



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS 1971 AND
1992

ASSEMBLY
6th extraordinary session
Agenda item 5

92FUND/A/ES.6/4
18 March 2002
Original: ENGLISH

ASSEMBLY
9th extraordinary session
Agenda item 6

71FUND/A/ES.9/4

WINDING UP OF THE 1971 FUND

OPERATIONS OF THE 1971 FUND AFTER 24 MAY 2002

Note by the Director

Summary:

The 1971 Fund Convention will cease to be in force on 24 May 2002 and will not apply to incidents occurring after that date.

The 1971 Fund Assembly and Executive Committee have been unable to achieve a quorum in recent years. Since April 2000 their functions have been carried out by a special body, the Administrative Council, created for that purpose. The Administrative Council is composed of 1971 Fund Member States and former 1971 Fund Member States, with the proviso that former Member States have the right to vote only in respect of issues relating to incidents which occurred while the 1971 Fund Convention was in force for that State.

After 24 May 2002 the 1971 Fund will no longer have any Member States and no State will have the right to vote in the Administrative Council on matters other than issues relating to specific incidents. The question is raised of how, in the light of this situation, the 1971 Fund should be administered after that date until it is wound up. Two main options are examined:

- a) the 1971 Fund Administrative Council could continue to administer the 1971 Fund but all former 1971 Fund Member States would have voting rights on all issues;
- b) the administration of the 1971 Fund could be transferred to the 1992 Fund.

Action to be taken:

To take decisions regarding the administration of the 1971 Fund after 24 May 2002.

1 Introduction

- 1.1 Under Article 43.1 of the original version of the 1971 Fund Convention, the Convention would remain in force until the number of States Parties fell below three. In September 2000 a Protocol was adopted to amend Article 43.1 to the effect that the Convention would cease to be in force when the number of Member States fell below 25. The Protocol entered into force on 27 June 2001.
- 1.2 The number of States Parties will fall to 24 on 24 May 2002 when the denunciation of the 1971 Fund Convention by the United Arab Emirates takes effect. The Convention will therefore cease to be in force on that date and will not apply to incidents occurring thereafter.
- 1.3 The termination of the 1971 Fund Convention will not in itself result in the winding up of the 1971 Fund since winding up can only take place once all the claims arising from pending incidents have been settled and all expenses have been paid.
- 1.4 The 1971 Fund Assembly and the 1971 Fund Executive Committee have not been able to achieve a quorum in recent years. Since April 2000 the functions of these bodies have been carried out by a special body set up for this purpose, the 1971 Fund Administrative Council which was established by 1971 Fund Resolution N°13 adopted by the 1971 Fund Assembly in April/May 1998.
- 1.5 As decided by the Assemblies of the two Organisations, the 1992 Fund and the 1971 Fund have a joint Secretariat and Director.
- 1.6 This document addresses the issue of how the 1971 Fund should be administered after 24 May 2002.
- 1.7 It is recognised that the 1971 Fund Assembly/Administrative Council and the 1992 Fund Assembly will consider this issue from different perspectives. The Director has nevertheless considered it appropriate to deal with this issue in a joint document for the two Organisations.

2 Previous consideration of this issue

- 2.1 Since there was a risk that the 1971 Fund Assembly would not achieve a quorum after 16 May 1998, on which date 24 of the 76 States Parties to the 1971 Fund Convention ceased to be Members of the 1971 Fund, the 1971 Fund Assembly considered at its 4th extraordinary session, held in April/May 1998, various options for the operation of the 1971 Fund on the basis of a document submitted by the Director (document 71FUND/A/ES.4/14/Add.1). The discussion is reflected in the Record of Decisions of that session (document 71FUND/A/ES.4/16, paragraphs 15.1.9 - 15.1.33).
- 2.2 The 1971 Fund Assembly noted that, under Article 18.14 of the 1971 Fund Convention, it was its duty to perform - in addition to the functions specifically mentioned elsewhere in Article 18 - such other functions as were necessary for the proper operation of the 1971 Fund. It was recognised, however, that the drafters of the 1971 Fund Convention had not foreseen that the operation of the 1971 Fund could be made impossible as a result of the lack of a quorum in the Organisation's governing bodies, ie the Assembly and the Executive Committee, and that for this reason the Convention did not contain any provisions dealing with such a situation.
- 2.3 The 1971 Fund Assembly shared the Director's view that it was crucial that - in the interests of victims of pollution damage - measures be taken to enable the compensation system established under the 1971 Fund Convention to continue to function. Since the supreme organ of the 1971 Fund, ie the Assembly, had the general obligation to ensure the proper operation of the

Organisation, the 1971 Fund Assembly considered that it was its responsibility to take the necessary steps to this effect while it was still able to do so.

- 2.4 The main options considered by the 1971 Fund Assembly in April/May 1998 were:
- a) the transfer of the administration of the 1971 Fund to the 1992 Fund, and
 - b) the allocation of the functions of the 1971 Fund Assembly and Executive Committee to a newly-created body of the 1971 Fund which would apply different rules on quorum and voting rights.

