



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ADMINISTRATIVE COUNCIL
2nd session
ASSEMBLY
11th extraordinary session
Agenda item 8

92FUND/AC.2/A/ES.11/8
25 May 2006
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RECORD OF DECISIONS OF THE SECOND SESSION OF THE ADMINISTRATIVE COUNCIL

ACTING ON BEHALF OF THE 11TH EXTRAORDINARY SESSION OF THE ASSEMBLY

(held on 22 May and 25 May 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

0.1 It was noted that the Assembly's Chairman had attempted to open the 11th extraordinary session of the Assembly at 9.45 am on Monday 22 May 2006, but that the Assembly had failed to achieve a quorum.

0.2 Only the following 40 Member States of the 1992 Fund had been present at that time, whereas a quorum required 48 States to have been present:

Algeria	Ghana	Norway
Antigua and Barbuda	Greece	Panama
Argentina	India	Poland
Australia	Italy	Portugal
Bahamas	Japan	Republic of Korea
Cameroon	Latvia	Russian Federation
Canada	Liberia	Singapore
China (Hong Kong Special Administrative Region)	Malaysia	South Africa
Colombia	Malta	Spain
Denmark	Mexico	Turkey
Finland	Monaco	United Kingdom
France	Morocco	Uruguay
Germany	Netherlands	Venezuela
	Nigeria	

0.3 It was recalled that at its 7th session the Assembly had adopted 1992 Fund Resolution N°7 whereby, whenever the Assembly failed to achieve a quorum, the Administrative Council established under Resolution N°7 should assume the functions of the Assembly, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions.

0.4 In view of the fact that no quorum was achieved, the Chairman had concluded the Assembly meeting.

- 0.5 In accordance with Resolution N°7, the items of the Assembly's agenda were therefore dealt with by the Administrative Council.
- 0.6 It was recalled that, at its 1st session in May 2003, the Administrative Council had decided that the Chairman of the Assembly should *ex officio* be the Chairman of the Council (document 92FUND/AC.1/A/ES.7/7, paragraph 2).
- 0.7 The Administrative Council noted that due to ill health the Director had, for the first time in 21 years, been unable to attend the session and that the Deputy Director had assumed the function of Acting Director.
- 0.8 The Council sent the Director its very best wishes and hoped that he would make a speedy recovery.

Procedural matters

1 Adoption of the Agenda

The Administrative Council adopted the Agenda as contained in document 92FUND/A/ES.11/1.

2 Examination of credentials

- 2.1 The Administrative Council recalled that the Assembly had, at its March 2005 session, 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.
- 2.2 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.
- 2.3 The following Member States were present:

Algeria	Germany	Nigeria
Antigua and Barbuda	Ghana	Norway
Argentina	Greece	Panama
Australia	India	Poland
Bahamas	Israel	Portugal
Belgium	Italy	Republic of Korea
Cameroon	Japan	Russian Federation
Canada	Latvia	Singapore
China (Hong Kong Special Administrative Region)	Liberia	South Africa
Colombia	Malaysia	Spain
Denmark	Malta	Sweden
Dominican Republic	Marshall Islands	Turkey
Finland	Monaco	United Kingdom
France	Mexico	Uruguay
Gabon	Morocco	Venezuela
	Netherlands	

- 2.4 After having examined the credentials of the delegations the Credentials Committee reported in document 92FUND/A/ES.11/2/1 that all except five of the above-mentioned members of the Assembly had submitted credentials which were in order. The Committee reported orally that two of these delegations had subsequently submitted credentials which were in order and that the

credentials in respect of Cameroon, Israel and Malaysia were accepted provisionally pending correction of the deficiencies set out in the report ^{<1>}.

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

Brazil	Ecuador	Saudi Arabia
Chile	Peru	

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

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1971 (1971 Fund)
International Oil Pollution Compensation Supplementary Fund (Supplementary Fund)

International non-governmental organisations:

International Association of Classification Societies Ltd (IACS)
International Association of Independent Tanker Owners (INTERTANKO)
International Tanker Owners Pollution Federation Ltd (ITOPF)
International Union of Marine Insurers (IUMI)
Oil Companies International Marine Forum (OCIMF)

Treaty matters

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

3.1 The Administrative Council took note of the information contained in document 92FUND/A/ES.11/3 concerning the ratification situation in respect of the 1992 Fund Convention and the Supplementary Fund Protocol.

