



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
62nd session
Agenda item 7

71FUND/EXC.62/14/A.22/23
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ASSEMBLY
22nd session
Agenda item 28

**RECORD OF DECISIONS OF THE SIXTY-SECOND SESSION
OF THE EXECUTIVE COMMITTEE
ACTING ON BEHALF OF THE ASSEMBLY
IN RESPECT OF THE ASSEMBLY'S TWENTY-SECOND SESSION**
(held from 19 to 22 October 1999)

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 22nd session of the Assembly (document 71FUND/A.22/1). 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 10.00 am on Tuesday 19 October 1999 the Head of the Polish Delegation, Ms Katarzyna Jedral (Poland), as representative of the delegation of the former Chairman, attempted to open the 22nd session of the Assembly. Only the following sixteen 1971 Fund Member States were present at that time:

China (Hong Kong
Special
Administrative
Region)
Colombia
Côte d'Ivoire
Estonia
Fiji

Ghana
India
Italy
Malaysia
Malta
Nigeria

Panama
Poland
Russian Federation
United Arab Emirates
Vanuatu

0.3 The acting Chairman then adjourned the session for 30 minutes and when the meeting was resumed only seventeen 1971 Fund Member States were present, the additional State being Cameroon.

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 Director, in accordance with Rule (V) of the Rules of Procedure, as neither the delegation of the former Chairman nor that of the former Vice-Chairman was a member a of the Executive Committee due to their States no longer being Members of the 1971 Fund.

Procedural matters

1 Adoption of the Agenda

The Executive Committee adopted the agenda as contained in document 71FUND/A.22/1. 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 21 (Election of members of the Executive Committee). It was also noted that two other items would not be dealt with, viz item 19 (Reports of the Executive Committee's 59th - 61st sessions) and item 20 (Consideration of items on the agenda of the 62nd session of the Executive Committee).

2 Election of the Chairman and two Vice-Chairmen

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

2.2 It was noted that the Executive Committee had on 19 October 1999 elected the following delegations to hold office until the next regular session of the Assembly.

Chairman:	Dr M Baradà (Italy)
Vice-Chairman:	Captain E Cely-Nuñez (Colombia)

3 Examination of credentials

3.1 The following Member States were present:

Members of the Executive Committee:

Colombia	Italy	Poland
Côte d'Ivoire	Malaysia	Russian Federation
Fiji	Nigeria	United Arab Emirates
India		

Other Member States:

Cameroon	Estonia	Panama
China (Hong Kong Special Administrative Region)	Ghana	Sri Lanka
	Malta	Vanuatu

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:

Algeria	Greece	New Zealand
Australia	Ireland	Norway
Belgium	Japan	Republic of Korea
Canada	Liberia	Spain
Cyprus	Marshall Islands	Sweden
Denmark	Mexico	Tunisia
Finland	Monaco	United Kingdom
France	Netherlands	Venezuela
Germany		

Other States:

Argentina	Georgia	Singapore
Brazil	Grenada	Turkey
Chile	Latvia	United States
Congo	Peru	Uruguay
Ecuador	Saudi Arabia	

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)
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)
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 during the last 12 months, contained in document 71FUND/A.22/2. In his presentation the Director made reference to the fact that in March 1998 there had been 76 Member States of the 1971 Fund, but that since then instruments of denunciation in respect of 32 States had taken effect and the 1971 Fund Convention had entered into force for Panama, resulting in 45 States being Parties to the 1971 Fund Convention as at 19 October 1999. He also mentioned that six of these 45 States had denounced the 1971 Fund Convention, reducing the number of Member States to 39 by October 2000.

4.2 The Director drew attention to the financial consequences of this development, namely that the departure from the 1971 Fund of a number of States resulted in a significant reduction in the contribution base and the considerably increased financial burden which might fall on the contributors in those States which remained Members of the 1971 Fund. He referred to the measures which he had taken to draw the attention of the remaining 1971 Fund Member States to the significant problems which continuing membership of the 1971 Fund would cause and the great urgency of acceding to the 1992 Protocols and of denouncing the 1969 Civil Liability Convention and the 1971 Fund Convention. He expressed the view that it was important that procedures could be found for the winding up of the 1971 Fund and referred to the documents dealing with this matter.

4.3 The Director reported on the progress of the implementation of the Assemblies' decisions with regard to the structure of the Secretariat and new working methods. He informed the Executive Committee that a review had been undertaken in order for the Funds to derive maximum benefits from the changes. He also mentioned that, as a result of the new structure, the Secretariat would have to be relocated outside the IMO building, and that it was expected that the negotiations on the lease of new premises would be completed in the near future so that the Secretariat could relocate in the spring of 2000.

4.4 The Director referred to the fact that the Assemblies had emphasised the importance of the IOPC Funds' strengthening the Secretariat's activities in the field of public relations. He informed the Executive Committee that the IOPC Funds' web site was now open at the address <http://www.iopcfund.org>.

4.5 The Committee congratulated the Secretariat on the 1998 Annual Report which contained an instructive presentation of the activities of the 1971 and 1992 Funds.

4.6 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 Office established in Kobe following the *Nakhodka* incident, as well as the lawyers and technical experts who had undertaken other work for the 1971 Fund.

4.7 It was noted that the failure of a number of 1971 Member States to submit reports of contributing oil receipts continued to give rise to concern, since to date only 15 of the present 45 Member States had submitted their reports of oil received in 1998.

Treaty questions

5 Status of the 1971 Fund Convention

The Executive Committee took note of the information contained in document 71FUND/A.22/3 concerning the status of the 1971 Fund Convention. It was noted that there were at present 45 Member States of the 1971 Fund, but that six 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 39 by October 2000.

6 Winding up of the 1971 Fund

6.1 The Director introduced document 71FUND/A.22/4 in which he had examined various ways of speeding up the winding up of the 1971 Fund. It was noted that the document had been elaborated on the basis of opinions on the most appropriate procedures for the winding up of the 1971 Fund which had been given by two eminent experts in public international law, Dr Thomas A Mensah and Sir Arthur Watts KCMG QC (documents 71FUND/A.22/4/1 and 71FUND/A.22/4/2).

6.2 It was recalled that the 1971 Fund Convention provided in Article 43.1 that the Convention would cease to be in force when the number of Member States fell below three.

6.3 The Executive Committee expressed its appreciation of the efforts being made by the Director to encourage States to denounce the 1971 Fund Convention and to accede to the 1992 Protocols. Many delegations and observer delegations considered it unlikely, however, that such steps alone would result in the number of Member States falling below three. They believed that, for the credibility of both the 1971 and 1992 Funds, alternative approaches should be considered.