Administration of the 1971 Fund by the 1992 Fund

- 2.5 As regards the option to entrust the administration of the 1971 Fund to the 1992 Fund, consideration was given to requesting the 1992 Fund Assembly to establish special bodies for this purpose to which 1971 Fund Member States would be invited, possibly with a right to vote or with a right to be heard.
- 2.6 The 1971 Fund Assembly stressed, however, that any solution to the problems encountered by the 1971 Fund should be found within the framework of the 1971 Fund Convention, and that this would be the best way to protect the interests of 1971 Fund Member States. It was stated by many delegations that it would be inappropriate to seek a solution outside that Convention, and that, even though the 1971 Fund and 1992 Fund had functions and objectives which were nearly identical, conflicts of interest might arise. Reference was also made to the fact that the present framework Convention (ie the 1971 Fund Convention) had been implemented into the national law of 1971 Fund Member States, whereas if a solution were found outside the Convention, the corresponding framework Convention would not be part of the national law of the Member States. One delegation stressed that the sovereign rights of States had to be respected, and that it was not possible for the 1971 Fund Assembly to transfer the governance of 1971 Fund Member States from the organs of the 1971 Fund to those of another organisation. The 1971 Fund Assembly decided therefore that the administration of the 1971 Fund should not be entrusted to the 1992 Fund (document 71FUND/A/ES.4/16, paragraphs 15.1.18 and 15.1.19).

Administration of the 1971 Fund by a newly-created body, ie its Administrative Council

- 2.7 Since the option to transfer the administration of the 1971 Fund to the 1992 Fund was not accepted, the 1971 Fund Assembly decided that the administration should be carried out within the 1971 Fund. The 1971 Fund Assembly adopted 1971 Fund Resolution N°13 whereby, with effect from the first session of the Assembly at which it was unable to achieve a quorum, various functions of the Assembly would be delegated to the Executive Committee, thereby enabling the Committee to take decisions in place of the Assembly. It was provided that if the Executive Committee should also fail to achieve a quorum, the functions of the Committee would revert to the Assembly. The Resolution created a body to be known as the Administrative Council which would assume its functions whenever the Assembly failed to achieve a quorum after the functions allocated to the Executive Committee in accordance with that Resolution had reverted to the Assembly. The Administrative Council would assume the functions of the Assembly (and therefore also of the Executive Committee). If the Assembly were to achieve a quorum at a later session, it would resume its functions. The Resolution is reproduced at Annex I.
- 2.8 The 1971 Fund Assembly last achieved a quorum in April/May 1998 (4th extraordinary session). The Executive Committee last achieved a quorum in October 1999 (62nd session). Thereafter all matters relating to the 1971 Fund have been dealt with by the Administrative Council.
- 2.9 Resolution N°13 was drafted so as to reflect the task of the 1971 Fund Assembly under Article 18.4 of the 1971 Fund Convention to perform such functions as are necessary for the proper operation of the 1971 Fund and that under Article 44.2 the Assembly should take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in

an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund.

2.10 In Resolution N°13 the 1971 Fund Assembly gave the Administrative Council the following mandate:

- (a) to perform such functions as are allocated to the Assembly under the 1971 Fund Convention or which are otherwise necessary for the proper operation of the 1971 Fund;
- (b) to establish a subsidiary body to consider the settlement of claims;
- (c) to give instructions to the Director concerning the administration of the 1971 Fund;
- (d) to supervise the proper execution of the Convention and of its own decisions;
- (e) to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity.

2.11 Under 1971 Fund Resolution N°13, the remaining 1971 Fund Member States and the former 1971 Fund Member States are invited to take part in the sessions of the Administrative Council. Decisions of the Administrative Council are taken by the majority vote of those remaining 1971 Fund Member States and former 1971 Fund Member States present and voting, with the proviso that former 1971 Fund Member States have the right to vote only in respect of issues relating to incidents which occurred while the 1971 Fund Convention was in force for that State. There is no quorum requirement for the Administrative Council.

3 Reconsideration of the arrangement for the administration of the 1971 Fund after 24 May 2002

3.1 After 24 May 2002 there will no longer be any States Parties to the 1971 Fund Convention and consequently there will not be any 1971 Fund Member States after that date. It appears, therefore, that after that date, under Resolution N°13, there will be no States having voting rights on general issues, eg matters relating to election of Chairman, the winding up of the Organisation or the distribution of any assets remaining when all claims and expenses arising out of pending incidents have been paid, since a former Member State has the right to vote only in respect of issues relating to incidents which occurred while the 1971 Fund Convention was in force for that State. In the Director's view any changes in respect of the administration of the 1971 Fund would therefore have to be decided by the 1971 Fund Assembly/Administrative Council at the April/May 2002 session.

