INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
11th session
Agenda item 38

92FUND/A.11/35
27 October 2006
Original: ENGLISH

RECORD OF DECISIONS OF THE ELEVENTH SESSION OF THE ASSEMBLY

(held from 23 to 27 October 2006)

Chairman:	Mr Jerry Rysanek (Canada)
First Vice-Chairman:	Professor Seiichi Ochiai (Japan)
Second Vice-Chairman:	Mr Edward K Tawiah (Ghana)

Opening of the session

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document 92FUND/A.11/1.

2 Election of the Chairman and two Vice-Chairmen

2.1 The Assembly elected the following delegates to hold office until the next regular session of the Assembly:

Chairman:	Mr Jerry Rysanek (Canada)
First Vice-Chairman:	Professor Seiichi Ochiai (Japan)
Second Vice-Chairman:	Mr Edward K Tawiah (Ghana)

2.2 The Chairman, on behalf of himself and the two Vice-Chairmen, thanked the Assembly for the confidence shown in them.

3 Examination of credentials

3.1 The Assembly recalled that, at its March 2005 session, it had decided to establish, at each session, a Credentials Committee composed of five members elected by the Assembly on the proposal of the Chairman to examine the credentials of delegations of Member States and that the Credentials Committee established by it should also examine the credentials in respect of the Executive Committee, provided the session of the Executive Committee was held in conjunction with a session of the Assembly. It was recalled that the Assembly had inserted provisions to this effect in the respective Rules of Procedure.

3.2 In accordance with Rule 10 of the Assembly's Rules of Procedure the delegations of Algeria, Australia, Mexico, the Russian Federation and Sweden were appointed members of the Credentials Committee.

3.3 The following Member States were present:

Algeria
Antigua and Barbuda
Argentina
Australia
Bahamas
Belgium
Cameroon
Canada
China (Hong Kong Special Administrative Region)
Colombia
Cyprus
Denmark
Estonia
Finland
France
Gabon
Germany
Ghana
Greece
Ireland
Israel
Italy
Japan
Latvia
Liberia
Lithuania
Malaysia
Malta
Marshall Islands
Mexico
Monaco
Morocco
Netherlands
New Zealand
Nigeria
Norway
Panama
Philippines
Poland
Portugal
Republic of Korea
Russian Federation
Singapore
Spain
Sri Lanka
Sweden
Turkey
United Arab Emirates
United Kingdom
Uruguay
Vanuatu
Venezuela

3.4 After having examined the credentials of the delegations of the members of the Assembly, the Credentials Committee reported that all of the above-mentioned members of the Assembly had submitted credentials which were in order (cf document 92FUND/A.11/2/1).

3.5 The Assembly expressed its sincere gratitude to the Members of the Credentials Committee for its work during this session.

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

Other States:

Brazil
Ecuador
Peru
Saudi Arabia

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

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1971
International Oil Pollution Compensation Supplementary Fund
Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)

International non-governmental organisations:

BIMCO
Comité Maritime International (CMI)
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P&I Clubs
International Salvage Union (ISU)
International Tanker Owners Pollution Federation Ltd (ITOPF)
International Union of Marine Insurance (IUMI)
Oil Companies International Marine Forum (OCIMF)

4 Report of the Director

4.1 The Director introduced his report on the activities of the 1992 Fund since the Assembly's 10th session in October 2005, contained in document 92FUND/A.11/3. The Director stated that this was his 22nd Report on the activities of the IOPC Funds and, since he would leave the post of Director on 31 October 2006, also his last report. He also stated that in view of this he had included in his presentation some comments on the development of the international compensation regime created by the Civil Liability Conventions and the Fund Conventions over the years. He recalled that the 1971 and 1992 Funds had been involved in some 135 incidents and had paid compensation of some £550 million. He further observed that most claims had been settled without claimants having to take court action, and that in fact, such actions had only been taken in respect of a small number of incidents.

4.2 The Director also made reference to the fact that the last 12 months had seen continued growth in 1992 Fund membership. He stated that after the 1971 Fund Convention had ceased to be in force on 24 May 2002, a number of the former 1971 Fund Member States had ratified the 1992 Fund Convention, and that it was hoped that the remaining eight such States would soon do so. He added that it was likely that a number of other States would also become Members of the 1992 Fund in the near future. The Director also mentioned that a number of States were expected to ratify the Supplementary Fund Protocol in the near future, increasing the number of Contracting States beyond the current 20.

4.3 The Director also referred to the IOPC Funds' participation at Interspill 2006, an international conference and exhibition held in London on spill prevention and response at sea and on inland waters. It was noted that this was the first such conference supported by the IOPC Funds through representation on the organising and programme committees and the first occasion on which the IOPC Funds had their own stand at the exhibition along with 140 other exhibitors. It was also noted that some 1 300 participants from 71 countries had attended the conference and exhibition.

4.4 The Director reported that since the 1992 Fund Assembly's session in October 2005, the 1992 Fund had been notified of one new oil pollution incident which would involve the Fund, namely the *Solar 1* (Republic of the Philippines), and that the incident was the first involving a vessel entered in the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) under which the shipowner/insurer had agreed to increase on a voluntary basis the limitation amount applicable to the vessel under the 1992 Civil Liability Convention from 4.51 Special Drawing Rights (SDR) (£3.6 million) to 20 million SDR (£15.8 million).

4.5 The Director drew attention to the fact that, although the situation had improved considerably in recent years, the failure of a number of Member States to submit oil reports continued to give rise to serious concern.

4.6 The Director pointed out that as requested by the Assembly the IOPC Funds would be giving a higher priority to the preparations for the entry into force of the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996 (HNS Convention).

4.7 In looking ahead, the Director stated that the coming year would be a very important one for the IOPC Funds as the new Director, Mr Willem Oosterveen, who joined the Secretariat on 1 September 2006, would take up his duties on 1 November 2006. He assured the Assembly that he would make every effort to ensure a smooth transition to his successor and would continue to be available up to 31 December 2006.

4.8 The Assembly expressed its gratitude to the Director and the other members of the joint Secretariat for the efficient way in which they had administered the 1992 Fund. It also thanked the staff of the Claims Handling Offices established in La Coruña (Spain) and Bordeaux (France) to deal with claims arising from the *Prestige* incident, as well as the lawyers and technical experts who had undertaken other work for the 1992 Fund.

4.9 The Assembly congratulated the Secretariat on the IOPC Funds' joint Annual Report for 2005, which had been published in English, French and Spanish and contained an instructive presentation of the activities of the 1992 Fund, the 1971 Fund and the Supplementary Fund.

5 Status of the 1992 Fund Convention and the Supplementary Fund Protocol

5.1 The Assembly took note of the information contained in document 92FUND/A.11/4 concerning the ratification situation in respect of the 1992 Fund Convention and the Supplementary Fund Protocol.

5.2 It was noted that at present there were 96 Member States of the 1992 Fund and that two more States would become Members by the end of 2006.

5.3 It was noted that nineteen 1992 Fund Member States were Members of the Supplementary Fund at the time of the session and that Greece had ratified the Supplementary Fund Protocol on 23 October 2006 and would become a Member of the Supplementary Fund on 23 January 2007.

6 Implementation of the 1992 Civil Liability and Fund Conventions into national law

6.1 The Assembly took note of the information in document 92FUND/A.11/5 in respect of the results of the Director's enquiries to all Member States as to whether the 1992 Conventions had been fully implemented into their national law.

6.2 The Assembly noted that, the Director had contacted all 98 States which had ratified the 1992 Fund Convention, of which 54 had confirmed that the Conventions had been fully implemented whereas 14 had stated that the Conventions had not been implemented into national legislation. The Assembly also noted that the Director had written to those States which had not implemented the Conventions into their national legislation and offered assistance in the preparation of the necessary legislation.

6.3 The Assembly took note of the Director's disappointment that, despite having been contacted repeatedly both in writing and by telephone since April 2005, 30 of the 98 States had still not stated whether or not the 1992 Conventions had been fully implemented into their national law. It was noted that the Director was regrettably of the opinion that further efforts to obtain such statements were unlikely to be successful and that, unless instructed otherwise, he did not intend to continue seeking responses from these States.

6.4 The Assembly noted that the Director did however intend to continue to offer assistance in the preparation of the necessary legislation to any States which informed the Secretariat that the 1992 Conventions had not been fully implemented into their national law. It was also noted that the Director intended to continue to draw the attention of States which ratified the 1992 Fund Convention to the importance of the implementation of the 1992 Conventions into national law and to offer assistance preparing the necessary legislation.

6.5 The Assembly thanked the Director for his ongoing efforts to obtain such responses but expressed concern over the lack of co-operation from Member States regarding such an important matter.

6.6 A number of delegations agreed with the Director that it was pointless to continue writing letters to those States which had not responded.

6.7 Some delegations expressed particular concern that of those States that had responded to the Director's enquiries, 14 States had not fully implemented the Conventions into national law, and considered that the international compensation regime may not function as it should, should an incident occur in one of those States.

6.8 The Director stated that in this regard there would be a difference between on the one hand States in which the legal system took a monistic approach to international treaties, ie that once ratified and published they became part of national law and should be applied by the national courts

without it being necessary to implement them by statute, and on the other hand States having a dualistic system, ie where international treaties did not become applicable unless they had been implemented through a national statute. He mentioned that even in States which had a monistic system it would however, normally be necessary to adopt some domestic legislation, for example on points where the treaties gave States options or which were not dealt with in the treaties.

6.9 One delegation asked the Director whether the Secretariat had checked whether those States which had informed the Secretariat that the Conventions had been fully implemented had in fact done so. The Director reminded the Assembly that this issue had been discussed within the third intersessional Working Group and that a number of delegations had considered that it would not be acceptable that the Fund Secretariat checked the conformity of national legislation with the 1992 Conventions and that for this reason the Director had not felt able to do so unless invited by a particular State.

6.10 One delegation suggested that the Secretariat could approach this matter in a more innovative way, such as writing to new Member States when they joined the 1992 Fund explaining the importance of implementing the legislation into national law and giving lectures to such States on their obligations under the 1992 Fund Convention. It was also suggested that the Secretariat should explore the possibility of developing new approaches in order to improve the situation as regards implementation of the Conventions into national law. Several delegations suggested that it might be possible to make progress on this issue via IMO, either through the IMO regional co-operation programme or through the IMO Member States' audit scheme.

6.11 The Director pointed out that the Funds already wrote to new Member States welcoming them to the Fund, explaining the importance of fulfilling their obligations under the 1992 Fund Convention and offering assistance in drafting legislation and implementing the Conventions into national law. He also pointed out that he and other members of the Secretariat had already given a number of workshops in a number of Member States and non-Member States on the legislation necessary to implement the Conventions, often in co-operation with IMO within the framework of its regional co-operation programme.

6.12 The Assembly instructed the Director not to continue to make efforts to obtain responses from those States which had still not responded to his enquiries but to focus future efforts on those States which in their responses had informed him that the 1992 Conventions had not been fully implemented into their national law. The Director was also instructed to report to the Assembly at each regular session on the situation in this regard.

7 Application of the 1992 Fund Convention to the EEZ or an area designated under Article 3(a)(ii) of the 1992 Fund Convention

The Assembly took note of the information in document 92FUND/A.11/6 as regards Member States which had provided information on the establishment of an EEZ or designated area under Article 3(a)(ii) of the 1992 Fund Convention.

8 Credentials for the 1992 Fund meetings

8.1 The Assembly considered document 92FUND/A.11/7 submitted by the Credentials Committee.

8.2 It was recalled that at its 10th session, held in October 2005, the Assembly had noted that the Credentials Committee had identified some inconsistencies during the examination of credentials. It was also recalled that the Assembly had instructed the Director to review the relevant Rules of Procedure and the guidelines given in circular 92FUND/Circ.49, in consultation with those States which had served on the first and second Credentials Committees, in order to clarify certain aspects of both the content of credentials and the procedures for their submission, and report to the next session of the Assembly (document 92FUND/A.10/37, paragraphs 3.5 and 3.6). It was further recalled that at its session in February/March 2006 the Assembly had considered the results of this review, which were set out in document 92FUND/A/ES.10/10.

8.3 It was recalled that the Assembly had requested the representatives of those States which had been appointed to the Credentials Committee (namely Algeria, Australia, Mexico, the Russian Federation and Sweden) to consider, in the light of the discussion at that session and in consultation with the Secretariat, the issue of the submission of credentials and related matters and to report to the Assembly's October 2006 session (document 92FUND/A/ES.10/18, paragraph 10.14).

8.4 It was noted that in its report to the Assembly (document 92FUND/A.11/7), the Credentials Committee had proposed certain amendments to the credentials arrangements for future sessions of the Assembly, as set out below:

- Whilst Rule 9 of the Rules of Procedure stated that credentials may be issued by an appropriate authority as determined by the Government, it did not require this authorisation to be communicated by the Government to the Director prior to the meeting. The Credentials Committee was of the view that it was only necessary for authorisation to be communicated to the Director prior to the meeting if the person authorised to issue credentials was not a government employee.

- A person who was properly authorised to issue credentials should be entitled to issue original credentials nominating a particular representative to participate in meetings of the IOPC Funds' governing bodies for a specific calendar year.

- If credentials were submitted in a language other than one of the official languages of the Funds (English, French and Spanish) they should be accompanied by a certified translation into one of these three languages. The certified translation:

    - must bear the name, position and organisation of the person certifying the translation and be signed and dated or be stamped, dated and initialled; and

    - may be provided by that Member State's Ministry for Foreign Affairs or by its diplomatic representative in London or by one of the delegates whose names were listed in the credentials or by IMO's Translation Section.

- There was no need for the credentials to state that they gave the nominated person(s) the right to take part in the meeting(s) and vote as such rights were considered to be implied.

- Credentials which were transmitted by telefax should be accepted as valid for all meetings of the governing bodies of the 1992 Fund, irrespective of whether voting was taking place or not, and there would be no requirement for a telefax to be accompanied by an original signed letter or *Note verbale* from the State's Embassy or High Commission in London certifying the authenticity of the telefax.

8.5 The Assembly thanked the members of the Credentials Committee for their report.

8.6 A number of delegations considered that the Credentials Committee's report contained sensible, pragmatic recommendations which would help to ensure the widest participation by States in the work of the Organisation.

8.7 As regards the acceptance of credentials in the form of a telefax, some delegations were of the view that the IOPC Funds should follow the same policy as IMO and require the original to be provided after the session. However, the Director made the point that this policy could cause problems. He referred to the difficulties that could arise if, due to the original not being provided, the credentials of a State were rejected retrospectively and this resulted in a quorum not having been achieved, after the session had been held. He also referred to a possible situation where a vote had taken place at the session.

8.8 The Assembly endorsed the amendments to the credentials arrangements proposed by the Credentials Committee as set out in paragraph 8.4, including the acceptance of credentials

submitted by telefax. However, it was decided that the Director should have a degree of flexibility so that, if he were to have any concerns as to the authenticity of any credentials received by telefax, he could attempt to corroborate them to the extent possible. The Assembly also decided that it would review at a later date whether or not there was any need to reconsider the issue of the acceptance of credentials submitted by telefax.

9 Report on investments

9.1 The Assembly took note of the Director's report on the 1992 Fund's investments during the period July 2005 to June 2006, contained in documents 92FUND/A.11/8 and 92FUND/A.11/8/Corr.1.

9.2 The Assembly noted the number of investments made during the twelve-month period, the number of institutions used by the 1992 Fund for investment purposes, and the amounts invested by the 1992 Fund. It also noted with appreciation the changed presentation of the document to include information on the previous financial year's investments.

9.3 The Assembly stated that it would continue to follow the investment activities closely.

10 Report of the joint Investment Advisory Body

10.1 The Assembly took note of the report of the joint Investment Advisory Body (IAB) of the 1992 Fund, the 1971 Fund and the Supplementary Fund contained in the Annex to document 92FUND/A.11/9.

