INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
62nd session
Agenda item 7

71FUND/EXC.62/14
22 October 1999

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RECORD OF DECISIONS OF THE SIXTY-SECOND SESSION OF THE EXECUTIVE COMMITTEE

(held from 19 to 22 October 1999)

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

Opening of the session

The 62nd session of the Executive Committee was opened by the Director, in accordance with Rule (v) of the Committee's Rules of Procedure, as neither the delegation of the former Chairman nor that of the former Vice-Chairman was a member of the newly elected Executive Committee.

1 Adoption of the Agenda

1.1 The Executive Committee adopted the Agenda as contained in document 71FUND/EXC.62/1.

Election of the Chairman and Vice-Chairman

1.2 The Executive Committee elected the following delegates to hold office until the next regular session of the Assembly:

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

1.3 The Chairman, on behalf of himself and the Vice-Chairman, thanked the Executive Committee for the confidence shown in them.

2 Examination of credentials

2.1 The following members of the Executive Committee were present:

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

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

2.2 The following Member States were represented as observers:

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

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

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

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

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

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

International non-governmental organisations:
Comité Maritime International (CMI)
Cristal Limited
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P & I Clubs
International Tanker Owners Pollution Federation Limited (ITOPF)
International Union for the Conservation of Nature and Natural Resources (IUCN)
Oil Companies International Marine Forum (OCIMF)

3 Incidents involving the 1971 Fund

3.1 Overview

The Executive Committee took note of document 71FUND/EXC.62/2 which contained a summary of the situation in respect of all 24 incidents dealt with by the 1971 Fund since the Committee's 59th session.

3.2 *Haven*

3.2.1 The Executive Committee took note of the information contained in document 71FUND/EXC.62/3 relating to the *Haven* incident. In particular, the Committee noted that the agreement on a global settlement of all outstanding issues, which had been signed on 4 March 1999 by the Italian State, the shipowner, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club) and the 1971 Fund, had been approved and registered by the Corte dei Conti on 22 April 1999 and that all legal actions in the Italian courts had been withdrawn.

3.2.2 It was recalled that as regards the 1971 Fund the agreement was based on a maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention of 60 million Special Drawing Rights (SDR) and that the amount paid by the 1971 Fund did not relate to environmental damage. It was also recalled that the agreement provided for a payment by the shipowner/UK Club to the Italian State on an *ex gratia* basis and without admission as to the liability of any party, to the extent that the payment exceeded the balance of the limitation amount under the 1969 Civil Liability Convention.

3.2.3 The Committee noted that funds totalling LIt 117 600 million (£42.8 million) had been released to the Italian State on 27 May 1999, out of which LIt 70 002 629 093 (£25.5 million) was paid by the 1971 Fund and LIt 47 593 370 907 (£17.3 million) by the UK Club. It was also noted that the 1971 Fund had made payments of FFr12 580 724 (£1.3 million) to the French State on 17 June 1999 and of FFr270 035 (£29 000) to the Principality of Monaco on 22 June 1999. The Committee further noted that the 1971 Fund had paid indemnification of £2.5 million to the UK Club on 7 May 1999.

3.3 *Aegean Sea*

3.3.1 The Director introduced document 71FUND/EXC.62/4 which set out the developments that had taken place in respect of the *Aegean Sea* incident since the Committee's 61st session.

Execution of the judgement

3.3.2 The Committee noted that on 5 October 1999 the Court in charge of the procedure for the execution of the judgement had served the 1971 Fund with pleadings submitted by eight out of the ten groups of claimants concerned and that in those pleadings the claimants had indicated the evidence which they intended to submit to the Court at a later stage to prove their losses and the evidence which they were requesting that the Court should obtain on their behalf. It was further noted that the Court had given the 1971 Fund ten days to notify the Court of any evidence it intended to rely upon during the execution of the judgement procedure.

3.3.3 The Committee also noted that the 1971 Fund had requested that the Court should suspend the proceedings, since the evidence referred to in the pleadings was incomplete and that the judge had issued an order extending the period for the Fund's submission of its pleadings to three months from the date on which the missing evidence was submitted.

Request for full payment by the towns of La Coruña and Culleredo

3.3.4 The Committee recalled that, in the Court of Appeal's judgement of 18 June 1997 on the merits of certain claims, the Court had awarded the towns of La Coruña and Culleredo specified amounts in compensation. It was noted that these towns had requested the Court in charge of the execution of the judgement to order that the awarded amounts be paid in full.

3.3.5 The Executive Committee noted with approval that, in its pleadings before the Court, the 1971 Fund had maintained that the enforceability of judgements rendered by national courts was recognised in the 1971 Fund Convention but that such enforcement was subject to a decision by the Assembly or the Executive Committee under Article 18.7 concerning the distribution of the total amount available for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. The Committee also noted with approval that the 1971 Fund had stated in its submission to the Court that for this reason the Fund was able to pay only 40% of the amounts awarded to the two towns in question.

3.3.6 The Executive Committee confirmed its previous decision that payments to claimants who had been awarded a specific amount in the judgements would be limited to 40% of the respective amounts so awarded (documents 71FUND/EXC.55/19, paragraph 3.3.30 and 71FUND/EXC.60/17, paragraph 3.2.9).

Claims presented to the Civil Court

3.3.7 The Committee noted that some 60 claims totalling Pts 22 000 million (£85.4 million) had been brought against the shipowner, his P & I insurer (the UK Club) and the 1971 Fund in the Civil Court of La Coruña by a number of companies and individuals, principally in the mariculture sector, who had not submitted any claims in the criminal proceedings but who had indicated in those proceedings that they would present their claims at a later stage in civil proceedings. The Committee further noted that the 1971 Fund had not been notified of these claims.

Evidence to support claims

3.3.8 It was noted that in September 1999 the Spanish Government had presented to the 1971 Fund a study carried out by the Instituto Español de Oceanografía containing an assessment of the losses suffered by fishermen and shellfish harvesters and by claimants in the mariculture sector and that the Institute had assessed the losses at between Pts 4 110 million (£16 million) and Pts 4 731 million (£18.4 million) and Pts 8 329 million (£32.3 million), respectively. It was also noted that extensive documentation relating to the losses suffered by companies in the mariculture sector had been submitted and that the experts engaged by the UK Club and the 1971 Fund were examining the documentation.