6.4 The Executive Committee noted that four options had been studied:

- (a) amendment of Article 43.1 of the 1971 Fund Convention by means of a Protocol to the effect that the Convention would be terminated well before the number of Contracting States fell below three;
- (b) adoption of a Resolution by the 1971 Fund Assembly terminating the Convention;

- (c) use of the procedure for rapid denunciation laid down in Article 42; and
- (d) involvement of the International Court of Justice or an Arbitration Tribunal.

6.5 It was generally accepted that no option for the early termination of the 1971 Fund Convention was entirely satisfactory. It was noted that, in order to be of value, the procedure to be used to terminate the Convention should be one which could be expected to apply to all remaining Contracting States.

6.6 The Committee shared the Director's view that the proposals in option (d), as set out in sections 5.4 - 5.6 of document 71FUND/A.22/4, were not viable for the 1971 Fund's purposes.

Accelerated denunciation procedure

6.7 It was generally acknowledged that the accelerated denunciation procedure provided in Article 42 of the 1971 Fund Convention (option (c)) would only assist those States which did in fact submit instruments of denunciation, by reducing the time it would take before the denunciation took effect. It was noted that the procedure would have only a limited effect on the winding up process since a number of States would not denounce the Convention during the period specified in that Article.

6.8 It was further noted that it was extremely unlikely that an extraordinary session of the Assembly convened under Article 42 would obtain a quorum, and that it was very questionable whether either the Executive Committee or the Administrative Council could take the decisions envisaged in Article 42.

6.9 The Executive Committee therefore decided that, despite Italy's denunciation of the 1971 Fund Convention on 8 October 1999 having reduced the contributing oil base of the 1971 Fund from 250 million tonnes to some 100 million tonnes, the Director should not, on his own initiative, convene an extraordinary session of the Assembly in accordance with Article 42.2. However, the Director was instructed to write to all remaining 1971 Fund Member States, informing them of the effects of Italy's denunciation and advising them of the possibility, in accordance with Article 42.1, of their requesting the Director to convene such an extraordinary session.

6.10 One delegation referred to the fact that, under Article 30.3 of the Final Clauses of the 1992 Fund Convention, States using the accelerated denunciation procedure would not become Members of the 1992 Fund until twelve months after the date on which they deposited their instruments of accession to the 1992 Protocols. That delegation asked whether it would be possible to shorten the twelve month period.

6.11 The Director mentioned that during previous consultations on the winding up issue it had been suggested that a procedure could be devised which would eliminate this 'gap' in financial protection and thereby encourage the remaining 1971 Fund Member States to denounce the 1971 Fund Convention by using the procedure laid down in Article 42. It was noted that this might be done by means of a Resolution adopted by the 1992 Fund Assembly setting out an agreement between all Parties to the 1992 Fund Convention that, notwithstanding the provisions of Article 13.4 of the Final Clauses of the 1992 Protocol to the 1969 Civil Liability Convention and Article 30.3 of the Final Clauses of the 1992 Protocol to the 1971 Fund Convention, the 1992 Protocols would come into force for those States on the same date as their denunciation of the 1971 Fund Convention became effective, if the State concerned so wished. It was noted that the 1969 Civil Liability Convention did not contain any provisions corresponding to Article 42 of the 1971 Fund Convention and that any denunciation of the 1969 Civil Liability Convention would therefore take effect for a State twelve months from the date of the deposit of the instrument of denunciation. It was also noted that this twelve month period could be shortened only by explicit agreement given by all remaining Parties to that Convention, but that it was not realistic to expect such an agreement to be obtained from all those States within a reasonable period of time. It was also noted that during consultations in April 1999 a number of 1992 Fund Member States indicated that they would encounter constitutional difficulties in accepting a shortening of the period for the entry into force of the 1992 Fund Convention. The Director considered that it was unlikely, therefore, that all Contracting States to the 1992 Fund Convention would agree to such a procedure.

Fundamental change of circumstances

6.12 A number of observer delegations considered that a fundamental change of circumstances, as referred to in Article 62 of the 1969 Vienna Convention on the Law of Treaties, had occurred in the case of the 1971 Fund Convention. For one of these delegations the fundamental change of circumstances was that the 1971 Fund could no longer ensure that adequate compensation was available to persons who suffered damage caused by oil pollution from tankers in accordance with the purpose of the 1971 Fund Convention as set out in its preamble, and that this fundamental change of circumstances should bring about the termination of the Convention. Other delegations considered that there would soon be no economic substructure on which the 1971 Fund could operate, and that this constituted a fundamental change of circumstances.

6.13 One observer delegation expressed the view that Article 62 of the Vienna Convention dealt only with the termination of treaty relationships between parties to a treaty, and that this concept could not be applied to bring about the termination of a treaty itself.

6.14 The Director of the Legal Affairs and External Relations Division of the International Maritime Organization (IMO) pointed out that the doctrine of a fundamental change of circumstances was not a solution in itself, as it could not terminate a treaty, but could be advocated by a 1971 Fund Member State which was being sued for non-payment of compensation. Nevertheless, in her view, the doctrine could be the rationale for pursuing either option (a) or (b).

Assembly resolution - option (b)

6.15 The Executive Committee noted that the Director shared the view expressed by Sir Arthur Watts that the adoption of a Resolution by the Assembly would be a legally effective way of terminating the 1971 Fund Convention and laying down procedures for the winding up of the 1971 Fund. It also noted that the Director agreed with Sir Arthur that it was unlikely that there would be any challenge of the legal validity of the approach, although Sir Arthur had drawn attention to the problems which this option would raise. The Committee noted that, even if the validity of the Resolution were not challenged by a State, it was conceivable that an individual claimant might challenge the Resolution before the courts in his country. It was noted that the Director considered that option (b) was less solid than option (a) and that for that reason he took the view that the adoption of an Assembly Resolution should be a second choice option.

6.16 One observer delegation did not foresee the difficulties envisaged by the Director in the adoption of a Resolution to the effect that the 1971 Fund Convention would cease to be in force when certain conditions were fulfilled even though the number of the remaining Contracting States had not fallen below three. That delegation considered that the Executive Committee, as a constitutionally established body which had been given authority by the Assembly to act on its behalf, could adopt such a Resolution, and that this could be done during the present session while there was a quorum in the Committee.

6.17 A few observer delegations expressed doubts as to whether a body (ie the Assembly) could take steps to bring about the demise of the treaty by which it had been created (ie the 1971 Fund Convention).

Amending Article 43.1 at a Diplomatic Conference: option (a)

6.18 The Executive Committee noted that the Director shared the view of both Dr Mensah and Sir Arthur Watts that the best option would be to amend Article 43.1 of the 1971 Fund Convention so as to allow for the termination of the Convention well before the number of Contracting States fell below three (option (a)). It was noted, however, that the crucial issue was that of bringing such an amendment into force.

