 500		24 500		12 250	12 250
(d)	Office stationery and supplies	16 886		20 000		22 000		22 000		11 000	11 000
(e)	Communications (telephone, telefax, telex, postage)	39 932		40 000		45 000		52 000		26 000	26 000
(f)	Other supplies and services	25 077		27 500		26 600		30 000		15 000	15 000
(g)	Representation (hospitality)	12 910		14 000		15 000		16 500		8 250	8 250
(h)	Public Information (previously printing and publication)	62 509		90 000		98 000		183 750		109 750	74 000
	Sub-total		304 000		342 080		395 300		521 250	278 500	242 750
III	Meetings										
(a)	Autumn sessions of 1992 Fund and 1971 Fund Assemblies and Executive Committees	20 055		25 000		25 800		30 720		13 520	17 200
(b)	Further sessions of 1971 Fund Executive Committee	16 834		40 000		30 600		30 600		0	30 600
(c)	Extra sessions of 1992 Fund and 1971 Fund Assemblies and 1971 Fund Executive Committee	3 379		30 000		25 800		0		0	0
(d)	Extra sessions of 1992 Fund Assembly or Executive Committee	2 024		0		15 300		22 680		22 680	0
(e)	Intersessional Working Groups	1 600		20 000		20 600		24 160		13 860	10 300
	Sub-total		43 892		115 000		118 100		108 160	50 060	58 100

STATEMENT OF EXPENDITURE		Actual 1997 expenditure for 1971 and 1992 Funds		1997 budget appropriations for 1971 and 1992 Funds		1998 budget appropriations for 1971 and 1992 Funds		1999 budget appropriations		
								Total	Distribution	
									1992 Fund	1971 Fund
		£		£		£		£	£	£
IV	Conferences and travel									
(a)	Conferences and seminars	29 022		20 000		20 000		30 000	15 000	15 000
(b)	Mission	2 066		20 000		20 000		20 000	10 000	10 000
	Sub-total		31 088		40 000		40 000		50 000	25 000
V	Miscellaneous expenditure									
(a)	External audit	21 000		21 000		57 925		46 600	10 350	36 250
(b)	Payment to IMO for general services	6 000		6 000		6 200		6 400	3 200	3 200
(c)	Consultants' fees	117 194		100 000		125 000		185 000	92 500	92 500
(d)	Payment to IMO for translator (French)	60 520		49 950		67 000		70 350	35 175	35 175
(e)	Investment Advisory Bodies	18 000		18 000		18 000		18 000	9 000	9 000
	Sub-total		222 714		194 950		274 125		326 350	150 225
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		0		60 000		60 000		60 000	30 000
VII	Relocation costs								400 000	200 000
Total Expenditure I-VII			1 547 388		1 821 720		2 042 920		2 792 360	1 397 085
VIII	Expenditure relating only to 1992 Fund						60 000			
B CLAIMS (See documents 92FUND/A.3/23 and 71FUND/A.21/22)										

STATEMENT OF INCOME		Funds actually accumulated as at 31.12.97		1997 budget estimates		1998 budget estimates		1999 budget estimates		
								Total	Distribution	
									1992 Fund	1971 Fund
		£		£		£		£	£	£
I	Balance from preceding years	12 263 234	6 526 112	15 184 524	0	9 609 057	6 334 122	15 419 891	8 706 427	6 713 464
II	Any other income			1 692 224	160 000	500 000	850 000	1 100 000	750 000	350 000
Total Income I-II		12 263 234	6 526 112	16 876 748	160 000	10 109 057	7 184 122	16 519 891	9 456 427	7 063 464
III	Income relating only to 1971 Fund	70 990		0		60 000				0

ANNEX II

List of Contributing Oil and Non-Contributing Oil

The following list of contributing and non-contributing oil is intended as a guide for contributors (see also note 6)

Contributing Oil*Crude Oils*

All naturally occurring crude oils
 Condensate ^{<1>}
 Topped crudes
 Spiked crudes
 Reconstituted crudes

Finished Products

N°4 fuel (ASTM)
 Navy special fuel
 Light fuel oil
 N°5 fuel (ASTM) - light
 Medium fuel oil
 N°5 fuel (ASTM) - heavy
 Bunker C fuel oil
 Heavy fuel oil
 Marine fuel oil
 N°6 fuel oil (ASTM)
 Blended fuel oils by viscosity
 or sulphur content
 OrimulsionTM (a bituminous emulsion used
 for the production of heat or power) ^{<2>}

Intermediate or Process Stocks

Fuel oil blend stocks

Non-Contributing Oil*Crude Oils*

Natural gas liquids
 Condensate ^{<1>}
 Casinghead naphtha
 Natural gasoline
 Cohasset-panuke

Finished Products

LNG and LPG
 Aviation gasolines
 Motor gasoline (petrol, essence)
 White spirit
 Kerosene
 Aviation kerosene
 - Jet 1 A
 - N°1 fuel (ASTM)
 Gas oil
 Heating oil
 N°2 fuel (ASTM)
 Marine diesel
 Lubricating oil

Intermediate or Process Stocks

Straight run naphthas
 Light cracked naphtha
 Heavy cracked naphtha
 Platformate
 Reformate
 Steam-cracked naphtha
 Polymers
 Isomers
 Alkylates
 Catalytic cycle oil
 Reformer feed
 Steam cracker feed
 Gas oil blend stocks
 Catalytic cracker feedstock
 Visbreaker feedstock
 Aromatic tar

^{<1>} To be considered as 'non-contributing oil' if more than 50% by volume distils at a temperature of 340°C, or if more than 95% by volume distils at a temperature of 370°C, when tested by the ASTM Method D 86/78 or any subsequent revision thereof.

^{<2>} Quantity of orimulsionTM received should be reported with no allowance for its water content.