Question of time bar

3.3.9 The Executive Committee recalled the discussions at its 59th session regarding the issue of whether the claims in respect of which actions have been brought against the 1971 Fund in the Civil Court of La Coruña had become time-barred. The Committee noted the legal opinions on this issue presented by the Spanish Government and the opinions obtained by the 1971 Fund.

3.3.10 In the light of the differing views expressed in the various legal opinions, the Committee agreed with the Director that the very complex issues relating to time bar should be discussed further with the Spanish Government and instructed him to continue those discussions.

Recourse action

3.3.11 The Executive Committee recalled that on 12 June 1998 the Spanish Ambassador in London and the Director had signed an agreement under which the Spanish State had undertaken 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. It was also recalled that the 1971 Fund, on its part, had undertaken not to bring legal action against the State within the first eleven months of the date of the agreement.

3.3.12 The Committee noted that on 9 June 1999 the Spanish Ambassador in London and the Director had signed a new 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 the above-mentioned recourse action against the Spanish State, provided that such an action was taken before 12 June 2000 and that the 1971 Fund, on its part, undertook not to bring legal action against the Spanish State before 12 May 2000.

Possible suspension of legal proceedings

3.3.13 The Executive Committee noted that at a meeting held in Madrid on 23 September 1999 the representatives of the Spanish Government had undertaken to consult with the lawyers representing the claimants with a view to agreeing to a provisional suspension of the legal proceedings before the Spanish Courts so as to enable the Spanish Government and the 1971 Fund to pursue discussions on all the outstanding issues. The Committee noted that such consultations were understood to be taking place.

Consultation Group

3.3.14 The Executive Committee noted that the *Aegean Sea* Consultation Group set up to assist the Director in his search for a solution of the outstanding issues had met on 14 October 1999 and that the Spanish delegation had attended the meeting.

3.3.15 Mr Charles Coppolani (France) made a statement on behalf of the Consultation Group which can be summarised as follows:

> A frank and useful exchange of views took place in order to clarify the respective positions. The Group hoped that discussions between the main parties would eventually result in a settlement being reached. The report by the Instituto Español de Oceanografía was a positive step but there were three main issues which had to be considered with the Spanish Government namely, the quantum of the losses, the distribution of liabilities and the time bar of a group of claims.
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> The Consultation Group considered that there were various points which should be clarified before any agreement could be reached. The 1971 Fund must know with whom to negotiate. The Spanish Government should clarify whether the Government represents all claimants or whether the claimants still have the right to claim against the shipowner/Club and the 1971 Fund. The members of the Consultation Group also took the view that any agreement must be binding on all claimants and that any settlement agreement must be global, ie it must include all outstanding issues.
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> The members of the Consultation Group took the view that it would be preferable if litigation before the Spanish Courts were suspended provisionally, since this would facilitate negotiations between the 1971 Fund and the Spanish Government.
>
> The Consultation Group considered that a global settlement would be preferable to protracted litigation. The Group nevertheless took the view that progress towards such a settlement could be made only if the 1971 Fund was in a position through its experts to examine the evidence and to form its own opinion on the admissibility of the claims. The Group believed that progress towards such an agreement would be possible only if the parties worked in a spirit of compromise. The Consultation Group encouraged the Director to continue his efforts to progress towards a solution in this case. The members of the Group considered that meetings should take place in parallel on the assessment of losses and on the legal aspects of the case as soon as possible with the aim of making substantial progress before the next session of the Executive Committee.

Statement by Spanish delegation

3.3.16 The Spanish observer delegation made the following statement:

> The Spanish Government wishes to reaffirm its determination to complete the negotiations with the 1971 Fund in respect of all the claims arising out of the *Aegean Sea* incident. This is the oldest incident which remains unresolved in the 1971 Fund and the Spanish Government is committed to seeking a single out-of-court settlement of all outstanding issues and efforts should be made by all the parties involved in this direction.
>
> This delegation agrees with the recommendation of the Consultation Group made in April 1999, endorsed by the Executive Committee at its 61st session, that a global settlement

would be preferable to protracted litigation and that progress towards such an agreement would be possible only if the parties worked in a spirit of compromise. With this in mind, the Spanish Government has submitted to the 1971 Fund a study carried out by the Instituto Español de Oceanografía containing an official assessment of the losses suffered by fishermen and shellfish harvesters and by claimants in the mariculture sector and extensive documentation of some 2 000 pages containing evidence to support the claims. The Institute has assessed the losses in the region of £50.5 million without taking into account three heads of claims: namely interest, property damage and financial expenditure. The claims relating to clean-up operations and preventive measures have not been included in this assessment. The Spanish Government is prepared to facilitate the work of the 1971 Fund's experts and is pleased to clarify the issues which might arise from the examination of this documentation.

As regards the two pending legal disputes which remain unresolved, the Spanish Government hopes that these can eventually be settled by negotiation on the basis of a spirit of co-operation and that all litigation in Spain should be terminated as a result. In this connection, the Committee should note that an arbitration award has been rendered in London in June 1999 to solve a dispute between the shipowner and the owner of the cargo, ruling out any State or port liability for the incident on the ground that the *Aegean Sea* incident was due to the failure of the master who firstly did not make a proper passage plan for his vessel into the port and secondly was negligent in the handling of his vessel when he commenced his turn into the port.

The Spanish Government takes this opportunity to recall that litigation is not the right tool for settling claims expeditiously, which is even more apparent in the *Aegean Sea* incident, at this stage of the negotiations, when the 1971 Fund and Spain are making progress in the hope that a settlement of all outstanding issues could be reached. This delegation wishes to thank all delegations for their support in the context of long and difficult negotiations and hopes that a possible framework to put an end to the *Aegean Sea* case can be adopted by consensus at the next session of this Committee.

3.3.17 The Executive Committee noted that the arbitration award mentioned in the statement made by the Spanish delegation referred to a dispute under a charterparty between two private companies and did not involve the 1971 Fund, that the arbitration was subject to English law, that the issue under consideration by the arbitrators was whether La Coruña was a safe port and that the arbitrators did not address the issue of the distribution of liabilities between the master/shipowner/UK Club/1971 Fund on the one hand and the pilot/Spanish State on the other. The Committee noted that for these reasons the Director considered that the findings of this arbitration award were not relevant for the purpose of resolving the differences of opinion between the Spanish State and the 1971 Fund as to the interpretation of the judgements rendered by the Spanish Courts on the distribution of liabilities.