6.19 The Committee noted that normally such an amendment would be binding only on the States which had expressed their acceptance. The Committee noted that, in the light of the difficulties which would result if explicit acceptance of the amendments were required, the Director had suggested that it would be appropriate to consider whether the envisaged amendment to Article 43.1 could be brought into force by means of a simplified procedure under which the consent of a State to be bound would be given not by express indication but by tacit or implied consent, ie by States failing to object within a certain period of time.

6.20 The majority of delegations and observer delegations who spoke preferred option (a) as it would be following the procedures laid down in the Convention itself, ie convening a conference to amend the 1971 Fund Convention in accordance with Article 45.

6.21 One delegation and some observer delegations were of the firm view that, since the 1971 Fund Convention did not provide for a tacit amendment procedure for amending the Convention, it was not possible to follow such an approach. One of those observer delegations pointed out that the precedent of the tacit amendment procedure applied in relation to the implementation of Part XI of the United Nations Convention on the Law of the Sea referred to by the Director (document 71FUND/A.22/4, paragraph 5.1.14) was different in that the Agreement in question had entered into force only for those States Parties to the Law of the Sea Convention which had signed the Agreement, and that there were other States Parties which had not signed the Agreement. Another of those observer delegations expressed its concern that using the tacit amendment procedure would be to pre-judge the wishes of those States which did not attend the Diplomatic Conference.

6.22 The Director of the Legal Affairs and External Relations Division of IMO emphasised that the tacit amendment procedure was not without risks, but that such risks could only arise at a later stage if there were a dispute in which a State wished to apply the 1971 Fund Convention to an incident after the Convention had ceased to be in force as a result of the application of that procedure having wound up the 1971 Fund.

6.23 The majority of delegations and observer delegations who spoke shared the Director's view that the use of a tacit amendment procedure to bring about the entry into force of an amendment to Article 43.1 was the best course of action in the present circumstances.

Other means

6.24 Some delegations and observer delegations considered that the Director should continue and enhance his efforts to encourage Member States to denounce the 1971 Fund Convention and accede to the 1992 Protocols. One observer delegation suggested that States could also take steps to urge 1971 Fund Member States to denounce the 1971 Fund Convention, using diplomatic contacts to bring the importance of the matter to the attention of the States concerned. Attention was also drawn to the possibility of raising the issue at the session of the IMO Assembly to be held in November 1999.

6.25 One delegation and two observer delegations considered that persuasion was the only legally possible approach and that options (a)-(d) should not be considered.

6.26 A number of delegations and observer delegations were of the view that relying solely on persuasion was virtually a 'do nothing' option, as results would come very slowly. Those delegations considered that this was not an appropriate course of action.

Conclusions

6.27 The Executive Committee instructed the Director to submit a request to the Secretary-General of IMO to convene urgently a Diplomatic Conference, in accordance with Article 45.1 of the 1971 Fund Convention, for the purpose of adopting a Protocol amending Article 43.1 of that Convention.

6.28 It was noted that the decision within IMO on whether to hold such a conference would have to be taken by either the IMO Assembly or the IMO Council, and that the decision would be influenced by whether there was a strong likelihood of the proposed text being adopted.

6.29 It was recognised that dissenting views with regard to the use of the tacit amendment procedure might be voiced within the IMO Assembly or Council when it considered convening a conference, and that this might influence the Assembly's or Council's view of the probable success of the conference.

6.30 The Executive Committee decided that the draft Protocol should contain two options, one based on a tacit amendment procedure and the other requiring explicit acceptance by States.

6.31 The Director expressed the view that to adopt a Protocol without the tacit amendment procedure would be of little value. Some delegations and observer delegations were of the opinion, however, that whatever the outcome of the conference, the fact that a Diplomatic Conference had been convened would be a very strong reminder to States of the importance of the issue and that the conference itself would be an opportunity to make diplomatic approaches to Member States regarding denunciation.

6.32 It was decided that there should be two possible criteria on which the Convention ceased to be in force, viz the number of Member States falling below a certain level or the total quantity of contributing oil received in the remaining Member States falling below a certain level, whichever was the earlier.

6.33 The Committee decided that the text of the draft Protocol as contained in Annex I should be submitted by the Director to the Secretary-General.

6.34 Some observer delegations expressed the view that it might at some time be appropriate for the 1992 Fund to distance itself from the 1971 Fund and the difficulties that the latter was encountering.

Cost of a Diplomatic Conference

6.35 The Executive Committee decided that the Director should inform the Secretary-General that the 1971 Fund was prepared to pay the cost of a Diplomatic Conference, which was estimated at £22 000 for a two-day conference.

Liquidation of the 1971 Fund

6.36 The Executive Committee noted that the question of the liquidation of the 1971 Fund would follow that of winding up the Organisation. It took note of the analysis of this issue set out in Section 6 of document 71FUND/A.22/4.

6.37 The Committee took note of the fact that the External Auditor had strongly recommended that the 1971 Fund should consider the need ultimately to appoint a liquidator for the 1971 Fund, and that the Director had stressed the need for the Committee to give him instructions in this regard.

6.38 The Director suggested that he should carry out a study of the various issues relating to the liquidation of the 1971 Fund. He mentioned that one option to be considered would be whether a liquidator - in the technical sense of the word - should be appointed to take over the administration of the 1971 Fund. He stated that in a normal liquidation, a liquidator would take over the management of the entity in liquidation but that a corresponding arrangement in respect of the 1971 Fund would result in such a liquidator taking over *inter alia* the handling of claims for compensation and the application of the criteria for the admissibility of claims. The Director expressed the view that it would be difficult for any liquidator who was not totally familiar with the IOPC Funds' policy on the admissibility of claims laid down by the Assemblies and Executive Committees of the 1971 and 1992 Funds to perform this function without a significant risk that he would apply criteria different from those applied by the IOPC Funds' organs, which would have serious consequences for the uniformity of application of the 1971 and 1992 Fund Conventions. The Director suggested that it would therefore have to be considered whether the winding up and liquidation should, at least for the time being, be handled by the organs of the 1971 Fund (ie the Assembly, the Executive Committee and the Administrative Council) and the Director. The Director also suggested that consideration should be given to whether the winding up of the 1971 Fund could be entrusted to the organs of the 1992 Fund, without in any way implying any liability on the part of the 1992 Fund, its Member States and the contributors in those States for the obligations of the 1971 Fund. In the Director's view, if the liquidation were to be dealt with by the organs of the IOPC Funds it might be appropriate to involve some eminent person outside the IOPC Funds so as to ensure that the liquidation was carried out correctly and impartially. If instructed to carry out such a study, the Director intended to consult the External Auditor and to use outside expertise, for example, accountants and solicitors, to consider the various issues involved.

