



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ADMINISTRATIVE COUNCIL
20th session
Agenda item 24

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RECORD OF DECISIONS OF THE TWENTIETH SESSION OF THE ADMINISTRATIVE COUNCIL

(held from 23 to 27 October 2006)

Chairperson: Mrs Teresa Martins de Oliveira (Portugal)
Vice-Chairperson: Mr John Gillies (Australia)

Opening of the session

1 Adoption of the Agenda

The Administrative Council adopted the Agenda as contained in document 71FUND/AC.20/1.

2 Election of the Chairman and Vice-Chairman

2.1 The Administrative Council elected Mrs Teresa Martins de Oliveira (Portugal) as its Chairperson and Mr John Gillies (Australia) as its Vice-Chairperson.

2.2 The Chairperson on behalf of herself and the Vice-Chairperson, thanked the Administrative Council for the renewed confidence shown in them.

3 Participation

3.1 The following States having at any time been Members of the 1971 Fund were present:

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

- 3.2 The following States which had not at any time been Members of the 1971 Fund were represented as observers:

Argentina	Latvia	Saudi Arabia
Brazil	Lithuania	Singapore
Ecuador	Peru	Turkey
Israel	Philippines	Uruguay

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

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1992
 International Oil Pollution Compensation Supplementary Fund 2003
 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 IOPC Funds since the Administrative Council's 17th session in October 2005, contained in document 71FUND/AC.20/2. 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 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.
- 4.5 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 Administrative Council 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 Administrative Council expressed its gratitude to the Director and the other members of the joint Secretariat for the efficient way in which they had administered the 1971 Fund.
- 4.7 The Administrative Council 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.

Financial matters

5 Report on Investments

- 5.1 The Council took note of the Director's report on the 1971 Fund's investments during the period July 2005 to June 2006, contained in document 71FUND/AC.20/3 .
- 5.2 The Council noted the number of investments made during the twelve-month period, the number of institutions used by the 1971 Fund for investment purposes, and the amounts invested by the 1971 Fund. It also noted with appreciation the changed presentation of the document to include information on previous financial years' investments.
- 5.3 The Council stated that it would continue to follow the investment activities closely.

6 Report of the joint Investment Advisory Body

- 6.1 The Council 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 71FUND/AC.20/4.
- 6.2 The Council noted that the IAB as in previous years had held meetings with representatives of the External Auditor and with the Audit Body.
- 6.3 It also noted that the IAB had discussed with the Audit Body the practicalities of introducing a third party independent investment performance measurement 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.
- 6.4 The Council also took note of the IAB's objectives for the coming year.
- 6.5 In presenting its report to the Council 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.

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

7 Financial Statements and Auditor's Report and Opinion

7.1 The Director introduced document 71FUND/AC.20/5 containing the Financial Statements of the 1971 Fund for the financial year 2005 and the External Auditor's Report and Opinion thereon.

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

7.3 The Council noted with appreciation the External Auditor's Report and Opinion contained in Annexes III and IV to document 71FUND/AC.20/5, 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 Council also appreciated that the Report went into great depth and detail.

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

7.5 The Council noted the recommendations set out in the External Auditor's Report.

7.6 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.

7.7 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.

7.8 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.

7.9 The Council noted that the modifications to the Financial Regulations gave the Director the authority to waive amounts owing where this was in the interest of the Funds and in order to fairly present the Fund's financial position. It was noted that this was particularly important in relation to the winding up of the 1971 Fund.

7.10 The Council 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 Council expressed its great satisfaction with the outcome of the External Auditor's investigation.

- 7.11 The Director informed the Administrative Council 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.
- 7.12 The Council 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.
- 7.13 The Council invited the Director to submit to the Administrative Council a summary of the External Auditor's recommendations.

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

- 8.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document 71FUND/AC.20/6, containing the joint Audit Body's Report.
- 8.2 In his introduction, Mr Coppolani reminded the Administrative Council 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.
- 8.3 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 9 below).
- 8.4 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.
- 8.5 Mr Coppolani referred to the anonymous allegations as set out in paragraph 7.10 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.
- 8.6 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.
- 8.7 Mr Coppolani explained that the Audit Body had continued to monitor the risk management process which had been adopted by the Secretariat.
- 8.8 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 Council and the Secretariat and the progress that had been made, it intended to examine this issue during the coming year.
- 8.9 The Administrative Council noted the Audit Body's recommendation that the governing bodies should approve the accounts of the 1971 Fund for the period 1 January – 31 December 2005.
- 8.10 The Administrative Council approved the accounts of the 1971 Fund for the financial period 1 January - 31 December 2005.

- 8.11 The Council expressed its gratitude for the important work being carried out by the Audit Body.
- 8.12 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.

9 Appointment of External Auditor

- 9.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document 71FUND/AC.20/7 submitted by the Audit Body.
- 9.2 Mr Coppolani reminded the Administrative Council 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 Administrative Council 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.
- 9.3 Mr Coppolani reminded the Administrative Council that at those sessions, the governing bodies had supported the Audit Body's proposal that the Administrative Council 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 Council that at that session the Audit Body had been requested by the Administrative Council 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 Council at its October 2006 session.
- 9.4 Mr Coppolani explained that the document which the Audit Body had prepared for these sessions (document 71FUND/AC.20/7) 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 Administrative Council at its February/March 2006 session that the existing External Auditor should be reappointed for a further term commencing on 1 January 2007.
- 9.5 Mr Coppolani informed the Council 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.
- 9.6 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.
- 9.7 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.

- 9.8 Mr Coppolani stated that although the Audit Body itself was independent and its members had been elected individually by the Administrative Council, 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.
- 9.9 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.
- 9.10 The Administrative Council 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.
- 9.11 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 Council 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.
- 9.12 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.
- 9.13 The Administrative Council 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.