Executive Committee's considerations

3.3.18 The Executive Committee noted with satisfaction that the Spanish Government had made available to the 1971 Fund extensive documentation in support of the claims in the fishery and mariculture sectors and that the experts engaged by the 1971 Fund and the UK Club were examining this documentation. It was also noted that it was envisaged that as soon as this examination had been carried out meetings would be held between these experts and the Spanish Government's experts in order to facilitate the 1971 Fund's assessment of the claims.

3.3.19 The Executive Committee agreed that the 1971 Fund should focus its efforts on an examination of the documentation presented by the Spanish Government in support of the claims in the fishery and aquaculture sectors, the distribution of liabilities between the Spanish State and the shipowner/UK Club/1971 Fund and the legal issue relating to time bar. The Committee instructed the Director to pursue his discussions with the Spanish Government with the objective of reaching a global agreement which would settle all outstanding issues. It was noted that any such agreement would have to cover all parties involved, including the shipowner and the UK Club.

3.4 *Braer*

3.4.1 The Executive Committee took note of document 71FUND/EXC.62/5 which set out the developments which had taken place in respect of the *Braer* incident since the Committee's 61st session, in particular, that the total amount of the claims in court, originally £80 million, stood at £34 million on 1 October 1999, after a number of claims had been settled out of court, withdrawn from the court proceedings or reduced in amounts. The Committee also noted that claims amounting to only £26 million had been transferred to the limitation proceedings and that this amount would be reduced further as some of those claims were in the process of being withdrawn from the proceedings.

3.4.2 The Committee noted with satisfaction that the Appeal Court in Scotland (the Inner House) had confirmed a decision by the Court of Session (the Court of first instance) to reject a claim for pure economic loss by Landcatch Ltd which supplied smolt to salmon farmers from its installations on mainland Scotland some 500 kilometres from Shetland.

3.4.3 It was recalled that at its 44th session the Executive Committee had instructed the Director to suspend any further payments of compensation until the Committee had re-examined the question of whether the total amount of the established claims would exceed the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, viz 60 million SDR (document FUND/EXC.44.17, paragraph 3.4.45). It was noted that, since the suspension of payments had been imposed, 212 claims for a total amount of £5.7 million had been approved but not paid.

3.4.4 The United Kingdom observer delegation reminded the Executive Committee that many claims had been approved since the suspension of payments and that some of these claims had remained unpaid for some four years. This delegation stated that as the uncertainties surrounding the claims which were the subject of legal proceedings became clarified, and once the maximum amount of the 1971 Fund's exposure could be established, then a partial payment of the approved claims should be made. The United Kingdom delegation added that in making such payments it would be necessary for the 1971 Fund to stress to claimants that these payments did not represent final payments.

3.4.5 The Executive Committee decided to authorise the Director to make partial payments to those claimants whose claims had been approved but not paid, in the event that the claims pending in the court proceedings together with the claims which had been approved but not paid fell below £20 million. The Committee further decided that the proportion of the approved amounts to be paid should be decided by the Director on the basis of the total amount of all outstanding claims.

3.5 *Keumdong N°5, Sea Prince, Yeo Myung, Yuil N°1* and *Osung N°3* incidents

Keumdong N°5

3.5.1 The Executive Committee took note of the developments in respect of the *Keumdong N°5* incident, as set out in section 1 of document 71FUND/EXC.62/6. It was recalled that the competent Korean Court had rendered judgements in relation to claims by the Yosu Fishery Co-operative and an arkshell fishery co-operative, in both cases awarding for the most part apparently arbitrary amounts, since the Court had considered it impossible, on the basis of the evidence presented by the claimants, to quantify the damage suffered. The Committee further recalled that the 1971 Fund had appealed against those judgements and that the Director had been instructed to pursue those appeals (document 71FUND/EXC.61/14, paragraphs 4.4.3 and 4.4.4). The Committee noted that several hearings had been held in the Seoul Appellate Court and that those hearings were expected to continue at approximately monthly intervals until the parties had presented all their evidence.

Sea Prince

3.5.2 The Executive Committee took note of the developments in respect of the *Sea Prince* incident as set out in section 2 of document 71FUND/EXC.62/6.

Yeo Myung

3.5.3 The Executive Committee took note of the developments in respect of the *Yeo Myung* incident as set out in section 3 of document 71FUND/EXC.62/6. The Committee also noted that there was only one claim for a small amount pending.

Yuil N°1

3.5.4 The Executive Committee took note of the developments in respect of the incident *Yuil N°1* as set out in section 4 of document 71FUND/EXC.62/6. In particular the Committee noted that most of the claims for the clean-up operations and most of the claims in the fishery sector had been settled and that the claim relating to the removal of the oil from the sunken ship had also been settled.

Osung N°3

3.5.5 The Executive Committee took note of the developments in respect of the *Osung N°3* incident as set out in section 5 of document 71FUND/EXC.62/6. The Committee noted in particular that most of the claims for clean-up operations and most of the fishery claims in the Republic of Korea had been settled, that the claim relating to the removal of the oil from the sunken ship had also been settled and that three claims for clean-up operations in Japan were under examination.

3.6 *Sea Empress*

3.6.1 The Executive Committee took note of the information contained in document 71FUND/EXC.62/7 concerning the *Sea Empress* incident.

Claims for compensation

3.6.2 The Committee noted that there had been only a few developments in respect of the claims situation and that legal proceedings had been brought against the shipowner, Assuranceföreningen Skuld (Skuld Club) and the 1971 Fund in respect of a number of claims.

Claim by a county fire brigade

3.6.3 The Executive Committee recalled that at its 60th and 61st sessions it had considered a claim for £150 000 which had been presented by a county fire brigade for expenses incurred in providing fire fighting services during the salvage operations (documents 71FUND/EXC.60/8, paragraphs 3.2.1 and 3.2.2 and 71FUND/EXC.61/7/1).

3.6.4 The Committee recalled that during the discussions at its 61st session there had been general acceptance that the question was whether, and if so, to what extent, the activities of emergency services could be considered as falling within the definition of 'preventive measures'. It was also recalled that it had been stated that if fire brigades were employed purely for their fire fighting capability, the operations could not be considered as preventive measures (document 71FUND/EXC.61/14, paragraph 4.6.9).