10.2 The Assembly noted that the IAB, as in previous years, had held meetings with representatives of the External Auditor and with the Audit Body.

10.3 It also noted that the IAB had discussed with the Audit Body the practicalities of introducing a third party independent investment performance measurement procedure in respect of investments but that it had considered that the monitoring process currently used by the IAB, ie its regular scrutinising of the money markets and foreign exchange deals was being carried out effectively. It was also noted that the IAB would, however, inform the Audit Body if any cost effective proprietary software for monitoring the performance of investments became available.

10.4 The Assembly also took note of the IAB's objectives for the coming year.

10.5 In presenting its report to the Assembly the IAB expressed its appreciation to the Director for the very able manner in which he had chaired the meetings over the last twelve years and recognised that during this time he had become somewhat of a financial expert.

10.6 The Assembly expressed its gratitude to the members of the joint Investment Advisory Body for their valuable work.

11 Financial Statements and Auditor's Report and Opinion

11.1 The Director introduced document 92FUND/A.11/10 containing the Financial Statements of the 1992 Fund for the financial year 2005 and the External Auditor's Report and Opinion thereon.

11.2 A representative of the External Auditor, Mr Graham Miller, Director International, introduced the Auditor's Report and Opinion.

11.3 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes III and IV to document 92FUND/A.11/10, and that the External Auditor had provided an unqualified audit opinion on the 2005 Financial Statements, following a rigorous examination of the financial operations and accounts in conformity with audit standards and best practice. The Assembly also appreciated that the Report went into great depth and detail.

11.4 The representative of the External Auditor commended the Fund on the rigor with which it maintained its financial records.

11.5 The Assembly noted the recommendations set out in the External Auditor's Report.

11.6 The representative of the External Auditor welcomed the positive way in which the Secretariat had accepted and implemented the recommendations made in the Report and commended the Funds in matters of governance, setting a best practice agenda appropriate to the size of the Funds and the Secretariat.

11.7 The representative of the External Auditor recommended that the Secretariat should review the position in relation to repayment of contributions owing to one particular contributor and make an appropriate proposal for the repayment. As regards procurement procedures he stated that there was a need to document these procedures to ensure consistency, for business continuity purposes, and justification of the supplier selected. He considered that risks with a high likelihood of occurrence and severe impact should be regularly monitored by the Secretariat to ensure that appropriate controls were in place to mitigate and keep these risks at an acceptable level.

11.8 As regards the repayment of contributions to a particular contributor, the Director explained that the contribution in question related to a joint venture between two companies and that, in spite of strenuous efforts on the part of the Secretariat, it had not been possible to reach an agreement with those companies on how the amount should be divided between them, but that recently the Secretariat had managed to make contact with persons in the companies who were trying to resolve the issue.

11.9 The Assembly noted in particular that at the Director's instigation on hearing of anonymous allegations which purported to disclose evidence of corruption and bribery involving a senior member of the Funds' Secretariat, the External Auditor had carried out a thorough investigation in respect of these allegations and had found no evidence of impropriety. It was noted that the External Auditor had also considered that the Director had acted correctly in his handling of these allegations and had been satisfied that a sufficient level of control was in place to prevent and detect impropriety. The Assembly expressed its great satisfaction with the outcome of the External Auditor's investigation.

11.10 The Director informed the Assembly that all the recommendations made by the External Auditor had been implemented, except as regards recommendation 6 relating to the risk register, which was expected to be completed by the end of 2006.

11.11 The Assembly noted that the External Auditor in his Report had made reference to the previous year's recommendations. It also noted that the Audit Body had considered the recommendations and management issues raised by the External Auditor.

11.12 The Assembly invited the Director to submit to the Assembly a summary of the External Auditor's recommendations.

12 Joint Audit Body's Report and approval of Financial Statements

12.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document 92FUND/A.11/11 containing the joint Audit Body's Report.

12.2 In his introduction, Mr Coppolani reminded the Assembly that a new Audit Body had been elected at the October 2005 sessions of the Funds' governing bodies. He mentioned that the new Audit Body had met three times since October 2005 and that, at its first meeting, it had planned its programme for the three years of its mandate.

12.3 Mr Coppolani pointed out that in addition to its regular activities, at their February/March 2006 sessions the Funds' governing bodies had also requested the Audit Body to look into the procedure for the appointment of the External Auditor in future, including the possibility of

introducing a competitive tender process and to report to them at these sessions. He explained that this report was the subject of a separate document (cf section 13 below).

12.4 Mr Coppolani mentioned that the Audit Body had decided that with respect to its continuing study in relation to claims handling, it would be useful to carry out a study to ascertain the level of satisfaction of claimants. He stated that a recent incident in the Republic of Korea had been chosen as a basis for the initial trial of a questionnaire. He informed the Assembly of the Audit Body's intention to present an analysis of the results of this questionnaire as well as possible recommendations for the handling of future incidents to a future session of the 1992 Fund Assembly.

12.5 Mr Coppolani drew attention to the Audit Body's examination of the accounts and thanked the External Auditor who had worked with the Audit Body for his participation in the Body's deliberations, for having accepted to discuss his audit and presented his conclusions to the Audit Body. He expressed the Audit Body's satisfaction with the responses received from the External Auditor that internal control procedures were in place and had been properly applied.

12.6 Mr Coppolani referred to the anonymous allegations as set out in paragraph 11.9 above and stated that the Audit Body had noted with satisfaction the External Auditor's findings that after a thorough investigation he had not found any evidence of impropriety.

12.7 Mr Coppolani referred to the discussions held with the joint Investment Advisory Body. He also referred to other issues which had been covered by the Audit Body, eg a review of the current budget process as a result of which the Audit Body had proposed the introduction of more user-friendly budget documents for all three Funds and the inclusion of the six-year trend information. Mr Coppolani expressed the Audit Body's satisfaction that the Director had complied with this proposal.

12.8 Mr Coppolani explained that the Audit Body had continued to monitor the risk management process which had been adopted by the Secretariat.

12.9 Mr Coppolani expressed the Audit Body's concern in respect of the non-submission of oil reports and explained that, whilst the Audit Body was aware of the efforts being made by the Assembly and the Secretariat and the progress that had been made, it intended to examine this issue during the coming year.

12.10 In relation to the satisfaction survey being undertaken in respect of an incident in the Republic of Korea, the delegation of that State noted that, in evaluating the outcome of the satisfaction survey, account should be taken of the fact that a number of claimants had only had their claims accepted for an amount significantly lower than the amounts claimed, which could have influenced their replies in the survey.

12.11 The Assembly noted the Audit Body's recommendation that the governing bodies should approve the accounts of the 1992 Fund for the period 1 January – 31 December 2005.

12.12 The Assembly approved the accounts of the 1992 Fund for the financial period 1 January - 31 December 2005.

12.13 The Assembly expressed its gratitude for the important work being carried out by the Audit Body.

12.14 Mr Coppolani expressed his gratitude and that of the other members of the Audit Body to the Director. He stated that the Director's support for the establishment of the Audit Body illustrated his thoroughness and a desire for transparency.

13 Appointment of the External Auditor

13.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document 92FUND/A.11/12 submitted by the Audit Body.

13.2 Mr Coppolani reminded the Assembly that the mandate of the External Auditor expired on 31 December 2006 and that it was therefore necessary to address the question of renewal or a changed appointment. The Assembly noted that the Audit Body had prepared a note on this matter which had been presented at the February/March 2006 sessions of the governing bodies.

13.3 Mr Coppolani reminded the Assembly that at those sessions, the governing bodies had supported the Audit Body's proposal that the Assembly should reappoint the existing External Auditor at its October 2006 session, although there had been some differences of opinion as to whether the appointment should be for the usual period of four years or for a shorter period. He also reminded the Assembly that at that session the Audit Body had been requested by the Assembly to look into the procedure for the appointment of the External Auditor in future, including the possibility of introducing a competitive tender process, and to report to the Assembly at its October 2006 session.

13.4 Mr Coppolani explained that the document which the Audit Body had prepared for these sessions (document 92FUND/A.11/12) addressed two related issues: firstly the recommendations on the procedures to be adopted in future for selecting and appointing the Funds' External Auditor, and, secondly, since these procedures, even if accepted in full as proposed, would take time to introduce, a proposal implementing the decision of the Assembly at its February/March 2006 session that the existing External Auditor should be reappointed for a further term commencing on 1 January 2007.

13.5 Mr Coppolani informed the Assembly that, with respect to future procedures for appointing the External Auditor, the Audit Body was of the view that for small organisations such as the Funds, the choice of External Auditor was of great importance. He stated that although the Audit Body had an important responsibility in terms of oversight of the risk management and control functions of the Funds, it was itself reliant upon the quality of work carried out for the Funds by the External Auditor. He also stated that, in the Audit Body's view, the external audit was not a commodity to be bought at the lowest possible price; it was an independent and challenging relationship which, when well managed, could provide not only assurance as to the adequacy of controls and accuracy of reported figures, but also added value through identification of potential risks, weaknesses and control issues which, when identified in a timely manner, could help the Funds to ensure that a suitable control environment was maintained in future.

13.6 Mr Coppolani explained that the Audit Body saw part of its role, on behalf of the governing bodies, as monitoring the external audit relationship and helping to enhance its effectiveness through the interaction between them. He stated that the Audit Body believed that when the External Auditor was chosen account should be taken of a number of factors, including competence, understanding of the specific legal and operating environment of the Funds, staff availability and continuity.

13.7 With regard to the tender process to be used for selecting the External Auditor, Mr Coppolani explained that the Audit Body saw its role as providing a mechanism which was approved in advance by the governing bodies and was rigorous and precise so that the governing bodies, when they received the Audit Body's recommendation, could be confident that the proper process had been followed and that the recommendation was independent and sound. He also explained that the Audit Body had considered that it would be advantageous if the governing bodies were to adopt the procedure two years before it would be applied. He further explained that whilst there was a need to ensure that the selection process was independent and transparent, the Audit Body believed that it would be impractical to create a process that tried to involve all Member States at the preparatory stage, although the final decision would obviously be taken by the governing bodies.

13.8 Mr Coppolani stated that although the Audit Body itself was independent and its members had been elected individually by the Assembly, it had proposed a separate oversight of the selection process by the Chairman of the 1992 Fund Assembly, the Chairman of the 1971 Fund Administrative Council and the Chairman of the Supplementary Fund Assembly, so that the

governing bodies would have the highest possible level of assurance that the agreed procedures had indeed been applied impartially and properly.

13.9 Many delegations supported the view that the Audit Body should be given the task of preparing a proposal for a procedure for the appointment of the External Auditor.

13.10 The Assembly considered the Audit Body's proposal that the procedure for the appointment of the External Auditor would include eligibility for tender, tender rules, timing, terms of reference, considerations and criteria that the Audit Body thought essential and a proposed framework for the selection process.

13.11 In relation to the time-frame needed for the tendering process some delegations questioned the need for such a lengthy time-frame. In the ensuing discussions it was recognised, however, that the Audit Body would need time to prepare a proposal to be submitted to the autumn sessions of the governing bodies in 2007 for approval. In addition many delegations recognised that since the Assembly was satisfied with the work of the Funds' present External Auditor (the Comptroller and Auditor General of the United Kingdom), there would only be a need to consider changing the procedure for the appointment at a future date. It was also recognised that there would be a significant change in the composition of the Audit Body in 2008, and that changing the Funds' External Auditor at around the same time would create a risk in terms of continuity.

13.12 In response to a question as to whether the tendering process would be open to commercial firms the Director stated that in accordance with the Funds' Financial Regulations the External Auditor should be the Auditor-General (or officer holding the equivalent title) of a 1992 Fund Member State.

13.13 The Assembly decided to re-appoint the Comptroller and Auditor General of the United Kingdom as External Auditor for the 1992 Fund, the Supplementary Fund and the 1971 Fund for a full term of four years from 1 January 2007, as proposed by the Audit Body.

14 Report on contributions

14.1 The Assembly took note of the Director's report on contributions contained in document 92FUND/A.11/13.

14.2 The Assembly noted that the Director had decided, pursuant to Financial Regulation 11.5, to write off an outstanding contribution owed by a contributor in the Netherlands which had been declared insolvent (document 92FUND/A.11/13, paragraph 2.2).

15 Submission of oil reports

15.1 The Assembly considered the situation in respect of the non-submission of oil reports, as set out in document 92FUND/A.11/14. It was noted that, since the document had been issued, two further States had submitted their outstanding oil reports: Guinea, which had four years of outstanding reports, and Nigeria, which had one outstanding report. It was therefore noted that, whilst there were no outstanding reports in respect of the Supplementary Fund, a total of 31 States still had outstanding oil reports for the 1971 and 1992 Funds for the year 2005 and/or previous years: seven States in respect of the 1971 Fund and 27 States in respect of the 1992 Fund. It was further noted that a number of States had reports outstanding for several years. The Assembly also noted that the total number of outstanding reports had fallen from 111 at 27 September 2005 to 93 at 25 October 2006, which corresponded to a decrease of 16%.

15.2 The Assembly noted with satisfaction that two States, Gabon and Sierra Leone**,** which had reports outstanding for 17 years and 13 years respectively, had submitted all of their reports. It was also noted that Georgia and Djibouti, which had reports outstanding for five years and four years respectively, had submitted all of their reports.

15.3 The Assembly noted that the failure of a number of Member States to submit oil reports had been a very serious issue for a number of years and that, whilst the situation might be slightly better than in previous years, it was still very unsatisfactory. The Assembly expressed its very serious concern as regards the number of Member States which had not fulfilled their obligations to submit oil reports, since the submission of these reports was crucial to the functioning of the IOPC Funds.

15.4 The Assembly noted the information contained in document 92FUND/A.11/14/1, which reported on the implementation of measures encouraging the submission of oil reports

15.5 The Assembly recalled that the governing bodies, at their October 2005 sessions, had considered the Secretariat's normal procedures for monitoring the submission of oil reports as well as recommendations as to further measures that might encourage States to fulfil their obligations in this regard. It was recalled that the governing bodies had considered a number of measures to encourage States to submit oil reports focussing on either assisting States to submit reports or 'shaming' them into doing so.

15.6 The Assembly further recalled that the governing bodies had instructed the Director to proceed only with the measures which had been proposed to assist States to submit oil reports, as listed below:

(a) The Secretariat could liaise much more closely with the Embassy or High Commission of new 1992 Fund Member States in order to try to prevent problems from arising in the first place. This could include inviting the Embassy or High Commission to inform the Secretariat of an individual who was to be responsible for the procedure for submission of the oil reports, either at the Embassy or High Commission or at a relevant Ministry or agency.

(b) All States could be invited to give the Secretariat the contact details of the person, section or agency which in the respective State was responsible for the submission of reports so as to enable the Secretariat to make direct contacts when problems arise.

(c) The Secretariat was considering establishing an electronic reporting system for the submission of reports on contributing oil, similar to that which has been developed in the context of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention). It was conceivable that the reduced administrative work involved in using such a system compared to the present system might assist those States with relatively small administrations in the submission of reports.

(d) The governing bodies might wish to consider whether, when electing Chairman and Vice-Chairmen of various Fund bodies, account should be taken of whether the States whose nationals are considered for election have fulfilled their obligations to submit oil reports.

(e) The governing bodies might wish to instruct the Director to invite a few States which have established efficient procedures for compiling the necessary information and submitting the reports to inform the Secretariat of these procedures. The Director could then prepare an information document which could assist other States in setting up such procedures.

15.7 It was recalled that the Assembly had decided at its October 2005 session not to take the proposed measure to 'shame states' into submitting oil reports by highlighting States with outstanding reports on the Funds' website and in the Annual Report. However, the Assembly noted that as regards the 1971 Fund, the Administrative Council had decided at its October 2005 session during its discussion of the winding up of that Fund that the former 1971 Fund Member States with outstanding oil reports should be listed on the IOPC Funds' website (document 71FUND/AC.17/20, paragraph 15.18).

