



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
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Agenda item 3

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## INCIDENTS INVOLVING THE 1971 FUND AEGEAN SEA

### Note by the Director

**Summary:**

It is understood that a number of claimants have brought legal action in the civil courts against the 1971 Fund, although the Fund has not been served with the actions. The question is whether these actions are time-barred. Legal opinions on the time-bar issue have been obtained. There exist differences of opinion between the Spanish State and the 1971 Fund as to the distribution of liabilities between the State and the Fund. An agreement has been concluded between the Spanish State and the 1971 Fund to the effect that the period for the Fund to take recovery action against the State is extended by one further year. The Spanish Government has submitted documentation in support of the claims in the fishery and mariculture sector. The procedure for the execution of the Court of Appeal's judgement in the criminal proceedings in respect of a number of claims for compensation has started, but the proceedings have been suspended.

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

### **1 Introduction**

1.1 Criminal proceedings were initiated in the Criminal Court of first instance in La Coruña against the master of the *Aegean Sea* and the pilot in charge of the ship's entry into the port of La Coruña. The Court of first instance rendered its judgement in the *Aegean Sea* case on 30 April 1996. The 1971 Fund and other parties appealed against this judgement. The Court of Appeal in La Coruña rendered its judgement on 18 June 1997. The judgement of the Court of Appeal is final. The Court of Appeal awarded specific amounts in compensation in respect of certain claims (cf document 71FUND/EXC.55/4, paragraph 5.6). However, a number of claims for compensation were referred to

the procedure for the execution of the judgement, since the Courts considered the evidence presented by the claimants to be insufficient to substantiate the amount of the losses suffered. Developments in these proceedings were reported in documents FUND/EXC.47/3, paragraph 3, FUND/EXC.49/3, paragraph 3, FUND/EXC.50/4, paragraph 4, 71FUND/EXC.55/4 paragraphs 3 and 4 and 71FUND/EXC.57/3, paragraph 5).

1.2 This document deals with the developments which have taken place since the Executive Committee's 61st session. In particular, it reports on a meeting which has taken place with a representative of the Spanish Government and on the additional documentation in support of the claims in the fishery and mariculture sector presented by the Government.

## **2 Claims situation**

### **2.1 Background**

The Joint Claims Office set up by the 1971 Fund and the shipowner's P & I insurer (the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club)) has received 1 277 claims totalling Pts 24 809 million (£96.4 million). Claims were also submitted to the Criminal Court in La Coruña, totalling some Pts 24 730 million (£96 million). These claims correspond to a great extent to those presented to the Joint Claims Office. Compensation has been paid in respect of 838 claims for a total amount of Pts 1 712 million (£7.7 million). Out of this amount, the UK Club has paid Pts 782 million (£3.2 million) and the 1971 Fund Pts 930 million (£4.5 million).

### **2.2 Level of payments**

2.2.1 At its 36th session the Executive Committee took the view that, due to the high total amount of the claims presented to the Court, caution had to be exercised when making payments to claimants, in order to ensure that the provisions in Article 4.5 of the 1971 Fund Convention relating to equal treatment of victims were respected. The Committee instructed the Director that the 1971 Fund should make only partial payments in respect of accepted claims not exceeding 30% - 40% of the amount approved (document FUND/EXC.36/10, paragraph 3.3.21). In the light of the uncertainty of the total amount of the claims, the Director decided to limit the payments to 25% of the established damage suffered by each claimant.

2.2.2 In the light of certain information provided by the Spanish authorities in October 1994, the Director informed the Executive Committee, at its 41st session, that in his view the uncertainty as to the total amount of the claims had been reduced. The Committee noted that, for this reason, the Director had decided to increase partial payments to 40% of the damage suffered by the respective claimants as assessed by the 1971 Fund on the basis of the advice of its experts at the time when a partial payment or additional partial payment was to be made. The Committee endorsed the Director's decision (document FUND/EXC.41/2, paragraphs 4.1.4 and 4.1.5).

## **3 Execution of the Court of Appeal's Judgement**

3.1 If a claimant has not proved the quantum of the damage suffered, the quantification may, under Spanish law, be deferred to the procedure for the execution of the judgement. In such a case, the court is obliged to determine the criteria to be applied for the assessment of the quantum of the damage suffered. In the *Aegean Sea* case, the Criminal Court of first instance decided that many claims should be quantified during the procedure for the execution of the judgement, and the Court of Appeal endorsed the position taken by the Court of first instance in this regard in a judgement dated 18 June 1997.