3.6.5 The Committee noted that following a meeting between the 1971 Fund and the fire brigade at which further details regarding its involvement in the incident were obtained, the Director had given further consideration to the claim.

3.6.6 The Executive Committee agreed with the Director's conclusion that the fire brigade's operations had on this occasion a dual purpose, ie both to prevent pollution damage and to protect the life of personnel involved in salvage operations. The Committee endorsed the Director's view that the costs of these operations should be apportioned between pollution prevention and other activities and that, since there was no precise basis on which to make such an apportionment, the costs should be apportioned equally on a 50:50 basis.

3.6.7 The Committee also shared the Director's view that the participation of the fire brigade in the Joint Response Centre had the primary purpose of protection of life and did not have a dual purpose and that this part of the claim should therefore be rejected.

3.6.8 The Committee emphasised that the extent to which claims with a dual purpose would be admissible would have to be decided on a case by case basis, taking into account the particular circumstances of each operation.

Outstanding claims

3.6.9 The United Kingdom observer delegation reminded the Committee that in October 1997 the United Kingdom Government had informed the 1971 Fund that, if and to the extent that the claim by the Government were to result in the total amount of the established claims exceeding the maximum amount of compensation payable under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), the Government would not pursue its claim, in its entirety or in part, against the 1971 Fund. That delegation stated that, since it had now become apparent that the total amount of established claims and the total amount of unsettled claims which were the subject of legal proceedings did not exceed 60 million SDR, the United Kingdom Government would like its claim against the 1971 Fund to be examined so that an out-of-court settlement could be reached.

Recourse action

3.6.10 The Executive Committee held a session in private, pursuant to Rule 12 of the Rules of Procedure, to consider whether the 1971 Fund should take recourse action against various third parties to recover the amount paid by the Fund in compensation as a result of the *Sea Empress* incident (cf document 71FUND/EXC.62/7/1). During the closed session, covered by paragraphs 3.6.11 - 3.6.24, only the delegations of Member States of the 1971 Fund and of those other States which were Members of the 1971 Fund at the time of the incident were present (cf 1971 Fund Resolution N°11).

3.6.11 The Executive Committee recalled that the 1971 Fund's policy in respect of actions as laid down by the Assembly and the Executive Committee could be summarised as follows:

> The Executive Committee had taken the view that the policy of the 1971 Fund was to take recourse action whenever appropriate and that the Fund should in each case consider whether it would be possible to recover any amounts paid by it to victims from the shipowner or from other parties on the basis of the applicable national law. It was recalled that the Committee had stated that if matters of principle were involved, the question of costs should not be the decisive factor for the Fund when considering whether to take legal action. It was further recalled that the Committee had stated that the 1971 Fund's decision of whether or not to take such action should be made on a case by case basis, in the light of the prospect of success within the legal system in question (document FUND/EXC.42/11, paragraph 3.1.4).

3.6.12 The Committee noted the channelling provisions of the United Kingdom Merchant Shipping Act 1995 implementing the 1969 Civil Liability Convention, which preclude action for compensation against salvors. The Committee also noted the Director's analysis of the legal position of the pilot and his employer. On the basis of this analysis the Committee shared the Director's view that there would be no point in taking recourse action against the salvor, the pilot or his employer. The Committee also agreed with the Director's view that there was no evidence of negligence on the part of the Marine Pollution Control Unit of the United Kingdom Department of Transport or the Coastguard Agency which would justify recourse action against them.

3.6.13 During its consideration of whether to take recourse action against the Milford Haven Port Authority (MHPA), the Committee recalled that criminal proceedings had been brought by the United Kingdom Environment Agency against two defendants, namely the MHPA and the Harbour Master in Milford Haven at the time of the incident. It was also recalled that both defendants had faced a charge that they caused polluting matter, namely crude oil and bunkers, to enter controlled waters, contrary to Section 85(1) of the Water Resources Act 1991, and that the discharge of crude oil and bunkers amounted to public nuisance. It was further recalled that at the opening of the criminal trial on 12 January 1999, the Harbour Master had pleaded not guilty, and that the plea had been accepted by the Environment Agency. It was further noted that the MHPA had pleaded guilty to the charge under the Water Resources Act 1991 of causing or permitting polluting matter, namely oil and bunkers, to enter controlled waters, the penalty for which is imprisonment for a term not exceeding two years, or a fine, or both, that the Port Authority had pleaded not guilty to all other charges and that the pleas had been accepted by the Environment Agency. It was also noted that, as a result, the full trial had not taken place. It was further recalled that on 15 January 1999 sentence was passed and that the MHPA had been ordered to pay a fine of £4 million and to pay £825 000 towards the prosecution costs against which sentence the Port Authority had appealed.

3.6.14 The Committee noted that the Director had considered the transcript of the trial in the criminal proceedings and that when passing sentence the trial judge had made a number of highly critical comments relating to the MHPA and the way in which it had operated the port.

3.6.15 The United Kingdom observer delegation stated that it was important to note that the charge to which the MHPA had pleaded guilty was a strict liability offence under the Water Resources Act 1991. The Committee noted the Director's statement that there had been some doubt expressed as to whether this offence was one of strict liability only.

3.6.16 It was noted that the legal advice given to the 1971 Fund indicated that the basis of a recourse action against the MHPA would be that, as a harbour authority and a pilotage authority, MHPA was in breach of both common law and statutory duties (under the Milford Haven Conservancy Act 1983 and the Pilotage Act 1987).

3.6.17 The Committee noted that, having reviewed the Marine Accident Investigation Branch of the United Kingdom Department of Transport and the Commissioner of Maritime Affairs of Liberia's reports on the cause of the incident and the views of several technical experts, the 1971 Fund's legal advisers considered that the standards of training and authorisation of pilots at Milford Haven, as well as the system for classification of vessels for the purpose of allocation of pilots, were inadequate, and that it was likely that this particular pilot's limited experience in piloting tankers of this size led to his error, which in turn caused the grounding. The Committee further noted that there appeared, in the opinion of the 1971 Fund's legal advisers, to be a realistic prospect of successfully arguing that the initial grounding would not have occurred if the radar system at Milford Haven - which had broken down some time before the grounding – had been fully operational, and if a reasonable vessel traffic system had been in operation. The Committee noted that a claim brought by the 1971 Fund against the MHPA would be on the basis of the 1971 Fund having acquired by subrogation the rights of those victims of oil pollution to whom it has made payments of compensation and that the 1971 Fund's legal advisers considered there to be good prospects of establishing that the MHPA was in negligent breach of duty in relation to the safe navigation within the Haven and its approaches and that the necessary causative link between the breaches and the incident existed.