15.8 With regard to the measures referred to in paragraph 15.6(a) and (b), the Assembly noted that the Secretariat had increased its efforts to improve liaison not only with the Embassy or the High

Commission in London of new 1992 Fund Member States but also with the respective authorities of all those Member States that had outstanding reports. The Assembly also noted that the Secretariat was in the process of increasing its assistance and guidance to new Member States by extending invitations to visit the IOPC Funds' offices or by offering to have IOPC Funds' staff visit the Embassy or High Commission in order to convey as much information as possible on the submission of oil reports, and that these efforts would be carried out on a continuing basis throughout each calendar year.

15.9 With regard to the measure referred to in paragraph 15.6(c), the Assembly noted that the Secretariat intended to proceed with establishing an electronic reporting system for the submission of reports on contributing oil, similar to that which had been developed in the context of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention).

15.10 The Assembly endorsed the Director's proposal that the measure referred to in paragraph 15.6(d) be applied at those October 2006 sessions at which a governing body elects a Chairman and/or Vice-Chairman.

15.11 Further to the measure referred to in paragraph 15.6(e), the Assembly noted that the Director had invited seven Member States which had established efficient procedures for compiling the necessary information and submitting oil reports to provide the Secretariat with details of their procedures. The Assembly further noted that at the time of the session five responses had been received, that some of the responses were more detailed than others and that some Member States had more elaborate systems in place than others. It was noted that based on the information received, the Director would prepare an information document which could assist other States in setting up such procedures for consideration at a future session.

15.12 As regards the 1971 Fund, the Assembly noted that a new entry on the 'Headlines' page within the 'News & Events' section of the IOPC Funds' website had been added, listing the former 1971 Fund Member States with outstanding oil reports.

15.13 Several States welcomed the progress made as a result of these measures and expressed the hope that the situation regarding the submission of oil reports would continue to improve.

15.14 One delegation reminded the Assembly that, under both the 1992 Fund Convention and the Supplementary Fund Protocol, States were obliged to submit information on contributing oil when depositing their instruments of ratification with the Secretary-General of the International Maritime Organization (IMO). That delegation suggested that the Secretary-General of IMO could be asked to insist that new States submitted their oil reports as a condition of ratification. The Director stated that, although States were obliged to submit oil reports when they deposited their instrument of ratification, the non-fulfilment of this objective did not render the ratification invalid. He further stated that he would raise the matter with the Secretary-General to explore any ways in which IMO could assist the Funds in obtaining the outstanding reports.

15.15 Another delegation suggested that a few Member States could submit a paper at the next regular session of the 1992 Fund Assembly suggesting different approaches which might further improve the situation regarding the submission of oil reports, since it was pointless continuing to write to States which did not respond.

15.16 The Director recalled that, under the Resolution establishing the 1992 Fund Executive Committee adopted by the 1992 Fund Assembly, the Assembly when electing members of the Committee may take into account the extent to which a particular State has fulfilled its obligation to submit oil reports (document 92FUND/A.2/29, Annex I).

15.17 The Assembly instructed the Director to continue to bring the matter of the submission of oil reports to its attention at each regular session.

15.18 The Assembly further instructed the Director to pursue his efforts to obtain the outstanding oil reports and urged all delegations to co-operate with the Secretariat in order to ensure that States fulfilled their obligations in this regard.

16 Operation of the Secretariat

16.1 The Assembly took note of the information contained in document 92FUND/A.11/15 regarding the operation of the Secretariat.

16.2 The Assembly recalled that at its October 2005 session, it had elected Mr Willem Oosterveen as Director with effect from 1 November 2006 and that the present Director would continue to be available until his retirement on 31 December 2006. The Assembly noted that the Director Elect had joined the Secretariat on 1 September 2006 and that before joining the Secretariat he had attended a number of important meetings, in particular those of the Audit Body and the Investment Advisory Body.

16.3 The Assembly further noted that Mr Masamichi Hasebe had resigned from the post of Legal Counsel on 30 June 2006 to take up a position with the Japanese Government and that the Director had appointed Mr Nobuhiro Tsuyuki to that post with effect from 16 October 2006.

16.4 The Assembly noted that the work on strengthening financial controls had continued.

16.5 The Assembly also noted that the consideration of risks relating to finance, human resources and claims handling had been completed to a satisfactory level and that the work on business continuity was at an advanced stage. It was further noted that the Director's objective was that the work on risk management should be completed prior to his retirement on 31 December 2006.

16.6 The Assembly noted that the claims handling database, which was used to record details of all the claims resulting from large incidents, had been developed further in 2006 to provide additional management reports and analysis. In the light of the experience of managing two large incidents, ie the *Erika* and the *Prestige*, a review of this database had been undertaken.

16.7 The Assembly noted that in June 2006, the Director had issued a Code of Conduct setting out expected standards of behaviour and conduct of staff members and that the Code was based on the "Standards of Conduct of the International Civil Service" adopted by the International Civil Service Commission of the United Nations. It was further noted that the Director had introduced a Register of Interests and a Register of Gifts and Hospitality for IOPC Funds' staff members as well as a document setting out a 'whistleblowing' policy for the Funds.

16.8 With regard to the IOPC Funds' website, the Director mentioned that a new sub-section had been added to the 'News & Events' section entitled 'Conferences & Seminars' which provided information on conferences, seminars and workshops participated in, or organised by the IOPC Funds. He explained that this sub-section, which covered the years 2005 and 2006 in reverse date order, would be continually updated. It was noted that consideration would be given to expanding the IOPC Funds' website further during 2007 by introducing new sections aimed at specific groups of users.

16.9 The Director drew attention to the ongoing work on the expansion of the Document Server to contain all documents going back to the first session of the 1971 Fund Assembly in 1978, which represented more than 4 000 documents. The Director explained that the work, which had begun in June 2005, was being carried out in three stages. He mentioned that the first stage of the project, which consisted of adding some 2 400 meeting documents for the period 1996-2000, had been completed; the second stage of the project, relating to 1 160 documents for the period 1990-1995, was under way; and that the third stage, covering the documents for the period 1978-1989, would be commenced shortly. The Director informed the Assembly that the project would be completed by the end of 2006.

16.10 The Director mentioned that a database of the decisions taken over the years by the governing bodies was being established. He explained that a key feature of the database, which would be web-based, was that each decision would be accompanied by an abstract of that decision which would be linked directly to the relevant paragraphs in the source documents relating to the decision. The Director also informed the Assembly that the total number of decisions taken by the various bodies of the 1971, 1992 and Supplementary Funds during the period 1978-2005 was estimated at some 1 500.

16.11 One delegation asked whether the database of the decisions would include court judgements. The Director explained that if court judgements were mentioned in the source document, which they usually were, they would be easily accessible since the database's menu included court judgements. The Director indicated that perhaps at a later point in time having a specific section for court judgments could be explored, but that completing the database as it stood was the priority.

16.12 Another delegation highlighted the importance of creating the database of the decisions and noted that although the database was being established in English first, it was hoping the database would be made available in the other two official languages of the Funds in the near future. Moreover, this delegation commended the Secretariat for its efforts in providing quality translations of the Organisations' documents as well as for its efforts to make all documents available in the three official languages of the Organisations.

16.13 Some delegations recognised that the Secretariat was asked to meet growing demands from Member States and therefore stated that it was important to continue ensuring that appropriate staffing was made available.

17 Amendments to Staff Rules

17.1 The Assembly noted the information contained in document 92FUND/A.11/16 with regard to the 1992 Fund's Staff Rules.

17.2 The Assembly approved the revised text of Staff Regulation 26 relating to paternity leave as set out in Annex VII of document 92FUND/A.11/16.

18 Appointment of a substitute member of the Appeals Board

18.1 The Assembly took note of the information contained in document 92FUND/A.11/17 and appointed Mr Hector Rodriguez Arellano (Mexico) as a substitute member of the Appeals Board to hold office until the 12th session of the Assembly.

18.2 Mr Rodriguez Arellano thanked the Assembly for approving his appointment.

19 Headquarters Agreement

19.1 The Assembly took note of the information contained in document 92FUND/A.11/18 regarding a revision of the Headquarters Agreement between the United Kingdom Government and the 1992 Fund and the preparation of a Headquarters Agreement between the United Kingdom Government and the Supplementary Fund.

19.2 The Assembly recalled that, as reported to the March 2005 session of the Assembly, the Director had submitted to the United Kingdom Government a draft text of a revised Headquarters Agreement for the 1992 Fund and a draft text of a Headquarters Agreement for the Supplementary Fund. It was also recalled that, as agreed with the United Kingdom Government, both texts had been drafted within the scope of the International Organisations Act 1968 (as amended) and that the texts followed, as closely as possible, the Headquarters Agreement between IMO and the United Kingdom Government, which had been concluded in 2002.

19.3 It was noted that consultations with the United Kingdom Government on the draft texts had continued throughout 2006 and that a provisional agreement had been reached between the Government and the Director on the text of a revised Headquarters Agreement between the United Kingdom and the 1992 Fund as set out in Annex I to document 92FUND/A.11/18.

19.4 The Assembly noted that although 1992 Fund staff were, like all IMO staff, exempt from income tax on their salaries, there was a difference between the treatment of IMO staff and that of the Fund staff in respect of certain other taxes. It was noted that whereas, under the IMO Headquarters Agreement, IMO staff in the professional category (other than British citizens and staff permanently resident in the United Kingdom) were exempt also from certain other taxes, in particular local taxes, customs duties on imported articles and duties and VAT on petrol, under the 1992 Fund's Headquarters Agreement only the Director was exempt from such taxes.

19.5 It was also noted that under the 1992 Fund Headquarters Agreement, the Director (unless he was a national or a permanent resident of the United Kingdom) enjoyed the immunities to which a diplomatic agent was entitled, ie in respect of both acts done by him in the exercise of his functions and in respect of acts outside these functions, whereas other staff members only enjoyed immunity in respect of acts done by them in the exercise of their functions. It was further noted that as regards IMO the wider immunity was enjoyed by the Secretary-General and six Directors. It was noted that the United Kingdom Government had offered to grant the wider privileges and immunities, to which at the present only the Director was entitled, to up to two Deputy Directors.

19.6 One delegation stated that it understood that the 1992 Fund and IMO were two different organisations, and that the 1992 Fund should stand on its own, but since the 1992 Fund professional staff members were graded under the United Nations system as applied by IMO, they should in that delegation's view also get the same privileges as IMO staff in terms of indirect taxes. That delegation also stated that the United Kingdom Government benefited from having the 1992 Fund based in the United Kingdom as it did by having IMO based there, and that therefore, in its opinion, professional staff members should be extended the same privileges as IMO staff. That delegation nevertheless stated that it was not attempting to re-open the debate.

19.7 The Director explained that the information provided by the United Kingdom Government indicated that only IMO professional staff benefited from certain privileges and not any other intergovernmental organisations also based in the United Kingdom. He also stated that if these privileges were extended to 1992 Fund staff members as well, it would set a precedent. The Director further stated that although the negotiations had indeed been difficult, they had been carried out in a constructive spirit.

19.8 The Assembly approved the text of the revised Headquarters Agreement between the Government of the United Kingdom and the 1992 Fund as contained in Annex I of document 92FUND/A.11/18.

20 <u>Premises for the IOPC Funds' Secretariat</u>.

20.1 The Assembly took note of the information contained in document 92FUND/A.11/19 regarding the premises for the IOPC Funds' Secretariat in Portland House.

20.2 The Assembly recalled that at the 2nd session of the 1992 Fund Administrative Council, held in May 2006, it had been noted that, as a consequence of the need to vacate the Funds' current office premises during external refurbishment of the building, the landlords had sought to secure the Funds' agreement to terminate the lease of the premises before June 2010 and had offered to cover all costs in relation to finding suitable alternative premises and to pay relocation costs.

20.3 The Assembly also recalled that at its May 2006 session the 1992 Fund Administrative Council had confirmed the Director's authority to sign on behalf of the 1992 Fund any agreement, lease or any other document relating to the lease of premises outside the present offices at Portland House (document 92FUND/AC.2/A/ES.11/8, paragraph 5.12).

20.4 The Assembly noted that since the May 2006 session the landlords had informed the Director that the proposed refurbishment of Portland House would only be undertaken after March 2015. It was also noted that the landlords had therefore offered the IOPC Funds the possibility to remain at Portland House up to March 2015. The Assembly further noted that the landlords had indicated that approximately one third of the current tenants' leases would expire in March 2015 and that all new leases of offices in Portland House would expire at that date.

20.5 The Assembly authorised the Director to take the necessary decisions in respect of an extension of the lease of the IOPC Funds' premises in Portland House, provided the United Kingdom Government agreed in respect of the rent and other financial arrangements and the duration of the lease.

20.6 The Assembly confirmed the Director's authority to sign on behalf of the 1992 Fund any agreement, lease or any other document relating to the present offices at Portland House and the extension of the lease in respect of these offices.

21 Review of Observer Status

21.1 The Assembly recalled that at its 7th session, held in October 2002, it had decided to review every three years the list of international non-governmental organisations having observer status in order to determine whether the continuance of observer status for any particular organisation was of mutual benefit.

21.2 It was further recalled that the first review had taken place at the October 2003 sessions of the governing bodies of the 1992 and 1971 Funds which had set up a group of five States to consider whether the international non-governmental organisations granted observer status should continue to have such status. The Assembly recalled that the group had held a meeting during these sessions and had reported to the governing bodies which in turn had endorsed the group's recommendations.

21.3 It was also recalled that at its March 2005 session the Supplementary Fund Assembly had decided that organisations having observer status with the 1992 Fund should have observer status with the Supplementary Fund, unless the 1992 Fund Assembly decided otherwise.

21.4 The Assembly noted the information set out in Annex II to document 92FUND/A.11/20 regarding attendance of international non-governmental organisations having observer status at the meetings of IOPC Funds' bodies since the previous review in October 2003, as well as an indication as to which organisations had submitted documents during this period.

21.5 It was noted that in July 2006 the Director had written to all the international non-governmental organisations having observer status at the meetings of IOPC Funds' bodies - except for the International Association of Classification Societies Ltd (IACS), which had only recently (May 2006) been granted observer status with the 1992 Fund - inviting comments on whether the continuance of observer status would be of mutual benefit to the respective organisation and to the 1992 Fund.

21.6 The Assembly took note of the information contained in Annex III to document 92FUND/A.11/20 which set out the responses received from the organisations concerned. The Assembly noted the Director's view that, as regards IACS, which had been granted observer status in May 2006 (document 92FUND/AC.2/A/ES.11/8, paragraph 7.1), the information submitted by IACS at that time was still relevant.

21.7 The Assembly also noted the information contained in paragraphs 4.5 – 4.11 of document 92FUND/A.11/20 regarding contacts between the Director and other members of the Secretariat and a number of the international non-governmental organisations having observer status.

21.8 In accordance with a decision taken at its October 2002 session, the Assembly decided to set up a group of five States to screen the responses in order to establish whether the continuance of

observer status for any particular international non-governmental organisation was of mutual benefit and to report its findings during the present session to the governing bodies.

21.9 The Assembly decided upon the composition of the group as follows:

France
Latvia
Nigeria
United Kingdom
Uruguay

21.10 The group, chaired by Uruguay, held a meeting during the present session and made the following unanimous recommendations to the Assembly:

The group considered the information about non-governmental organisations having observer status provided in document 92FUND/A.11/20.

The group noted that Cristal Limited had requested not to have its observer status maintained since it was very close to a final winding up and had concluded all aspects of cases relevant to the IOPC Funds.