3.2 It will be recalled that since the establishment of the 1971 Fund in 1978, the 1971 Fund Assembly has taken decisions by a formal vote only a few times, and the Executive Committee and the Administrative Council have never proceeded to a formal vote. However, it could be argued that a body where no State has voting rights cannot legally take decisions. It may therefore be appropriate to reconsider the arrangements for the administration of the 1971 Fund after 24 May 2002.

3.3 It appears that there are two main options, namely to maintain the administration of the 1971 Fund within that Organisation through the Administrative Council or to transfer the administration of the 1971 Fund to the 1992 Fund.

- 3.4 The main issues to be dealt with during the winding up of the 1971 Fund are settling all remaining claims in respect of pending incidents and the liquidation of the 1971 Fund by distribution of any remaining assets. An overview of the situation in respect of the pending incidents is at Annex II.

Administration within the 1971 Fund

- 3.5 In the Director's view the difficulty referred in paragraph 3.1 could be overcome by giving voting rights to all former 1971 Fund Member States on all issues, whether or not related to specific incidents.
- 3.6 While a distinction between the voting rights of the remaining 1971 Fund Member States, on the one hand, and the voting rights of the former 1971 Fund Member States, on the other hand, was justified at the time that Resolution N°13 was adopted when these two categories of States existed, it appears that such a distinction will be neither logical nor desirable after 24 May 2002 since after that date every State with an interest in the 1971 Fund will be a former Member State. In such a situation, withholding the right to vote on general issues relating to the winding up of the 1971 Fund would mean that no decision can be taken by the Administrative Council on such issues. Such a result cannot be in the interest of "the proper operation of the 1971 Fund", nor can it protect the interests of the persons who have contributed to the 1971 Fund.
- 3.7 In the Director's view the 1971 Fund Assembly would have the power to amend Resolution N°13 adopted by it. However, if as is very likely, the Assembly were not to achieve a quorum, the matter would have to be dealt with by the Administrative Council. The Director considers that the Administrative Council would have the power to decide such a modification of the voting rules, since under Resolution N°13 the Administrative Council has the mandate to perform such functions which are necessary for the proper operation of the 1971 Fund and to take all appropriate measures to complete the winding up of the 1971 Fund.
- 3.8 A decision to amend the voting rules in the Administrative Council will in the Director's view have to be taken before the 1971 Fund Convention ceases to be in force on 24 May 2002. He considers that a decision to amend the voting rules should be taken by the majority vote of only those States which are still Members of the 1971 Fund on the date when the decision is taken, in order to respect the voting rules laid down in Resolution N°13.
- 3.9 In view of the importance of such a decision the Director considers that the amendment of the voting rules should take the form of a Resolution. A draft Resolution to amend the voting rules of the Administrative Council is at Annex III.

Transfer of the administration of the 1971 Fund to the 1992 Fund

- 3.10 As mentioned in paragraph 2.6, in April/May 1998 the 1971 Fund Assembly decided that the administration of the 1971 Fund during the winding up period should not be entrusted to the 1992 Fund. The 1971 Fund Assembly stressed that any solution to the problems encountered by the 1971 Fund should be found within the 1971 Fund Convention, that this would be the best way to protect the interests of the 1971 Fund Member States and that it would be inappropriate to seek a solution outside that Convention. If, however, the 1971 Fund Assembly/Administrative Council were to find that a solution within the framework of the 1971 Fund Convention - either the solution set out in paragraph 3.5 above or any other solution - was not possible or appropriate, it may wish to reconsider whether the administration of the 1971 Fund should be transferred to the 1992 Fund.
- 3.11 When the issue was considered by the 1971 Fund Assembly in 1998, there was great uncertainty as to when the 1971 Fund Convention would cease to be in force and as to the liabilities of the 1971 Fund during its winding up period. These uncertainties have now largely been removed.