3.2 It was noted that at the end of the session there were 94 Member States of the 1992 Fund and that four more States would become Members by the end of 2006.

3.3 It was noted that sixteen 1992 Fund Member States were Members of the Supplementary Fund.

3.4 It was noted that the Supplementary Fund Protocol would enter into force for Slovenia on 3 June 2006 and for Latvia on 18 July 2006.

Secretariat and Headquarters matters

4 Headquarters Agreement

4.1 The Administrative Council noted that consultations were taking place between the United Kingdom Government and the Director concerning the texts of a new Headquarters Agreement between the United Kingdom Government and the 1992 Fund and of a Headquarters Agreement between the Government and the Supplementary Fund.

4.2 The Administrative Council further noted that in January and February 2006 meetings had been held between the Director and representatives of the United Kingdom Government and that agreement had been reached on a number of points.

^{<1>} Note by the Acting Director: These deficiencies had not been rectified when the final version of this Record of Decisions was issued.

Immunities

- 4.3 It was recalled that under the 1992 Fund Headquarters Agreement, the Director (unless he or she 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 or her in the exercise of his or her functions and in respect of acts outside these functions.
- 4.4 It was also recalled that IOPC Funds' staff members other than the Director had immunity from jurisdiction in respect of acts done by them in the exercise of their functions, except in respect of motor traffic offences or damage caused by a motor vehicle driven by a staff member, but did not have any immunity in respect of acts outside their functions.
- 4.5 The Administrative Council noted that as regards the International Maritime Organization (IMO), the wider immunity referred to in document 92FUND/A.ES/11/4 paragraph 3.1 was enjoyed by the Secretary-General and six Directors at grade D2 level.
- 4.6 The Administrative Council further noted that the United Kingdom Government had indicated that it was prepared to grant the wider immunity also to the IOPC Funds' Deputy Director (unless he or she was a national or a permanent resident of the United Kingdom).
- 4.7 The Administrative Council noted that the Director had considered that the extension of the wider immunity to the Deputy Director offered by the United Kingdom Government was satisfactory since the IOPC Funds' Secretariat was considerably smaller than that of IMO.

Taxes

- 4.8 The Administrative Council recalled that under the 1992 Fund's Headquarters Agreement, the Director was exempt not only from income tax but also from certain indirect taxes, in particular local taxes, customs duties on imported articles and duties and VAT on petrol, but that other Fund staff members were only exempt from income tax.
- 4.9 It was noted that as regards IMO, all professional staff were exempt from indirect taxes unless they were United Kingdom citizens or permanently resident in the United Kingdom.
- 4.10 It was further noted that in the discussion with the United Kingdom Government the Director had proposed that the professional staff of the IOPC Funds (other than British citizens or staff permanently resident in the United Kingdom) should be given the same benefits in respect of exemption from certain taxes other than income tax as are enjoyed by IMO professional staff.
- 4.11 The Administrative Council noted that the United Kingdom Government had indicated that it was prepared to extend the exemption from certain taxes other than income tax only to the Deputy Director.
- 4.12 The Administrative Council further noted that the United Kingdom Government had pointed out that the professional staff at IMO enjoyed exemption from indirect taxes because IMO was a United Nations Specialised Agency, which had its Headquarters in the United Kingdom, and that the provisions of the IMO Headquarters Agreement were, in substance, in conformity with the Convention on the Privileges and Immunities of the Specialised Agencies of the United Nations, signed in 1947, under which the Government already accorded certain immunities and privileges to that Organisation.

Further consultations

- 4.13 The Administrative Council noted that further consultations would take place with the United Kingdom Government with a view to reaching a provisional agreement on a revised text for consideration by the 1992 Fund Assembly at its October 2006 session.

5 Premises for the IOPC Funds' Secretariat

The issue

- 5.1 The Administrative Council took note of the information contained in document 92FUND/A/ES.11/5 regarding the premises of the IOPC Funds' Secretariat. It was noted in particular 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 before June 2010 and had offered to cover all costs in relation to finding suitable alternative premises and to pay relocation costs.