3.2 The Criminal Court of first instance and the Court of Appeal considered the evidence presented by many claimants to be insufficient to substantiate the amount of the losses suffered. The total of the claims which the Courts found substantiated by acceptable evidence was about Pts 840 million (£3.3 million). All but two of these claims related to clean-up operations or preventive measures. All but two claims in the fishery sector were referred to the procedure for the execution of the judgement.

3.3 Under Spanish law, the Court of Appeal's judgement is not subject to appeal and, consequently, the judgement is enforceable in respect of the claims for which specific amounts have been awarded in compensation.

3.4 The 1971 Fund was notified on 16 September 1997 of a decision, issued by the judge in charge of the execution of the judgement of the Court of Appeal, ordering the master of the *Aegean Sea* and the pilot to pay the fines in accordance with the judgement of the Court of first instance which had been upheld by the Court of Appeal (cf paragraph 7.2 below). This decision also ordered the two defendants who had been held directly liable, namely the UK Club and the 1971 Fund, to pay the claimants the amounts of compensation awarded by the judgement as modified by the Court of Appeal.

3.5 Although the enforceability of judgements rendered by national courts was recognised in the 1971 Fund Convention, the Executive Committee considered at its 55th session that, in view of the provisions of Article 8, the Convention also provided that such enforcement could be subject to a decision of the Assembly or of 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. In view of the high degree of uncertainty as to the total amount of the established claims, both as regards many of the claims covered by the judgements of the Court of first instance and the Court of Appeal, and as regards the claims which might be presented at a later stage in the civil proceedings (although the 1971 Fund took the view that these claims were time-barred), the Executive Committee decided that payments to the claimants who had been awarded a specific amount in the judgements should be limited to 40% of the respective amounts so awarded (document 71FUND/EXC.55/19, paragraph 3.3.30).

3.6 The UK Club appealed against the September 1997 decision referred to in paragraph 3.4 on the following grounds. Firstly, the court decision did not order the two persons who were directly liable for the incident, namely the master and the pilot, to pay claimants the compensation awarded by the judgement. Secondly, if the master and the pilot were insolvent, the parties which were subsidiarily liable, namely the shipowner and the Spanish State, would have to pay compensation to claimants. Thirdly, the court should have taken into account the fact that the UK Club had already paid compensation to victims of the *Aegean Sea* incident for a total of Pts 782 million (£3.3 million). Fourthly, the Court should have also taken into account the fact that the Club had established a limitation fund in the amount of Pts 1 121 219 450 (£4.8 million) in accordance with Articles V.1 and V.3 of the 1969 Civil Liability Convention. Finally, the Court should have borne in mind the fact that a sufficient sum should have been set aside to enable other claimants who had reserved their right to take civil action to enforce their claim against the limitation fund (Article V.7 of the 1969 Civil Liability Convention).

3.7 The UK Club's appeal was rejected on 12 November 1997 by the judge who rendered the decision of 16 September 1997, except that the judge agreed that the order should be directed also to the master and the pilot.

3.8 The UK Club appealed against the decision of 12 November 1997.

3.9 The Court of Appeal rejected the appeal submitted by the UK Club on the ground that the judgement rendered by the Court on 18 June 1997 was final. The Court of Appeal stated that the execution of the judgement could not legally be delayed. The Court also stated that, in accordance with Article IX.3 of the 1969 Civil Liability Convention, it was the Court where the limitation fund had been established which would distribute the limitation fund between claimants. The Court made the point that the Club should not be concerned with the rights of claimants since the Club had limited its liability under the 1969 Civil Liability Convention and had therefore no further liability. The Court of Appeal referred to the fact that claimants had two other sources of compensation available to them, namely the 1971 Fund and other parties which were directly or subsidiarily liable for the damage caused by the incident.

3.10 The Court of Appeal's decision is final. Once this decision has been notified to the parties involved in the appeal proceedings, the judge will execute the judgement against those parties held liable by the judgement of the Court of Appeal.

3.11 On 5 October 1999, the Court in charge of the procedure for the execution of the judgement served the 1971 Fund with pleadings submitted by eight out of the ten groups of claimants concerned. In these pleadings the claimants have indicated the evidence which they intend to submit to the court at a later stage to prove their losses and the evidence which they requested the court to obtain on their behalf.