The group recommended that the Assembly should confirm the continuance of observer status of the other non-governmental organisations included in the review, ie:

Advisory Committee on Protection of the Sea (ACOPS)
BIMCO
Comité Maritime International (CMI)
Conference of Peripheral Maritime Regions (CPMR) (not 1971 Fund)
European Chemical Industry Council (CEFIC) (not 1971 Fund)
Federation of European Tank Storage Associations (FETSA)
Friends of the Earth International (FOEI)
International Association of Classification Societies Ltd (IACS) (not 1971 Fund)
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P&I Clubs
International Salvage Union (ISU)
International Tanker Owners Pollution Federation Ltd (ITOPF)
International Union for the Conservation of Nature and Natural Resources (IUCN)
International Union of Marine Insurance (IUMI) (not 1971 Fund)
Oil Companies International Marine Forum (OCIMF)

However, the group noted that IUCN had not responded to the Director's letter inviting comments on whether the continuance of observer status would be of mutual benefit to IUCN and to the 1992 Fund. It therefore recommended that the Assembly should invite the Director to write to IUCN again, requesting a response to his letter.

The group considered that the information which the Director had made available for the review was very helpful and that similar information should be provided for the next regular review in October 2009.

21.11 The Director made the point that it was important for the IOPC Funds to have environmental organisations as observers, even though they were unable to attend meetings as regularly as some of the industry organisations due to lack of resources. He indicated that in his view it was important for the Secretariat to devote some effort to developing closer working relationships with these particular observer organisations.

21.12 The Assembly endorsed the group's recommendations.

22 Reports of the Executive Committee on its 31st – 34th sessions

22.1 The Assembly took note of the reports of the Executive Committee's 31st – 34th sessions (cf documents 92FUND/EXC.31/2, 92FUND/EXC.32/6, 92FUND/EXC.33/8 and 92FUND/EXC.34/12).

22.2 The Assembly approved the reports of the Executive Committee and expressed its gratitude to the Committee's Chairman, the Vice-Chairman and its members for their work, which were presented by the Committee's Chairman, Mr Carlos Ormaechea (Uruguay).

23 Election of members of the Executive Committee

In accordance with 1992 Fund Resolution N°5, the Assembly elected the following States as members of the Executive Committee to hold office until the end of the next regular session of the Assembly:

Eligible under paragraph (a)	Eligible under paragraph (b)
Canada	Australia
France	Bahamas
Germany	Cameroon
Japan	Denmark
Netherlands	Gabon
Singapore	Lithuania
Spain	Malaysia
	Turkey

24 Technical Guidelines on methods of assessing losses in the fisheries sectors

24.1 The Assembly took note of the information contained in document 92FUND/A.11/22 on the admissibility of claims relating to subsistence fishing. It was recalled that draft Technical Guidelines on methods of assessing losses in the fisheries, mariculture and fish processing sectors, which were intended to assist the 1992 Fund's world-wide network of fishery experts in assessing claims, had been prepared by the Director. It was also recalled that at its 9th session, held in October 2004, the Assembly had decided to establish a correspondence group to review the draft Technical Guidelines and to report to the Assembly with a recommendation on whether they should be published, and if so, in what form. It was further recalled that the Assembly had also decided that the correspondence group should address the need for more concise guidelines for claimants (document 92FUND/A.9/31, paragraphs 24.7 and 24.8).

24.2 It was noted that ten 1992 Fund Member States' delegations and one observer delegation had volunteered to join the correspondence group, but only six respondents had submitted their comments by the 31 July 2006 deadline. The Assembly expressed its gratitude to those respondents and took note of the replies received as analysed in section 3 of document 92FUND/A.11/22.

24.3 It was noted that in view of the limited interest and the divergence of opinions of delegations, the Director had considered that there was no justification in proceeding further with the development of the Guidelines for experts or developing more concise guidelines for claimants.

24.4 Some delegations supported the view expressed by the Director and proposed that the Guidelines be simply included in the Funds' internal reference materials for use by their experts.

24.5 A number of delegations expressed a counter view and stated that it would be a great pity if the useful information included in the Guidelines was not made more widely available in the interests of facilitating the assessment of claims by experts. The point was made that although only a small number of correspondents had provided comments on the draft Guidelines, of those that had there was a clear majority in favour of publishing them.

24.6 The Assembly decided to instruct the Director to publish the Guidelines as a Fund document.

25 Lessons learned from the *Erika* incident

25.1 The Assembly took note of the information contained in document 92FUND/A.11/23 regarding the lessons learned from the *Erika* incident, with particular emphasis on the claims handling, assessment and settlement process.

25.2 It was noted that the document focussed on the ways in which the different types of claims had been assessed and the particular problems faced by the experts appointed by the shipowner's insurer, the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual) and the 1992 Fund. It was also noted that general conclusions had been drawn regarding the future handling of claims arising from major incidents as well as specific conclusions regarding the future handling of claims in France. It was further noted that in reaching these conclusions it had been recognised that the claims handling procedures adopted by the Funds in different countries were sometimes determined by factors outside the Funds' control and that some flexibility would therefore be necessary in the light of the particular circumstances.

25.3 The Director acknowledged the excellent work of the Claims Handling Office (CHO) staff and the experts engaged by Steamship Mutual and the 1992 Fund to deal with the claims arising from the incident. The Director stated that Steamship Mutual and the Fund were particularly indebted to the Head of the CHO and his wife, who had co-managed the office, for their tenacity and courage when threatened with their own safety and that of their staff.

25.4 The Assembly noted that the difficulties inherent in the claims handling in connection with an incident of the magnitude of the *Erika* incident had been exacerbated by the fact that in the early stages the Executive Committee had had to limit payments to 50% of the assessed amount of the individual claims, which had, understandably, given rise to negative reactions from claimants, the general public and the media.

25.5 It was noted that a number of lessons had been learned in the handling of claims arising from the *Erika* incident, in the light of which, modified procedures had been put in place for dealing with claims arising from the *Prestige* incident and would be used in the event of other major incidents.

25.6 It was noted that the main lessons and conclusions for improvements were:

(i) P&I Club correspondents appeared to provide the ideal staff to manage CHOs, since in addition to having the relevant background and experience, they were found in most major ports worldwide and had the necessary infrastructure to provide the services of a CHO.

(ii) The security of the staff and premises of the CHO should be given a high priority if a local CHO were to be set up.

(iii) Greater efforts should be made to have claims forms finalised as soon as possible after an incident. Since some claimants had considered that the claims forms were too detailed and others considered that they were not sufficiently detailed, it was necessary for the Funds to strike a balance between these opposing views.

(iv) The 1992 Fund should explore the possibility of making the Claims Manual more user friendly, for example by having separate manuals for the various sectors and including examples of claims forms, well presented claims and a typical assessment for that sector.

(v) In future major incidents the IOPC Funds, in conjunction with the shipowner's insurer, should continue to conduct claims workshops to advise all potential groups of claimants on the submission of claims.

(vi) When an incident occurs, the IOPC Funds should discuss with the insurer the numbers of experts required in various sectors and suitable experts should be recruited and trained as early as possible so that they are fully functional by the time that claims start to be received.

(vii) Consideration should be given as to whether less rigorous assessment of claims for small amounts would be acceptable.

(viii) The IOPC Funds should explore further ways of using computer-based business models in order to speed up the assessment of claims without compromising their quality.

(ix) Attention should be given immediately after an incident to the procedures to be used to ensure good contacts with the media.

25.7 The Assembly expressed its thanks to the Director for the document and expressed its thanks and appreciation to the staff of the CHO and the experts involved in the assessments of claims.

25.8 The French delegation noted that the majority of claims had been assessed within three years of the date of the incident. Whilst that delegation acknowledged that this was not a long time for an intergovernmental organisation, it considered that it was a long time for the victims, especially when combined with a low level of payment of compensation. For that reason the French delegation considered that the Fund should in future make a greater effort to reduce delays in the handling of claims and supported the proposals to produce more user-friendly Claims Manuals for each claims sector and to carry out less rigorous assessments in the case of claims for small amounts. The French delegation also expressed the view that the Fund should consider increasing the number of experts in future in order to speed up the claims assessment. It agreed with the Director that greater attention to the media was necessary in order to avoid negative reporting and the Fund becoming the scapegoat.

25.9 The Spanish delegation, whilst noting that there was a number of references to delays in the claims handling process, made the point that despite this very few claims had become time-barred, which was in itself a very positive outcome.

25.10 The Director referred to the study of the claims handling process that had been carried out by the Audit Body in 2005, which had concluded, *inter alia*, that the delays in completing claims assessments were often due to reasons which were beyond the control of the Fund. He stated that increasing the number of experts seemed a good solution in theory, but that it was often impossible to find experts that were willing and able to devote the necessary time to work for the Fund. The Director stated that he had underestimated the importance of establishing good contacts with the media at an early stage and that this was one of the main lessons learned. The Director also made the point that in considering whether to apply less rigorous assessment methods to small claims it was important not to lose sight of the need for equal treatment of all claimants.

25.11 In response to a suggestion by two delegations that the Fund could widen its worldwide network of experts by bringing in experts from other parts of the world and providing them with the necessary on the job training, the Director pointed out that this would have budgetary implications and might not provide any benefit if the countries providing trainee experts did not experience a major spill.

26 Admissibility criteria relating to claims for costs of preventive measures

26.1 The Assembly took note of documents 92FUND/A.11/24 (submitted by the Director) and 92FUND/A.11/24/1 (submitted by France and Spain) regarding admissibility criteria relating to claims for costs of preventive measures.

26.2 It was recalled that when the 1992 Fund Executive Committee, at its February/March 2006 session, considered the Spanish Government's claim for the costs of the operation to remove the

oil from the wreck of the *Prestige*, many delegations expressed views on the policy of the Funds on the interpretation and application of the criteria for the admissibility of claims for the costs of preventive measures and on the desirability of changing that policy so as to make it more flexible. It was further recalled that as a result of its consideration of this issue the Executive Committee instructed the Director to carry out an examination of the admissibility criteria relating to claims for costs of preventive measures, in particular for the extraction of oil from sunken vessels, with a view to enabling the Assembly at its October 2006 session to discuss possible alternatives for the existing criteria for admissibility within the framework of the 1992 Conventions.

26.3 The Assembly recalled that the Fund's admissibility criteria in respect of claims for the costs of preventive measures were based on the definitions of 'pollution damage', 'preventive measures' and 'incident' as set out in Articles I.6, I.7 and I.8 respectively of the 1992 Civil Liability Convention, which were incorporated by reference in Article 1.2 of the 1992 Fund Convention and in Article 1.6 of the Supplementary Fund Protocol. The Assembly also recalled that preventive measures did not only refer to the removal of oil from wrecks, but included measures to minimise pollution damage once a spill had occurred such as clean-up operations.

26.4 The Assembly recalled that the Funds' governing bodies had over the years developed criteria for the admissibility of claims for costs of preventive measures and that the current criteria, which were contained in the 2005 edition of the 1992 Fund's Claims Manual, read as follows:

> Claims for the costs of measures to prevent or minimise pollution damage are assessed on the basis of objective criteria. The fact that a government or other public body decides to take certain measures does not in itself mean that the measures are reasonable for the purpose of compensation under the Conventions. The technical reasonableness is assessed on the basis of the facts available at the time of the decision to take the measures. However, those in charge of the operations should continually reappraise their decisions in the light of developments and technical advice.
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> Claims for costs of response measures are not accepted when it could have been foreseen that the measures taken would be ineffective, for example if dispersants were used on solid or semi-solid oils or if booms were deployed with no regard to their ineffectiveness in fast flowing waters. On the other hand, the fact that the measures proved to be ineffective is not in itself a reason for rejection of a claim.
>
> The costs incurred, and the relationship between those costs and the benefits derived or expected, should be reasonable. For example, a high degree of cleaning, beyond removal of bulk oil, of exposed rocky shores inaccessible to the public is rarely justified, since natural cleaning by wave action is likely to be more effective. On the other hand, thorough cleaning is usually necessary in the case of a public amenity beach, particularly immediately prior to or during the holiday season. Account is taken of the particular circumstances of an incident.
>
> Costs of reasonable aerial surveillance operations to establish the extent of pollution at sea and on shorelines and to identify resources vulnerable to contamination are accepted. Where several organisations are involved in the response to an incident, aerial surveillance should be properly co-ordinated to avoid duplication of effort.

26.5 The Assembly recalled that in order to qualify for compensation preventive measures had to be reasonable and that the governing bodies of the Funds had taken the position that the criterion of reasonableness should be an objective one and that the relationship between the costs of the preventive measures and the benefits derived or expected should also be reasonable. The Assembly noted that in the Director's view, the overarching criterion of reasonableness would

have to be the same for all types of preventive measures, ie whether the measures taken were objectively reasonable under the circumstances existing at the time they were taken.

26.6 It was noted that when applying the test of reasonableness of preventive measures, an examination should, under the present criteria, be made of the relationship between the costs of the measures and the likely benefits in the form of the expected reduction in loss or damage that would have resulted from those measures. It was also noted that, in the Director's view, it was not possible in the abstract to lay down in figures as to what a reasonable proportionality would be, since this would have to be decided in the light of the particular circumstances of the case, but that in general, when the oil remaining in the vessel objectively did not pose a significant pollution threat, very high costs of a removal operation would normally be considered disproportionate to any potential economic effects of leaving the oil in the vessel.

26.7 The Assembly noted that the Director also took the view that when considering whether the criterion of reasonableness was fulfilled, ie whether the costs were admissible, account should also be taken not only of the potential direct economic effects of not taking a particular preventive measure, but also of potential damage to the environment, which might have a direct or indirect economic effect; for example, where the oil in the sunken vessel posed a significant risk of causing substantial damage to the marine environment, even very high costs of a removal operation would normally not be considered disproportionate in relation to the potential environmental consequences of leaving the oil in the vessel.

26.8 It was noted that although the definition of 'pollution damage' limited compensation for impairment of the environment to losses of an economic nature and costs of reinstatement, in the Director's view practically all preventive measures taken to prevent environmental damage should be admissible in principle for compensation, since they would also have a direct or indirect economic benefit. It was also noted that the Director had suggested that if the Assembly were to agree with this interpretation it might wish to consider whether a clarification of the Claims Manual in this respect would be required and, if so, invite the Director to develop a draft text for that purpose.

26.9 The Assembly noted the Director's view that it would be possible to determine specific sub-criteria to facilitate the consideration of the admissibility in terms of reasonableness of measures aimed at the extraction of oil from sunken vessels in the same way that sub-criteria had been developed for the purpose of considering the reasonableness of measures taken to prevent or mitigate pure economic loss (pages 29-30 of the Claims Manual), and determining whether there was a sufficiently close link of causation between the contamination and pure economic loss allegedly suffered as a result of the contamination (pages 25-26 and 28 of the Claims Manual).

26.10 It was noted that the Director had suggested that possible elements that could be taken into account when considering the admissibility of costs of measures to extract oil from a sunken vessel could include:

(a) The extent to which the shoreline which is most likely to be affected by a release of the oil from the vessel is vulnerable to oil pollution, and the economic damage which is likely to occur if the remainder of the oil were to be released from the vessel;

(b) The likely damage to the environment from a release of the oil from the vessel, including the potential costs of post-spill studies and measures of reinstatement;

(c) The likelihood that oil will be released from the vessel within the foreseeable future and will reach the shore or other natural or economic resources, the quantity, type and characteristics of the oil which could be released and the likely rate at which a release might take place;

(d) The extent to which alternative methods of containing the oil on board the vessel for an indefinite period, or of rendering the remaining oil harmless, are possible and adequate;

(e) The likely cost of the extraction operation and the likelihood that the operation would be successful, taking into account the location of the vessel and its condition, the type of the oil and the characteristics of the area where the ship is located and other relevant circumstances;

(f) The likelihood that significant quantities of oil would be released during the extraction operation and the likely amount of damage that would be caused as a result of such a release.

26.11 The Assembly noted that the Director had considered whether, when determining the reasonableness of costs of certain preventive measures, other factors should be taken into account, such as social or even political factors.