Landlords' offer

- 5.2 The Administrative Council noted that the IOPC Funds currently enjoyed the benefits of excellent office accommodation. The Administrative Council also noted that, in the Director's view, the Funds had therefore no reason in principle to terminate the present lease before June 2010. It was noted however that since there were only four years remaining on the lease, the Director was of the view that it would be worth considering accepting the landlords' request if appropriate alternative premises could be obtained covered by a lease of 10 to 15 years and provided that the economic conditions offered by the present landlords were acceptable from the Funds' and the United Kingdom Government's points of view.
- 5.3 The Administrative Council noted that the landlords had offered to cover all costs in relation to finding suitable alternative premises and to pay relocation costs, the amount of which to be agreed with the Director in consultation with the United Kingdom Government.
- 5.4 The Administrative Council also noted that the Director was of the view that the landlords would have to cover all costs incurred by the Funds resulting from the move to new premises, including removal costs, fitting-out and decoration. It was further noted that the present landlords would also need to reach agreement with the Funds in respect of the issue of the rent level for the new premises, wherever located, which was expected to be higher per square foot than the rent payable for the present premises, even after the anticipated rent increase on the latter in the light of the review currently being undertaken.
- 5.5 The Administrative Council further noted that the United Kingdom Government had been assisting the IOPC Funds in attempts to secure alternative office premises and had indicated that it would continue to refund 80% of the rent relating to the offices of the IOPC Funds as well as continuing to subsidise the rates, as was customary for Diplomatic Missions.

Search for alternative premises

- 5.6 The Administrative Council noted that the IOPC Funds had engaged consultants to identify suitable premises, including office space available in the new office buildings close to Portland House.
- 5.7 The Administrative Council also noted that the Director, in consultation with the Director-Elect, had identified the following criteria for the selection of premises:
- the new premises should be located reasonably close to the building of the International Maritime Organization (IMO), so as to enable the IOPC Funds to continue to use the conference facilities of IMO;
 - the office space should be sufficient to accommodate the needs of the IOPC Funds for at least the next 10 to 15 years, including accommodation of the HNS Fund, if it were to be decided that the IOPC Funds and the HNS Fund should have a joint Secretariat;
 - the premises should provide a good working environment for staff and enable the Secretariat to carry out its work in an efficient manner;

- the location should allow easy access for visitors using public transport;
- the premises should provide an appropriate level of security.

5.8 It was further noted that, given the above criteria and subject to the instruction by the 1992 Fund Assembly, the Director intended to concentrate the search for new premises in the Victoria area.

Contractual arrangements

5.9 The Administrative Council noted that, if the IOPC Funds were to move to new premises, some contractual issues would arise.

5.10 It was noted that the lease should be entered into on behalf of the 1992 Fund only, since the 1992 Fund Secretariat administered not only the 1992 Fund but also the 1971 Fund and the Supplementary Fund. It was also noted that, as was the case in respect of the previous lease, the United Kingdom Government might be requested by the landlords to act as a guarantor for the 1992 Fund.

Time scale

5.11 The Administrative Council noted that it had become clear that, if suitable alternative premises were found, a rapid decision would have to be taken to enter into a contract in order to secure these premises since there was great demand for office space in a good location in London. The Council also noted that it was likely, therefore, that there would not be sufficient time to submit the issue to the 1992 Fund Assembly for a specific decision.

Decision by the Administrative Council

5.12 The 1992 Fund Administrative Council 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.

5.13 The 1992 Fund Administrative Council also authorised the Director, in consultation with the Director-Elect and the Chairman of the 1992 Fund Assembly, to take the necessary decisions in respect of relocation of the IOPC Funds' offices from Portland House, provided that the United Kingdom Government agreed to the rent and other financial arrangements and to the duration of the lease.