Contribution matters

10 Report on contributions

- 10.1 The Council took note of the Director's report on contributions contained in document 71FUND/AC.20/8.
- 10.2 The Council noted that the Director in accordance with the Fund's Financial Regulations, had written off amounts due from two contributors.

11 Submission of oil reports

- 11.1 The Administrative Council considered the situation in respect of the non-submission of oil reports, as set out in document 71FUND/AC.20/9. 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 Council 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%.

- 11.2 The Council 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.
- 11.3 The Council noted that the failure of a number of former 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 Council expressed its very serious concern as regards the number of former 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.
- 11.4 The Council noted the information contained in document 71FUND/AC.20/9/1, which reported on the implementation of measures encouraging the submission of oil reports.
- 11.5 The Council 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.
- 11.6 The Council 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.
- 11.7 It was recalled that the 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).
- 11.8 The Council endorsed the Director's proposal that the measure referred to in paragraph 11.6(d) be applied at those October 2006 sessions at which a governing body elects a Chairman and/or Vice-Chairman.
- 11.9 Further to the measure referred to in paragraph 11.6(e), the Council noted that the Director had invited seven 1992 Fund 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 Council 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 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.
- 11.10 The Council 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.
- 11.11 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.
- 11.12 Another delegation suggested that a few 1992 Fund Member States could submit a paper at the next autumn 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.
- 11.13 The Council instructed the Director to continue to bring the matter of the submission of oil reports to its attention at each regular session.
- 11.14 The Council 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.

Secretariat and administrative matters

12 Operation of the Secretariat

- 12.1 The Administrative Council took note of the information contained in document 71FUND/AC.20/10 regarding the operation of the Secretariat.
- 12.2 The Council 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 Council 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 Council 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 Council noted that the work on strengthening financial controls had continued.
- 12.5 The Council 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 Council 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 Council 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 Council 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 Council 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 Premises for the IOPC Funds' Secretariat

- 13.1 The Administrative Council took note of the information contained in document 71FUND/AC.20/11 regarding the premises for the IOPC Funds' Secretariat in Portland House.
- 13.2 The Council recalled that at the 19th session of the 1971 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.
- 13.3 The Council 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).
- 13.4 The Council 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 Council 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.
- 13.5 The Council noted that the 1992 Fund Assembly had, at its 11th session, 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.
- 13.6 The Council also noted that the 1992 Fund Assembly had 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.

14 Review of Observer Status

- 14.1 The Administrative Council 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.
- 14.2 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 Council 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.

- 14.3 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.
- 14.4 The Council noted the information set out in Annex II to document 71FUND/AC.20/12 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.
- 14.5 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.
- 14.6 The Council took note of the information contained in Annex III to document 71FUND/AC.20/12 which set out the responses received from the organisations concerned. The Council 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.
- 14.7 The Council also noted the information contained in paragraphs 4.5 – 4.11 of document 71FUND/AC.20/12 regarding contacts between the Director and other members of the Secretariat and a number of the international non-governmental organisations having observer status.
- 14.8 The Council noted that, in accordance with a decision taken at its October 2002 session, the 1992 Fund 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.
- 14.9 The Council noted that the 1992 Fund Assembly had decided upon the composition of the group as follows:
- France
 - Latvia
 - Nigeria
 - United Kingdom
 - Uruguay
- 14.10 The Council 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 71FUND/AC.20/12.
- 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.

- 14.11 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.
- 14.12 The Council noted that at its 11th session the 1992 Fund Assembly had endorsed the group's recommendations.

Compensation matters

15 Incidents involving the 1971 Fund

15.1 Overview

The Administrative Council noted the information contained in document 71FUND/AC.20/13, which contained a summary of the situation in respect of all 12 incidents dealt with by the 1971 Fund during the past 12 months.

15.2 Pontoon 300

15.2.1 The Administrative Council took note of the information contained in document 71FUND/AC.20/13/1 concerning the *Pontoon 300* incident.

15.2.2 It was recalled that the barge *Pontoon 300* had sunk off Hamriyah in Sharjah United Arab Emirates (UAE) whilst being towed by the tug *Falcon 1* and that an estimated 8 000 tonnes of intermediate fuel had been spilled which had spread over 40 kilometres of coastline.

- 15.2.3 The Administrative Council recalled that claims in respect of clean-up operations and preventive measures had been settled for a total of Dhs 6.3 million (£958 000) and that the 1971 Fund had paid a total of Dhs 4.8 million (£817 000), corresponding to 75% of the settlement amounts.
- 15.2.4 It was recalled that the Municipality of Umm Al Quwain had presented claims against the 1971 Fund totalling Dhs 199 million (£28.7 million) on behalf of fishermen, tourist hotel owners, private property owners, a Marine Resource Research Centre (MRRC) and the Municipality itself. It was also recalled that little or no documentation had been provided in support of the claims, that the amounts involved appeared to be based upon estimates and that the main claim by the Municipality was for environmental damage, which appeared to have been based upon theoretical models.