26.12 It was noted that the Director was of the view that it would be very difficult to arrive at a consensus within the governing bodies if the admissibility criteria were widened to take into account considerations linked to certain social or political circumstances which were specific for the Member State involved and that this could lead to severe disagreements between Member States, since the concept of reciprocity underlying the 1992 Conventions and the Supplementary Fund Protocol would not apply in such cases. It was noted that the Director therefore did not recommend a widening of the criteria to include such considerations.

26.13 It was also noted that it was the Director's view that, if the Assembly were to decide to take considerations of a social and/or political nature into account when deciding on the admissibility of a claim for the costs of an extraction operation, it would, in the interest of ensuring the uniform application of the Conventions, also be necessary to take such considerations into account to the same extent in respect of claims for other types of preventive measures, such as clean-up as well as claims for other types of damage where such considerations of a non-objective nature might play a role, such as claims for loss of earnings resulting from fishing bans, claims for costs of post-spill studies and claims for costs of reinstatement measures.

26.14 The Assembly noted that in document 92FUND/A.11/24/1 submitted by the delegations of France and Spain those delegations had been thinking along the same lines as the Director in recommending sub-criteria to facilitate the consideration of reasonableness of operations undertaken to extract oil from a sunken wreck. It was noted, however, that the French and Spanish delegations had proposed wider but more precise criteria than had been put forward by the Director. It was noted that the French and Spanish delegations had proposed that the claimant should justify oil removal operations on the basis of the following criteria:

(a) Risks associated with the situation of the wreck: it will be necessary to take into account all the risks associated with the situation of the wreck, such as the instability of the sea bed (a factor which may give rise to structural collapse with the resulting general impact) and the proximity of areas vulnerable from different points of view (economic, environmental, etc.).

(b) Risks associated with the volume of oil contained in the wreck: the volume of oil contained measured with the maximum precision possible must be considerable and capable of producing general damage if the sunken structure collapses.

(c) Technical viability of the operation: the viability of the extraction must be assured because the wreck is within a range of depths where work is possible with sufficient guarantees of success.

(d) The cost of the operation must be reasonable taking into account the cost per unit of product recovered, which must be within the limits for past operations.

26.15 It was noted that as regards the submission of such claims, the French and Spanish delegations had considered that States should present separately the costs of the studies carried out prior to the operation and of the extraction operations and those incurred as a result of the adaptation of the technology to the extraction operations, and that in each case the admissibility of the latter should be considered in the light of the particular circumstances and their proportionality.

26.16 The Assembly noted that although the document did not address the question of whether or not social or political factors should be taken into account when determining the admissibility of claims for the costs of removing oil from wrecks, the French and Spanish delegations were of the view that such factors should not be taken into consideration.

26.17 A large number of delegations welcomed the proposals set out in the documents by the Director and the French and Spanish delegations. There was widespread support for amending the Fund's Claims Manual and for including specific sub-criteria addressing claims for costs of measures to remove oil from sunken wrecks and for including in the sub-criteria the potential environmental damage which could be caused if the measures were not taken. The point was made, however, that the sub-criteria must remain consistent with the definitions of 'pollution damage' and 'preventive measures' in the Conventions.

26.18 All delegations but one that intervened considered that it would be inappropriate to include social or political considerations in the sub-criteria, although it was recognised that such considerations might well be taken into account by States when deciding whether to go ahead with an oil removal operation. The point was made, however, that the costs of operations undertaken for social or political reasons should not be recoverable under the Conventions.

26.19 There was considerable support for combining some of the criteria proposed by the Director with those proposed by the French and Spanish delegations. However, a number of delegations considered that the criterion proposed by the French and Spanish delegations which took into account the cost per unit of oil recovered compared with the unit cost from past oil removal operations was not appropriate. Those delegations expressed the view that this represented too narrow a view and could preclude operations with a high cost per unit of oil recovered, which could be justified on other grounds, for example if a wreck was located close to a very sensitive area which needed a high degree of protection from pollution.

26.20 The French delegation stated that the criterion relating to cost per unit of oil recovered was not intended to limit the costs of oil removal operations, but was simply to provide a point of reference taking into account the volume of oil recovered.

26.21 The Director agreed that there was not a great deal of difference between his proposals and those of the French and Spanish delegations. He expressed the view, however, that clarity of the admissibility criteria was key rather than a widening of their scope. He stated that it should be possible to amalgamate the two sets of criteria, although he was also of the view that the criterion of costs per unit of oil recovered was inappropriate, since it did not take into account technical difficulties and the relative economic conditions in different countries. He further stated that it was his view that the relevant criterion was the overall cost of removing oil from a wreck in relation to the potential total damage of leaving the oil in that wreck.

26.22 The Assembly decided not to widen the Fund's admissibility criteria relating to costs of preventive measures so as to include social and/or political considerations.

26.23 The Assembly also decided that when considering the reasonableness of preventive measures account should be taken of the potential environmental damage which could be caused if the measures were not taken and that the Fund's Claims Manual should be amended accordingly.

26.24 The Assembly further decided that the Fund should adopt specific sub-criteria for claims for costs of removing oil from sunken vessels and to develop appropriate text to this effect to be included in the Claims Manual, taking into account the proposals by the Director and the French and

Spanish delegations. The Director was instructed to develop such text in consultation with these delegations and present his recommendations to the Assembly at its next session.

27 Sharing of joint administrative costs between the 1992 Fund, the 1971 Fund and the Supplementary Fund

27.1 It was recalled that at their March 2005 sessions, the governing bodies of the 1992 Fund, the 1971 Fund and the Supplementary Fund had decided that the distribution of the costs of running the joint Secretariat should be made on the basis of the 1971 Fund and the Supplementary Fund paying a flat management fee to the 1992 Fund.

27.2 It was recalled that it had been decided that the management fees payable by the 1971 Fund and the Supplementary Fund should be reviewed annually in view of changes of the total figure of the costs of running the joint Secretariat and the amount of work required by the Secretariat in the operation of these Funds.

27.3 The Assembly approved the Director's proposal that for 2007 the 1971 Fund and the Supplementary Fund should pay flat management fees of £275 000 and £70 000 respectively to the 1992 Fund.

27.4 It was noted that the Administrative Council of the 1971 Fund and the Assembly of the Supplementary Fund had agreed, at their 20th session and 2nd session respectively, to the apportionment of joint administrative costs set out in paragraph 27.3.

28 Budget for 2007 and assessment of contributions to the General Fund

28.1 The Assembly considered the draft 2007 Budget for the administrative expenses of the 1992 Fund, the 1971 Fund and the Supplementary Fund and the assessment of contributions to the 1992 Fund General Fund as proposed by the Director in documents 92FUND/A.11/26 and 92FUND/A.11/26/Add.1.

28.2 The Assembly adopted the budget for 2007 for the administrative expenses for the joint Secretariat for a total of £3 590 750 (including external audit fees for the three Funds) as reproduced in the Annex to this document.

28.3 The Assembly decided to maintain the working capital of the 1992 Fund at £22 million.

28.4 The Assembly renewed its authorisation to the Director to create positions in the General Service category as required provided that the resulting cost would not exceed 10% of the figure for salaries in the budget (ie up to £ 143 000 based on the appropriation for salaries in the joint Secretariat budget for 2007).

28.5 The Assembly noted the Director's estimate of the expenses to be incurred in respect of the preparation for the entry into force of the HNS Convention.

28.6 The Assembly noted that the increased limit for small ships under the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) was applicable to the *Solar 1* and decided that any amounts payable in respect to this incident in excess of this limit should be paid from the working capital.

28.7 The Assembly decided to levy contributions of £3.0 million to the General Fund payable by 1 March 2007.

28.8 It was noted that the contributions referred to in paragraph 28.7 would be calculated as follows:

Fund	Oil year	Estimated total oil receipts (tonnes)	Payment by 1 March 2007	
			Levy £	Estimated levy per tonne £
General Fund	2005	1 495 232 551	3 000 000	0.0020064

29 Assessment of contributions to Major Claims Funds

29.1 The Director introduced document 92FUND/A.11/27 in which he proposed that the 1992 Fund should not levy any 2006 contributions to Major Claims Funds.

29.2 The Assembly decided that there should be no levy of 2006 contributions in respect of the *Erika* Major Claims Fund and the *Prestige* Major Claims Funds.

30 Report of the 4th intersessional Working group

30.1 It was recalled that at its February/March 2006 session, the Assembly had established a new working group to consider non-technical measures to promote quality shipping for carriage of oil by sea. The Assembly also recalled that the Working Group had held its first meeting in May 2006. It was recalled that the Assembly had given the Working Group the following mandate:

(a) to develop proposals in respect of non-technical measures and guidelines for Contracting States and the industry to promote quality shipping by ensuring that effective checks and procedures are in place to establish that ships insured and certificated are suitable for the carriage of oil by sea covered under the CLC/Fund regime;

(b) to make a proposal to the Assembly's October 2006 session on a time-frame for its work;

(c) to report on the progress of its work at each regular session of the Assembly; to identify related issues other than those referred to below as it may deem helpful to complete its task within the current Conventions and make the appropriate recommendations to the Assembly; and

(d) to make recommendations to the Assembly upon the completion of its work.

30.2 It was also recalled that the Assembly had decided that in conducting its work, the Working Group should focus on the following:

(a) consider and make proposals on the development of common criteria to be uniformly applied by Contracting States to ensure that fully effective insurance is in place before States issue CLC Certificates;

(b) identify factors that prevent the sharing of information between marine insurers and seek to develop a common policy or other measures that would facilitate such sharing of information;

(c) identify practical measures to achieve better and more transparent co-ordination between insurers, shipowners and cargo interests that would promote quality shipping;

(d) consider possible measures for the denial or withdrawal of insurance cover in order to improve the safer transport of oil;

(e) consider the feasibility and impact of differentiated insurance rates and premiums that would encourage quality shipping; and

(f) examine ways of encouraging and strengthening the participation of classification societies in the promotion of quality shipping.

30.3 The Assembly took note of the Working Group's report contained in document 92FUND/A.11/28, which was introduced by its Chairperson, Ms Birgit Sølling Olsen (Denmark).

30.4 It was noted that the Working Group's first meeting had focused on current and planned procedures and practices of the marine insurance industry and States to promote quality shipping and that the Group had also discussed the sharing of information relating to the quality of shipping and barriers to sharing such information.

30.5 It was also noted that the Working Group had decided to undertake a study to:

(a) identify factors that allow/require/prevent marine insurers and other business endeavours from sharing information on clients, including national legislation and practices; and

(b) identify whether competition law and practices take into consideration the need for taking measures to encourage quality shipping for the transportation of oil.

30.6 It was further noted that the Working Group had also decided to undertake a study to determine the extent to which the main focus of the Group's attention should be ships falling outside the ambit of the classification societies belonging to the International Association of Classification Societies and the P&I insurers belonging to the International Group of P & I Clubs.

30.7 The Assembly noted that the Working Group had invited the International Maritime Committee (CMI) to undertake a study with the following aims:

(a) to identify factors that allow/require/prevent marine insurers and other business endeavours from sharing information on clients, including national legislation and practices; and

(b) to identify whether competition law and practices take into consideration the need for taking measures to encourage quality shipping for the transportation of oil.

30.7 The Assembly noted that the Director had met with the President and other representatives of CMI to discuss the study. It was noted that CMI had indicated that competition law was not a speciality of the lawyers belonging to the organisation and that it would probably be necessary for them to engage appropriate consultants, which would have budgetary implications.

30.8 It was noted that before deciding how to proceed the Director had written to the relevant non-governmental organisations, namely ICS, INTERTANKO, OCIMF and the International Group of P&I Clubs inviting them to elaborate on the problems that they had faced with regard to the free exchange of information and to indicate whether similar problems had arisen in other areas and, if so, whether any solutions had been found to overcome them. The Director stated that once the problem had been defined more precisely, the Director Elect and CMI would be in a better position to consider how to conduct the study and by whom and recommend to the Working Group, at its next meeting, the way forward.

30.9 The IUMI observer delegation said that if it would be helpful if IUMI would be willing to ask its 56 member associations to examine their domestic legislation relating to competition law and practices and the sharing of information.

30.10 The Assembly noted that there had been general agreement in the Working Group that the Group should seek to complete its mandate in the shortest time possible, but that it was difficult to recommend a firm deadline to the Assembly at its October 2006 session. It was also noted that the Group had felt, nevertheless, that a tentative deadline should be proposed in order to ensure that the Working Group maintained the necessary momentum to complete its work.

30.11 It was further noted that some delegations had considered that a further 4-5 sessions were required, and that, since it was necessary to hold Working Group meetings either in conjunction with other Fund meetings or back-to-back with the IMO Legal Committee sessions to ensure maximum participation, it would not be possible for the Working Group to meet more than twice per year. It was noted that the Working Group had therefore decided to recommend to the Assembly that a tentative deadline of October 2008, which would allow 4-5 meetings to be held, should be set for the completion of the Working Group's mandate, but that the Working Group would have the possibility of revisiting the issue if necessary.

31 Implementation of STOPIA 2006 and TOPIA 2006

31.1 It was recalled that at their February/March 2006 sessions the Assemblies of the 1992 Fund and the Supplementary Fund had taken note of two voluntary agreements, Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006, under which the shipowner/P&I Clubs would reimburse the 1992 Fund and the Supplementary Fund for part of the compensation payable by the Funds under the 1992 Fund Convention and the Supplementary Fund Protocol, respectively.

31.2 The Assembly noted that the Director had held discussions with the International Group of P&I Clubs concerning the procedures required to implement the payment provisions in STOPIA 2006 and TOPIA 2006.

31.3 The Assembly approved the text of a note on administrative procedures for indemnification of the 1992 Fund and the Supplementary Fund by shipowners/P&I Clubs under STOPIA 2006 and TOPIA 2006 as set out in the Annex to document 92FUND/A.11/29.

32 Application of 1992 Conventions to ship-to-ship oil transfer

32.1 The Assembly recalled that its October 2005 session it had considered the question of whether permanently anchored vessels engaged in ship-to-ship (STS) oil transfer operations fell within the definition of 'ship' under the 1992 Civil Liability and Fund Conventions, as interpreted by the Assembly, and whether contributing oil received by such vessels should be considered as received for the purpose of Article 10.1(a) of the 1992 Fund Convention and therefore be taken into account for the levying of contributions.

32.2 It was further recalled that the Assembly had not reached any decision on the application of the 1992 Conventions to these STS operations under consideration, but had instructed the Director to undertake an in-depth study of the issues involved and report to the Assembly at its next session (document 92FUND/A.10/37, paragraph 37.3.7).

32.3 The Assembly noted that the Director had engaged an independent expert to carry out a detailed study to identify the worldwide locations where STS oil transfer operations were being carried out where one of the vessels involved was permanently anchored and to which oil was delivered by tankers and subsequently transferred to tankers for onward carriage.

32.4 The Assembly noted that the study had identified two main types of STS operations. It was noted that in the first category, crude oil was shipped from inland sources by small tankers to a location at sea where a vessel remained permanently at anchor and received these cargoes for storage and consolidation before subsequently discharging the consolidated cargo to other tankers, which transported the crude oil to its final destination. It was noted that in the second category, which had been found to be very common in the bunker industry, fuel oil was received as cargo where the receiving vessel was used either temporarily or permanently to store or blend the received

cargoes and subsequently discharge parcels of the stored or blended cargo onto other vessels which transport it to shore-based terminals or deliver it to other vessels as bunkers.

32.5 It was noted that the study had identified 24 STS operations involving permanently or semi-permanently anchored vessels acting as floating storage units, 20 of which were located within the territorial waters of 1992 Fund Member States.

32.6 It was noted that the vessels identified had a combined deadweight tonnage of 3.3 million tonnes and had an estimated total annual throughput of nearly 30 million tonnes of oil (crude oil and heavy fuel oil) annually, which corresponded to about 2% of the total quantity of contributing oil received in 1992 Fund Member States in 2004.