Other matters

6 Co-operation with P&I Clubs

6.1 It was recalled that at their February/March 2006 sessions the Assemblies of the 1992 Fund and the Supplementary Fund had approved a Memorandum of Understanding between these Funds and the International Group of P&I Clubs regarding joint claims settlement procedures and the undertakings by the Clubs in respect of the new voluntary arrangements of STOPIA and TOPIA. It was further recalled that the Assembly had authorised the Director to agree minor editorial amendments to the text with the International Group and to sign the Memorandum on behalf of the Funds (document 92FUND/A/ES.10/18, paragraph 14.2 and SUPPFUND/A/ES.2/9, paragraph 9.2).

6.2 The Administrative Council noted that the Director had reached agreement with the International Group on editorial amendments to Clauses 9B, 10D and 10F to ensure consistency with other provisions.

6.3 The Administrative Council also noted that the Director and the Chairman of the International Group of P&I Clubs had signed the Memorandum (cf Annex to document 92FUND/A/ES.11/6) on 19 April 2006.

- 6.4 One delegation queried the amendment to the last sentence of Clause 10F in the Memorandum of Understanding, which prevented the Supplementary Fund from making a claim against the Clubs if the Supplementary Fund had previously received notice, whether under Clause 10D or otherwise, of a Ship's non-entry (or cesser of entry) in TOPIA. That delegation stated that it had understood that any Relevant Ship owned by a Participating Owner would automatically be entered in STOPIA and TOPIA. The Legal Counsel explained that on the basis of legal advice the International Group had decided that it was necessary to allow a Participating Owner the option of not becoming a party to STOPIA and TOPIA. The Acting Director recalled that the arrangement under STOPIA and TOPIA was very similar to that under the old TOVALOP Supplement, although in fact very few shipowners had elected not to become parties to the TOVALOP Supplement. The delegation that queried the amendment of Clause 10F noted that the observer delegation of the International Group of P&I Clubs was not present and stated that further clarification should be sought from the Clubs at some future session.
- 6.5 The Administrative Council recalled that the Assembly had instructed the Director to undertake discussions with the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) on whether there was a need to supplement the new Memorandum of Understanding between the two Funds and the International Group of P&I Clubs with an exchange of letters between the 1992 Fund and the Supplementary Fund and JPIA.
- 6.6 It was recalled that for many years the 1971 Fund had been involved in a number of incidents in Japan involving small coastal tankers where the limitation amount was very low and as a result of which the cost of establishing the limitation fund would have been disproportionately high. The Administrative Council also recalled that, in the 1980 Memorandum of Understanding, JPIA had guaranteed the payment of the limitation amount, as a result of which the 1971 Fund Executive Committee had on a number of occasions waived the requirement for a limitation fund to be established. The Council further recalled that a similar undertaking had been made in the exchange of letters between JPIA and the 1992 Fund but that so far no incidents involving the 1992 Fund had occurred where this undertaking had applied.
- 6.7 The Administrative Council noted that the Director General of JPIA and the Director of the IOPC Funds had agreed that, in view of the fact that the present limitation amount for small tankers of SDR 4.51 million (£3.7 million) seemed to be sufficient for most potential spills by Japanese coastal tankers, there was no need for an exchange of letters between JPIA and the 1992 Fund to supplement the 2006 Memorandum.

7 Any other business

7.1 Observer Status

The Administrative Council decided to grant observer status to the International Association of Classification Societies Ltd (IACS).

7.2 Legal Counsel

The Acting Director informed the Administrative Council that the Legal Counsel, Mr Masamichi Hasebe, would leave the IOPC Funds at the end of June after five years with the Funds. The Chairman, on behalf of himself and the Administrative Council, thanked Mr Hasebe for his contribution to the work of the IOPC Funds and extended his best wishes for the future.

7.3 Contributions

The Gabon delegation apologised to the governing bodies for its failure to submit oil reports and stated that it was the intention of the Government of Gabon to correct the situation as soon as possible and to play its full part in the activities of the 1971 Fund and 1992 Fund in the future. That delegation explained that Gabon was an oil exporter and that it was therefore unlikely that there would have been any outstanding contributions to the 1971 Fund and the 1992 Fund.

8 **Adoption of the Record of Decisions**

The draft Record of Decisions, as contained in document 92FUND/AC.2/A/ES.11/WP.1, was adopted, subject to certain amendments.