3.12 The Court gave the 1971 Fund ten days to notify the court of any evidence it intends to rely upon during the execution of the judgement procedure.

3.13 The only evidence submitted with the pleadings referred to in paragraph 3.11 is two reports prepared by an expert appointed by the Court on losses suffered by two fish wholesalers and a certificate issued by the Regional Government of Galicia (Xunta de Galicia) indicating the amount of the losses suffered by shellfish harvesters affected by the *Aegean Sea* incident. The experts engaged by the UK Club and the 1971 Fund are examining this documentation.

3.14 The 1971 Fund requested the Court to suspend the proceedings since the evidence referred to in the pleadings was incomplete.

3.15 On 5 October 1999 the judge issued an order extending the period for the Fund's submission of its pleadings by three months.

#### **4 Request for full payment made by the towns of La Coruña and Culleredo**

4.1 In the Court of Appeal's judgement of 18 June 1997 on the merits of certain claims, the Court awarded the towns of La Coruna and Culleredo specified amounts in compensation. These towns have requested the Court in charge of the execution of the judgement to order that the awarded amounts be paid in full.

4.2 At the Executive Committee's 58th session, the Spanish delegation stated that the Spanish Government had accepted that the Spanish State was in any event liable to pay the total amount of the established claims in excess of the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, namely 60 million SDR. It was noted that the Spanish Government had indicated that it was prepared to give a formal binding acceptance in this regard. The Committee considered that, if such an acceptance was given, there would be no risk of overpayment by the 1971 Fund. On 2 June 1998 the Spanish Government informed the Director that, for constitutional reasons, the Spanish Government was not prepared to make a written commitment on this point.

4.3 At its 55th session, the Executive Committee considered that, although the enforceability of judgements rendered by national courts was recognised in the 1971 Fund Convention, Article 8 also provided that such an enforcement could be 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 (document 71FUND/EXC.59/19, paragraph 3.3.29).

4.4 In view of the high degree of uncertainty as to the total amount of the established claims, both as regards many of the claims covered by the judgements of the Court of first instance and the Court of Appeal, and as regards the claims which might be presented at a later stage in the civil proceedings (although the 1971 Fund took the view that these claims were time-barred), the Executive Committee decided at its 55th session that payments to the claimants who had been awarded a specific amount in the judgements should be limited to 40% of the respective amounts so awarded (document 71FUND/EXC.55/19, paragraph 3.3.30). The Committee confirmed its position on this point at its 60th session (document 71 FUND/EXC.60/1 7, paragraph 3.2.9).

4.5 In its pleadings before the Court in charge of the procedure for the execution of the Court of Appeal's judgement on the merits of the claims the 1971 Fund has maintained that the enforceability of judgements rendered by national courts is recognised in the 1971 Fund Convention but that such enforcement is 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 (Articles 8 and 18.7 of the 1971 Fund Convention). The 1971

Fund has stated that for this reason the Fund is only able to pay 40% of the amounts awarded to the two towns in question.

## **5 Claims presented to the Civil Court**

It is understood that some 60 claims have been brought against the shipowner, 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 did not submit any claims in the criminal proceedings but who indicated in those proceedings that they would present their claims at a later stage in civil proceedings. It is also understood that the total amount of these claims is Pts 22 000 million (£85.4 million). The 1971 Fund has not been notified of these claims.

## **6 Evidence to support claims**

6.1 A meeting was held in Madrid on 23 September 1999 between Mr F Marhuenda, Director of the Minister's Office (Director del Gabinete del Ministro) of the Ministry of Education and Culture, and the Director. At the meeting, the Spanish Government presented a study carried out by the Instituto Español de Oceanografía of some 29 pages containing an assessment of the losses suffered by fishermen and shellfish harvesters and by claimants in the mariculture sector. Extensive documentation containing evidence of the losses suffered by companies in the mariculture sector was submitted. The Institute has assessed the losses by fishermen and shellfish harvesters at between Pts 4 110 million (£16 million) and Pts 4 731 million (£18.4 million) and the losses in the mariculture sector at Pts 8 329 million (£32.3 million).

6.2 The experts engaged by the UK Club and the 1971 Fund are examining the documentation provided.

## **7 Recourse action**

7.1 Criminal proceedings were initiated in the Criminal Court of first instance in La Coruña against the master of the *Aegean Sea* and the pilot in charge of the ship's entry into the port of La Coruña. The Court considered not only the criminal aspects of the case but also the claims for compensation which had been presented in the criminal proceedings against the shipowner, the master, the UK Club, the 1971 Fund, the owner of the cargo on board the *Aegean Sea* and the pilot.