Legal actions relating to claims

- 15.2.5 The Administrative Council recalled that in September 2000 the Umm Al Quwain Municipality had brought legal action in the Umm Al Quwain Court against the owner of the tug which had been towing the *Pontoon 300* at the time of the incident and against the owner of the cargo on board the *Pontoon 300*. It was also recalled that in December 2000 the UAE Ministry of Agriculture and Fisheries had joined the Umm Al Quwain Municipality's action as a co-plaintiff, claiming Dhs 6.4 million (£920 000). It was further recalled that at a court hearing in September 2001 the 1971 Fund had maintained that the claims submitted by the Municipality were time-barred.
- 15.2.6 It was recalled that in December 2001 the Court had decided to refer the matter to a panel of experts experienced in oil pollution and the environment. It was also recalled that the Court had decided to combine all the pleadings relating to issues of jurisdiction and time bar and to review these after the experts had submitted their report.
- 15.2.7 The Administrative Council recalled that the experts had submitted their report to the Umm Al Quwain Court of first instance in February 2003 and that the experts had assessed the claims at a total of Dhs 3.2 million (£465 000). It was recalled that in the light of comments by all the parties on the experts' report, the Court had decided to refer the case back to the experts for a response.
- 15.2.8 It was recalled that the 1971 Fund had held a number of meetings with the experts and the other parties with the aim of reaching agreement on the quantum of the losses, without prejudice to the issue of time bar in respect of the claim by the Municipality. It was also recalled that as a result of these meetings an agreement in principle had been reached on the claim by the Ministry of Agriculture and Fisheries in respect of the MRRC at Dhs 1.6 million (£230 000), which was not time-barred. It was recalled that this claim had not been paid pending clarification as to the recipient of the compensation. It was noted that the Ministry of Agriculture and Fisheries had requested the Fund to pay the agreed amount to the UAE Ministry of Environment and Water.
- 15.2.9 It was noted that despite numerous attempts by the Fund's lawyers to finalise a settlement agreement with the Ministry of Environment and Water, the claim by the MRRC had not been settled and that the Fund was still waiting for the Ministry of Environment and Water to agree to the receipt and release document prepared by the Fund before this claim can be settled.

Criminal proceedings

- 15.2.10 The Administrative Council recalled that in November 1999 a Criminal Court of first instance had found the master of the tug *Falcon 1*, the alleged cargo owner, the general manager of the tug owner and the general manager of the alleged cargo owner guilty of misuse of the barge *Pontoon 300*, which had not been in a seaworthy condition and thus in violation of United Arab Emirates law, and of causing harm to the people and the environment by the use of the unseaworthy barge. It was recalled that the master of the tug *Falcon 1*, the tug owner and his

general manager had appealed against the judgement but the alleged cargo owner and his general manager had not.

15.2.11 It was recalled that in February 2000 the Criminal Court of Appeal had found the tug owner and his general manager not guilty but had confirmed the guilty verdict against the master of the *Falcon 1*, the alleged cargo owner and his general manager.

15.2.12 It was also recalled that the master of the tug *Falcon 1* had lodged an appeal in the Federal Court of Cassation, which had sent the case back to the Court of Appeal to consider the issues of the seaworthiness of the *Pontoon 300* and the master's defence of 'force majeure'. It was recalled that in March 2005 the Court of Appeal had rejected the appeal and had sentenced the master to one year's imprisonment.

Action by the 1971 Fund against the owner of the tug Falcon 1

15.2.13 It was recalled that in January 2000, the 1971 Fund had taken legal action against the owner of the tug *Falcon 1* maintaining that, since the sinking of the *Pontoon 300* had occurred due to its unseaworthiness and the negligence of the master and owner of the *Falcon 1* during the towage, the tug owner was liable for the ensuing damage.

15.2.14 It was recalled that the Fund's action had given rise to protracted litigation in the Dubai Court of first instance and the Court of Appeal as set out in paragraphs 6.2-6.7 of document 71FUND/AC.17/12/2.

15.2.15 It was recalled that in April 2004, the Court of Appeal had issued its judgement in favour of the 1971 Fund holding that both the charterer and the owner of the *Falcon 1* were jointly and severally liable to pay the Fund an amount of Dhs 4.7 million (£680 000).

15.2.16 It was further recalled that the 1971 Fund had appealed against this judgement to the Court of Cassation on the question of the quantum and that the owner of the *Falcon 1* had appealed on procedural grounds, including, *inter alia*, that the civil case should have been suspended pending the final judgement in the criminal proceedings relating to the incident.

15.2.17 It was recalled that the Court of Cassation had issued its judgement in January 2006 and that in the judgement the Court rejected the tug owner's appeal. It was further recalled that the Court of Cassation had rejected the Fund's appeal on the quantum and had reversed the Court of Appeal's judgement in respect of the charterer, holding him not liable to pay compensation to the Fund. It was also recalled that the Court of Cassation had upheld the Court of Appeal's judgement as regards the liability of the tug owner, ie that the tug owner was liable to pay compensation to the 1971 Fund in the amount of Dhs 4.7 million (£705 000).

Recent developments

15.2.18 It was recalled that at the request of the owner of the *Falcon 1* a meeting had been held in London in April 2006 between the Director and the Chairman of Mohammed Al Otaiba Group Est, the company that owned the *Falcon 1*. It was also recalled that during this meeting the tug owner had confirmed that he was in negotiations with the Umm Al Quwain Municipality for the purpose of reaching an out-of-court settlement in respect of its claim. It was recalled that the tug owner had requested that the Fund should postpone any attempts to resolve the Umm Al Quwain Municipality's claim for the time being and to delay the service relating to the execution proceedings in respect of the Dubai Court of Cassation's judgement to give him time to resolve the Municipality's claim and the legal proceedings in the Umm Al Quwain Court.

15.2.19 It was recalled that at its May 2006 session, the Administrative Council had endorsed the Director's proposal that he be allowed to continue the discussions with the tug owner and to allow the tug owner further time to reach an out-of-court settlement with the Municipality (document 71FUND/AC.19/5, paragraph 4.3.21).