6.39 Some delegations considered that it would not be possible to appoint a liquidator in the normal sense for the reasons mentioned by the Director. In the view of those delegations the liquidation should be dealt with by the organs of the IOPC Funds.

6.40 The Director considered that it would be valuable, in view of the complexities of the issues involved, for him to be able to consult some individuals with considerable experience in Fund matters and with expertise in legal and financial issues.

6.41 The Executive Committee instructed the Director to carry out a study along the lines set out in paragraph 6.38 above. The Committee also authorised the Director to use outside legal and financial expertise

and to consult some individuals with the qualifications referred to above. The Director was invited to report to the Executive Committee at its April 2000 session on the progress of this study.

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.22/5 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 of the 1971 Fund Convention 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 decided to include in the list of instruments the 1988 Protocol to the International Convention for the Safety of Life at Sea 1974 (SOLAS 74) and the 1988 Protocol to the International Convention on Load Lines, 1966 with effect from 1 May 2000.

7.4 The Executive Committee decided that the July 1999 Amendments to Annex I of MARPOL 73/78 were of an important character for the purpose of the prevention of oil pollution, but that it was premature to take a decision at the present session on whether to include these Amendments in the list of instruments, since it was not possible to determine when these Amendments would enter into force.

7.5 The Committee decided not to include in the list of instruments the May 1999 Amendments to SOLAS 74 and the July 1999 Amendments to Annex II of MARPOL 73/78.

7.6 It was recalled that the Assembly had decided at its 19th session that the November 1995 Amendments to the International Convention on Load Lines (IMO Resolution A.784 (19)) were of an important character for the purpose of the prevention of pollution but had taken the view that it was premature to take a decision at that session on whether to include them in the list of instruments contained in Article 5.3 (a) of the 1971 Fund Convention since it was not possible to determine when these Amendments would enter into force (document 71 FUND/A.19/30, paragraph 26.3). It was also recalled that the Executive Committee, acting on behalf of the Assembly, took corresponding decisions in respect of the May 1998 Amendments to SOLAS 74 (IMO Resolution MSC 69/69) (document 71FUND/EXC.59/17/A.21/24, paragraph 7.4). The Committee took the view that it was still premature to take a decision on whether to include these Amendments

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 2000:

- (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 and the Protocol of 1988 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, as modified by the Protocol of 1988 relating thereto; and
- (iv) the Convention on the International Regulations for Preventing Collisions at Sea, 1972.

7.8 One delegation suggested that it would be more practical for the 1971 Fund to take a general decision to the effect that the most recent versions of the instruments listed in Article 5.3(a) should be included. The Director stated that such a procedure would not be possible, since Article 5.4 of the 1971 Fund Convention required specific decisions by the 1971 Fund for each amendment.

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 1998 - 30 June 1999, contained in document 71FUND/A.22/6.

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. The Committee stated that it would 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 Bodies, contained in the Annex to document 71FUND/A.22/7. It noted in particular the review of the activities of those Bodies during the period 1994 - 1999, and the objectives for the coming year.

9.2 The Committee expressed its gratitude to the members of the Investment Advisory Body for their work.

10 Financial Statements and Auditor's Report and Opinion

10.1 The Director introduced document 71FUND/A.22/8 containing the Financial Statements of the 1971 Fund for the financial year 1998 and the External Auditor's Report and Opinion thereon.

10.2 A representative of the External Auditor, Mr Martin Sinclair, Assistant Auditor General, introduced the Auditor's Report and Opinion. He drew the Executive Committee's attention to the fact that, for the first time since 1991, the Auditor's Report was without qualification, as a result of the *Haven* incident having been settled.

10.3 Mr Sinclair highlighted the aspects of the Auditor's report which dealt with the winding up of the 1971 Fund (document 71FUND/A.22/8, Annex II, sections 35-55). He mentioned that in future audits the Auditor's Opinion would have to be qualified if it was considered that the 1971 Fund was not a going concern for the foreseeable future. Mr Sinclair referred to the Auditor's views regarding 'ring-fencing' certain Major Claims Funds in order to protect contributors, as well as possible ways of eventually distributing the working capital General Fund balance. He also urged the Executive Committee to follow the Auditor's strong recommendation to consider the need ultimately to appoint a liquidator for the 1971 Fund.

10.4 The Director informed the Executive Committee that, with regard to repaying the working capital, he shared the Auditor's view that a method should be used whereby those who had contributed to the building up

of that capital but were located in States which had since left the 1971 Fund should benefit in an equitable manner. With regard to the Auditor's recommendations on 'ring-fencing' Major Claims Funds by restricting internal loans between Major Claims Funds to those incidents where the same contributors were involved, the Director agreed in principle with the Auditor's view. The Director stated, however, that in his view a distinction should be made between Major Claims Funds in respect of incidents which had occurred before the end of the transitional period (ie 15 May 1998) and Major Claims Funds for incidents which occurred after that date. The Director took the view that as regards the former group of Major Claims Funds, the contributors were largely identical and there was a sufficient contribution base for future levies. He considered, therefore, that it would be appropriate to continue to allow internal loans between such Major Claims Funds in the future. With regard to the second group of Major Claims Funds (ie those relating to incidents after 15 May 1998), the Director considered that the situation was different. As a result of the progressively decreasing quantities of contributing oil which would form the basis of the levy of contributions to such Major Claims Funds, the Director took the view that loans should not be taken between such Major Claims Funds nor between Major Claims Funds of the second group and Major Claims Funds of the first group, nor from the General Fund to Major Claims Funds of either group. As for the question of appointing a liquidator, the Director stressed the need for the Executive Committee to give him instructions in this regard.

10.5 The Executive Committee noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 71FUND/A.22/8 which went into great depth and detail. In particular, the Assembly welcomed the 'value-for-money' audit and agreed with the External Auditor that this type of audit should be continued.

10.6 The Committee approved the accounts of the 1971 Fund for the financial period 1 January to 31 December 1998.

10.7 Several observer delegations representing 1992 Fund Member States stressed that, although they were concerned about the credibility of the compensation system and the operation of the 1971 Fund and were following the deliberations of that Organisation regarding incidents which occurred while they were Members of the 1971 Fund, there was no financial responsibility on the part of 1992 Fund Member States to fulfil the 1971 Fund's obligation to pay compensation for any incidents which might occur in 1971 Fund Member States in the future.