7.2 In a judgement rendered in April 1996 the Criminal Court held that the master and the pilot were both liable for criminal negligence. They were each sentenced to pay a fine of Pts 300 000 (i1 200) or one day's imprisonment for each Pts 5 000 (£20) not paid. The master, the pilot and the Spanish State appealed against the judgement, but on 18 June 1997 the Court of Appeal upheld the judgement.

7.3 The Criminal Court of first instance and the Court of Appeal held that the master of the *Aegean Sea* and the pilot were directly liable for the incident and that they were jointly and severally liable, each of them on a 50% basis, to compensate victims of the incident. It was also held that the UK Club and the 1971 Fund were directly liable for the damage caused by the incident and that this liability was joint and several. In addition, the Courts held that the owner of the *Aegean Sea* and the Spanish State were subsidiarily liable.

7.4 There exist differences of opinion between the Spanish State and the 1971 Fund as to the interpretation of the judgements. The Spanish Government has maintained that the UK Club and the 1971 Fund should pay up to the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), and that the Spanish State would pay compensation only if and to the extent that the total amount of the established claims exceeded that amount. The Fund has maintained that the final distribution of the compensation payments between the various parties declared civilly liable should be: the UK Club and the 1971 Fund 50% of the total compensation for the damage (within their respective limits laid down in the Conventions), the State the remaining 50%. The shipowner and the UK Club share the 1971 Fund's interpretation of the judgement.

7.5 At its 58th session, the Executive Committee decided that it was necessary for the 1971 Fund to take measures to protect its right to take recovery action against the Spanish State unless the disagreement between the Spanish State and the Fund as to the distribution of liability were solved out of court. For this reason, the Director was instructed to seek to obtain, well in advance of 18 June 1998 (ie within one year of the date of the Court of Appeal's judgement), a binding commitment by the Spanish Government to the effect that, if the 1971 Fund were to bring a recovery action against the Spanish State, the Spanish State would not invoke the time bar. The Committee emphasised that such an agreement would have to be signed by somebody who, under Spanish constitutional law, would have the capacity of binding the State in this regard. The Committee further instructed the Director that, should such a commitment not be given by the Government, the Fund should take recovery action against the Spanish State by 18 June 1998 in order to preserve the Fund's rights, pending a solution of the disagreement between the State and the Fund (document 71FUND/EXC.58/15, paragraph 3.2.21).

7.6 On 12 June 1998 the Spanish Ambassador in London and the Director signed an agreement under which the Spanish State undertook not to invoke the time bar if the competent bodies of the Fund were to decide to take recourse action against the Spanish State to recover 50% of the amounts paid by the Fund, provided that such an action was taken within one year of the date of the agreement. The 1971 Fund, on its part, undertook not to bring legal action against the State within the first eleven months of the date of the agreement.

7.7 On 9 June 1999 the Spanish Ambassador in London and the Director 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. The 1971 Fund, on its part, undertook not to bring legal action against the Spanish State before 12 May 2000.

7.8 In a letter to the Director dated 9 June 1999, the Spanish Ambassador stated that Spain recognised that the Agreement referred to in paragraph 7.7 applied provisionally from the date of signature but that it would enter into force when Spain informed the 1971 Fund, through its Ambassador in London, that all the procedures required under Spanish law for entering into the Agreement had been complied with. In the letter it was stated that the provisional application of the Agreement would terminate if Spain notified the Fund, through its Ambassador in London, before 12 May 2000 that all these procedures had been complied with or that these procedures would not be complied with. In the letter it was further stated that Spain undertook in such cases not to invoke the time bar if the Fund took recourse action against Spain within 30 days of 12 May 2000 or, where applicable, of the receipt of this notification. Furthermore, it is stated in the letter that its content would be considered as an instrument elaborated by both parties setting out the only possible interpretation of the Agreement. In his reply of the same date, the Director stated that the 1971 Fund agreed with the content of the Ambassadors' letter.