- 15.2.20 It was noted that in September 2006, the tug owner had reported that he had reached a settlement with the Umm Al Quwain Municipality and that at a hearing on 28 September 2006 at the Umm Al Quwain Court the settlement agreement had been filed by the Municipality's lawyer and a request had been made for the action against the 1971 Fund and the other defendants to be withdrawn. It was noted, however, that the lawyer representing the Ministry of Agriculture and Fisheries, whose claim had been agreed in principle with the Fund (see paragraph 15.2.8 above), had asked for an adjournment pending settlement of the claim by the Ministry of Agriculture and Fisheries and that consequently, the action against the 1971 Fund had not been withdrawn.
- 15.2.21 It was noted that the Director, having seen a copy of the settlement agreement between the tug owner and Umm Al Quwain Municipality, and bearing in mind that a settlement had been reached in principle between the 1971 Fund and the Ministry of Agriculture and Fisheries, considered that it was likely that the legal action against the 1971 Fund would be withdrawn in the near future.
- 15.2.22 The Director stated that he had encouraged the tug owner to make every effort to reach a settlement with the Umm Al Quwain Municipality, since this appeared to be the only way to reach a satisfactory outcome within a reasonable time. The Director further stated that, as an incentive to the tug owner, the Director had agreed that if the tug owner were to succeed in reaching a settlement, and if this were to result in the withdrawal of all actions against the Fund in the Umm Al Quwain Court, the Director would recommend to the Administrative Council that the 1971 Fund should not proceed with the execution of the judgement against the tug owner.
- 15.2.23 The Director informed the Council that the settlement amount agreed between the tug owner and the Umm Al Quwain Municipality was for Dhs 3 million (£450 000).
- 15.2.24 The Director recommended that once the legal proceedings against the Fund had been withdrawn the Fund should withdraw its action against the tug owner and not execute the judgement against him. He stated that although this would result in the Fund paying more than the shipowner the imbalance in the distribution of compensation payments between the tug owner and the Fund had to be viewed in the light of the benefit to the Fund in having avoided further protracted legal proceedings, the outcome of which were far from certain both with regard to the question of time bar and to the admissibility of environmental damage claims based on an abstract quantification. He also referred to the importance for the winding up of the 1971 Fund of avoiding protracted litigation.
- 15.2.25 It was recalled in view of the continuing uncertainty as to the total amount of the admissible claims, the 1971 Fund's level of payments had been maintained at 75% of the total loss or damage suffered by each claimants. The Administrative Council noted that in the Director's view the level of payments could be increased to 100% in the event that the legal action against the 1971 Fund was withdrawn, which would enable the Fund to pay the outstanding 25% of the settled claims.
- 15.2.26 The Administrative Council decided to authorise the Director to increase the level of payments from 75% to 100% of all settled claims if the legal action against the 1971 Fund was withdrawn.
- 15.2.27 The Administrative Council also decided to instruct the Director not to proceed with the execution of the judgement against the owner of the tug *Falcon 1* if the legal action against the 1971 Fund was withdrawn.
- 15.3 *Al Jaziah 1*
- 15.3.1 The Administrative Council took note of the information contained in document 71FUND/AC.20/13/2 (cf 92FUND/EXC.34/10) concerning the *Al Jaziah 1* incident which had occurred in the United Arab Emirates (UAE) and which involved both the 1971 and the 1992 Funds.

- 15.3.2 It was recalled that the *Al Jaziah I* had not been covered by any liability insurance, that claims totalling £1.1 million had been submitted to the Funds in relation to clean-up and pollution prevention, and that these claims had been settled at £920 000 and had been paid by the Funds. The Council recalled that the Funds would not be required to make any further compensation payments.
- 15.3.3 It was recalled that, at their October 2002 sessions, the governing bodies of the 1971 and 1992 Funds had decided that the Funds should pursue recourse action against the shipowner (document 71FUND/AC.9/20, paragraph 15.10.10, cf document 92FUND/EXC.18/14, paragraph 3.5.9).
- 15.3.4 The Administrative Council recalled that the Funds had commenced legal action in the Abu Dhabi Court of first instance against the shipowning company and its sole proprietor in January 2003, requesting that the defendants be ordered to pay Dhs 6.4 million (£920 000) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.
- 15.3.5 It was recalled that in November 2003 the Abu Dhabi Court of first instance had issued a preliminary judgement appointing an expert to investigate the nature of the incident and the payments made by the Funds. It was also recalled that the Funds and their lawyers had met with the expert on two occasions and had provided supplementary information as requested by the expert.
- 15.3.6 The Council recalled that in August 2005, the Funds' lawyers in the UAE had reported that the expert had informed the Court that he could not complete his report due to other commitments. It was also noted that in September 2005 the Court had appointed a new expert and that in October 2005 the Funds and their lawyers had met with him and provided all the information requested by him in order for him to be able to complete his report.
- 15.3.7 The Council noted that the expert had submitted his report to the Court in July 2006 and that the expert's report had confirmed the following:
- The incident had caused pollution damage to various parties within the Emirate of Abu Dhabi.
 - The Funds had paid a total of Dhs 6.4 million (£920 000) in compensation to those affected by the pollution.
 - The ship had not been registered as an oil tanker and its insurance policies had expired.
 - The shipowner was liable for the damage caused by the incident.
- 15.3.8 It was noted that the expert had appeared to suggest that the Funds had paid claims without scrutinizing them. It was also noted that the expert had made the point that there was gross negligence on the part of the UAE authorities in permitting the ship, which was not a tanker, to load a cargo of oil and allowing it to depart in inclement weather. It was noted that the expert had suggested that the lack of appropriate legislation in the UAE dealing with the licensing authority and loading facilities had contributed directly to the incident. It was further noted that the expert had concluded that considering the lack of such legislation, the UAE authorities should be partly liable for paying compensation for the damage arising from this incident.
- 15.3.9 The Council noted that in September 2006 the Funds had submitted a memorandum to the Court which set out their comments on the expert's report. The Committee also noted that the Funds had agreed with the main conclusions reached by the expert set out in paragraph 15.3.7 above.
- 15.3.10 It was noted that in the memorandum, the Funds had commented on the expert's view in relation to the payments made to claimants. It was further noted that the Funds had explained that all

claims had been assessed on the basis of the admissibility criteria established by the Funds' Member States. It was also noted that the Funds had stated that the expert's opinion that the UAE authorities should be partly liable for this incident was incorrect since under the Conventions the shipowner had strict liability. It was noted that the Funds had therefore requested the Court to hold the shipowner solely liable for the damage arising from this incident and to order the sole proprietor of the shipowning entity to pay the Funds Dhs 6.4 million (£920 000).