11 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

12 Report on contributions

The Executive Committee took note of the report on contributions contained in document 71FUND/A.22/10. It noted that over 97% of the 1998 annual contributions had been paid. The Committee expressed its satisfaction with the situation regarding the payment of contributions.

13 Non-submission of oil reports

13.1 It was recalled that at its 59th session, the Executive Committee acting on behalf of the Assembly had instructed the Director to make contacts with any State which failed to submit its contributing oil reports and to inform the competent persons of the State concerned that the Assembly would review individually each such State.

13.2 The Executive Committee considered document 71FUND/A.22/11 on this issue, noting that 32 States had not submitted oil reports for 1998.

13.3 The Executive Committee reiterated its view 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

these States. The Committee instructed the Director to pursue his efforts to obtain oil reports from all Member States. The Committee renewed the Director's instruction that, if a State did not submit its oil reports, he should make contacts with that State and emphasise the concerns expressed by the Assembly and Executive Committee in this regard. The Director was also instructed to inform the competent persons of the States concerned that the Assembly or Executive Committee would review individually each State which had not submitted its report and that it would then be for that body to decide on the course of action to be taken for each State.

13.4 Noting that oil reports were outstanding in respect of over two-thirds of the remaining Member States of the 1971 Fund, the Director was requested to bring this specific point to the attention of the other remaining Member States.

14 Amendment of Internal Regulations

14.1 The Executive Committee considered the proposals contained in document 71FUND/A.22/12 that the date for the submission of oil reports and the normal due date for the payment of contributions should be amended to allow Member States and contributors more time to carry out those functions.

14.2 The Executive Committee decided to amend Internal Regulation 4.1 to read as follows:

3.7 Payment of annual contributions shall be due on 1 March of the year following that in which the Assembly decides on the levy of annual contributions, unless the Assembly decides otherwise.

3.9 Interest shall be charged on unpaid annual contributions from the date on which payment is due at an annual rate which for each period of twelve months from 1 March shall be 2% higher than the lowest London clearing bank base rate prevailing on 1 March.

4.1 Each Member State shall forward annually to the Director reports on contributing oil receipts, using the form annexed to these Internal Regulations. The reports shall reach the Director not later than 30 April each year. They shall specify the names and addresses of all persons who, in the preceding calendar year, received within the territory of the Member State concerned oil in respect of which contributions are liable to be paid in accordance with Article 10 of the 1992 Fund Convention, together with details of the quantities of contributing oil received by all such persons during that year.

4.3 Each State in respect of which the Convention enters into force after 30 April of any year shall, on or before the date of entry into force of the 1992 Fund Convention for that State, submit a report in the terms stipulated in this Internal Regulation in respect of contributing oil received within its territory during the preceding calendar year.

15 Definition of 'contributing oil'

15.1 The Executive Committee considered document 71FUND/A.22/13 relating to the list of 'contributing oil' and 'non-contributing oil' attached to the oil reporting form which is annexed to the Internal Regulations.

15.2 It was recalled that the Executive Committee, acting on behalf of the Assembly, had decided at its 59th session that 'contributing oil' should be limited to 'persistent oil' and that the classification of condensates should be dependent on whether the type of oil in question was persistent.

15.3 The Executive Committee noted that in the list marine diesel oil was placed in the column for non-contributing oil. It also noted that it had been established that some marine diesel oils were persistent whereas others were non-persistent. It was further noted that the specifications against which marine diesel oils were marketed did not normally include distillation data and that a distinction for contribution purposes between

persistent and non-persistent marine diesel oil would therefore require additional tests to be carried out. The Committee decided that, in view of the small quantity of marine diesel oil carried by sea as cargo in relation to the total quantity of contributing oil so transported, and the considerable administrative burden oil receivers would face if they had to distinguish in their reports to the IOPC Funds between persistent and non-persistent marine diesel oils, marine diesel oil should continue to be classified as 'non-contributing oil'.

15.4 It was recalled that it had been decided that a bituminous emulsion used for the production of heat and power, known as *orimulsion*, should be considered as falling within the definition of 'contributing oil' laid down in Article 1.3 of the Fund Convention. It was noted that there were a number of products similar to *orimulsion* which were also used for the production of heat and power. It was decided that also those products should be considered as 'contributing oil' for the purpose of Article 1.3 of the 1971 Fund Convention, but that it was not necessary in the designation to include the phrase 'used for the production of heat and power'. The Executive Committee decided therefore that those products should be referred to in the list by the generic term 'bituminous emulsions and fuel oil emulsions'. It was also decided that no allowance should be made for the water content in those products for the assessment of contributions.

15.5 The Executive Committee decided to correct a typographical error in footnote <1> in the list.

15.6 A revised list, as reproduced in Annex II, was approved by the Executive Committee.

Secretariat and administrative matters

16 Implementation of organisational changes within the Secretariat

16.1 The Executive Committee noted that the Director had instructed a consultant to undertake a review of the implementation of the Assemblies' decisions with regard to the new working methods and new structure of the Secretariat. The Committee took note of the report of this review (document 71FUND/A.22/14, Annex). The Committee also took note of a document submitted by the Director on the same issues (document 71FUND/A.22/14/1).

16.2 A number of French-speaking delegations expressed their satisfaction with the translation of documents for the October 1999 sessions. It was noted by some delegations that it was preferable to have in-house translators if there was sufficient work, in order to ensure consistency. One delegation suggested that, for this reason, it might be appropriate to consider employing an additional part-time French translator and/or a part-time Spanish translator, rather than relying on freelance translators until the workload was sufficient to justify employing a full-time translator.

16.3 The Executive Committee approved the creation of two posts in the Professional category, namely an IT Officer and a French Translator/Reviser.

16.4 The Executive Committee took note of the Director's intention to convert two posts in the General Service category in the External Relations and Conference Department, and of the Director's intention to recruit to those posts. The Committee further noted the appointment of a Clerk-Secretary instead of a Claims Clerk in the Claims Department.

16.5 One delegation had hoped that the review carried out by the consultant would have contained a more thorough evaluation of whether the consultants' original proposals regarding the Secretariat's working methods were being followed and implemented.

16.6 The Executive Committee decided that a further evaluation of the working methods should be arranged once the Secretariat had settled into its new premises.

16.7 One delegation suggested that it might be more appropriate for the IT Officer to report to the Management Team rather than to the Director.

17 Relocation of the IOPC Funds' offices

17.1 The Director introduced document 71FUND/A.22/15 dealing with the relocation of the IOPC Funds' offices outside the IMO building. The Director informed the Executive Committee that he had decided that, subject to the conclusion of ongoing negotiations with the landlord and the United Kingdom Government, the IOPC Funds' Secretariat would be relocated to Portland House, Stag Place, London SW1.