Applicability of the 1992 Civil Liability and Fund Conventions to permanently and semi-permanently anchored vessels

32.7 The Assembly recalled that at its October 1999 session it had decided to endorse the conclusions of the Working Group regarding the applicability of the 1992 Conventions to offshore craft that such craft should be regarded as 'ships' under the 1992 Conventions only when they carried oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operated. It was also recalled that the Assembly had emphasised that in any event the decision as to whether the 1992 Conventions applied to a specific incident would be taken in the light of the particular circumstances of that case and that the issue could be reconsidered if new information were to come to light (document 92FUND/A.4/32, paragraph 24.10).

32.8 It was noted that in the light of the findings of the study it had become apparent that some of the vessels engaged in STS operations on a permanent or semi-permanent basis were capable of operating, and did operate on occasions, as normal trading tankers. It was further noted that the Director was of the view, however, that when such vessels were engaged in STS operations whilst at anchor they functioned in much the same way as offshore craft, namely as floating storage units (FSUs) and floating production, storage and offloading units (FPSOs). It was also noticed that in accordance with the policy adopted by the Assembly in October 1999, the Director had therefore concluded that permanently or semi-permanently anchored vessels engaged in STS oil transfer operations should be regarded as 'ships' under the 1992 Conventions only when they carried oil as cargo on a voyage to or from a port or terminal outside the location in which they normally operated.

32.9 A number of delegations agreed with the Director's conclusion regarding the applicability of the Conventions to permanently or semi-permanently anchored vessels engaged in STS oil transfer operations. Some of those delegations referred to the decision by the Greek Supreme Court that a waste oil reception facility, the *Slops*, should be regarded as a 'ship' under the Conventions (document 92FUND/EXC.34/7), which had been contrary to the Fund's policy and the decision by the Executive Committee at its July 2000 session that the *Slops* should not be considered a 'ship' for the purpose of the Conventions. Those delegations noted that no recommendation had been made by the 1992 Fund Executive Committee to change the Fund's policy in the light of the adverse judgement. It was also noted that some delegations had suggested that the decision should be deferred to the next session for future study.

32.10 Two delegates expressed concern if permanently and semi-permanently anchored vessels engaged in STS oil transfer operations were not to be considered 'ships' for the purpose of the 1992 Conventions, since the compensation regime under the Conventions would not apply to spills occurring during these operations.

32.11 Some delegations, whilst agreeing with the consensus of opinion regarding offshore craft, including permanently and semi-permanently anchored vessels, stated that they would not be averse to re-considering the applicability of the Conventions to such craft at some point in the future.

32.12 The Assembly decided that permanently and semi-permanently anchored vessels engaged in STS oil transfer operations should be regarded as 'ships' only when they carried oil as cargo on a voyage to or from a port or terminal outside the location in which they normally operate, but that in any event the decision as to whether such a vessel fell within the definition should be decided in the light of the particular circumstances of the case.

Ship-to-ship transfers and contributing oil

32.13 The Assembly recalled that Article 10.1 (a) of the 1992 Fund Convention provided that annual contributions to the 1992 Fund shall be made in respect of each Contracting State by any person who, in the relevant calendar year, had received in total, quantities of contributing oil exceeding 150 000 tonnes by sea in the ports or terminal installations in the territory of the State.

32.14 It was also recalled that at its 1st extraordinary session in October 1980 the 1971 Fund Assembly had considered the circumstances under which contributing oil should be considered as 'received' and that it had approved the following interpretation of 'received' (document FUND/A/ES.1/13, paragraph 10).

(a) Discharge into a floating tank within the territorial waters of a Member State (including its ports) constitutes a receipt of oil, irrespective of whether the tank is connected with onshore installations via pipeline or not. Ships are considered to be floating tanks in this connection only if they are 'dead' ships, ie if they are not ready to sail.

(b) Traffic within a port area shall not be considered as carriage by sea.

(c) Ship-to-ship transfer shall not be considered as receipt, irrespective of where this transfer takes place (ie within a port area or outside the port but within territorial waters) and whether it is done solely by using the ships' equipment or by means of a pipeline passing over land. This applies for a transfer between two sea-going vessels as well as for a transfer between a sea-going vessel and an internal waterway vessel and irrespective of whether the transfer takes place within or outside a port area. When the oil, after having been transferred in this way from a sea-going vessel to another vessel, has been carried by the latter to an onshore installation situated in the same Member State or in another Member State, the receipt in that installation shall be considered as receipt of oil carried by sea. However, in the case where the oil passes through a storage tank before being loaded to the other ship, it has to be reported as oil received at that tank in that State.

32.15 It was recalled that the above interpretation is reflected in the explanatory notes attached to the 1992 Fund form for reporting contributing oil received (which constitutes an Annex to the Internal Regulations), the current version of which was approved by the 1992 Fund Assembly at its extraordinary session in March 2005 (document 92FUND/A/ES.9/28, paragraph 16.2).

32.16 It was noted that the Director had understood that in the case of STS oil transfer operations involving permanently or semi-permanently anchored vessels, the oil received by those vessels was subsequently loaded onto other tankers, sometimes after modification through onboard blending, that STS oil transfer operations were sometimes introduced as a rapid means of entering into the crude oil and bunker fuel import/export market prior to the construction of shore-based terminals. It was further noted that in the Director's view such STS operations were much the same as shore-based terminal operations in terms of the activities undertaken and the attendant pollution risks and that since oil received by shore-based terminals in 1992 Fund Member States after sea transport was considered as received for the purpose of Article 10.1 (a) of the 1992 Fund Convention, oil received by permanently or semi-permanently anchored vessels in 1992 Fund Member States after sea transport should also be considered as received for the purpose of that Article.

32.17 The Assembly noted that the Director had considered that all crude oil and heavy fuel oil (ie contributing oil) received through STS operations by ships permanently or semi-permanently at anchor in the territory or territorial sea of a State Party to the 1992 Fund Convention should be regarded as received for the purpose Article 10.1 (a) of the 1992 Fund Convention and therefore be taken into account for the levying of contributions.

32.18 One delegation asked which State would be responsible for reporting to the Fund the quantities received, the flag State or the State in whose territory the operations were carried out. The Director expressed the view that it would be the responsibility of the latter State to submit such reports.

32.19 It was further noted that the interpretation set out in paragraph 32.17 above was incompatible with the current interpretation of the concept of 'received' set out in sub-paragraph 32.14 (a) above, namely that ships were considered to be floating tanks in this connection only if they were 'dead' ships, ie if they were not ready to sail. It was also noted that if the Director's interpretation was correct it would be necessary to amend the wording relating to floating tanks in the explanatory note attached to the 1992 Fund form for reporting receipts of contributing oil and that the Director had proposed the following revised text for item (a), reproduced in paragraph 32.14 above, in the explanatory notes attached to the 1992 Fund's oil reporting form for consideration by the Assembly (additional text highlighted):

> Discharge into a floating tank within the territorial waters of the Member State (including its ports) constitutes a receipt, irrespective of whether the tank is connected with onshore installations via pipeline or not. Ships are considered to be floating tanks in this connection[<1>] **only** if they are 'dead' ships, ie if they are not ready to sail**, or if they are permanently or semi-permanently at anchor.**

32.20 The Assembly agreed with the Director's analysis and decided that all contributing oil received by such vessels when operating in the territory, including the territorial waters, of a State Party to the 1992 Fund Convention, should be considered as received for the purpose of Article 10.1 (a) of that Convention and therefore be taken into account for the levying of contributions.

32.21 The Assembly also decided to revise the wording relating to floating tanks in the explanatory notes attached to the 1992 Fund form for reporting contributing oil received as set out in paragraph 32.19 above.

33 International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea

33.1 The Assembly recalled that, in a Resolution of the Conference which had adopted the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention), the Assembly of the 1992 Fund had been invited to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the International Hazardous and Noxious Substances Fund (HNS Fund) in accordance with the HNS Convention. It was also recalled that at its 1st session, the Assembly had instructed the Director to carry out the tasks requested by the HNS Conference (document 92FUND/A.1/34, paragraphs 33.1.1 - 33.1.3), on the basis that all expenses incurred would be repaid by the HNS Fund.

33.2 The Assembly noted the developments in respect of the ratification and implementation of the HNS Convention since the 10th extraordinary session of the Assembly as set out in document 92FUND/A.11/31. It was noted that eight States (Angola, Cyprus, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Slovenia and Tonga) had acceded to the HNS Convention.

[<1>] The word 'only' deleted

33.3 The Assembly recalled that at its 10th session, held in October 2005, it had noted that revised regulations to prevent marine pollution by ships carrying oil or chemicals had been adopted by IMO's Marine Environment Protection Committee (MEPC) at its 52nd session in October 2004 (document 92FUND/A.10/37, paragraphs 35.6-35.12). It had also noted that these revised regulations, which included Annexes I and II of the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto (MARPOL 73/78) and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983 (IBC Code), were expected to enter into force on 1 January 2007 under the 'tacit acceptance' procedure, whereby the amendments would enter into force on that date unless at least one third of the States Parties or States Parties having ships totalling at least 50% of the gross tonnage of the world's merchant fleet objected to the amendments by 1 July 2006.

33.4 It was also noted that the definition of HNS in Article 1.5 of the HNS Convention was largely based on lists of individual substances which were identified in a number of IMO Conventions and Codes designed to ensure maritime safety and prevention of pollution and that, in particular, parts (a)(i) to (a)(iii) of the definition of HNS in Article 1.5 were based on Annexes I and II of MARPOL 73/78 and the IBC Code, respectively.

33.5 It was further noted that if, as expected, the revised Annex II entered into force on 1 January 2007, the reference in Article 1.5(a)(ii) of the HNS Convention to 'noxious liquid substances carried in bulk referred to in appendix II of Annex II to MARPOL 73/78, as amended,...' would be meaningless from that date, as would the reference to '...those substances and mixtures provisionally categorised as falling in pollution category A, B, C or D in accordance with regulation 3(4) of Annex II'.

33.6 The Assembly recalled that, under Article 46.1, the HNS Convention would enter into force 18 months after ratification by at least 12 States, subject to two conditions, one of which was that in the previous calendar year a total of at least 40 million tonnes of cargo consisting of HNS other than oils, liquefied natural gas (LNG) or liquefied petroleum gas (LPG) had been received in States which have ratified the Convention. The Assembly noted that it was essential therefore that the issue relating to the definition of HNS under Article 1.5(a)(ii) was resolved as quickly as possible, since those substances that qualified as HNS under this part of the definition were likely to form a significant part of such contributing cargo.

33.7 At its October 2005 session, the Assembly had instructed the Director to discuss this issue with the Secretary-General of IMO with the aim of finding a practical solution to the issue and also of attempting to avoid similar issues arising in the future (document 92FUND/A.10/37, paragraph 35.12)

33.8 The Assembly noted that the Director had discussed this issue with the Secretary-General of IMO at a meeting held on 27 January 2006.

33.9 The Assembly further noted that following consultations with the Legal Division and the Marine Environment Division of IMO, the Secretary-General had indicated at that meeting that IMO's view was that, whilst the new Annex II to MARPOL 73/78 would no longer contain an Appendix II referring to a list of noxious liquid substances, an equivalent reference to the list of these substances would be contained in the body of the Annex.

33.10 The Assembly noted that the Secretary-General had therefore suggested that the Legal Committee and the Marine Environment Protection Committee should be invited to consider adopting a resolution on the issue referring interested parties to the relevant references in Annex II. The Assembly further noted that he intended that the matter would be raised in a note by the IMO Secretariat to the 91st session of the Legal Committee in April 2006 and again in a similar note to the 55th session of the Marine Environment Protection Committee in October 2006.

33.11 It was noted that the Secretary-General had indicated that in the meantime he intended to issue a Circular to States to clarify the issue, which he did in February 2006 (IMO Circular

letter No. 2699). It was further noted that he had also stated that footnotes would be added where appropriate in new IMO publications, such as the new version of the Consolidated Edition of MARPOL 73/78, the English version of which was published in July 2006.

33.12 The Assembly noted that it had been suggested at the meeting that the first Assembly of the HNS Fund should also be invited to adopt an appropriate resolution on this matter.

33.13 The Assembly also noted that at its 91st session in April 2006, the Legal Committee had adopted a resolution on this issue (LEG.4(91)), which is contained in the Annex to document 92FUND/A.11/31. The Assembly further noted that, at its 55th session in October 2006, the Marine Environment Protection Committee, noting that the conditions for the entry into force of the amendments to the regulations had been met on 1 July 2006 and that the revised regulations would therefore enter into force on 1 January 2007, had adopted a similar resolution.

33.14 The Assembly recalled that the Secretariat had organised a Workshop in June 2005 which had been intended to facilitate States' preparations for ratification of the HNS Convention and to address the need for the uniform interpretation and application of the Convention. The Assembly also recalled that the Secretariat had produced a 'Guide to the Implementation of the HNS Convention' to form the basis of that Workshop.

33.15 The Assembly noted that the Secretariat had organised a second Workshop on 25 and 26 May 2006, which had focussed on more practical aspects of the implementation of the HNS Convention.

33.16 The Assembly also noted that the Secretariat had participated in several seminars on the HNS Convention in States which were considering ratifying the Convention.

33.17 The Assembly noted that Director and the Head of the External Relations and Conference Department had participated in a seminar on the HNS Convention held in Helsinki (Finland) on 11 September 2006 under the auspices of the Finnish Ministry of Transport. The Assembly noted that the purpose of the seminar had been to increase the awareness of the major issues that had to be addressed in relation to the envisaged ratification by Finland of the Convention.

33.18 The Assembly also noted that the Head of the External Relations and Conference Department had given a series of presentations on different aspects of the HNS Convention at a seminar organised by the European Maritime Safety Agency on the HNS Convention held in Riga (Latvia) on 19 and 20 September 2006. It was noted that the purpose of the seminar was to assist the Latvian Government in its preparations for ratifying the Convention.

33.19 It was noted that a four-page brochure providing an accessible introduction on the HNS Convention had been made available in English in July 2006 and that French and Spanish versions would be published shortly.

33.20 It was also noted that during 2005, the Secretariat had set up a dedicated website for the HNS Convention (www.hnsconvention.org), which had initially been available in English only. It was further noted that in May 2006, the website had also been made available in French and Spanish and that consideration would be given to further development of the website during 2007.

33.21 The Assembly noted that the Secretariat had also developed a system to assist in identifying and reporting contributing cargo under the HNS Convention, which included a database of all substances qualifying as hazardous or noxious substances and that the final system had been made available during 2005 in the form of both a CD-ROM and a dedicated website (www.hnscccc.org).

33.22 Several delegations made the point that only one of the eight States which had ratified the HNS Convention to date has submitted the reports on receipts of contributing cargo which were required under Article 43 of the Convention and that this was a major obstacle for those States

which had not yet ratified, since they were under an obligation to protect the interests of contributors in their own States.

33.23 The United Kingdom delegation offered to produce a document for the June sessions of the IOPC Funds governing bodies, to which other delegations were welcome to contribute, containing a short summary of the preparations for ratification of the HNS Convention and submission of reports on contributing cargo, with a view to reaching a consensus on a date for simultaneous ratification by a number of States. Many delegations supported this initiative. The United Kingdom delegation suggested that any note on this issue should be submitted to the Secretariat.

33.24 Several delegations noted that more needed to be done to encourage States which had ratified the Convention to submit their reports on contributing cargo. The delegation of Cyprus stated that he shared these concerns and that his State would shortly be in a position to submit these reports.

33.25 The Assembly noted its gratitude to the Secretariat for its work towards the implementation of the HNS Convention, in particular the Workshop which it had organised in May 2006, and took note of the proposal by the United Kingdom delegation.

33.26 The Assembly, noting that that the submission of reports on contributing cargo was key to the entry into force of the HNS Convention, instructed the Director to take up with the Secretary-General of IMO the question of what action could be taken against those States which, when they ratify, do not submit the required reports on contributing cargo.