- 3.12 A State which has been a party to the 1971 Fund Convention will have an interest in its administration if there are pending incidents affecting victims in that State or if there are contributors to the 1971 Fund in that State.
- 3.13 As mentioned above, there will be 24 States Parties to the 1971 Fund Convention on 24 May 2002 when the Convention ceases to be in force. Of these 24 States, six have ratified the 1992 Fund Convention. It is expected that the majority of the remaining 18 States will ratify that Convention in the near future.
- 3.14 All States which have denounced the 1971 Fund Convention have ratified the 1992 Fund Convention except Switzerland and Indonesia, which ceased to be Members of the 1971 Fund on 15 May 1998 and 26 June 1999 respectively.
- 3.15 As regards the former 1971 Fund Member States which will not be Members of the 1992 Fund after 24 May 2002, there are pending incidents affecting three of these States, namely Estonia (*Alambra*, 2000), Indonesia (*Evoikos*, 1997) and Malaysia (*Evoikos*, 1997 and *Singapura Timur*, 2001).^{<1>} It is expected that Estonia and Malaysia will ratify the 1992 Fund Convention in the near future.
- 3.16 If it were to be decided to transfer the administration of the 1971 Fund to the 1992 Fund, that administration could be carried out by the organs of the 1992 Fund, ie the Assembly and the Executive Committee. Under the Rules of Procedure of the 1992 Fund Assembly and Executive Committee the former 1971 Fund Member States which are not Members of the 1992 Fund would, as is the case at present, be invited to attend the sessions as observers. The 1992 Fund Assembly could make a declaration to the effect that although these States would not have voting rights, their views would be taken into account when the Assembly and Executive Committee deal with 1971 Fund matters.
- 3.17 Alternatively the 1971 Fund Assembly or Administrative Council could invite the 1992 Fund Assembly to establish a special body for the purpose of considering matters on behalf of the 1971 Fund. This body, which could be known as the 1992 Fund Administrative Council for the 1971 Fund, would be composed of all 1992 Fund Member States and all States not Members of the 1992 Fund which had been Members of the 1971 Fund. It would have rules of procedure identical to those of the 1992 Fund Assembly. However, those former 1971 Fund Member States which are present at the sessions of this body would be given full voting rights. On the other hand, it may be appropriate to consider whether the 1992 Fund Member States which were never members of the 1971 Fund should have voting rights. It is suggested that, as is the case for the 1971 Fund Administrative Council, there should be no quorum requirement for this special 1992 Fund body.
- 3.18 Decisions taken on the 1971 Fund's behalf by the bodies referred to in paragraphs 3.16 and 3.17 would be considered as decisions of the 1971 Fund.
- 3.19 If either of the solutions referred to in paragraphs 3.16 and 3.17 were to be adopted, a request would need to be made by the 1971 Fund Assembly to the 1992 Fund Assembly to the effect that the 1992 Fund should act on behalf of the 1971 Fund's organs and, if considered appropriate, to set up the special body referred to in paragraph 3.17. The transfer of the administration of the 1971 Fund to the 1992 Fund would have to be made by a Resolution adopted by the 1971 Fund Assembly or Administrative Council. The 1992 Fund Assembly would have to accept the request to carry out the administration of the 1971 Fund, preferably by a Resolution setting out the arrangements to be used. Draft Resolutions to this effect are at Annexes IV and V. As regards the draft Resolution to be adopted by the 1992 Fund Assembly, alternative texts have been prepared for the operative paragraphs in order to reflect the two alternative solutions set out in paragraphs 3.16 and 3.17.

^{<1>} The *Evoikos* incident also affected Malaysia, but all claims for compensation for pollution damage in Malaysia have been settled and paid.

Director's consideration

- 3.20 The Director takes the view that the first option is clearly preferable, ie maintaining the administration of the 1971 Fund within that Organisation through the Administrative Council but with an amendment of the voting rules to the effect that all former 1971 Fund Member States should have full voting rights on all issues. This option has the advantage of maintaining a clear distinction between the administration of the 1971 Fund and the administration of the 1992 Fund. It also respects the position of principle taken by the 1971 Fund Assembly, namely that the administration of the 1971 Fund should be carried out within that Organisation.

4 Appointment of an eminent person

- 4.1 The 1971 Fund Executive Committee also considered in October 1999 a proposal by the Director to the effect that, in order to ensure that the winding up of the 1971 Fund was impartial and equitable, it might be appropriate to consider appointing some eminent person from outside the 1971 Fund who was nevertheless familiar with the operation of the Organisation, to oversee the winding up. The Director had proposed that Dr Thomas Mensah might be a suitable candidate for that post (document 71FUND/EXC.63/10, paragraph 5.4). At its October 2000 session, the 1971 Fund Administrative Council decided that such a person should be appointed but postponed its consideration of the person to be appointed (document 71FUND/AC.2/A.23/22, paragraph 6.17). At its 6th session, held in October 2001, the Administrative Council again postponed further consideration of this issue to a later session (document 71FUND/AC.6/A.24/22, paragraph 6.5).
- 4.2 The 1971 Fund Assembly is invited to consider whether it still wishes to appoint such a person and, if so, whether to appoint such an eminent person at this stage.

5 Action to be taken by the Assemblies

- 5.1 The 1971 Fund Assembly is invited:

- (a) to take note of the information contained in this document;
- (b) to consider whether
 - (i) the 1971 Fund should continue to be administered by its Administrative Council after 24 May 2002 and, if so, whether the rules on voting rights in Resolution N°13 should be modified (paragraphs 3.5 – 3.9 and 3.20), or
 - (ii) the administration of the 1971 Fund should be transferred to the 1992 Fund and, if so, the framework to be used (paragraphs 3.10 – 3.20);
- (c) to consider whether to appoint an eminent person to oversee the winding up of the 1971 Fund (paragraph 4); and
- (d) to take such other decisions as it may deem appropriate to ensure the proper functioning and winding up of the 1971 Fund.

- 5.2 The 1992 Fund Assembly is invited:

- (a) to take note of the information contained in this document;
- (b) to consider any request which may be made by the 1971 Fund Assembly/Administrative Council regarding the transfer of the administration of the 1971 Fund to the 1992 Fund; and

- (c) to take such decisions as it may deem appropriate in respect of the 1992 Fund's involvement in the administration of the 1971 Fund after 24 May 2002.