17.2 The Executive Committee noted that the United Kingdom Government had undertaken to refund 80% of the rent relating to Portland House for the duration of the lease, and that it would also subsidise the rates as was customary for Diplomatic Missions. It was also noted that the United Kingdom Government was prepared to make a contribution to the relocation costs provided that the costs fell within the Government's budget year ending 31 March 2000, and that the level of the Government's contribution was being discussed. The Committee expressed its great appreciation of the financial assistance given by the United Kingdom Government to the IOPC Funds.

17.3 The Executive Committee expressed its concern at the high cost of refurbishing the proposed office premises. It was considered that, as such one-off costs were high, it would be appropriate for the period of the lease to be reasonably long, say 10-15 years.

17.4 The Executive Committee approved an appropriation of £600 000 to cover expenses in connection with the relocation of the IOPC Funds' offices.

17.5 It was noted that the Assembly of the 1992 Fund had at its 4th session approved the same appropriation.

18 Appointment of Director

18.1 It was recalled that the Assembly had decided, at its 4th extraordinary session, that the Director of the 1971 Fund should *ex officio* be the person who held the post of Director of the 1992 Fund, provided that the Assembly of the 1992 Fund agreed and that the Director of the 1992 Fund agreed to carry out the functions of Director of the 1971 Fund (document 71FUND/A/ES.4/16, paragraph 15.1.27 and 1971 Fund Resolution N°13, operative paragraph 8).

18.2 The Executive Committee noted that the present Director's term of office would expire on 31 December 1999.

18.3 The Executive Committee noted the decision of the 1992 Fund Assembly to appoint the present Director, Mr Måns Jacobsson, as Director of the 1992 Fund for a further term of office of five years. It was also noted that the 1992 Fund had decided that the Director of the 1992 Fund should be allowed to carry out the functions of Director of the 1971 Fund also.

18.4 The Executive Committee took note of the fact that, as a result of the 1992 Fund's decision, Mr Måns Jacobsson would hold the post of Director of the 1971 Fund for a period of five years from 1 January 2000.

18.5 The Director accepted the role as Director of the 1971 Fund, and expressed his gratitude for the renewed confidence shown in him.

19 Reports of the Executive Committee's 59th - 61st sessions

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

20 Consideration of items on the agenda of the 62nd session of the Executive Committee

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

21 Election of members of the Executive Committee

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

Budgetary matters

22 Sharing of joint administrative costs with the 1992 Fund

22.1 The Executive Committee approved the Director's proposal that the costs of running the joint Secretariat for 2000 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 2000 (document 71FUND/A.22/19).

22.2 It was also noted that the Assembly of the 1992 Fund had agreed at its 4th session to the distribution proposed by the Director.

23 Budget for 2000

23.1 The Executive Committee considered the draft 2000 Budget for the administrative expenses of the 1992 Fund and 1971 Fund, as proposed by the Director in documents 71FUND/A.22/19 and 71FUND/A.22/19/Add.1.

23.2 A number of delegations expressed their concern at the increases in the budget during the last few years and suggested that a nominal zero growth budget might have to be considered in the future.

23.3 Whilst appreciating those concerns, many other delegations did not envisage that the trend would continue, since the budget for 2000 related to a period of transition.

23.4 The Director drew the Executive Committee's attention to the fact that the increases were a direct result of decisions taken by the Committee, such as the increase in activities in the field of public relations, improvement of the Organisation's IT facilities, the establishment of two new posts and relocation. He also pointed out that there had been a saving of 20% in the total budget appropriations for the 1998 financial year. The Director assured delegations that the Secretariat would endeavour, as in the past, to keep the administrative costs to a minimum.

23.5 The Executive Committee adopted the budget appropriations for 2000, with a total administrative expenditure for the joint Secretariat of £3 225 040, as reproduced in Annex III.

23.6 It was noted that the Assembly of the 1992 Fund had at its 4th session adopted the same budget appropriations.

23.7 The Director was invited to consider how a clearer presentation of the budget could be made, for example whether all budgetary aspects relating to the General Fund (ie those relating to administrative expenses and those relating to minor claims) could be presented in one document.

23.8 The Executive Committee took note of the information contained in the Annex to document 71FUND/A.22/19 of the decisions by the Director concerning the grading of posts in the general service category and promotions.

24 Working capital

24.1 One delegation expressed the view that the working capital of the 1971 Fund should be reduced from its present level of £5 million to £2.5 million in due course. A number of delegations considered, however, that the present level should be maintained.

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

25 Assessment of annual contributions

25.1 The Director introduced document 71FUND/A.22/21, which contained proposals for the levy of 1999 annual contributions.

25.2 The Executive Committee decided not to levy 1999 annual contributions to the General Fund.

25.3 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 *Sea Empress*, *Nakhodka* and *Osung N^o3* 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, acting on behalf of the Assembly, decided pursuant to Article 12.2(b) of the 1971 Fund Convention, to raise 1999 annual contributions to the following three Major Claims Funds:

- (a) a levy of £2.0 million to the *Sea Empress* Major Claims Fund;
- (b) a levy of £1.0 million to the *Nakhodka* Major Claims Fund; and
- (c) a levy of £5.3 million to the *Osung N^o3* Major Claims Fund.

25.4 The Executive Committee took note of the fact that all claims and expenses arising out of the *Haven* incident had been paid. Since the amount remaining in this Major Claims Fund was considered to be substantial, the Committee decided, pursuant to Financial Regulation 4.4 that an amount of £2.5 million should be reimbursed to the contributors to the *Haven* Major Claims Funds and that the balance be transferred to the General Fund.

25.5 The Executive Committee decided that the entire levies to the *Nakhodka* and *Osung N^o3* Major Claims Funds should be due for payment by 1 March 2000, whereas the entire levy to the *Sea Empress* Major Claims Fund should be deferred. The Director was authorised to decide whether to invoice all or part of the amount of the deferred levy for payment during the second half of 2000, if and to the extent required. The Committee also decided that the reimbursement in respect of the *Haven* Major Claims Fund should be made on 1 March 2000.

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

25.7 The Executive Committee considered it premature to take any decisions in respect of the *Yeo Myung* and *Yuil N^o1* Major Claims Funds.

25.8 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^o5*, *Sea Prince* and *Nissos Amorgos* incidents.