3.6.18 The Committee was aware that there was a risk element inherent in any litigation and that a recourse action against the MHPA would give rise to complex legal issues. It was noted that it was likely that certain evidence concerning the running of the port would not become available until after the proceedings had begun, which added to the difficulty of predicting the outcome of the case. The Committee also noted that the 1971 Fund's legal advisers considered it unlikely that the MHPA would be entitled to limit its liability in this case.

3.6.19 The Committee noted the financial position of the MHPA from its audited accounts for the year ended 31 December 1997. The Committee further noted that it was uncertain to what extent there was insurance covering the MHPA's liability for pollution damage.

3.6.20 The Committee noted that the 1971 Fund had paid some £9.4 million in compensation of which £5.6 million related to property damage, clean-up operations and preventive measures and £3.8 million related to pure economic loss and that further payments for significant amounts in respect of clean-up operations would be made as well as some further payments for pure economic loss. The Committee noted that the amount at stake in a recourse action would be substantial (£25 - 28 million) but observed that it was necessary to take into account also the fact that the cost of any litigation would be considerable and that if other parties were also to take recourse action against the MHPA, the 1971 Fund might have to compete with them in the distribution of any amount available if that amount were insufficient to meet all favourable judgements.

3.6.21 It was noted that a considerable part of the 1971 Fund's recourse claim would relate to pure economic loss and that the courts in the United Kingdom had in general taken a restrictive approach as to the admissibility of such claims. It was recognised that it was possible, therefore, that at least some of the 1971 Fund's subrogated claims for pure economic loss would not be admitted in a recourse action.

3.6.22 A number of delegations expressed the view that the 1971 Fund should be consistent as regards its policy in respect of recourse actions. They took the view that, since there appeared to be a reasonable prospect of recovering at least part of the amounts paid by the 1971 Fund to victims, they supported the Director's view that a recourse action should be pursued against the MHPA. One delegation, although supporting the Director's view, drew attention to the serious consequences for port authorities that a policy of

basing recourse actions on pilot errors could have in developing countries where it had not yet been possible to harmonise standards of training of pilots.

3.6.23 The Executive Committee decided to instruct the Director to take recourse action on behalf of the 1971 Fund against the MHPA. The Director was also instructed to keep the Committee informed of any developments so as to enable it to reassess the 1971 Fund's position if required.

3.6.24 The United Kingdom observer delegation expressed the view that the Executive Committee's decision appeared to be in line with the 1971 Fund's policy in respect of recourse actions. That delegation considered that it was important that the 1971 Fund evaluated very carefully its evidence of negligence on the part of MHPA and examined the costs and benefits of a recourse action from the point of view of contributors.

3.7 *Nakhodka*

Claims for compensation

3.7.1 The Executive Committee took note of the developments in respect of the *Nakhodka* incident, as contained in document 71FUND/EXC.62/8. It was noted that as at 30 September 1999 claims totalling ¥34 758 million (£204 million) had been received and that payments totalling ¥7 635 million (£38.8 million) had been made by the 1971 Fund and the shipowner/United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club).

3.7.2 The Executive Committee noted that it was expected that the assessment of most of the claims in the tourism sector would be completed by the end of 1999.

3.7.3 The Japanese observer delegation expressed its gratitude for the work undertaken by the Secretariat towards the settlement of claims, but stated that with only 2½ months left before the three-year time bar, that delegation hoped that there would be a smooth and rapid progress towards the assessment and payment of the remaining claims.

3.7.4 The Director recognised that the assessment of claims had not progressed as fast as had been hoped but drew attention to the enormous volume of documentation which had to be examined by the Claims Handling Office. He pointed out that a balance had to be struck between the number of surveyors and the need for a consistent approach to the assessment of claims. In response to a question from one delegation regarding the need to ensure that claimants' attention was drawn to the issue of time bar, the Director informed the Committee that such steps were being undertaken.

Level of payments

3.7.5 In the light of the continuing uncertainty as to the level of the total amount of claims arising from the *Nakhodka* incident, the Executive Committee decided to maintain the level of the 1971 Fund's payments at 60% of the amount of the losses actually suffered by the respective claimants.

3.7.6 It was noted that the total payments of claims would in the near future reach the maximum amount payable by the 1971 Fund and that the 1992 Fund would then commence making payments.

Recourse action

3.7.7 The Executive Committee held a session in private, pursuant to Rule 12 of the Rules of Procedure to consider the investigation into the cause of the incident and possible recourse action (cf document 71FUND/EXC.62/8/1). During the closed session covered by paragraphs 3.7.7 - 3.7.22 only the delegations of Member States of the 1971 Fund and the 1992 Fund were present.

3.7.8 The Committee noted the conclusion of the IOPC Funds' experts that the *Nakhodka* was in a seriously dilapidated condition. It was noted that there was, in the experts' view, evidence of serious wastage of hull strength members and inadequate repairs, that it was clear that the hull strength was seriously reduced, but that while the actual loading of the ship was not in accordance with the loading manual which increased the stress in the ship, this would not in their view have affected a well-maintained ship. It was noted that the experts considered that there was no evidence of collision or near-collision with a low buoyancy object nor of any other contact or any explosion. It was further noted by the Committee that the fact that the ship had failed in these circumstances supported the experts' view that the ship was unseaworthy, that the *Nakhodka* did

experience bad weather but such bad weather was not in their view exceptional in the Sea of Japan in January, but that the experts were of the opinion that the shipowner was or should have been aware of the actual condition of the hull structure.

3.7.9 The Committee shared the Director's opinion that the *Nakhodka* was unseaworthy at the time of the incident and that the defects which caused the ship to be unseaworthy were causative to the incident. The Committee also agreed with the Director that the shipowner was or at least should have been aware of the defects that caused the ship to be unseaworthy, that the incident was therefore caused by the fault or privity of the shipowner and that consequently, pursuant to Article V.2 of the 1969 Civil Liability Convention, the shipowner was not entitled to limit his liability.