## 8 Question of time bar

8.1 As mentioned above, a number of claimants have brought actions against the 1971 Fund in the Civil Court of La Coruña. The question has arisen as to whether these claims are time-barred. Two opinions were presented to the 1971 Fund by the Spanish Government in April 1998, one prepared by the Legal Department of the Ministry of Public Administrations and one by a Spanish law firm (Cuatrecasas), both of which concluded that the actions brought against the 1971 Fund in the Civil Court were not time-barred. The 1971 Fund obtained an opinion by a former Spanish Supreme Court judge, Mr Santos Briz, on the time bar issue, and Mr Santos Briz' conclusion is that those claims were extinguished and thus time-barred (document 71 FUND/EXC.59/4).

8.2 The Executive Committee took note of the situation at its 59th session. In view of the different opinions presented in respect of the time bar issue, the Director was instructed to study further this very complex issue. The Committee noted that the civil actions would be served on the 1971 Fund in the near future. It was noted that, once served, the 1971 Fund would have to present all its defences within a short period of time, including any defence to the effect that the claims were time-barred, and that it would not be possible to raise that defence at a later stage. Pending further study, the Committee instructed the Director to raise the defence of time bar in the civil proceedings (document 71FUND/EXC.59/7, paragraphs 3.3.11 and 3.3.12).

### 8.3 Legal opinion by four Professors at Universidad Carlos III presented by the Spanish Government

8.3.1 On 12 April 1999 the Spanish Government made available to the 1971 Fund an additional legal opinion of some 180 pages by four professors at Universidad Carlos III in Madrid.

8.3.2 It is stated in the opinion that the Spanish translation of the term "shall be extinguished" in 1969 Civil Liability Convention uses the word "prescribirán" and that the translation of the same term in the 1971 Fund Convention uses the term "caducarán". It is stated that in view of this contradictory terminology, it must be found that both Conventions contemplate periods of prescription ("prescripcion"). In their view, the criminal proceedings had the effect of interrupting the period of prescription and this period had not started to run. The professors expressed the view that if not interrupted by the criminal proceedings, which in effect they were, these periods were interrupted by the contacts and negotiations which took place between claimants and the Joint Claims Office which could be considered as recognition of debts.

8.3.3 The four Professors at Universidad Carlos III conclude that the three-year periods of prescription established by the international conventions must be calculated from the day on which the final judgement in the criminal proceedings was rendered, ie from 18 June 1997.

### 8.4 Further legal opinion obtained by the 1971 Fund

8.4.1 In the light of the different views expressed in the legal opinions obtained by the Spanish Government and the legal opinion of Mr Santos Briz, the Executive Committee instructed the Director, at its 61st session, to study the time bar issue further (document 71 FUND/EXC.61/14, paragraph 4.2.9). The Director instructed therefore two eminent law professors and practising lawyers, Mr Antonio Jimenez Blanco, Professor of Administrative Law at the University of Jaen, and Mr Gonzalo Rodriguez Mourullo, Professor of Penal Law at the University of Madrid, to examine all the legal opinions obtained by the Spanish Government and by the 1971 Fund and to give a joint opinion on the time bar issue.

8.4.2 In this opinion which was received in early October 1999, the professors focus their analysis on the texts of the relevant articles of the Conventions and the relationship between these articles and the provisions of internal Spanish law. They draw attention to the fact that under the Conventions the period to bring an action for compensation against the 1971 Fund is three years from the date when the damage occurred. They note that under Spanish internal law, when criminal proceedings have been brought in respect of a particular event, the criminal action results in the suspension or interruption of time bar periods as regards civil actions based on the same event. They also note that this suspension or interruption applies not only to the parties involved in the criminal proceedings but also to all other claimants who may wish to bring an action for compensation based on the same event, that criminal proceedings have the effect of preventing the exercise of civil proceedings until there is a final criminal judgement and that the period for bringing civil actions start to run when the criminal proceedings have been terminated. They express the view that the actions for compensation referred to in the time bar provisions of the Conventions are individual actions and that these actions must be brought within three years from the date when the damage occurred. They consider that there is therefore a conflict between the Conventions and Spanish internal law. In their view the time bar provisions in the Conventions are provisions of substantive law and not procedural and that provisions of substantive law take precedence over procedural law. They state that under the Spanish Constitution and the jurisprudence of the Spanish Supreme Court international treaties have precedence over internal Spanish law and that for this reason the conflict must be resolved in accordance with the provisions of the Conventions.

8.4.3 In conclusion the two professors express the view that claimants who only reserved their right to claim compensation in future proceedings (ie civil proceedings to be brought at a later date after completion of the criminal proceedings) are time-barred because the reservation of the right to bring an action at a later date cannot be considered as an individual legal action in accordance with Article 6.1 of the 1971 Fund Convention.

