



INTERNATIONAL
OIL POLLUTION
COMPENSATION
SUPPLEMENTARY
FUND

ASSEMBLY
2nd session
Agenda item 26

SUPPFUND/A.2/23
27 October 2006
Original: ENGLISH

RECORD OF DECISIONS OF THE SECOND SESSION OF THE ASSEMBLY

(held from 24 to 27 October 2006)

Chairman: Captain Esteban Pacha (Spain)

Opening of the session

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document SUPPFUND/A.2/1.

2 Election of the Chairman and the two Vice-Chairmen

2.1 The present Chairman, Captain Esteban Pacha (Spain), informed the Assembly that he had been elected as Director of the International Mobile Satellite Organization (IMSO) and for that reason would not be available to Chair future sessions of the Assembly.

2.2 The Chairman pointed out that the First Vice-Chairman, Mr Nobuhiro Tsuyuki, had been appointed Legal Counsel within the IOPC Funds' Secretariat and would no longer represent Japan at the Supplementary Fund Assembly sessions, and that therefore, a new Vice-Chairman would need to be elected.

2.3 The Assembly decided to postpone the election of the Chairman and Vice-Chairmen until the end of the current session.

Present session

2.4 The Assembly decided to elect Captain Pacha to Chair the current session of the Assembly.

Future sessions

2.5 The Assembly elected the following delegates to hold office after the present session until the next regular session of the Assembly:

Chairman:	Mr Giancarlo Olimbo (Italy)
First Vice-Chairman:	Mrs Birgit Sjølling Olsen (Denmark)
Second Vice-Chairman:	Mr. Hidetoshi Ohno (Japan)

2.6 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 following Member States were present:

Belgium	Italy	Portugal
Denmark	Japan	Spain
Finland	Latvia	Sweden
France	Lithuania	United Kingdom
Germany	Netherlands	
Ireland	Norway	

The Assembly took note of the information given by the Director that all Member States participating had submitted credentials which were in order.

3.2 The following States which were Members of the 1992 Fund but not of the Supplementary Fund were represented as observers:

Algeria	Ghana	Philippines
Antigua and Barbuda	Greece	Poland
Argentina	Israel	Republic of Korea
Australia	Liberia	Russian Federation
Bahamas	Malaysia	Singapore
Cameroon	Malta	Sri Lanka
Canada	Marshall Islands	Turkey
China (Hong Kong Special Administrative Region)	Mexico	United Arab Emirates
Colombia	Monaco	Uruguay
Cyprus	Morocco	Vanuatu
Estonia	New Zealand	Venezuela
Gabon	Nigeria	
	Panama	

3.3 The following States which had observer status with the 1992 Fund were represented as observers:

Brazil	Peru
Ecuador	Saudi Arabia

3.4 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 Fund 1992
 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 Tanker Owners Pollution Federation Ltd (ITOPF)

International Union of Marine Insurance (IUMI)
Oil Companies International Marine Forum (OCIMF)
General review

4 Report of the Director

- 4.1 The Director introduced his report on the activities of the Supplementary Fund since the Assembly's 1st extraordinary session in October 2005, contained in document SUPPFUND/A.2/2. 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 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).
- 4.5 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.
- 4.6 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 Supplementary Fund.
- 4.7 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.

Treaty matters

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

- 5.1 The Assembly took note of the information contained in document SUPPFUND/A.2/3 concerning the ratification situation in respect of the Supplementary Fund Protocol and the 1992 Fund Convention. It was noted that at the time of the session there were nineteen Member States of the

Supplementary Fund 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.

- 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.

6 Application of the Supplementary Fund Protocol to the EEZ or an area designated under Article 3(a)(ii) of the Protocol

The Assembly took note of the information in document SUPPFUND/A.2/4 as regards Member States which had provided information on the establishment of an EEZ or designated area under Article 3(a)(ii) of the Supplementary Fund Protocol.