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ANNEX I

1971 Fund Resolution N°13: Operation of the 1971 Fund from 16 May 1998

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 (1971 FUND),

NOTING that there are 76 States Parties to the 1971 Fund Convention;

AWARE that 24 of these States will cease to be Members of the 1971 Fund from 16 May 1998 and that a number of other States will in the near future also cease to be Members of the 1971 Fund,

RECOGNISING that, as a result of these States leaving the 1971 Fund, it is likely, despite considerable efforts to be made by the Director, that the Assembly of the Organisation will no longer be able to achieve a quorum and that the same may in the near future apply to its Executive Committee,

ACKNOWLEDGING that this would result in the 1971 Fund's being unable to operate in a normal way,

MINDFUL that the 1971 Fund's objective is to pay compensation to victims of oil pollution damage in Member States,

RECALLING that it is the task of the Assembly, under Article 18.14 of the 1971 Fund Convention, to perform such functions as are necessary for the proper operation of the 1971 Fund,

AWARE that the Assembly may allocate functions to the Executive Committee in accordance with Article 26.1(c) of the 1971 Fund Convention,

NOTING that, under Article 44.2, the Assembly should take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund,

CONSCIOUS of the need to establish a structure which will permit the 1971 Fund to operate from 16 May 1998 until such time as it is wound up,

RECOGNISING that it is the general responsibility of the Assembly to ensure the proper operation of the 1971 Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,

CONSIDERING that it is important to ensure that the interests of States which remain Members of the 1971 Fund are protected,

RECALLING Resolution N°11 of the 1971 Fund on co-operation between the 1971 Fund and its former Member States, in which it is recognised that former States Parties which have been affected by incidents covered by the 1971 Fund Convention but in respect of which settlements have not yet been finalised, should be entitled to present their views on pending cases in the competent bodies of the 1971 Fund,

1 **INSTRUCTS** the Director to convene a regular session of the Assembly of the 1971 Fund once every calendar year, and in the invitations to urge States to make every effort to be represented at the meeting, and to draw attention to the consequences of a quorum not being achieved.

2 **RESOLVES** that, in addition to those functions which are allocated to the Executive Committee pursuant to Article 26.1 of the 1971 Fund Convention, the following functions of the Assembly

shall be delegated to the Executive Committee with effect from the first session of the Assembly at which the latter is unable to achieve a quorum, on the condition that if the Assembly were to achieve a quorum at a later session or sessions, the Assembly would resume the functions previously allocated to the Committee:

- (a) to adopt the annual budget and fix the annual contributions;
- (b) to appoint auditors and approve the accounts of the 1971 Fund;
- (c) to supervise the proper execution of the 1971 Fund Convention and of its own decisions;
- (d) to perform such other functions as are otherwise necessary for the proper operation of the 1971 Fund;
- (e) to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund;

3 **RESOLVES ALSO** that, whenever the Executive Committee fails to achieve a quorum, all functions undertaken by the Committee (ie those allocated by the Assembly and those allocated in accordance with the 1971 Fund Convention) shall revert to the Assembly;

4 **HEREBY CREATES** a body to be known as the Administrative Council, which shall have the following mandate:

- (a) to perform such functions as are allocated to the Assembly under the 1971 Fund Convention or which are otherwise necessary for the proper operation of the 1971 Fund;
- (b) to establish a subsidiary body to consider the settlement of claims;
- (c) to give instructions to the Director concerning the administration of the 1971 Fund;
- (d) to supervise the proper execution of the Convention and of its own decisions;
- (e) to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity;

5 **FURTHER RESOLVES** that the Administrative Council shall assume its functions whenever the Assembly fails to achieve a quorum after the functions allocated to the Executive Committee in accordance with paragraph 2 have reverted to the Assembly pursuant to paragraph 3, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;

6 **DECIDES** that the following States and organisations shall be invited to take part in sessions of the Administrative Council:

- (a) 1971 Fund Member States;
- (b) former 1971 Fund Member States;
- (c) other States which would be invited to attend sessions of the 1971 Fund Assembly as observers; and
- (d) intergovernmental organisations and international non-governmental organisations which have observer status with the 1971 Fund;

FURTHER DECIDES:

- (a) that decisions of the Administrative Council shall be taken by majority vote of those 1971 Fund Member States and former 1971 Fund Member States present and voting, provided that a former 1971 Fund Member State shall have the right to vote only in respect of issues relating to incidents which occurred while the 1971 Fund Convention was in force for that State;
- (b) that there shall be no quorum requirement for the Administrative Council;
- (c) that the Administrative Council shall meet at least once every calendar year at thirty days' notice upon convocation by the Director, either at his own initiative or at the request of its Chairman;
- (d) that the Rules of Procedure of the Administrative Council shall be those of the Assembly, to the extent applicable;
- (e) that the States invited to a session of the Administrative Council shall inform the Director of the person or persons who will attend; and
- (f) that the sessions of the Administrative Council shall be held in public, unless the Council decides otherwise;

FURTHER RESOLVES that the Director of the 1971 Fund shall *ex officio* be the person who holds the post of Director of the 1992 Fund, provided that the Assembly of the 1992 Fund agrees thereto and that the Director of the 1992 Fund agrees to carry out the functions of the Director of the 1971 Fund also, or, if these conditions are not met, that the Director shall be appointed by the Executive Committee in accordance with paragraph 2 above, or by the Administrative Council in accordance with paragraph 4 above.