15.3.11 It was noted that at a hearing in October 2006 the shipowner had submitted a memorandum to the Court setting out his comments on the expert's report. It was also noted that the next hearing was scheduled for 29 November 2006 when it was expected that the Court would render its final judgement.

15.4 *Nissos Amorgos*

15.4.1 The Administrative Council took note of the information contained in document 71FUND/AC.20/13/3 concerning the *Nissos Amorgos* incident.

Criminal proceedings

15.4.2 The Administrative Council recalled that criminal proceedings had been brought against the master of the *Nissos Amorgos* and that in his pleadings to the Criminal Court the master had maintained that the damage had substantially been caused by negligence imputable to the Republic of Venezuela.

15.4.3 The Council recalled that in a judgement rendered in May 2000, the Criminal Court had dismissed the arguments made by the master and had held him liable for the damage arising as a result of the incident and had sentenced him to one year and four months in prison. The Council also recalled that the master had appealed against the judgement before the Criminal Court of Appeal in Maracaibo.

15.4.4 The Council recalled that in a decision rendered in September 2000 the Court of Appeal had decided not to consider the appeal and to order the Court of Cabimas to send the file to the Supreme Court due to the fact that the Supreme Court was considering a request for 'avocamiento'^{<1>}. The Council also recalled that the Court of Appeal's decision appeared to imply that the judgement of the first instance Court had become null and void.

15.4.5 The Council recalled that in August 2004 the Supreme Court had decided to remit the file on the criminal action against the master to the Criminal Court of Appeal. It was recalled that in February 2005 the Criminal Court of Appeal had rendered its judgement and had held that the master had incurred criminal liability due to negligence causing pollution damage to the environment, but that in accordance with Venezuelan procedural law, since more than four and a half years from the date of the criminal act had passed, the criminal action against the master had become time-barred. It was also recalled that in its judgement the Court had stated that its decision was without prejudice to the civil liabilities which could arise from the criminal act dealt with in the judgement that had been declared time-barred.

<1> Under Venezuelan law, in exceptional circumstances, the Supreme Court may assume jurisdiction, 'avocamiento', and decide on the merits of a case. Such exceptional circumstances are defined as those which directly affect the 'public interest and social order' or where it is necessary to re-establish order in the judicial process because of the great importance of the case. If the request of 'avocamiento' is granted, the Supreme Court would act as a court of first instance and its judgement would be final.

CLAIMS FOR COMPENSATION IN COURT

Claim by Republic of Venezuela

- 15.4.6 The Council recalled that the Republic of Venezuela had presented a claim for environmental damage for US\$60 250 396 (£32.2 million) against the master, the shipowner and his insurer, Assuranceforeningen Gard (Gard Club), in the Criminal Court in Cabimas. It was also recalled that the 1971 Fund had been notified of the criminal action and had submitted pleadings in the proceedings.
- 15.4.7 The Council further recalled that the Republic of Venezuela had also presented a claim for environmental damage against the shipowner, the master of the *Nissos Amorgos* and the Gard Club before the Civil Court of Caracas for US\$60 250 396 (£32.2 million). It was also recalled that the 1971 Fund had not been notified of the civil action.
- 15.4.8 It was recalled that at its July 2003 session the Administrative Council had reiterated the 1971 Fund's position that the components of the claims by the Republic of Venezuela did not relate to pollution damage falling within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and that these claims should therefore be treated as not admissible (document 71FUND/AC.11/3, paragraph 3.33). It was also recalled that at that session the Administrative Council had noted that the two claims presented by the Republic of Venezuela were duplications, since they were based on the same university report and related to the same items of damage. It was further recalled that the Procuraduria General de la Republica (Attorney General) had accepted this duplication in a note submitted to the 1971 Fund's Venezuelan lawyers in August 2001 (document 71FUND/AC.11/3, paragraph 3.5).
- 15.4.9 The Administrative Council recalled that Article 6.1 of the 1971 Fund Convention relating to the time bar provisions read as follows:

'Rights to compensation under Article 4 or indemnification under Article 5 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.'

- 15.4.10 The Council recalled that the legal actions by the Republic of Venezuela in the Civil and Criminal Courts had been brought against the shipowner and the Gard Club, but not against the 1971 Fund. The Council also recalled that the Fund was therefore not a defendant in these actions, and that although the Fund had intervened in the proceedings brought before the Criminal Court in Cabimas, the actions could not have resulted in a judgement against the Fund. It was recalled that as set out above, Article 6.1 of the 1971 Fund Convention required that in order to prevent a claim from becoming time-barred in respect of the 1971 Fund a legal action had to be brought against the Fund within six years of the date of an incident. The Council also recalled that the Republic of Venezuela had not brought legal action against the 1971 Fund within the six-year period, which had expired in February 2003.
- 15.4.11 The Council recalled that at its October 2005 session it had endorsed the view of the Director that the claims by the Republic of Venezuela were time-barred vis-à-vis the 1971 Fund (document 71FUND/AC.17/20, paragraph 4.2.11).