25.9 The Executive Committee noted that its decisions in respect of the levy of 1999 annual contributions could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy/(reimbursement) £	Payment by/(credit on) 1 March 2000		Maximum deferred levy	
				Levy/(reimbursement) £	Estimated levy/(reimbursement) per tonne £	Levy £	Estimated levy per tonne £
<i>Haven</i>	1990	913	(2 500 000)	(2 500 000)	(0.0027382)	0	0.0000000
<i>Sea Empress</i>	1995	1 230	2 000 000	0	0.0000000	2 000 000	0.0016260

<i>Nakhodka</i>	1996	1 235	1 000 000	1 000 000	0.0008097	0	0.0000000
<i>Osung N°3</i>	1996	1 239	5 300 000	5 300 000	0.0042776	0	0.0000000
Total			5 800 000	3 800 000	0.0023491	2 000 000	0.0016260

25.10 The Executive Committee noted the Director's position as regards inter-fund borrowing as set out in paragraph 10.4 above. The Committee endorsed the Director's position in this regard.

Other matters

26 Future sessions

The Executive Committee decided that the next session of the Assembly should be convened during the week of 23 - 27 October 2000.

27 Any other business

27.1 Transfer within the 1999 Budget

27.1.1 The Executive Committee authorised the Director to transfer £20 000 from Chapter VI to the appropriation for Mission in Chapter IV in the 1999 budget.

27.1.2 It was noted that the Assembly of the 1992 Fund had, at its 4th session, also authorised the Director to make such a transfer.

27.2 Early compensation payments by the 1992 Fund

27.2.1 The Malaysian delegation drew the Executive Committee's attention to the intervention made by the United Kingdom delegation at the 4th session of the 1992 Fund Assembly in which reference was made to situations which had recently become apparent in which claimants, who could have expected to receive compensation from the shipowner (or his insurer) as the total amount claimed in respect of the incident was less than the limit of the shipowner's liability, had received no compensation two years after the incident had occurred. It was noted that the United Kingdom delegation had recognised that the regime of the Conventions established a two-tier system in which the 1992 Fund should not normally become involved in the payment of compensation until the limit of the shipowner's liability had been reached. It was also noted that that delegation had nevertheless suggested that it would be appropriate to consider whether there might be a possibility within the system of the Conventions whereby victims could in such circumstances obtain compensation from the 1992 Fund which could then present a subrogated claim to the shipowner.

27.2.2 It was noted that the 1992 Fund Assembly had instructed the Director to study the question raised by the United Kingdom delegation and to report to the Assembly at its 5th session. Delegations were invited to submit their views on the matter to the Secretariat, in order to assist the Director in the preparation of his study.

27.2.3 The Director informed the Executive Committee that he would submit his study to the governing bodies of both the 1992 Fund and the 1971 Fund.

28 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 documents 71FUND/EXC.62/A.22/WP.2 and 71FUND/EXC.62/A.22/WP.2/Add.1, was adopted, subject to some amendments.

* * *

ANNEX I

DRAFT

Protocol of [.....year.....] to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971

THE CONTRACTING STATES to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (hereinafter the “1971 Fund Convention”),

RECALLING Article 43, paragraph 1, of the 1971 Fund Convention which provides that the Convention shall cease to be in force on the date when the number of Contracting States falls below three,

RECALLING ALSO Article 42 of the 1971 Fund Convention which provides for measures to be taken in the event of a denunciation the result of which will significantly increase the level of contributions for remaining Contracting States,

NOTING that denunciations of the 1971 Fund Convention will result in a significant increase in the level of contributions from contributors in remaining Contracting States,

MINDFUL of the need to ensure that at all times the International Oil Pollution Compensation Fund 1971 (1971 Fund) is able to meet in full its obligations to pay compensation to victims of pollution damage arising from incidents covered by the 1971 Fund Convention,

CONCERNED that further reductions in the contribution base of the 1971 Fund could seriously impair the ability of the Fund to discharge its obligations,

RECOGNISING that failure of the 1971 Fund to meet its obligations could adversely affect the credibility of the international regime for liability and compensation for oil pollution damage,

DESIRING to facilitate the orderly termination of the 1971 Fund Convention without undue complication for Contracting States or for victims of oil pollution damage,

REAFFIRMING the provisions of Article 43, paragraph 2 and Article 44 of the 1971 Fund Convention regarding the obligation of Contracting States and the 1971 Fund with respect to incidents occurring before the 1971 Fund Convention ceases to be in force,

ADOPT THE FOLLOWING AMENDMENTS TO THE 1971 FUND CONVENTION

Article I

For the purpose of the present Protocol:

- 1 “Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.
- 2 “Liability Convention” has the same meaning as in the Convention.
- 3 “Organization” has the same meaning as in the Convention.
- 4 “Secretary-General” means the Secretary-General of the Organization.

Article II

Article 43, paragraph 1 of the Convention is replaced by the following text:

This Convention shall cease to be in force:

- (a) on the date when the number of Contracting States falls below [25]; or
- (b) twelve months following the date on which the Assembly notes that, according to the information provided by the Director of the Fund on the basis of oil reports submitted by Contracting States in accordance with Article 15, the total quantity of contributing oil received in the remaining Contracting States by those persons who would be liable to contribute pursuant to Article 10 of the Convention during the preceding calendar year falls below [100 million] tonnes,

whichever is the earlier.

Article III

Option A	Option B
<p>1 This amendment shall be subject to acceptance by Contracting States in accordance with this Article.</p> <p>2 This amendment shall be deemed to have been accepted [six months] from the date of its adoption unless, prior to that date, objections to acceptance have been communicated to the Secretary-General by not less than [one-third] of the Contracting States.</p> <p>3 Contracting States may indicate their acceptance of this amendment by signing it without reservation as to ratification, acceptance or approval, or by depositing the appropriate instrument with the Secretary-General at any time prior to the expiry of the [six-month] period specified in paragraph 1.</p> <p>4 An objection to acceptance under paragraph 1 may be withdrawn at any time prior to the date of deemed acceptance in accordance with paragraph 2.</p>	<p>1 The present Protocol shall be open for signature by any State Party to the Convention. The Protocol shall be open for signature from [.....date.....] to [.....date.....] at the Headquarters of the Organization.</p> <p>2 Subject to paragraph 4 of this Article, the present Protocol shall be subject to ratification, acceptance or approval by the States which have signed it.</p> <p>3 Subject to paragraph 4 of this Article, this Protocol shall be open for accession by States Parties to the Convention which did not sign it.</p> <p>4 The present Protocol may be ratified, accepted, approved or acceded to by States Parties to the Convention.</p> <p>5 Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General.</p>

Article IV

Option A	Option B
<p>1 This amendment shall enter into force [six] months after the date on which it is deemed to have been accepted in accordance with paragraph 2 of Article III.</p> <p>2 Upon its entry into force this amendment shall apply to all Contracting States with the exception of those Contracting States which, at</p>	<p>The present Protocol shall enter into force on the [ninetieth day] following the date on which all States Parties to the 1971 Fund Convention have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.</p>

<p>least [six] months before the date of entry into force, have declared that they do not wish to be bound by the amendment.</p> <p>3 A declaration made under paragraph 2 of this Article may be withdrawn at any time prior to the entry into force of this amendment.</p> <p>4 A Contracting State which has made a declaration under paragraph 2 of this Article and which does not withdraw the declaration prior to the date of entry into force of this amendment shall be deemed to have denounced the Convention. Such denunciation shall take effect on the date of entry into force of this amendment, or such earlier date as may be specified by the Contracting State in a communication to the Secretary-General.</p>	
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Article V

1 The text of this Protocol shall be communicated by the Secretary-General to all Contracting States immediately after its adoption.