* * *

ANNEX II

Pending incidents involving the 1971 Fund

- 1 The situation in respect of pending incidents involving the 1971 Fund is in summary as follows.
- 2 There are 20 incidents involving the 1971 Fund in respect of which claims for compensation and/or indemnification are pending, or recourse actions are being pursued by the 1971 Fund.
- 3 Of these 20 incidents, the following six have already been fully financed through contributions levied to the respective Major Claims Funds:

Aegean Sea
Braer
Keumdong N°5
Sea Prince
Yeo Myung
Yuil N°1

- 4 These Major Claims Funds are together expected to show a considerable surplus in the region of £35 million when all claims and expenses have been paid.
- 5 A further six incidents will probably not result in any payments of compensation or indemnification by the 1971 Fund or in only very limited payments:

Vistabella
Iliad
Kriti Sea
Katja
Alambra
Natuna Sea

- 6 As for the *Sea Empress* incident, the balance on the Major Claims Fund is sufficient to cover the payments of compensation of pending claims and indemnification of the shipowner. The recourse action taken by the 1971 Fund against the Milford Haven Port Authority will, however, take a considerable time and may result in the 1971 Fund's incurring significant costs.
- 7 With respect to the *Nakhodka* incident, it is difficult to assess the remaining exposure of the 1971 Fund since the maximum amount payable by that Fund (60 million SDR) under the 1971 Fund Convention (contrary to the 1992 Fund Convention) is converted into Japanese yen on the basis of the rate of exchange on the date when the shipowner establishes the limitation fund and this fund has not yet been constituted. Prior to 31 December 1999 all compensation payments were made by the 1971 Fund and thereafter all payments have been made by the 1992 Fund. On the basis of the rate of exchange on that date the 1971 Fund would have paid over its limit, whereas if the conversion were made on the basis of the rate of exchange as at 1 March 2002 the 1971 Fund would have to make additional payments.
- 8 The remaining claims arising out of the *Nissos Amorgos* and *Pontoon 300* incidents are, in the 1971 Fund's view, for the most part inadmissible. These claims are for significant amounts. It is very difficult therefore to estimate the total payments to be made by the 1971 Fund in respect of these incidents. There are in any event deficits on these Major Claims Funds and contributions will have to be levied to these Funds.

- 9 The *Evoikos* incident is unlikely to give rise to any payments of compensation by the 1971 Fund. It is possible that the Fund will have to pay indemnification of the shipowner not exceeding £1.9 million. The Fund may also incur some related costs.
- 10 All the incidents referred to in paragraphs 3 - 9 except the *Alambra* incident occurred before the end of the transitional period, 15 May 1998, when the denunciation of the 1971 Fund Convention by 24 States took effect. Apart from that incident a sufficient contribution basis exists therefore as regards these incidents, should it be necessary to levy further contributions in respect of any of them.
- 11 It is estimated that the *Al Jaziah 1* incident (24 January 2000) will give rise to payments of compensation and costs by the 1971 Fund not exceeding £2 million. Contributions may have to be levied in respect of that incident.
- 12 In October 2000 the 1971 Fund purchased insurance covering its liabilities in respect of incidents occurring during the period 25 October 2000 – 24 May 2002, subject to a deductible of 250 000 Special Drawing Rights (£220 000) per incident. So far the insurance will be used in respect of the *Zeinab* and *Singapura Timur* incidents (14 April 2001 and 28 May 2001 respectively) but will also cover any further incidents occurring after the issue of this document up to 24 May 2002. The maximum amount to be borne by the 1971 Fund in respect of each of these incidents is the deductible, ie £220 000.

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ANNEX III

Draft 1971 Fund Resolution on the operation of the 1971 Fund after 24 May 2002

THE [ASSEMBLY] ADMINISTRATIVE COUNCIL OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 (1971 FUND) ACTING OF BEHALF OF THE ASSEMBLY,

RECALLING Resolution N°13 of the Assembly of the 1971 Fund creating the Administrative Council,

NOTING that paragraph 7(a) of Resolution N°13 provides that "decisions of the Administrative Council shall be taken by the majority vote of those 1971 Fund Member States and former 1971 Fund Member States present and voting, provided that a former 1971 Fund Member State shall have the right to vote only in respect of issues relating to incidents which occurred while the 1971 Fund Convention was in force for that State",