Financial matters

7 Report of the joint Investment Advisory Body

- 7.1 The Assembly took note of the report of the joint Investment Advisory Body (IAB) of the Supplementary Fund, the 1992 Fund and the 1971 Fund contained in the Annex to document SUPPFUND/A.2/5.
- 7.2 The Assembly noted that the IAB, as in previous years, had held meetings with representatives of the External Auditor and with the Audit Body.
- 7.3 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.
- 7.4 The Assembly also took note of the IAB's objectives for the coming year.
- 7.5 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.
- 7.6 The Assembly expressed its gratitude to the members of the joint Investment Advisory Body for their valuable work.

8 Financial Statements and Auditor's Opinion

- 8.1 The Director introduced document SUPPFUND/A.2/6 containing the Financial Statements of the Supplementary Fund for the nine month period ending December 2005 and the External Auditor's Opinion thereon.
- 8.2 A representative of the External Auditor, Mr Graham Miller, Director International, introduced the Auditor's Opinion.
- 8.3 The Assembly noted that as this was the first audit of the Supplementary Fund and due to the low level of activity in the audit period there was no Report produced.
- 8.4 The Assembly noted the Opinion contained in Annex III to document SUPPFUND/A.2/6, 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.

- 8.5 The representative of the External Auditor commended the Fund on the rigor with which it maintained its financial records.
- 8.6 The Assembly noted in particular that, as set out in the External Auditor's report to the 1992 Fund Assembly's 11th session, 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.

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

- 9.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document SUPPFUND/A.2/7 containing the joint Audit Body's Report.
- 9.2 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.
- 9.3 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 10 below).
- 9.4 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 Supplementary Fund Assembly.
- 9.5 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.
- 9.6 Mr Coppolani referred to the anonymous allegations as set out in paragraph 8.6 above and stated that the Audit Body had noted with satisfaction the External Auditor's findings, as set out in his report to the 1992 Fund Assembly's 11th session, that after a thorough investigation he had not found any evidence of impropriety.
- 9.7 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.
- 9.8 Mr Coppolani explained that the Audit Body had continued to monitor the risk management process which had been adopted by the Secretariat.

- 9.9 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.
- 9.10 The Assembly noted the Audit Body's recommendation that the governing bodies should approve the accounts of the Supplementary Fund for the period 1 January – 31 December 2005.
- 9.11 The Assembly approved the accounts of the Supplementary Fund for the financial period 1 January - 31 December 2005.
- 9.12 The Assembly expressed its gratitude for the important work being carried out by the Audit Body.
- 9.13 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.

10 Appointment of External Auditor

- 10.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document SUPPFUND/A.2/8 submitted by the Audit Body.
- 10.2 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.
- 10.3 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.
- 10.4 Mr Coppolani explained that the document which the Audit Body had prepared for these sessions (document SUPPFUND/A.2/8) 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.
- 10.5 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.

- 10.6 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.
- 10.7 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.
- 10.8 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.
- 10.9 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.
- 10.10 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.
- 10.11 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.
- 10.12 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.
- 10.13 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.

Contributions matters

11 Submission of oil reports

- 11.1 The Assembly noted that all Supplementary Fund Member States had submitted their oil reports for 2004, as set out in document SUPPFUND/A.2/9.
- 11.2 The Assembly noted that the failure of a number of Member States to submit oil reports to the 1992 Fund and the 1971 Fund 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.
- 11.3 The Assembly noted the information contained in document SUPPFUND/A.2/9/1, which reported on the implementation of measures encouraging the submission of oil reports.
- 11.4 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 would raise the matter with the Secretary-General to explore any ways in which IMO could assist the Funds in obtaining the outstanding reports
- 11.5 The Assembly instructed the Director to continue to bring the matter of the submission of oil reports to its attention at each regular session.

Secretariat and Headquarters matters

12 Operation of the Secretariat

- 12.1 The Assembly took note of the information contained in document SUPPFUND/A.2/10 regarding the operation of the Secretariat.
- 12.2 The Assembly recalled that at its October 2005 session the 1992 Fund Assembly 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.
- 12.3 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.
- 12.4 The Assembly noted that the work on strengthening financial controls had continued.
- 12.5 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.
- 12.6 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.
- 12.7 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.

- 12.8 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.
- 12.9 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.
- 12.10 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.
- 12.11 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.
- 12.12 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.
- 12.13 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.