3.7.10 The Committee confirmed that it was the 1969 Civil Liability Convention and not the 1992 Civil Liability Convention that applied in this case.

3.7.11 The Committee decided that, if the shipowner, Prisco Traffic Limited, initiated limitation proceedings, the 1971 Fund should oppose his right to limit his liability.

3.7.12 The Executive Committee noted that it would take considerable time to serve legal proceedings on the shipowner in Russia. The Committee recognised that for a number of reasons a recovery action against the company might not result in any money being recovered. It was noted that the investigations carried out by the IOPC Funds indicated that it was unlikely that this company had any significant assets against which a judgement could be enforced. It was also noted that the company had disposed of its fleet and no longer appeared in the list of shipowners published by Lloyds' Register and that it was possible that steps were being taken to dissolve the company. The Executive Committee decided that the 1971 Fund should nevertheless take recovery action against the shipowner, Prisco Traffic Limited.

3.7.13 The Committee decided that recourse action should be taken against Primorsk Shipping Corporation ('Primorsk'), the parent company of Prisco Traffic Limited. The Committee noted that both companies shared the same office until 1996 and that Prisco Traffic appeared as a subsidiary of Primorsk in Lloyds Confidential Index until late in 1996 and as a separate entry after the incident in 1997. The Committee also noted that both companies had the same hull insurer and the same P & I Club and that Primorsk appeared to have a considerable involvement with Prisco Traffic in matters of shipping. It further noted that the proximity of the two companies and the links between them suggested that the parent company exercised a considerable degree of control over Prisco Traffic and the fleet. The Committee shared the Director's view that such control brought with it responsibility for the seaworthiness and safe operation of the fleet.

3.7.14 The Executive Committee considered the further question of whether recovery action should be brought against the UK Club. Although the Committee noted that under the 1969 Civil Liability Convention the shipowner was obliged to maintain insurance covering the limitation amount applicable to the ship under the Convention, in the case of the *Nakhodka* 1 588 000 SDR (approximately ¥229 million or £1.3 million), it was believed that the *Nakhodka* was covered for its legal liabilities for pollution damage up to an amount of US$500 million, as was normally the case for oil tankers.

3.7.15 The Committee also noted that the UK Club's Rules contain a "pay to be paid" clause (ie that the Club is under an obligation to indemnify the shipowner only for compensation actually paid by him to third parties), and that this clause had been upheld by the United Kingdom courts. The Committee noted, however, that the legal advice given to the Director indicated that the "pay to be paid" clause might not be upheld in Japan. In the light of this advice, the Executive Committee decided that the 1971 Fund should take recovery action against the UK Club.

3.7.16 The Executive Committee noted that the *Nakhodka* was subject to classification under the rules of the Russian Maritime Register of Shipping. The Committee recognised that litigation against classification societies was difficult, due to the special role they play in international shipping. The Committee concluded, however, that the Russian Register had failed to ensure that the *Nakhodka* met its requirements and that this failure was causative to the incident, and therefore decided that the 1971 Fund should initiate recovery action against the Russian Register.

3.7.17 It was noted that significant repairs were carried out on the *Nakhodka* in 1993 at a shipyard in Singapore and that the IOPC Funds' technical experts were investigating the extent of these repairs. The Committee decided that the question of whether or not the 1971 Fund should take legal action against the shipyard should be left to the discretion of the Director, in the light of what was in the best interest of the Organisation.

3.7.18 A number of delegations expressed concerns over the legal position of those claimants whose claims had not been settled and those claimants whose claims had been settled but had only received partial payments from the Funds. The Director indicated that these claims would have to be protected under Japanese law and that steps were being taken to ensure that those claimants' rights were protected.

3.7.19 The Japanese observer delegation advised the Committee that the Japanese experts who had conducted the investigation into the cause of the incident were prepared to assist with the preparation of further technical arguments.

3.7.20 The observer delegation of the Republic of Korea stated that its Government objected to the body of water between the Korean peninsula and the Japanese archipelago being referred to as the 'Sea of Japan' in paragraphs 1.2, 5.3 and 5.4 of document 71FUND/EXC.62/8/1. That delegation made the point that, in its view, this body of water should be referred to as the 'East Sea', and mentioned that the denomination of this body of water was currently in dispute and was still a pending issue between the States concerned.

3.7.21 The Japanese observer delegation objected to the intervention by the Korean delegation on the grounds that the name 'Sea of Japan' was well-established.

3.7.22 The Director stated that he had previously investigated the position taken within the United Nations on this point. He mentioned that the policy of the Cartographic Section of the United Nations was that the name 'Sea of Japan' would continue to be used, as the most common and widespread denomination for the body of water in question, until a negotiated solution was found by the parties concerned, and stated that for this reason that denomination was used in documents prepared by the IOPC Funds' Secretariat.

3.8 *Nissos Amorgos*

3.8.1 The Executive Committee took note of the information on the *Nissos Amorgos* incident contained in document 71FUND/EXC.62/9.

Disposal of the oily sand

3.8.2 The Committee noted that in September 1999 Petroleos de Venezuela had informed the 1971 Fund that the estimated cost of the disposal of the oily sand which had been collected during the clean-up operations was Bs1 500 million (£1.4 million) and that Assuranceföreningen Gard (Gard Club) and the 1971 Fund had agreed in principle that the disposal operation should proceed.

3.8.3 One observer delegation raised the question as to whether the 1971 Fund would incur liability in the future. This delegation asked if it was Fund policy in such cases to obtain a release from the owner of the dunes, and from those charged with legal responsibility for oil pollution clean-up, regarding possible future claims for pollution damage in the 'farmed' dunes. This delegation also asked whether the 1971 Fund would conclude an indemnity and save harmless agreement with those who carried out the disposal operations, and the consultants who proposed the Environmental Impact Assessment. It was pointed out by another observer delegation that the 1971 Fund was liable to compensate for the costs and expenses incurred in the disposal of the oily sand but that it was not for the Fund to carry out the operation. The latter delegation expressed the view that, for this reason, the Fund would not be liable for subsequent damage resulting from these operations, since there would be a breach of the link of causation.