AWARE that on 24 May 2002 the 1971 Fund Convention shall cease to be in effect and, accordingly, that there will be no 1971 Fund Member States in the Administrative Council after that date,

NOTING ALSO that, in the circumstances, there will be no States with the right to vote in the Administrative Council on issues relating to the winding up of the 1971 Fund, pursuant to paragraph 7(a) of Resolution N°13,

ACKNOWLEDGING that such a situation will make it impossible for the Administrative Council to take decisions relating to such issues,

RECOGNISING that the mandate of the Administrative Council is, *inter alia*, "to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity",

MINDFUL of the need to establish an arrangement which will permit the completion of the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund,

BEARING IN MIND that it is appropriate for measures to be taken to ensure that the necessary decisions on these matters can be taken in the Administrative Council,

CONSCIOUS of the need to ensure that the interests of the persons who have contributed to the 1971 Fund are protected,

CONSIDERING that, for these reasons, it is necessary to amend the provisions on voting rights in the Administrative Council, as contained in paragraph 7(a) of Resolution N°13,

RESOLVES to amend paragraph 7(a) of Resolution N°13 to read as follows:

"that decisions of the Administrative Council shall be taken by majority vote of former 1971 Fund Member States present and voting;"

FURTHER RESOLVES that this amendment shall take effect on 25 May 2002.

* * *

ANNEX IV

Draft 1971 Fund Resolution on the operation of the 1971 Fund after 24 May 2002

THE [ASSEMBLY] ADMINISTRATIVE COUNCIL OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 (1971 FUND) ACTING ON BEHALF OF THE ASSEMBLY,

[RECALLING that it is the task of the Assembly, under Article 18.14 of the 1971 Fund Convention, to perform such functions as are necessary for the proper operation of the 1971 Fund,]^{<1>}

[NOTING that, under Article 44.2, the Assembly should take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund,]^{<1>}

[RECOGNISING that it is the general responsibility of the Assembly to ensure the proper operation of the 1971 Fund and that it is therefore the duty of the Assembly to take the necessary measures to achieve this,]^{<1>}

RECALLING that at its 4th extraordinary session, conscious of the need to establish a structure which would permit the 1971 Fund to operate from 16 May 1998 until such time as it is wound up, the 1971 Fund Assembly adopted Resolution N°13 establishing a body to be known as the Administrative Council with the following mandate:

- (a) to perform such functions as are allocated to the Assembly under the 1971 Fund Convention or which are otherwise necessary for the proper operation of the 1971 Fund;
- (b) to establish a subsidiary body to consider the settlement of claims;
- (c) to give instructions to the Director concerning the administration of the 1971 Fund;
- (d) to supervise the proper execution of the Convention and of its own decisions;
- (e) to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity;

FURTHER RECALLING that under Resolution N°13 the Administrative Council shall assume its functions whenever the Assembly fails to achieve a quorum after the functions allocated to the Executive Committee in accordance with paragraph 2 of that Resolution have reverted to the Assembly pursuant to its paragraph 3, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions;

NOTING that the Assembly and the Executive Committee of the 1971 Fund have for several years been unable to achieve a quorum and that since April 2000 their functions have been carried out by the Administrative Council;

NOTING ALSO that under that Resolution N°13 decisions of the Administrative Council shall be taken by majority vote of those 1971 Fund Member States and former 1971 Fund Member States present and voting, provided that a former 1971 Fund Member State shall have the right to vote only in respect of issues relating to incidents which occurred while the 1971 Fund Convention was in force for that State;

^{<1>} These paragraphs should be included only if the Resolution is adopted by the Assembly.

AWARE that the 1971 Fund Convention will cease to be in force on 24 May 2002 and that consequently the 1971 Fund will no longer have any Member States after that date;

NOTING that, in the circumstances, there will be no States with the right to vote in the Administrative Council on issues relating to the winding up of the 1971 Fund, pursuant to paragraph 7(a) of Resolution N°13;

ACKNOWLEDGING that such a situation will make it impossible for the Administrative Council to take decisions relating to such issues;

RECOGNISING that the Administrative Council has been given the mandate to take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity;

TAKING INTO ACCOUNT that the International Oil Pollution Compensation Fund 1992 (1992 Fund), established under the 1992 Fund Convention, has functions and objectives which are nearly identical to those of the 1971 Fund;

1. **REQUESTS** that the 1992 Fund shall, from 25 May 2002, exercise the functions of the 1971 Fund Assembly and Executive Committee on behalf of the 1971 Fund, through the 1992 Fund Assembly and Executive Committee;
2. **FURTHER REQUESTS** that the 1992 Fund Assembly shall invite former 1971 Fund Member States which are not Members of the 1992 Fund to take part, without voting rights, in sessions of the 1992 Fund Assembly and Executive Committee;
3. **INVITES** the 1992 Fund Assembly to take into account the views of the former 1971 Fund Member States which are not Members of the 1992 Fund when considering matters relating to the 1971 Fund;
4. **CONFIRMS** that the 1992 Fund and its Member States will not have any financial liabilities in respect of the 1971 Fund.