8.4.4 The two professors also express the view that if there were to be a final judgement on the time bar issue in favour of these claimants and against the 1971 Fund, this could result in international liability of the Spanish State, according to the jurisprudence of the Spanish Constitutional Court.

*Further discussions with the Spanish Government*

8.4.5 In the light of the differing views expressed in the various opinions, the Director considers that the very complex issues relating to time bar should be discussed further with the Spanish Government.

## **9 Loans to claimants given by the Instituto de Credito Oficial**

9.1 At its 59th session, the Spanish Government informed the Executive Committee that in June 1997 and September 1998 the Government had authorised loans to certain Spanish claimants for a total amount of Pts 22 500 million (£90 million) through Instituto de Credito Oficial. These loans were granted on the basis of the study by the Instituto Espatiol de Oceanografia. The Spanish Government made the point that this would facilitate progress, since the 1971 Fund would have to negotiate with only one claimant (document 71 FUND/EXC.59/1 7, paragraph 3.19).

## **10 Consultation Group**

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

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

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

10.3 The Consultation Group met on 27 April 1999. One member of the Consultation Group made a statement at the Executive Committee's 61st session in which he informed the Committee of the discussions at the Group's meeting. A summary of this statement is reproduced in document 71FUND/EXC.61/14, paragraph 4.2.4.

10.4 It is expected that a meeting of the Consultation Group will take place in the near future.

## **11 Possible suspension of legal Proceedings**

11.1 At the 61st session of the Executive Committee the Spanish delegation stated that it had consulted the lawyers representing two groups of claimants in the fishery, aquaculture and mariculture sectors and that these lawyers had indicated that their clients were prepared to agree with the 1971 Fund to suspend litigation provisionally before the Spanish courts, both as regards the procedure for the execution of the criminal judgement and as regards the civil proceedings. That delegation expressed the view that such a provisional suspension would facilitate negotiations between the 1971 Fund and the Spanish Government but that it was for the claimants and the 1971 Fund to consider whether to agree to such a provisional suspension.

11.2 The Committee considered that the provisional suspension of the legal proceedings before the courts would benefit the negotiations between the Spanish Government and the 1971 Fund. It was noted, however, that this issue had not yet been fully discussed with the 1971 Fund's lawyer. The Committee also noted that this issue would have to be discussed with the other parties involved in the proceedings, in particular the shipowner and the UK Club.

11.3 The Executive Committee authorised the Director to agree with the claimants to request the court to suspend the legal proceedings before the Spanish courts, provided that the Director, after consultation with the 1971 Fund's lawyer, was of the view that such a suspension would not prejudice the Fund's position (document 71FUND/EXC.61/14, paragraph 4.2.18). So far no such agreement has been reached.

11.4 At the meeting held in Madrid on 23 September 1999 referred to in paragraph 6.1 above, the representatives of the Spanish Government undertook to consult with the lawyers representing the claimants with a view to agree 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. It is understood that such consultations are taking place.

## **12 Main outstanding issues**

12.1 It has been agreed with the Spanish Government that in order to facilitate progress the efforts should focus on the following questions:

- an examination of the documentation presented by the Spanish Government in support of the claims in the fishery and aquaculture sectors submitted by the Spanish Government (section 6 above)
- the distribution of liabilities between the Spanish State and the shipowner/UK Club/1971 Fund (section 7 above)
- an analysis of the legal issue relating to time bar in respect of a group of claimants (section 8 above)

12.2 As mentioned in paragraph 6.2 above, the experts engaged by the UK Club and the 1971 Fund are examining the documentation in support of the claims in the fishery and aquaculture sectors. It is envisaged that as soon as this examination has been carried out, meetings will be held between these experts and the Spanish Government's experts in order to facilitate the 1971 Fund's assessment of the claims.

12.3 The Director intends to continue the discussions with the Spanish Government on the time bar issue and on the distribution of liabilities between the Spanish State and the shipowner/UK Club/1971 Fund.

12.4 The result of the discussions referred to in paragraphs 12.2 - 12.4 will be reported to the Executive Committee at its next session.

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

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
  - (b) to consider the position taken in respect of the requests for full payment made by the two towns referred to in section 4; and
  - (c) to give the Director such other instructions as the Committee may deem appropriate in respect of this incident.
-