2 A declaration or communication referred to in Articles III and IV shall be notified in writing to the Secretary-General. The latter shall bring each such notification and the date of its receipt to the notice of the Contracting States and the Director of the 1971 Fund.

Article VI

As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article VII

The present Protocol is established in a single original in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared by the Secretariat of the Organization and deposited with the signed original.

DONE AT LONDON this day of[date]..... .

IN WITNESS WHEREOF the undersigned being duly authorised for that purpose have signed the present Protocol.

* * *

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
 Bituminous emulsions and fuel oil emulsions ^{<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)
 N°2 fuel (ASTM)
 Lubricating oil
 Marine diesel

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 and at least 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 emulsion received should be reported with no allowance for its water content.

ANNEX III

2000 GENERAL FUND BUDGET FOR 1992 FUND AND 1971 FUND

STATEMENT OF EXPENDITURE		Actual 1998 expenditure for 1971 and 1992 Funds		1998 budget appropriations for 1971 and 1992 Funds		1999 budget appropriations for 1971 and 1992 Funds		2000 budget appropriations			
								Total		Distribution	
		£		£		£		£		1992 Fund	1971 Fund
A	SECRETARIAT										
I	Personnel										
(a)	Salaries	629 493		780 980		838 050		981 450		490 725	490 725
(b)	Separation and recruitment	17 846		59 215		69 800		80 000		40 000	40 000
(c)	Staff benefits and allowances	193 839		270 200		343 750		360 790		180 395	180 395
(d)	Temporary assistance	38 207		30 000		40 000		40 000		20 000	20 000
(e)	Staff Training	10 748		15 000		35 000		50 000		25 000	25 000
	Sub-total		890 133		1 155 395		1 326 600		1 512 240	756 120	756 120
II	General Services										
(a)	Rent of office accommodation (including common services, security services and rates)	93 601		111 700		132 500		218 000		109 000	109 000
(b)	Office machines, including maintenance	49 949		52 500		60 000		71 500		35 750	35 750
(c)	Furniture and other office equipment	18 995		24 500		24 500		24 500		12 250	12 250
(d)	Office stationery and supplies	15 153		22 000		22 000		22 000		11 000	11 000
(e)	Communications (telephone, telefax, telex, postage)	36 304		45 000		52 000		57 100		28 550	28 550
(f)	Other supplies and services	26 928		26 600		30 000		33 500		16 750	16 750
(g)	Representation (hospitality)	9 637		15 000		16 500		16 500		8 250	8 250
(h)	Public Information (previously printing and publication)	79 849		98 000		183 750		220 000		135 000	85 000
	Sub-total		330 416		395 300		521 250		663 100	356 550	306 550
III	Meetings										
(a)	Autumn sessions of 1992 Fund and 1971 Fund Assemblies and Executive Committees	35 260		25 800		30 720		33 500		16 400	17 100
(b)	Further sessions of 1971 Fund Executive Committee	6 844		30 600		30 600		31 700		0	31 700
(c)	Extra sessions of 1992 Fund and 1971 Fund Assemblies and 1971 Fund Executive Committee	6 437		25 800		0		0		0	0
(d)	Extra sessions of 1992 Fund Executive Committee	2 624		15 300		22 680		23 100		23 100	0
(e)	Intersessional Working Groups	0		20 600		24 160		25 300		14 650	10 650
	Sub-total		51 165		118 100		108 160		113 600	54 150	59 450

STATEMENT OF EXPENDITURE		Actual 1998 expenditure for 1971 and 1992 Funds		1998 budget appropriations for 1971 and 1992 Funds		1999 budget appropriations for 1971 and 1992 Funds		2000 budget appropriations			
								Total		Distribution	
		£		£		£		£		1992 Fund	1971 Fund
IV	Conferences and travel										
(a)	Conferences and seminars	22 102		20 000		30 000		40 000		20 000	20 000
(b)	Mission	9 866		20 000		20 000		30 000		15 000	15 000
	Sub-total		31 968		40 000		50 000		70 000	35 000	35 000
V	Miscellaneous expenditure										
(a)	External audit	52 925		57 925		46 600		56 600		15 350	41 250
(b)	Payment to IMO for general services	6 200		6 200		6 400		6 500		3 250	3 250
(c)	Consultants' fees	129 029		125 000		185 000		125 000		62 500	62 500
(d)	Payment to IMO for translator (French)	63 378		67 000		70 350		0		0	0
(e)	Investment Advisory Bodies	18 000		18 000		18 000		18 000		9 000	9 000
	Sub-total		269 533		274 125		326 350		206 100	90 100	116 000
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		0		60 000		60 000		60 000	30 000	30 000
VII	Relocation costs						400 000		600 000	300 000	300 000
Total Expenditure I-VII			1 573 214		2 042 920		2 792 360		3 225 040	1 621 920	1 603 120
VIII	Expenditure relating only to 92 Fund(1998); 71Fund (2000)		60 000		60 000						250 000
B	CLAIMS (See documents 92FUND/A.4/26 and 71FUND/A.22/21)										

STATEMENT OF INCOME		Funds actually accumulated as at 31.12.98		1998 budget estimates		1999 budget estimates		2000 budget estimates			
								Total		Distribution	
		1971 Fund	1992 Fund	1971 Fund	1992 Fund	1971 Fund	1992 Fund	£		1992 Fund	1971 Fund
		£		£		£		£		£	£
I	Balance from preceding years	8 613 692	12 584 813	9 609 057	6 334 122	6 713 464	8 706 427	23 233 171		15 587 357	7 645 814
II	Any other income			500 000	850 000	350 000	750 000	1 060 000		790 000	270 000
Total Income I-II		8 613 692	12 584 813	10 109 057	7 184 122	7 063 464	9 456 427	24 293 171		16 377 357	7 915 814
III	Income relating only to 1971 Fund	60 000		60 000							0