Claims by fish processors

- 15.4.12 The Administrative Council recalled that three fish processors had presented claims totalling US\$30 million (£14 million) in the Supreme Court against the 1971 Fund and the Instituto Nacional de Canalizaciones (INC) and that the Supreme Court would in this case act as

court of first and last instance. The Council recalled that the claims had not been substantiated by supporting documentation and had therefore been considered inadmissible.

15.4.13 The Council recalled that in August 2003 the 1971 Fund had submitted pleadings to the Supreme Court arguing that, as the claimants had submitted and subsequently had renounced claims in the Criminal Court in Cabimas and the Civil Court in Caracas against the master, the shipowner and the Gard Club for the same damage, they had implicitly renounced any claim against the 1971 Fund. It was further recalled that the 1971 Fund had also argued that not only had the claimants failed to demonstrate the extent of their loss but the evidence they had submitted had indicated that the cause of any loss was not related to the pollution. The Council noted that there had been no developments in respect of these claims.

'Avocamiento'

15.4.14 The Council recalled that in a judgement rendered in July 2005, the Supreme Court had decided to accept the withdrawal of claims by a group of eleven fish and shellfish processors and the fishermen's union FETRAPESCA following the settlement reached by the six shrimp processors and the 2000 fishermen with the 1971 Fund in December 2000 (document 71FUND/A/ES.7/4, paragraph 3.3.1). It was noted that in its judgement, the Supreme Court had also rejected the request for 'avocamiento'.

Recent developments

15.4.15 The Council recalled that at its October 2005 session, the Venezuelan delegation had acknowledged that most of the outstanding claims resulting from the *Nissos Amorgos* incident had become time-barred and had requested the Administrative Council to authorise the Director to approach the Gard Club and the Attorney General and the Public Prosecutor of the Republic of Venezuela to facilitate the resolution of the outstanding issues arising from this incident. The Council also recalled that that delegation had pointed out that a resolution of the rest of the outstanding issues would contribute to the winding up of the 1971 Fund. It was further recalled that the Director had indicated his willingness to make the suggested approaches and that the Council had invited the Director to approach the Gard Club and the Attorney General and the Public Prosecutor of the Republic of Venezuela for the purpose of assisting them in resolving the outstanding issues.

15.4.16 The Council noted that since October 2005 there had been several meetings and discussions between the Venezuelan delegation and the 1971 Fund and that during this period the 1971 Fund had also held meetings and discussions with the Gard Club. It was noted that in February 2006 the 1971 Fund had written to the Venezuelan delegation setting out possible solutions to the outstanding issues. It was also noted that in May 2006 a meeting had taken place in Caracas between the various interested parties including representatives of the Venezuelan Government and that the 1971 Fund had been represented at the meeting by its Venezuelan lawyers. It was noted that the purpose of the meeting had been to brief the various parties as regards the current situation concerning the outstanding claims.

15.4.17 The Council noted that in June 2006 a meeting had been held in London between the Venezuelan delegation and the 1971 Fund at which time the Fund had been informed that the Venezuelan authorities were well advanced in their internal discussions and that meetings would take place in Venezuela in the near future between the five government departments concerned and with representatives of the private claimants. It was also noted that the Venezuelan delegation had stated that it would inform the 1971 Fund of the outcome and that in discussions with the Venezuelan delegation in September 2006, the 1971 Fund had been informed that a meeting had taken place in Caracas in August 2006 and that it would be helpful if representatives of the Gard Club and the 1971 Fund could visit Venezuela in the near future.

15.4.18 It was noted that the 1971 Fund and the Gard Club had visited Venezuela in early October 2006, but that this had not led to any progress.

Possible recourse action against Instituto Nacional de Canalizaciones (INC)

15.4.19 The Administrative Council recalled that at its May 2004 session, it had considered the issue of whether the 1971 Fund should take recourse action against the Instituto Nacional de Canalizaciones (INC), the agency responsible for the maintenance of the Lake Maracaibo navigation channel. The Council also noted that the discussion had been based on a document submitted by the Director, the relevant parts of which were reproduced in the Annex to document 71FUND/AC.20/13/3.

15.4.20 The Council recalled that the Director had considered the following main factors:

- (a) there were facts that spoke in favour of the incident being caused by deficiencies of the channel and other facts supporting the view that the grounding had been caused by negligence on the part of the vessel;
- (b) the 1971 Fund would have the burden of proof that the incident had been caused by or contributed to by deficiencies in the channel;
- (c) there was a risk element in any litigation and in this case the conflicting evidence mentioned above increases the difficulty in predicting the outcome;
- (d) a very similar case had been dealt with in an arbitration in New York and the arbitrators had concluded that the grounding was solely caused by an error in navigation; and
- (e) a Venezuelan criminal court had held the master of the *Nissos Amorgos* liable for the incident, although this judgement was the subject of appeal^{<2>}.

15.4.21 The Council recalled that, having taken into account all available information, the Director had considered on balance that it was unlikely that a recourse action by the 1971 Fund against INC would succeed, and that for that reason he had proposed that the Fund should not pursue such an action.

15.4.22 The Administrative Council recalled that in summing up the discussion that took place at its May 2004 session, the Chairman had stated that it was important that there should be a wide consensus for a decision not to take recourse action against INC and that, since a slight majority of those delegations that had expressed a view had been in favour of postponing a decision and that even some of those delegations supporting the Director's proposal had been very hesitant, such consensus did not exist. It was recalled that it had been decided that the 1971 Fund should postpone taking a position as to whether or not the Fund should take recourse action against INC (document 71FUND/AC.14/4, paragraph 3.1.93).