Claim by the Republic of Venezuela

3.8.4 The Committee noted that the panel of experts which had been appointed by the Criminal Court of Cabimas at the request of the shipowner, the Gard Club and the 1971 Fund to advise the Court on the technical merits of the claim presented by the Republic of Venezuela had submitted its report on 15 July 1999. The Committee further noted that the panel's findings refuted the allegations made in the claim by the Republic of Venezuela regarding clam mortality, the need for restoration of water quality and the replacement of sand removed from the beach during clean-up operations, and the damage to the beach as a tourist resort. It was also noted that the 1971 Fund was preparing pleadings in respect of this claim.

Level of payments

3.8.5 In view of the remaining uncertainty as to the total amount of the claims arising out of the *Nissos Amorgos* incident, the Executive Committee decided to maintain the level of the 1971 Fund's payments at 25% of the loss or damage actually suffered by each claimant.

Cause of the incident

3.8.6 It was noted that since the 61st session of the Executive Committee, the shipowner and the Gard Club had provided the 1971 Fund with further documentation concerning the cause of the incident and that they had also supplied the 1971 Fund with a draft of pleadings to be submitted in the near future to the Cabimas Court. The Committee noted that the Director was considering this further documentation and that the Director continued his investigation into the cause of the incident in consultation with the shipowner and the Gard Club.

3.8.7 The Executive Committee noted that in the Director's view the documents made available to the 1971 Fund indicated that negligence on the part of Instituto Nacional de Canalizaciones (INC) might have been a factor which contributed to the incident and the ensuing pollution damage and that therefore the shipowner/Gard Club might be partially exonerated from liability to the Venezuelan Government and to other government bodies. It was also noted that, if there was such contributory negligence, in the Director's view the 1971 Fund would also be partially exonerated in respect of claims by the Venezuelan Government, except to the extent that the claims related to the cost of preventive measures. It was further noted that the Director was not convinced that, on the basis of the evidence made available to the 1971 Fund so far, the damage was caused wholly by the negligence or other wrongful act of INC and that therefore the shipowner might not be wholly exonerated from liability in respect of this incident pursuant to Article III.2 (c) of the 1969 Civil Liability Convention.

3.8.8 The Executive Committee decided that, since not all the evidence on the cause of the incident had been made available to the 1971 Fund, it was premature for the Committee to take a decision on the issues relating to the cause of the incident and contributory negligence. The Committee instructed the Director to investigate further these issues and took the view that this investigation should be carried out in co-operation with the shipowner/Gard Club to the extent that there was no conflict of interest between them and the Fund (document 71FUND/EXC.61/14, paragraph 4.8.10).

3.8.9 The Executive Committee also instructed the Director to raise the defence of contributory negligence against the claim submitted by the Venezuelan Government, if this became necessary to protect the interests of the 1971 Fund (document 71FUND/EXC.61/14, paragraph 4.8.11).

3.8.10 The Venezuelan observer delegation expressed the view that the 1971 Fund should not take any position on the cause of the incident until this issue had been decided by the Venezuelan courts.

3.8.11 The Committee noted that if the evidence were to establish contributory negligence on the part of INC, it would need to consider the issue of whether the 1971 Fund should take recourse action against the Republic of Venezuela for the purpose of recovering any amount paid by the Fund in compensation.

3.9 *N°1 Yung Jung*

3.9.1 The Executive Committee took note of the information on the *N°1 Yung Jung* incident contained in document 71FUND/EXC.62/10.

3.9.2 It was noted that the *N°1 Yung Jung* had grounded in the Port of Pusan on an uncharted submerged rock. It was also noted that a diving inspection had concluded that the rock was not part of the seabed but had been placed on the seabed at some time. The Committee further noted the advice of the 1971 Fund's Korean lawyer on the position under Korean law in respect of the potential liability of the Republic of Korea. It was noted, in particular, that if the rock in question was not a natural part of the seabed it would be considered to have given rise to a defect in 'public facilities or structures' for which, in the view of the 1971 Fund's Korean lawyer, the Republic of Korea had strict liability for any resulting damage.

3.9.3 The Committee recalled that at its 61st session it had instructed the Director to continue his investigations into the cause of the incident and to discuss the issues involved with the Korean Government. It was further recalled that the Director had also been instructed to present a claim for recovery to the Regional Government Compensation Committee and, if required, to pursue the claim before the competent Korean court to the extent needed to prevent the claim becoming time-barred. The Committee noted that such a claim against the Republic of Korea had therefore been presented to the Regional Compensation Committee on 9 August 1999, in order to prevent the claim from becoming time-barred.

3.9.4 The observer delegation of the Republic of Korea introduced document 71FUND/EXC.62/10/1. That delegation made the point that the 1971 Fund did not have a valid recourse claim against the Korean Government for two reasons. That delegation maintained firstly that the cause of the incident was not a defect in the installation or maintenance of a public facility or structure owned by the Government, but the gross negligence of the shipowner who had used those facilities illegally in an area where oil tankers were not allowed, without giving notice to, or obtaining the permission of the Port Authority, and without giving full consideration to the possible effects of the weather or the tide. The point was made that if the vessel had notified the Port Authority of its intentions, the Port Authority would have guided it to a safe berth. The Korean delegation maintained secondly that, since Article 4.3 of the 1971 Fund Convention precluded reduction of compensation to a claimant who had taken preventive measures on the grounds of contributory negligence, the 1971 Fund could not pursue a recourse claim against the Korean Government for any payments which the Fund had made in respect of preventive measures. The Korean delegation stated that it could itself have carried out the preventive measures, that other persons could have carried out such operations in the port only if permitted to do so by the Government and that therefore the operations should be regarded as taken by the Korean Government. In that delegation's view, a recourse action by the 1971 Fund in this case was contrary to the spirit of the 1971 Fund Convention.

3.9.5 The Committee noted that in the Director's view the Korean Government could not have been a claimant since the Government did not incur the costs of the clean-up and preventive measures (except as regards the operations carried out by the Pusan Marine Police), that if the Korean Government had carried out the operations itself it would have been entitled to claim compensation, and that the same would have applied if the Government had engaged contractors to carry out the operations and paid these contractors. The Committee observed, however, that this was not the case in respect of the *N°1 Yung Jung* incident.