13 Headquarters Agreement

- 13.1 The Assembly took note of the information contained in document SUPPFUND/A.2/11 regarding the preparation of a Headquarters Agreement between the United Kingdom Government and the Supplementary Fund and a revision of the Headquarters Agreement between the United Kingdom Government and the 1992 Fund.
- 13.2 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.

- 13.3 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 Headquarters Agreement between the United Kingdom and the Supplementary Fund as set out in Annex II to document SUPPFUND/A.2/11.
- 13.4 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.
- 13.5 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.
- 13.6 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.
- 13.7 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.
- 13.8 The Assembly approved the text of the revised Headquarters Agreement between the Government of the United Kingdom and the Supplementary Fund as contained in Annex II of document SUPPFUND/A.2/11.

14 Agreement of co-operation with the International Maritime Organization

The Assembly took note of the information contained in document SUPPFUND/A.2/12 regarding an agreement with the International Maritime Organization (IMO) on an extension of the scope of the Agreement and License to occupy and the Underlease relating to the Funds' occupancy in the IMO building to cover also the activities of the Supplementary Fund.

15 Premises for the IOPC Funds' Secretariat

- 15.1 The Assembly took note of the information contained in document SUPPFUND/A.2/13 regarding the premises for the IOPC Funds' Secretariat in Portland House.
- 15.2 The Assembly recalled that at the session of the Supplementary Fund Assembly, 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.
- 15.3 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).
- 15.4 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.
- 15.5 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.
- 15.6 The Assembly noted that the 1992 Fund Assembly had at its 11th session 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.

16 Review of observer status

- 16.1 The Assembly noted that at its 7th session, held in October 2002, the 1992 Fund Assembly 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.
- 16.2 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 the October sessions and had reported to the governing bodies which in turn had endorsed the group's recommendations.
- 16.3 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.
- 16.4 The Assembly noted the information set out in Annex II to document SUPPFUND/A.2/14 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.
- 16.5 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.

- 16.6 The Assembly took note of the information contained in Annex III to document SUPPFUND/A.2/14 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, the information submitted by IACS at that time was still relevant.
- 16.7 The Assembly also noted the information contained in paragraphs 4.5 – 4.11 of document SUPPFUND/A.2/14 regarding contacts between the Director and other members of the Secretariat and a number of the international non-governmental organisations having observer status.
- 16.8 The Assembly noted that, in accordance with a decision taken at its October 2002 session, the 1992 Fund Assembly had decided at its 11th session 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.
- 16.9 The Assembly noted that the 1992 Fund Assembly had decided upon the composition of the group as follows:

France
Latvia
Nigeria
United Kingdom
Uruguay

- 16.10 The Assembly also noted that the group, chaired by Uruguay, had held a meeting during the October 2006 session and had made the following unanimous recommendations to the 1992 Fund Assembly:

The group considered the information about non-governmental organisations having observer status provided in document SUPPFUND/A.2/14.

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.

- 16.11 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.
- 16.12 The Assembly noted that at its 11th session the 1992 Fund Assembly had endorsed the group's recommendations.

Compensation matters

17 Incidents

The Assembly noted that, since the Supplementary Fund Protocol had entered into force on 3 March 2005, there had, at the time of the session, been no incidents which would or might involve the Supplementary Fund (document SUPPFUND/A.2/15).

Budgetary matters

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

- 18.1 It was recalled that at their March 2005 sessions, the governing bodies of the Supplementary Fund, the 1992 Fund and the 1971 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 flat management fees to the 1992 Fund.
- 18.2 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.
- 18.3 The Assembly approved the Director's proposal that for 2007 the Supplementary Fund should pay a flat management fee of £70 000 to the 1992 Fund.
- 18.4 It was noted that the Assembly of the 1992 Fund and the Administrative Council of the 1971 Fund had agreed, at their 11th session and 20th session respectively, to the apportionment of joint administrative costs set out in paragraph 18.3.

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

- 19.1 The Assembly noted that the draft budget for 2007 for the administrative expenses for the joint Secretariat adopted by the 1992 Fund Assembly totalled £3 590 750 (including external auditor fees for the three Funds).
- 19.2 The Assembly considered the draft 2007 Budget for the administrative expenses of the Supplementary Fund as proposed by the Director in document SUPPFUND/A.2/17.