15.4.23 The Council noted that a time-bar period of ten years applied to a recourse action by the 1971 Fund against INC, that such an action would therefore become time-barred on 28 February 2007 and that for this reason the Director needed instructions from the Council as to whether such action should be brought before that date.

15.4.24 It was noted that the factors set out in paragraph 15.4.20 (a)-(d) had not changed since May 2004 and that the Director had therefore still considered it unlikely that a recourse action by the 1971 Fund against INC would succeed. It was noted that for this reason he maintained his recommendation that the Fund should not pursue such an action.

<2> As mentioned in paragraph 14.4.5 the criminal proceedings have been terminated on the grounds that the action against the master was time-barred.

15.4.25 The Administrative Council decided that the 1971 Fund should not take recourse action against INC.

15.5 Other incidents

15.5.1 The Administrative Council took note of the information contained in document 71FUND/AC.20/13/5 in respect of the following incidents: *Vistabella*, *Aegean Sea*, *Braer*, *Iliad*, *Kriti Sea*, *Plate Princess*, *Katja*, *Evoikos* and *Alambra*.

Plate Princess

15.5.2 The Venezuelan delegation stated that, in its view, there appeared to have been a misunderstanding as regards the future action of the 1971 Fund in respect of this incident as decided by the Administrative Council at its May 2006 session. That delegation had understood that the Director had been instructed to undertake a more in-depth legal analysis of the question of time bar in consultation with the Venezuelan authorities.

15.5.3 The Director pointed out that whilst he was not present at the May session, the Record of Decisions of that session, which had been adopted by the Council, made it clear that the Council had decided that claims arising from the *Plate Princess* had become time-barred (document 71FUND/AC.19/5, paragraph 4.2.25). The Director made the point that unless new elements were to emerge as regards the time bar issue the Director had no basis on which to prepare a new document.

15.5.4 The Venezuelan delegation stated that it intended to submit a document to the next session of the Administrative Council in which it would demonstrate that the claims arising from the *Plate Princess* had not become time-barred *vis-à-vis* the 1971 Fund Convention.

16 Winding up of the 1971 Fund

16.1 The Administrative Council took note of the information in document 71FUND/AC.20/14 regarding the winding up of the 1971 Fund.

Pending incidents

16.2 The Administrative Council noted that it was anticipated that by the end of 2007 there would only be outstanding compensation and/or indemnification claims in respect of the *Nissos Amorgos* incident and, possibly, in respect of the *Plate Princess* and *Alambra* incidents.

16.3 It was noted that following the Administrative Council's decision not to pursue legal action against the Instituto Nacional de Canalizaciones (INC) in respect of the *Nissos Amorgos* incident, all legal proceedings involving the 1971 Fund should be concluded during 2007.

Financial situation in respect of pending incidents

16.4 The Administrative Council noted that any further costs arising from the *Aegean Sea*, *Braer* and *Katja* incidents would be paid from the General Fund and that payments in respect of the *Iliad*, *Kriti Sea* and *Al Jaziah 1* incidents would also be made from that Fund.

16.5 It was noted that as regards the *Plate Princess* incident, payments, if any, would be made from the General Fund up to a total of £851 165 and any payments in excess of that amount from a Major Claims Fund to be established for that incident.

16.6 With respect to the *Alambra* incident the Council noted that payments would be made from the General Fund up to a total of £917 680 and any payments in excess of that amount from a Major Claims Fund to be established for that incident. It was noted that since this incident had occurred

after the end of the transitional period, when the denunciation of the 1971 Fund Convention by a large number of States had resulted in a major reduction in the contribution base, there were relatively few contributors against whom contributions could be levied to a Major Claims Fund.

- 16.7 It was also noted that further payments relating to the *Nissos Amorgos*, *Pontoon 300* and *Vistabella* incidents would be made from their respective Major Claims Funds.

Distribution of the 1971 Fund's remaining assets

- 16.8 As regards Major Claims Funds, the Administrative Council recalled that the distribution of surpluses was governed by Financial Regulation 4.4. It was further recalled that if, after the period for bringing legal actions under Article 6 of the 1971 Fund Convention in respect of a particular incident had expired, and all claims and expenses arising out of that incident had been paid, there remained a substantial amount on that Major Claims Fund, the Assembly would decide whether that amount should be reimbursed *pro rata* to the persons who had made contributions to that Major Claims Fund, or whether the amount should be credited to the respective contributors accounts with the 1971 Fund. It was also recalled that the same would apply if, after the settlement of all claims known to the 1971 Fund, the Executive Committee (now the Administrative Council) was satisfied that no more claims in respect of that incident would be made against the 1971 Fund and no more expenses would have to be met. It was recalled that if the Assembly considered that the amount remaining was not substantial, this amount should be transferred to the General Fund (Financial Regulation 4.5).
- 16.9 The Council noted that there remained only three Major Claims Funds, namely those established for the *Vistabella*, *Nissos Amorgos* and *Pontoon 300* incidents.
- 16.10 As regards the distribution of any surplus on the General Fund the Council recalled that at its October 2004 session it had decided that the most equitable and practicable solution would be first to distribute any surplus between the States on the basis of the percentage of the total contributions made to the General Fund by contributors in the respective State and that the amount allocated to a given State should then be distributed between the contributors in that State on the basis of the quantities of contributing oil reported as having been received during 1997 by each contributor in that State, ie the last full year before the end of the transitional period (15 May 1998) (document 71FUND/AC.15/21, paragraphs 17.10 and 17.11; and Annex II to document 71FUND/AC.15/15 which provides a summary of the net contributions levied to the General Fund given by means of the percentage of the total paid by contributors in each State).