34 Future sessions

34.1 The Assembly decided to hold its next regular session during the week of 15 -19 October 2007, and noted that whilst this session was expected to be held at the IMO building, the Secretariat did have a contingency plan in the event that the work being carried out on the IMO building fell behind schedule.

34.2 It was noted that tentative arrangements had been made for meetings during the week of 12 March 2007 to take place at the Inmarsat building.

34.3 The Assembly noted the invitation of the Government of Canada to hold the June 2007 sessions of the IOPC Funds' governing bodies in Montreal at the Headquarters of the International Civil Aviation Organization (ICAO) (document 92FUND/A.11/34).

34.4 The Canadian delegation informed the Assembly that the facilities at the ICAO were very similar to those of IMO and pointed out that, as stated in the Director's document (document 92FUND/A.11/34), holding the meetings in Montreal would be cost neutral from a budgetary point of view.

34.5 The Assembly thanked the Government of Canada for its kind invitation.

34.6 The Assembly decided to accept the invitation and hold sessions of the IOPC Funds' governing bodies at the ICAO in Montreal during the week of 11-15 June 2007.

35 Any other business

Transfer within the Budget

The Assembly authorised the Director to make the necessary transfer to Consultants' fees under Miscellaneous expenditure under Chapter V, within the 2006 budget, from Chapter VI (Unforeseen expenditure) to cover the cost of such fees in 2006.

36 Oath of the Director Elect

36.1 The Assembly noted that, in accordance with Regulation 5 of the Staff Regulations of the 1992 Fund every member of the Secretariat, on taking up his or her duties, should make and sign an oath or declaration, as set out in Staff Regulation N°5 (cf document 92FUND/A.11/32).

36.2 The Director Elect, Mr Willem Oosterveen, made the following declaration in front of the governing bodies of the 1992 Fund, the 1971 Fund and the Supplementary Fund:

> 'I solemnly promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the 1992 Fund, to discharge those functions and regulate my conduct with the interests of the 1992 Fund, the Supplementary Fund and the 1971 Fund only in view and not to seek or accept instructions in regard to the performance of my duties from any government or other authority external to the 1992 Fund, the Supplementary Fund and the 1971 Fund.'

37 Address by the outgoing Director

37.1 On the occasion of the last sessions of the governing bodies before his successor took up office on 1 November 2006, at a special joint session of the 1992 Fund Assembly, the 1992 Fund Executive Committee, the 1971 Fund Administrative Council and the Supplementary Fund Assembly the outgoing Director, Mr Måns Jacobsson of Sweden, who had held the post of Director of the IOPC Funds for nearly 22 years, made a final address which is reproduced below:

'Chairpersons, Excellencies, distinguished delegates, ladies and gentlemen, dear friends.

It is with some nostalgia that I address the governing bodies of the International Oil Pollution Compensation Funds for the last time as their Director. Perhaps I may be permitted on this occasion to review briefly the developments over the years within the international compensation regime, to mention some of the difficult issues which have had to be addressed and to speak about the challenges ahead. On some points I may be a little less diplomatic than you have been used to hearing me over the 22 years and I hope you can accept that.

As you all know, the international regime was created as a response to the *Torrey Canyon* incident in 1967. Already two years later within IMO (IMCO as it was known at that time) a Diplomatic Conference was convened which adopted the 1969 Civil Liability Convention which governed the liability of shipowners for oil spills. But the Conference also adopted a Resolution inviting IMO to elaborate a scheme for the setting up of an international Fund so that victims of oil spills could be sure of full compensation.

My first contact with this issue was in May 1970 when, as a young lawyer, I was part of the Swedish delegation to an IMO Working Group set up to develop the idea of an international fund. But great hesitations were expressed from many quarters at that stage about the viability of such a project. A number of delegations said 'We will never be able to agree on such a scheme'. They were wrong.

Only two years later a new Diplomatic Conference adopted the 1971 Fund Convention. But again at that Conference many delegations said 'This will not work'. Again they were wrong.

In particular, doubts were expressed as to whether the contribution system would really work; it was said the oil industry would not pay. They were wrong too.

The 1971 Fund itself was set up in 1978 when the Fund Convention came into force. Very soon, however, some major incidents, the *Amoco Cadiz* and the *Tanio* in France, showed that the Conventions had some shortcomings. For this reason already at the beginning of the 1980s a revision exercise was embarked upon and I had the pleasure of chairing a Working Group

which had the task of preparing the revision. As a result, a Diplomatic Conference held in 1984 adopted two Protocols to the Conventions. To the disappointment of many, in particular of myself who had the pleasure of chairing the Conference, the 1984 Protocols never entered into force. I do not need to go into the reasons for this since they are well known.

A new attempt to revise the Conventions was made in 1992 when a Diplomatic Conference adopted two Protocols which in substance were identical to the 1984 texts but with different entry into force conditions. The 1992 Protocols entered into force only four years later in June 1996. It is very unusual that international treaties enter into force so shortly after their adoption (I will not mention the HNS Convention). I think that the reasons that they came into force so quickly was that there had been three major incidents in Europe: the *Haven*, the *Aegean Sea* and the *Braer*, which had made ratification a political priority.

I think that it is true to say that the regime set up by the 1969 and 1971 Conventions and the 1992 Conventions represent an innovation in international law. Those who participated in the creation of the Conventions - apart from myself there is only one person present who participated, Professor Hisashi Tanikawa of Japan who is sitting on the Audit Body's bench - were aware that we were creating something new in international law. We were aware that it was impossible to predict how such a regime would operate, or whether it would be able to function at all. As I said, doubts were expressed.

It is now 28 years since the Conventions came into force. In the light of the experience of some 135 incidents, I think that it is fair to say that the regime has worked reasonably well in most cases. An indication of that is that the number of Member States has grown from 14 to 98. The fact that so many States have ratified the Conventions shows that they have considered it worthwhile to do so. Some £550 million have been paid in compensation to tens of thousands of victims of oil pollution damage.

It is for me, as a former judge, of special satisfaction that the overwhelming majority of claims have been settled without the claimants having to resort to court actions. As we know, no courts are equipped to handle large numbers of compensation claims. I do not think that it is in the interest of the Funds to be involved in protracted litigation nor could it be in the interest of victims to have to fight for compensation for many years until legal proceedings have been brought to an end - we can all think of the *Amoco Cadiz* incident where it took 14 years in the United States courts for the judgements to be rendered. In fact, actions have only been brought against the Funds in respect of a low number of incidents.

After the *Nakhodka* incident in Japan and the *Erika* incident in France, however, the adequacy of the compensation regime came under the spotlight again. This led to a further review of the Conventions carried out during the period 2000-2005. During this review, the *Prestige* incident (Spain 2002) helped to focus even further the minds on the need to review the Conventions.

The first issue which was addressed was again the adequacy of the amount available for compensation under the 1992 Conventions. Very conflicting views were expressed at that time as to whether higher amounts were needed. In the spirit of compromise, a solution was found without revising the 1992 Conventions, by creating an optional third tier in the form of a Supplementary Fund with a very high amount available, actually higher than the amount available in the American Fund.

At that time, there was a serious risk that the global character of the regime could be compromised because of an initiative of the European Commission to create a European Fund. Fortunately all Fund Member States, including those which were Members of the European Union, took the view that issues of liability and compensation for oil spills should be dealt with on a global and not on a regional basis. The Supplementary Fund does exactly that.

In fact, the Protocol establishing the Supplementary Fund entered into force in less than two years after its adoption – I think this is probably a world record for international treaties.

When Governments addressed the issue of whether a general revision of the 1992 Conventions was required, the Fund Membership was divided into two roughly equal groups, one which was very firmly against any revision of the 1992 Conventions – at least for the time being - whilst the other considered that there were a number of issues that had to be solved through a revision of the treaties. In the light of this divergence of opinions, the 1992 Fund Assembly decided that there was insufficient consensus for making a revision viable.

A major oil spill gives rise to strong reactions from the population in the affected area and also in the media. People see their livelihoods threatened and their environment destroyed. Their anger and frustration is very understandable. Unfortunately, however, the anger and frustration has in some cases been directed against the Fund which is there to provide financial assistance. The Fund has sometimes become a scapegoat for the incident and has been seen as part of or an arm of the oil industry. This does not make it easier for the Funds to operate and fulfil their task, namely that of providing compensation to the victims of the oil spill. In this situation, it is crucial that the Funds have the support of the country where the oil spill occurred.

When there is an oil spill, the industries involved, ie shipowners and oil industry, are often the target of heavy criticism. It is suggested in the media that ships in general are in an unacceptable condition and that the shipowners and the oil industry are only interested in making profits but have no concern for environmental issues. We of course know that this is not true. We know that, as in other sectors, there are some shipowners who cut corners and act in an irresponsible manner but, by and large, the oil industry and the shipping industry have made serious efforts to reduce the number of oil spills and their effects and - to some extent – they have been successful. The number of oil spills has fallen significantly in recent years. If they were all totally successful, my successor would be out of business. But this will not happen because shipping is a dangerous business and there is always room for human error.

The fact that the number of oil spills has dropped is no consolation to the fishermen and small businesses in the tourist industry who are affected by an oil spill. They know that they have suffered damage and they want compensation. That is where the Funds come in. Even if they are criticised, we must never forget why they were set up in the first place, namely to provide compensation.

For the international regime to function well, it is important that Fund Member States show solidarity and defend the regime even when the sailing becomes rough. It is natural in a democratic society that the international regime and the Funds should be subject to scrutiny by Governments, claimants and the media, and that is a strength of the democracy in which we live. However, it is, in my view, detrimental if the Government of a Member State where an oil spill occurs criticises in public the substantive contents of the Conventions which that same Government has adopted and implemented, criticises the policy on the handling of claims which that Government has subscribed to and criticises the criteria for admissibility which that Government, together with other States, has been involved in developing. Because if that Government does so, this can undermine the credibility of the regime to the detriment of the victims. In my view, the right approach would rather be to defend the system as it is but to raise the question of improvements or a revision within the proper forum, notably through the IOPC Funds' governing bodies.

To operate effectively, the Funds depend on being able to recruit external staff of high quality to manage local Claims Offices and to assist the Funds as technical experts. It is essential, therefore, that States take the necessary steps to protect these persons from intimidation and assault and ensure that when such actions take place the perpetrators are brought to justice rapidly and effectively. If this is not done, it could be difficult for the Funds to recruit personnel of the right calibre in the future and this would be to the detriment of the victims.

One of the purposes of the international regime as set out in the Preamble to the Conventions is to establish uniform rules and procedures as regards liability and compensation. The Funds

have promoted the uniform application of the Conventions through the decisions taken by the governing bodies not only on matters of principle but also on the admissibility of individual claims.

As has been repeatedly emphasised by the governing bodies, the uniform application of the Conventions is crucial and this is for two reasons. Firstly, from the point of view of equity, claimants should be treated in the same manner, whether in Sweden, Japan or Venezuela. Secondly, the oil industry in one Member State pays for the clean-up costs and the economic losses in other Member States. If it is not possible to reach a fairly high degree of uniformity and consistency – it is not realistic to hope for absolute uniformity - I fear that there may be such tensions between Member States that it would be difficult for the regime to function properly.

The IOPC Funds can contribute to, and in fact have contributed to the development of international law over the years. One example is the Funds' acceptance in principle, and under certain conditions, of claims for pure economic loss, which in most common law countries are normally not admissible for compensation, whereas such claims are accepted under the civil law systems.

The decisions taken by the governing bodies should in the longer term contribute to the development of international law. For this reason, the Funds' activities can be seen as being carried out in the spirit of Article 235 of the United Nations Convention on the Law of the Sea, which obliges States to cooperate in the development of international law in the field of liability and compensation.

But in order to achieve a uniformity of application of the Conventions, it is essential that the national courts keep an open mind and that they take the decisions by the Funds' governing bodies into account. Of course the national courts are not bound by these decisions – but they should take them into account when they face issues relating to the application of the Conventions. As we have seen, courts in some States are more inclined to do so than those in other States.

Although the 1992 Fund Assembly decided last year not to revise the 1992 Conventions, I believe that sooner or later, a revision will have to take place. Law is not - and should not be – static but should develop to take into account changes in economic, social and political priorities. This applies equally to national laws and to international treaties. It is recognised, however, that it is much more difficult to amend international treaties than national legislation since a broad consensus is required for a revised text of a treaty to be ratified by a significant number of States and thus become viable.

In order for the international regime to continue to be attractive to States, it must be ensured that it meets the needs of society and the aspirations of Member States and their citizens in the 21st century. In this context it is necessary to take into account the interests of all States, developed and developing, as well as the interests of the general public, that is to say of potential victims. Only if this is done will it be possible to maintain a global compensation regime and avoid the regionalisation of liability and compensation issues, which, in my view, would be detrimental to international shipping, to the international community at large and in particular to victims of oil spills. Shipping is, by its very nature, international and oil spills do not respect national borders. I am convinced that Fund Member States will, as they have done in the past, live up to the challenges and take the necessary steps to ensure the continued viability of the global compensation regime.

I believe that the experience gained by and expertise developed within the Funds could be used to create compensation regimes within other areas. This has already been done by the adoption of the HNS Convention. When the nuclear liability conventions were revised, the notion of 'damage' as developed by the Funds was used as a source of inspiration. Consideration is being given to the creation of a similar regime for river transport in continental Europe. Other areas

could be the funding through public and/or private subscriptions of search and rescue services by the shipping and aviation sectors, compensating those who suffer damage on the ground as a result of aviation incidents and - why not - compensating victims suffering the economic consequences of natural disasters such as tsunamis. The future will show whether the international community – the governments - are brave enough to take that step.

The IOPC Funds are intergovernmental organisations, established by States and governed by States through their representatives in the Funds' bodies. No Fund Director can function properly without the strong support of Member States. I feel that I have always had that support and that Member States have showed understanding for the difficulties that a Director faces in reconciling the often conflicting interests of Member States. For this I am deeply grateful.

I have always tried to take an objective position and - to the best of my ability - with the interests of the Funds in mind and in line with their purpose. I do recognise that the positions I have taken on some issues have not always been popular in the country affected by the spill in question. I do believe, however, that the Director has a duty to all Member States and to the governing bodies to present his views impartially and honestly, without fear or favour, and without giving in to political pressure. It is then for the governing bodies- governments - to take the decision whether or not to follow the Director's advice. But the governing bodies must always be sure that the Director has given his honest opinion and presented it to them in a transparent manner. I have tried to carry out the task of Director with these principles in mind.

As we all know, the Funds are the children of IMO, established by international treaties adopted under the auspices of IMO. For many years, the IOPC Funds lived happily as a member of the IMO family in the IMO Building. However, as we know, when a child grows up, it sometimes needs more independence and a home of its own. This was the case for the Funds when in 2000 they moved from the IMO Building to their own premises in Victoria. But the link to IMO is very strong and I trust that this will be the case for many years to come.

I would like to recognise on this occasion the very strong support that IMO has given to the IOPC Funds and to myself, both under the current Secretary-General of IMO, Mr Efthimios Mitropoulos, and under his predecessors Mr C P Srivastava and Mr William O'Neil. My thanks also go to the entire IMO staff for their support over the years.

Special gratitude should also go to the Government of the United Kingdom of Great Britain and Northern Ireland – our host country. That Government has always supported the Fund organisations, not only financially but also in many other ways, and I would ask the United Kingdom delegation to convey to Her Majesty's Government my sincere gratitude

As you all know, the Funds have three official languages. Since the Funds have their Headquarters in London, it follows that the languages used primarily within the Secretariat is English. However, French has been one of the official languages since the beginning. France has, unfortunately, been the victim of several major incidents and this has often given my colleagues and I the opportunity to work in this language. I can assure you that we have always done our utmost to provide an excellent service to the French-speaking Member States in their own language[<2>].