- 19.3 The Assembly adopted the budget for 2007 for the administrative expenses of the Supplementary Fund with a total of £85 000 (including the management fee of £70 000 payable to the 1992 Fund), as reproduced in the Annex to this document.
- 19.4 The Assembly decided to maintain the working capital at £1 million as decided at the October 2005 session of the Assembly (document SUPPFUND/A/ES.1/21, paragraph 18).
- 19.5 The Assembly noted the application of the capping procedure set out in document SUPPFUND/A.2/17/1.
- 19.6 The Assembly decided to levy contributions of £1.4 million (including the working capital of £1 million) to the General Fund payable by 1 March 2007.
- 19.7 It was noted that the contributions referred to in paragraph 19.6 would be calculated as follows:

Fund	Oil year	Estimated total oil receipts (tonnes)	Payment by 1 March 2007	
			Levy £	Estimated basic levy per tonne £
General Fund	2005	806 233 633	1 400 000	0.0017365
Capping deduction per tonne for contributors in Japan				-0.0006476
Capping levy per tonne for contributors in States other than Japan				0.0003033

20 Assessment of contributions to Claims Funds

The Assembly noted that there had been no incidents which would or might have required the Supplementary Fund to pay compensation or claims related expenses. The Assembly decided therefore that there was no need to levy 2006 contributions to Claims Funds.

21 Implementation of STOPIA 2006 and TOPIA 2006

- 21.1 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.
- 21.2 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.
- 21.3 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.

Other matters

22 Future sessions

- 22.1 The Assembly noted that, at its 11th session, the 1992 Fund Assembly had decided to hold its next regular session during the week of 15 -19 October 2007.
- 22.2 It was also noted that tentative arrangements had been made for meetings during the week of 12 March 2007 to take place at the Inmarsat building.

- 22.3 The Assembly further noted that the 1992 Fund Assembly had agreed at its 11th session to accept the invitation by the Government of Canada to hold the June 2007 sessions of the IOPC Funds' governing bodies at the Headquarters of the International Civil Aviation Organization (ICAO) in Montreal.

23 Any other business

Transfer within the Budget

The Assembly noted that the 1992 Fund Assembly, at its 11th session, had 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.

24 Oath of the Director Elect

- 24.1 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 SUPPFUND/A.2/20).
- 24.2 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.'

25 Address by the outgoing Director

On the occasion of the last sessions of the governing bodies before his successor took up office, 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. The Director Elect also chose to mark the special occasion by addressing the governing bodies prior to taking over responsibility for the IOPC Funds on 1 November 2006. The Director Elect, the Ambassadors of Sweden and the Netherlands, on behalf of the Swedish and Netherlands delegations, and a number of other delegations, as well as the Chairpersons of the above-mentioned governing bodies also took the opportunity to pay tribute to Mr Jacobsson's outstanding career and invaluable contribution to the international compensation regime. In respect of the joint session, reference is made to the Record of Decisions of the 11th session of the 1992 Fund Assembly (document 92FUND/A.11/35, paragraph 37).

26 Adoption of the Record of Decisions

The draft Record of Decisions of the Assembly, as contained in document SUPPFUND/A.2/WP.1, was adopted, subject to certain amendments, except for section 11, in respect of which the Director was authorised to revise the text to the effect that only those issues which were relevant to the Supplementary Fund should be included.

ANNEX

2007 ADMINISTRATIVE BUDGET FOR THE SUPPLEMENTARY FUND

(Figures in Pounds Sterling)

STATEMENT OF EXPENDITURE		ACTUAL 2005 EXPENDITURE	2005 BUDGET APPROPRIATIONS	2006 BUDGET APPROPRIATIONS	2007 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund	125 000	125 000	70 000	70 000
II	Administrative expenses (including external audit fees)	5 000	50 000	15 000	15 000
III	Reimbursement with interest of payments made by the 1992 Fund before 3 March 2005	47 742	50 000	-	-
Supplementary Fund Budget Appropriation		177 742	225 000	85 000	85 000