Non-submission of oil reports

- 16.11 It was recalled that at its October 2003 and October 2004 sessions the Administrative Council had decided that reimbursement of surpluses from any Major Claims Funds (after offset had been made against any arrears) to contributors in States with outstanding reports should be postponed until all contributing oil reports for that State had been submitted. It was also recalled that the Administrative Council had not reached any conclusion as to what action should be taken in the event that outstanding reports had not been submitted by the time all pending incidents had been resolved and the 1971 Fund could be wound up.
- 16.12 The Director stated that failure to submit oil reports was the root of the problem as regards the winding up of the 1971 Fund, and that although contributors in arrears was also a serious issue, the Fund had the possibility of taking legal action against defaulting contributors.
- 16.13 It was noted that, as decided by the Administrative Council at its October 2005 session, the former 1971 Fund Member States with outstanding oil reports were now listed on the IOPC Funds' website.

Contributors in arrears

- 16.14 The Council noted that as at 5 October 2006 there were 12 contributors in arrears for the principal amount of contributions of £343 624, which represented some 0.09% of the total amount levied by the 1971 Fund during the period 1978-2003.
- 16.15 It was noted that since the October 2005 session the Director had continued his efforts to make those contributors who were in arrears pay the amounts due. It was also noted that contributors were reminded at least twice annually by telefax or letter of their outstanding contributions, that the Director sometimes made direct contact with persons within some defaulting entities to press for payments and that assistance had also been given by members of the delegations of the States concerned to the governing bodies. It was further noted that the Director had written to the contributors with significant arrears, explaining the legal basis for their obligations to pay and making it clear that unless payment was made by a specified date, the 1971 Fund might take legal action to recover outstanding amounts.
- 16.16 It was recalled that the External Auditor of the 1971 Fund had recommended in its 2005 report on the financial statements that the Secretariat should carry out a review of the recoverability of all contributions outstanding to the 1971 Fund, to identify receivables that were unlikely to be recovered and that the Director should then consider whether write off was appropriate in order for the financial statements to present fairly the financial position (document 71FUND/AC.20/5, Annex III, paragraph 25). It was noted that in the light of this recommendation the Director had decided, pursuant to Financial Regulation 11.5, to write off outstanding contributions in respect of a contributor in France and a contributor in Hong Kong (cf document 71FUND/AC.20/8).
- 16.17 It was noted that there had been a considerable improvement in the situation over the last four years in respect of unpaid contributions and that the total amount of the principal in arrears had decreased from £930 000 in October 2002 to £343 624 in October 2006 with the number of contributors in arrears decreasing from 27 to 12, out of which five were in the former USSR and three were in the former Socialist Federal Republic of Yugoslavia.
- 16.18 The Council noted that the Director would continue his efforts to collect the outstanding contributions and consider, on a case-by-case basis, whether legal action should be taken against a particular contributor. It was also noted that the Director would present a report on the developments to the Administrative Council's October 2007 session.

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

- 17.1 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 flat management fees to the 1992 Fund.
- 17.2 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.
- 17.3 The Administrative Council approved the Director's proposal that for 2007 the 1971 Fund should pay a flat management fee of £275 000 to the 1992 Fund.
- 17.4 It was noted that the Assembly of the 1992 Fund and the Assembly of the Supplementary Fund had agreed, at their 11th session and 2nd session respectively, to the apportionment of joint administrative costs set out in paragraph 17.3.

18 Budget for 2007

- 18.1 The Council 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).
- 18.2 The Council considered the draft 2007 Budget for the administrative expenses of the 1971 Fund as proposed by the Director in document 71FUND/AC.20/16.
- 18.3 The Council adopted the budget for 2007 for the administrative expenses of the 1971 Fund with a total of £535 000 (including the management fee of £275 000 payable to the 1992 Fund), as reproduced in the Annex to this document.
- 18.4 The Council noted the Director's observations as regards the balance on the General Fund and authorised the Director to use the balance of the General Fund to pay for the administrative and minor claims expenses.

19 Assessment of contributions to Major Claims Funds

The Council decided there should be no levies of 2006 contributions in respect of the three remaining Major Claims Funds, ie the *Vistabella*, *Nissos Amorgos* and *Pontoon 300* Major Claims Funds.

Other matters

20 Future sessions

- 20.1 The Administrative Council 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.
- 20.2 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.
- 20.3 The Council further noted that the 1992 Fund Assembly had agreed at its 11th session to accept the invitation by the Government of Canada to hold sessions of the IOPC Funds' governing bodies at the Headquarters of the International Civil Aviation Organization (ICAO) in Montreal during the week of 11-15 June 2007.

21 Any other business

21.1 Transfer within the Budget

The Administrative Council 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.

21.2 Election of Vice-Chairman

- 21.2.1 The Vice-Chairman, Mr John Gillies (Australia), informed the Council that he would no longer be available for the post.
- 21.2.2 The Administrative Council elected Captain David J. F. Bruce (Marshall Islands), as Vice-Chairman.
- 21.2.3 The Vice Chairman thanked the Administrative Council for the confidence shown in him.

22 Oath of the Director Elect

22.1 The Administrative Council 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 71FUND/AC.20/18).

22.2 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.'

23 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).

24 Adoption of the Record of Decisions

The draft Record of Decisions of the Administrative Council, as contained in documents 71FUND/AC.20/WP.1 and 71FUND/AC.20/WP.1/Add.1 was adopted, subject to certain amendments.

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ANNEX

2007 ADMINISTRATIVE BUDGET FOR 1971 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 by 1971 Fund	325 000	325 000	275 000	275 000
II	Costs for Winding up of the 1971 Fund	-	250 000	250 000	250 000
III	External audit fees for Financial Statements	12 500	12 500	10 000	10 000
1971 Fund Budget Appropriation		337 500	587 500	535 000	535 000