Spanish was introduced as an official language some ten years ago. This resulted in an increased administrative burden on the Secretariat since the volume of translation increased not by 50%, as one may think, but by 100%. However, I believe that the Fund has benefited greatly from having Spanish as an official language. It is clear that this has facilitated the active participation in the Fund bodies by States which work in Spanish. We have tried to give the best possible service to those States[<3>].

<2> This paragraph was delivered in French.
<3> This paragraph was delivered in Spanish.

Oil pollution matters not only to States and their citizens but also to the entities involved in the transport of oil, namely shipowners, insurers and the oil industry, as well as to non-governmental organisations representing environmental interests. I have always enjoyed the relationship with these bodies and appreciated the expertise and knowledge of their representatives and their willingness to assist the Fund in a good spirit as and when required.

I also owe the Funds' contributors my sincere gratitude for their support. I do not say that they have enjoyed paying contributions – who does enjoy paying taxes? – but they have understood the reason why the contributions are necessary and the vast majority have always paid and on time. In fact, no other intergovernmental organisation has a payment rate of some 99%. The contributors have, of course, been even happier in the reverse situation, that is to say when the Funds have reimbursed considerable amounts out of surpluses on certain Major Claims Funds.

The Funds have, over the years, engaged a large number of experts in various fields: clean-up, fisheries and tourism to name but a few. The Funds have also set up local Claims Offices in a number of Member States and their staff members have worked very hard for many years and often under very difficult conditions. We have also engaged very eminent lawyers. I thank them all.

A special mention should be made of the International Tanker Owners' Pollution Federation (ITOPF) whose staff has served as technical advisers in the great majority of the incidents involving the Funds. Their extensive knowledge of oil pollution matters is unique and I thank them for their assistance and support.

Last but not least, my thanks go to all the members of the Funds' Secretariat, past and present. I am not sure that delegations realise the immense and important work that is carried out at all levels in the Secretariat, not only during meetings but throughout the whole year. I have enjoyed the privilege of having had a very qualified, knowledgeable and loyal staff. Without their full support I would not have been able to carry out the functions incumbent upon the Director. I thank them all.

After 22 years it is time for a change. I am pleased to hand over the post of Director to Mr Willem Oosterveen. Willem is well-known to all of us. He participated in Fund meetings for more than 10 years and he chaired the Executive Committee and the Assembly with great skill. He is highly respected by Governments and industry alike. I am sure that the Funds will be in good hands.

Willem, I can assure you that you have a challenging job ahead of you, demanding, difficult but never dull. You will often be under great pressure but I know that you will rise to the challenge. And you will have the benefit of working with an excellent staff. I wish you every success.

Let me conclude on a more personal note. The Fund Director's job is not a nine-to-five job. The workload is considerable and the major victim of that has been my family. I would like to express my sincere thanks to my wife, Margareta, whom many of you know, and who has been enormously supportive. Without her I would not have been able to carry out the task. And our children have also been victims. They have not been able to see me as much as I would have liked and, I hope, as much as they would have liked. They have never complained – at least not to me. I don't know what they have said to my wife! To Anna and Mårten, my sincere gratitude.

As many of you know, before joining the IOPC Funds as Director, I was Director General in the Swedish Ministry of Justice and would have continued my career as President of Division of the Court of Appeal in Stockholm. You may ask why I left that interesting and somewhat more protected career to take up the role of Chief Executive of an intergovernmental organisation with all the responsibilities which that entails. Some people would say I was silly or maybe naïve. However, I thought it would be interesting to meet new challenges. But in my case, there was something more, namely that I saw the chance of being able to participate in

international cooperation, bringing compensation to the innocent victims of oil pollution. If I have to some extent contributed to the achievement of this objective, I would be very satisfied.

When I took up the post of Director 22 years ago, I had no idea what I was getting into. Had I known, I doubt that I would have dared to do it. These have been challenging years. The work has been interesting, sometimes difficult, demanding but rewarding, challenging but never dull.

And, I must admit, I have enjoyed it most of the time. It has been a great privilege to serve the international community.'

37.2 The Director Elect, Mr Willem Oosterveen made the following intervention to the joint session of the governing bodies:

'Chairpersons, Excellencies, distinguished delegates, ladies and gentlemen.

I too would like to say a few words to mark this special occasion. Having heard a number of eminent speakers already I will try to be brief, although I realise that an announcement to be brief in our meetings usually is somewhat ominous.

Once more I would like to thank the Assembly for the confidence it put in me when I was elected, more than a year ago now. It was a long time ago, and it sometimes felt like being in the waiting room of my dentist: you know there is no escape and the waiting, combined with the prospect of the treatment you will undergo, is making you more and more nervous, if not downright scared. But a year has passed now and next Wednesday I will take over the responsibility for the IOPC Funds from Mans Jacobsson; by some peculiar coincidence exactly on my 50th birthday.

And what a birthday present this is! I am truly honoured to have been elected to occupy this position. I am encouraged by the challenges that lie ahead and the prospect of doing this complex and interesting job which enables me to do something really positive and useful for the international community and for victims of oil pollution damage in particular fills me with pride.

I also feel proud and honoured because apparently I was considered worthy of taking over the position from Måns Jacobsson, who has led the Funds for 22 years, an extraordinarily long time for a position of this kind. This clearly illustrates the importance he has had for the Organisations; an importance which is unprecedented and it seems impossible that it will ever be matched.

I would also like to express my sincere gratitude to Måns for the way he has, since my election, consistently involved me in all major decisions he had to take as a Director, especially where such decisions had consequences for the future. Måns, I have great respect for the way you have done that and I look forward to continuing our pleasant and efficient co-operation in the months to come.

It is my hope that I will succeed in being a Director for all Member States, whether they are big or small, and whether they are far away or close by. I also hope I can count on your advice and support, and I look forward to working with you all in a pleasant and constructive manner, for the benefit of the international community. But I especially hope to be a Director for all claimants; for those who have no choice but to rely on our support in case of a major oil spill.

I would also like to say a few words to the French-speaking delegations in their own language, not only to reassure them that I am convinced of the importance of the French language as an official language of the Organisations, but also to underline the importance of the role of French-speaking States in the operations of the Funds. Unfortunately France has for many years been one of the major “customers” of the Organisations and I sincerely hope that in a few

years time this situation will have changed. Nevertheless I am looking forward with great pleasure to working with France as well as with the other French-speaking States[<4>].

I would like to say the same to the Spanish speaking delegations. Spain as well as other Spanish speaking States has unfortunately suffered major oil spills in recent history. Although we like to believe that the magnitude of the consequences of such an incident is clear to us, I am convinced that it is only when you personally experience a major oil spill actually threatening your livelihood that you fully understand the impact of such an incident. The perspective of the people affected and of the State involved changes dramatically at that moment and the Funds will do their utmost to take that into account when dealing with major spills[<5>].

For almost two months now I have had the privilege of being a staff member of the IOPC Funds. With the sign of 'Director-Elect' on my door I felt a bit superfluous in the beginning to be honest. But I felt truly welcomed as a colleague and that feeling of being superfluous changed quickly. There is no doubt that I still have many things to learn, but I am confident that with the help of a Secretariat as competent as that of the IOPC Funds and with the people in the Secretariat being as kind as they are, I have every reason to look at the future with confidence.'

37.3 Speaking on behalf of the Swedish delegation, His Excellency Mr Staffan Carlson, Ambassador of Sweden, stated that the IOPC Fund Assembly had made an important choice when they appointed Måns Jacobsson to be the second Director of the Fund. He referred to the fact that, when taking up the post of Director in January 1985, Mr Jacobsson was already a well-known lawyer in international maritime law circles and had for many years represented Sweden in several international bodies, such as IMO and the IOPC Fund. He stated that during Mr Jacobsson's leadership for over 20 years, the Funds had become prominent and well-known actors in the international work to combat environmental damage. He suggested that the fact that there were at present some 100 Fund Member States, with more expected to join, demonstrated the high degree of confidence with which the Funds' activities were regarded. He made the point that Mr Jacobsson had, together with Member States, worked tirelessly to achieve improvements in the international compensation system. The Ambassador stated that Mr Jacobsson's ambition had always been to help the person behind the headlines, the fisherman, the farmer and the small businessman who, without financial assistance, would face a hard future. He expressed the view that Mr Jacobsson had done his utmost to have the Fund live up to its objective of providing speedy and adequate compensation to victims of oil pollution damage, taking also into account the interests of Member States and of the Funds' contributors. He stated that a professional claims handling procedure and sound and responsible management had characterised his leadership and this had benefited victims, contributors and Member States. The Ambassador suggested that one sign of the high confidence placed in Mr Jacobsson by Member States was the fact that he had been re-elected four times as Director. The Ambassador said that Mr Jacobsson had, of course, served his country no more than he had served any other Member States and that his work reflected not only on the Organisations but also, to some extent, on his own country. The Ambassador concluded by wishing the Director-Elect, Mr Willem Oosterveen, every success as he assumed the responsibilities as Director of the IOPC Funds.

37.4 Speaking on behalf of the Dutch delegation, His Excellency Count Jan M V A de Marchant et d'Ansembourg, Ambassador of The Netherlands, expressed his appreciation for the very considerable contribution which Mr Jacobsson had made to the work of the IOPC Funds. He reiterated the Swedish Ambassador's comments that Mr Jacobsson had accompanied the growth of the Funds for the last 22 years during which time it had attained almost universal membership and had played a crucial role in the prevention and follow-up of maritime disasters. He said that Mr Jacobsson had shown his excellent skills in addressing the needs for changes in the IOPC Funds and should be seen as a major contributor to the success of the Funds. He wished Mr Jacobsson a well deserved retirement. He expressed his welcome to his fellow countryman, Mr Willem Oosterveen, and said that the delegation of The Netherlands would respect

<4> This paragraph was delivered in French.
<5> This paragraph was delivered in Spanish

Mr Oosterveen's pledge not to seek or accept instructions in regard to the performance of his duties, whilst at the same time pledging its support to him in his duties and wishing him every success.

37.5 The representative of the Government of the United Kingdom and Northern Ireland, the host Government, stated that the high esteem in which Mr Jacobsson was held had been earned by hard work over the many years during which he had led the IOPC Funds. He said that Mr Jacobsson had always taken a balanced and pragmatic view, ensuring that all Member States were treated equally, with respect and impartiality. He expressed the view that a special, open relationship had developed between the host Government not only with the outgoing Director but also with key members of the Secretariat and he hoped that this sense of closeness was reciprocated and that it would continue in the years ahead under Mr Oosterveen' leadership. On behalf of the United Kingdom Government, he thanked Mr Jacobsson for the significant contribution which he had made to the IOPC Funds and for always maintaining the highest possible standards throughout his long period of office. He finished by wishing him well in retirement.

37.6 Representatives of many Member States and Observer delegations took the floor to express their appreciation and gratitude to Mr Jacobsson on the occasion of his retirement.

37.7 Attention was drawn to Mr Jacobsson's exemplary commitment to finding solutions that would enable victims of oil pollution – and particularly the small claimants - to receive rapid compensation and to his ability to find new and innovative solutions to difficult situations. Delegations spoke of his unique knowledge of the legal aspect of the Funds, of his extraordinary recollection of precedents and of his wisdom, his impartiality and a deeply-embedded fairness and sense of what was right and wrong. Reference was made to these qualities being combined with an unquenchable appetite for challenge. His ability to reconcile the legitimate demands of victims with the interests of industry and the Member States which are the most involved in sea transport was also mentioned.

37.8 Appreciation was expressed for his recognition of the fact that the Funds needed to be present on the ground, not only to promote membership of the Funds around the world but also in times of crisis to put in place a dialogue with victims. He was also thanked for his tireless efforts, perseverance and help in developing national legislation and for the efforts he had made to expand the use of French and Spanish as official languages.

37.9 Delegations drew attention to the fact that he had recognised that the compensation regime needed to develop in order to continue to meet the needs of society and in this context particular mention was made of the establishment of the Supplementary Fund to ensure the full compensation of victims to which he had contributed. Mention was also made of the creation of the Audit Body which had been his initiative and which ensured transparency in the functioning of the Funds as well as of his commitment to the elaboration of the STOPIA and TOPIA agreements.

37.10 All delegations wished Mr Jacobsson good health and happiness in his retirement and expressed their warmest wishes to the Director-Elect, Mr Willem Oosterveen, and pledged their support to him.

37.11 The Chairpersons of the 1992 Fund Assembly, the 1992 Fund Executive Committee, the 1971 Fund Administrative Council and the Supplementary Fund Assembly also paid tribute to Mr Jacobsson's leadership as Director of the Funds and to his very important contribution to the development of the international compensation regime.

38 Adoption of the Record of Decisions

The draft Record of Decisions of the Assembly, as contained in document 92FUND/A.11/WP.1, was adopted, subject to certain amendments. The Director and the Director Elect were instructed to prepare in consultation with the Chairman the Record of Decisions as regards section 37.

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ANNEX

2007 ADMINISTRATIVE BUDGET FOR 1992 FUND

	STATEMENT OF EXPENDITURE	Actual 2005 expenditure for 1992 and 1971 Funds		2005 budget appropriations for 1992 and 1971 Funds		2006 budget appropriations for 1992 Fund	2007 budget appropriations for 1992 Fund
	SECRETARIAT	£		£		£	£
I	**Personnel**						
(a)	Salaries	*1 223 974*		*1 306 900*		1 385 300	1 433 650
(b)	Separation and recruitment	*10 522*		*105 000*		125 000	35 000
(c)	Staff benefits, allowances and training	*423 949*		*566 000*		576 200	573 700
	Sub-total		***1 658 445***		***1 977 900***	**2 086 500**	**2 042 350**
II	**General Services**						
(a)	Rent of office accommodation (including service charges and rates)	*255 199*		*259 200*		287 400	280 400
(b)	Office machines, including maintenance	*71 492*		*90 000*		110 000	110 000
(c)	Furniture and other office equipment	*7 212*		*17 500*		17 500	17 500
(d)	Office stationery and supplies	*10 456*		*22 000*		22 000	22 000
(e)	Communications (courier,telephone, postage, e-mail/internet)	*57 250*		*70 000*		68 000	68 000
(f)	Other supplies and services	*33 022*		*51 000*		47 500	37 500
(g)	Representation (hospitality)	*19 377*		*20 000*		25 000	25 000
(h)	Public Information	*115 617*		*180 000*		180 000	180 000
	Sub-total		***569 625***		***709 700***	**757 400**	**740 400**
III	**Meetings**						
	Sessions of the 1992 and 1971 Fund Governing Bodies and Intersessional Working Groups		***151 598***		***145 000***	**150 000**	**200 000**
IV	**Travel**						
	Conferences, seminars and missions		***108 791***		***125 000***	**160 000**	**160 000**
V	**Miscellaneous expenditure**						
(a)	External audit fees for IOPC Funds	*55 000*		*55 000*		60 500	60 500
(b)	Consultants' fees	*169 743*		*180 000*		180 000	180 000
(c)	Audit Body	*89 048*		*90 000*		110 000	110 000
(d)	Investment Advisory Bodies	*30 000*		*30 000*		37 500	37 500
	Sub-total		***343 791***		***355 000***	**388 000**	**388 000**
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		***27 449***		***60 000***	**60 000**	**60 000**
Total Expenditure I-VI			***2 859 699***		***3 372 600***	**3 601 900**	**3 590 750**
	Total Expenditure I-VI excluding External Audit fees for IOPC Funds					**3 541 400**	**3 530 250**
VII	**Due from 71Fund**						
	Management fee payable to 1992 Fund by 1971 Fund		***325 000***		***325 000***	**(275,000)**	**(275,000)**
VIII	**Due from Supplementary Fund**						
	Management fee payable to 1992 Fund by Supplementary Fund					**(70,000)**	**(70,000)**
	1992 Fund Budget Appropriation excluding External audit fee for IOPC Funds					**3 196 400**	**3 185 250**
	1992 Fund Budget Appropriation including External audit fee for 1992 Fund only					**3 243 400**	**3 232 250**