



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
60th session  
Agenda item 3

71FUND/EXC.60/3  
26 January 1999

Original: ENGLISH

## INCIDENTS INVOLVING THE 1971 FUND

### AEGEAN SEA

#### Note by the Director

**Summary:**

The Director was instructed by the Executive Committee at its 59th session to continue his discussions with the Spanish Government so as to enable progress to be made towards solving outstanding issues. In November 1998 and January 1999 the Director proposed to the Spanish Government that a meeting for such discussions should be held. However, it has not been possible to hold such a meeting.

**Action to be taken:** Information to be noted.

#### 1 Introduction

1.1 At its 59th session the Executive Committee considered the various outstanding issues on the basis of a document prepared by the Director (document 71FUND/EXC.50/4). The discussions were summarised in the Record of Decisions (document 71FUND/EXC.59/17, paragraphs 3.3.1 - 3.3.22). Reference is made to these documents.

1.2 The Executive Committee instructed the Director to continue his discussions with the Spanish Government so as to enable progress to be made towards solving outstanding issues.

## **2 Consultation Group**

2.1 At its 57th session the Executive Committee decided to set up a Consultation Group to assist the Director in his search to solutions of the outstanding issues. The Committee appointed the following delegates as members of the Group:

Mr C Coppolani (France)  
Mr W Oosterveen (Netherlands)  
Professor H Tanikawa (Japan)  
Mr A H E Popp (Canada)  
Professor L S Chai (Republic of Korea)  
Captain A Saúl Bandala (Mexico)

2.2 At its 59th session the Executive Committee decided to renew the mandate of the Consultation Group. It was noted that only one of the States represented in the Group remained a Member of the 1971 Fund and that that State would cease to be a Member in the near future. The Committee considered that, since it was important to secure the continuity of the Consultation Group, the Group's composition should remain unchanged. It was emphasised, however, that the members of the Group did not participate as representatives of their Governments but in their personal capacity. The Committee also noted that, if an agreement was reached with the Spanish Government, that agreement would have to be submitted to the Committee for approval.

2.3 During the Executive Committee's 59th session, the Consultation Group held a meeting, part of which was attended by the Spanish delegation. The members of the Group expressed the view that it would be for the Spanish Government to make a proposal in order to make it possible to make progress on the important issues.

## **3 Question of time-bar**

3.1 At its 59th session the Executive Committee noted that a number of claimants had brought actions against the 1971 Fund in the Civil Court of La Coruña.

3.2 It was recalled that the question had arisen as to whether these claims were time-barred. It was noted that two opinions had been presented to the 1971 Fund by the Spanish Government in April 1998, one prepared by the Legal Department of the Ministry of Public Administrations and one by a Spanish law firm (Cuatrecasas), both of which had concluded that the actions brought against the 1971 Fund in the Civil Court were not time-barred. It was further noted that the 1971 Fund had obtained an opinion by a former Spanish Supreme Court judge, Mr Santos Briz, on the time-bar issue and that Mr Santos Briz' conclusion was that those claims were extinguished and thus time-barred.

3.3 In view of the different opinions presented in respect of the time-bar issue, the Director was instructed to study further this very complex issue.

3.4 The Committee noted that these actions would be served on the 1971 Fund in the near future. It was noted that, once served, the 1971 Fund would have to present all its defences within a short period of time, including any defence to the effect that the claims were time-barred, and that it would not be possible to raise that defence at a later stage. Pending further study, the Executive Committee instructed the Director to raise the defence of time-bar in the civil proceedings.

3.5 These actions have not yet been served on the 1971 Fund.

## **4 Recourse action**

4.1 On 12 June 1998 the Spanish Ambassador in London and the Director signed an agreement under which the Spanish State undertook not to invoke the time-bar if the competent bodies of the Fund

were to decide to take recourse action against the Spanish State to recover 50% of the amounts paid by the Fund, provided that such an action was taken within one year of the date of the agreement. The 1971 Fund, on its part, undertook not to bring legal action against the State within the first eleven months of the date of the agreement.

4.2 The Director draws the Executive Committee's attention to the fact that the one year period expires on 12 June 1999.

## **5 Developments since the Executive Committee's 59th session**

5.1 In a letter of 10 November 1998 to the Director of the Minister's Office (Director del Gabinete de Ministro) of the Ministry of Public Administration, the Director of the 1971 Fund referred to the view expressed by the members of the Consultation Group that it would be appropriate for the Spanish Government to make proposals in order to make it possible to make progress on outstanding issues. He proposed that a meeting should be held in early December 1998 to discuss the outstanding issues, but it was not possible to hold such a meeting at that time.

5.2 In another letter to the Director of the Minister's Office of the Ministry of Public Administration, dated 12 January 1999, the Director of the 1971 Fund referred again to the views expressed by the Consultation Group. In the letter the Director dealt with all the outstanding issues, summarised the 1971 Fund's position and presented certain ideas on how progress could be made. He addressed the following issues:

- ▶ General need for evidence to support the claims
- ▶ Loans given by the Instituto de Crédito Oficial to claimants in the fishery sector
- ▶ Spanish Government's position in respect of payments over and above 60 million SDR
- ▶ Claims by fishermen and shellfish gatherers which have been referred to the procedure for the execution of the judgement rendered by the Court of Appeal in La Coruña
- ▶ Conversion into Spanish pesetas of the maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention
- ▶ Spanish Government's claim for costs incurred during clean-up
- ▶ Possibility of additional payments
- ▶ Time bar in respect of claims presented before the Civil Court in La Coruña
- ▶ Possible recourse action by the 1971 Fund against the Spanish State

5.3 In his second letter, the Director proposed again that a meeting should be held to try to make progress towards solutions of the outstanding issues. He expressed the view that such a meeting should be held in the near future, and in any event before the 60th session of the Executive Committee. Unfortunately it was again not possible to hold such a meeting.

5.4 Following the Executive Committee's instructions, the Director will continue his efforts to pursue the discussions with the Spanish Government.

## **6 Action to be taken by the Executive Committee**

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
  - (b) to give the Director such instructions as the Committee may deem appropriate in respect of this incident.
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