Alternative text of the operative paragraphs if the 1992 Fund Assembly were to set up a special body to administer the 1971 Fund:

1. **REQUESTS** that the 1992 Fund shall, from 25 May 2002, exercise the functions of the 1971 Fund Assembly and Executive Committee on behalf of the 1971 Fund through a body established for that purpose which could be known as the 1992 Fund Administrative Council for the 1971 Fund and which would be composed of all 1992 Fund Member States and all former 1971 Fund Member States which are not Members of the 1992 Fund and which would have rules of procedure identical to those of the 1992 Fund Assembly to the extent applicable, except that the former 1971 Fund Member States which are not Members of the 1992 Fund shall have full voting rights [whereas the 1992 Fund Member States which were never members of the 1971 Fund shall not be entitled to vote,] and that there shall be no quorum requirement;
2. **CONFIRMS** that the 1992 Fund and its Member States will not have any financial liabilities in respect of the 1971 Fund.

* * *

ANNEX V

Draft 1992 Fund Resolution on the operation of the 1971 Fund after 24 May 2002

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 (1992 FUND),

NOTING that the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (1971 Fund Convention) will cease to be in force on 24 May 2002,

RECOGNISING that difficulties will arise concerning the administration of the International Oil Pollution Compensation Fund established under the 1971 Fund Convention (1971 Fund) after that date,

NOTING ALSO the request made by the 1971 Fund Assembly that the 1992 Fund should, from 25 May 2002, on behalf of the 1971 Fund, exercise the functions of the 1971 Fund Assembly and Executive Committee through [the 1992 Fund Assembly and Executive Committee] [a body established for that purpose],

TAKING INTO ACCOUNT that the 1992 Fund, established under the 1992 Fund Convention, has functions and objectives which are nearly identical to those of the 1971 Fund,

CONSIDERING that it is important that the winding up of the 1971 Fund is completed in an efficient and orderly manner in order to ensure that the interests of the victims of the incidents involving the 1971 Fund which have not yet been settled are protected,

CONSIDERING ALSO that it is important to protect the interests of the former 1971 Fund Member States and the persons in those States liable to pay contributions to the 1971 Fund,

RESOLVES that the 1992 Fund shall from 25 May 2002 assume the functions which, under the 1971 Fund Convention, shall be carried out by the 1971 Fund Assembly and Executive Committee;

1. **FURTHER RESOLVES** that the 1992 Fund Assembly and Executive Committee shall:
 - (a) perform such functions as are allocated to the 1971 Fund Assembly and Executive Committee under the 1971 Fund Convention or which are otherwise necessary for the proper operation of the 1971 Fund;
 - (b) give instructions to the Director concerning the administration of the 1971 Fund;
 - (c) supervise the proper execution of the 1971 Fund Convention and of their own decisions;
 - (d) take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity;
2. **DECIDES** that former 1971 Fund Member States which are not Members of the 1992 Fund shall be invited to take part in sessions of the Assembly and Executive Committee without voting rights;

3. **DECLARES** that the views and interests of the former 1971 Fund Member States which are not Members of the 1992 Fund shall be taken into account when the Assembly or Executive Committee deals with 1971 Fund matters;
4. **FURTHER DECLARES** that the 1992 Fund and its Member States will not have any financial obligations in respect of the 1971 Fund.

Alternative text of the operative paragraphs if the 1992 Fund Assembly were to set up a special body to administer the 1971 Fund:

1. **RESOLVES** that the 1992 Fund Assembly and Executive Committee will from 25 May 2002 assume the functions which, under the 1971 Fund Convention, are to be carried out by the 1971 Fund Assembly and Executive Committee through a body established for that purpose which will be known as the 1992 Fund Administrative Council for the 1971 Fund and which would be composed of 1992 Fund Member States and all former 1971 Fund Member States which are not Members of the 1992 Fund and which would have rules of procedure identical to those of the 1992 Fund Assembly to the extent applicable, except that the former 1971 Fund Member States which are not Members of the 1992 Fund shall be entitled to take part in these sessions with full voting rights [whereas the 1992 Fund Member States which were never members of the 1971 Fund shall not be entitled to vote,] and that there shall be no quorum requirement;
2. **FURTHER RESOLVES** that the 1992 Fund Administrative Council for the 1971 Fund shall:
 - (a) perform such functions as are allocated to the 1971 Fund Assembly and Executive Committee under the 1971 Fund Convention or which are otherwise necessary for the proper operation of the 1971 Fund;
 - (b) give instructions to the Director concerning the administration of the 1971 Fund;
 - (c) supervise the proper execution of the 1971 Fund Convention and of its own decisions;
 - (d) take all appropriate measures to complete the winding up of the 1971 Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the 1971 Fund, at the earliest possible opportunity;
3. **DECLARES** that the 1992 Fund and its Member States will not have any financial obligations in respect of the 1971 Fund.