3.9.6 The Committee noted the Korean Government's position as regards the facts of the incident but also noted that the 1971 Fund's technical experts had disagreed with that position on several points.

3.9.7 The Committee recognised that the use of the berth in question was restricted to dry cargo vessels of less than 1 000 DWT and that these restrictions had been published in the regulations for operation of the berth facilities of the port of Pusan. The Committee noted, however, that no restriction had been published in respect of the draught of dry cargo vessels at the berth and that therefore, in the Director's view, the assumption was that the maximum permitted draught for such vessels was 4.3 metres at low tide. The Committee also noted that a dry cargo vessel with the same draught as the *N°1 Yung Jung* (ie. 3.6 metres) would have grounded on the rock in question and that the use of the berth was restricted to dry cargo vessels because there were no fire fighting facilities at the berth.

3.9.8 A number of delegations considered that in order to maintain consistency with the 1971 Fund's policy relating to recourse actions it should pursue its claim against the Republic of Korea. Other delegations expressed the view that further consideration of the legal arguments was needed and that when all the factors surrounding the incident were taken into account, there might be a shared liability between the shipowner/Fund and the Republic of Korea.

3.9.9 Other delegations expressed the view that the Fund might be seen as acting opportunistically in attempting to shift the burden of liability under the Conventions to a national system of strict liability which was put in place for some other purpose. These delegations expressed the view that this could in future lead to conflicts between national and international strict liability regimes. Some delegations suggested that further time was needed to reflect on the various policy issues before deciding whether to proceed with a recourse action.

3.9.10 The Executive Committee instructed the Director to explore with the Korean Government whether the Compensation Commission could postpone its consideration of the 1971 Fund's claim, in order to allow the Committee further time for consideration of the important issues at stake. The Committee instructed the

Director to pursue the 1971 Fund's claim against the Korean Government, if the Compensation Commission were not to agree to a postponement.

3.10 *Pontoon 300*

3.10.1 The Executive Committee took note of the developments in respect of the *Pontoon 300* incident as set out in documents 71FUND/EXC.62/11 and 71FUND/EXC.62/11/Add.1.

3.10.2 In view of the continuing uncertainty as to the total amount of the claims, the Executive Committee decided to maintain the level of the 1971 Fund's payments at 75% of the loss or damage actually suffered by each claimant.

3.10.3 The Executive Committee noted that the 1971 Fund's lawyers were trying to obtain evidence relating to the cause of the incident. The Committee further noted that a claim against the owner in tort would, under United Arab Emirates' law, become time-barred within three years of the date of the incident, but that it might be argued that since the pollution damage in this case arose out of a towage operation, the time bar period would be two years.

3.10.4 The Committee therefore instructed the Director to commence legal action against the owner of the tug that carried out the towing operation (the *Falcon 1*) within two years of the date of the incident.

3.11 Evoikos

3.11.1 The Executive Committee took note of the developments in respect of the *Evoikos* incident as set out in document 71FUND/EXC.62/12.

3.11.2 The Committee noted in particular that the shipowner had maintained that the limitation amount applicable to the *Evoikos* was approximately 5.9 million SDR (£4.9 million), whereas the lawyers acting for some claimants had argued that the figure should be approximately 8.8 million SDR (£7.4 million). It was also noted that if the higher limitation amount were to apply, it would be unlikely that the 1971 Fund would be called upon to pay any claims for compensation, whereas if the lower amount were applied, the Fund might have to make compensation payments as well as pay indemnification of the shipowner.

3.11.3 The Malaysian delegation stated that, since according to its estimate the total amount of the claims submitted from Singapore, Malaysia and Indonesia would exceed the shipowner's limit, the Committee should authorise the Director to make payments in respect of the claims from Malaysia and Indonesia.

3.11.4 Some observer delegations expressed concern that as Singapore was not a party to the 1971 Fund Convention, the 1971 Fund would not be able to intervene in the limitation proceedings which had been commenced there. One observer delegation questioned whether, in the event that the 1971 Fund paid compensation to claimants in Malaysia, the right of subrogation given by Malaysian claimants to the 1971 Fund would be valid in Singapore.

3.11.5 It was recalled that the 1971 Fund's policy was to start paying compensation only after the shipowner's insurer had paid up to the limitation amount applicable to the ship in question. It was noted that the situation in the *Evoikos* case was complicated due to the fact that at the time of the incident Malaysia and Indonesia were Parties to the 1971 Fund Convention whereas Singapore was not.

3.11.6 In view of the continuing uncertainty as to the total amount of the claims, the Executive Committee confirmed its decision at previous sessions that the Director was not authorised to make any payments for the time being.

3.12 Other incidents

3.12.1 The Executive Committee noted the information contained in document 71FUND/EXC.62/13 in respect of the following incidents: *Irving Whale, Vistabella, Iliad, Honam Sapphire*, *Kriti Sea, Plate Princess, Diamond Grace, Katja, Kyungnam N°1* and *Maritza Sayalero*.

3.12.2 It was noted that the 1971 Fund would not be called upon to make any payments in respect of the *Honam Sapphire* and *Diamond Grace* incidents.

3.12.3 In respect of the *Kriti Sea* incident the Committee noted that some claimants had appealed against the decision of the administrator appointed by the Court and that the amounts indicated in the appeal exceeded the limitation amount applicable to the *Kriti Sea.* It was further noted that the shipowner and his insurer had served a writ on the 1971 Fund in September 1999 in respect of claims in excess of the shipowner's limitation fund as well as in respect of a claim for indemnification under Article 5.1 of the 1971 Fund Convention.

4 Consideration of items on the agenda on the 22nd session of the Assembly

A record of the Executive Committee's consideration of items on the agenda of the 22nd session of the Assembly is contained in document 71FUND/EXC.62/14/A.22/23.

5 Future sessions

5.1 The Executive Committee decided to hold a session during the week of 3 - 7 April 2000 and, if required, a session during the week of 14 - 18 February 2000.

5.2 It was decided that the Committee would hold its normal autumn session during the week of 23 - 27 October 2000.

6 Any other business

No items were raised under this agenda item.

7 Adoption of the Record of Decisions

The draft Record of Decisions of the Executive Committee, as contained in document 71FUND/EXC.62/WP.1, was adopted, subject to certain amendments.