



## RECORD OF DECISIONS OF THE TWENTY-SECOND SESSION OF THE ADMINISTRATIVE COUNCIL

(held from 15 to 19 October 2007)

Chairman: Mrs Teresa Martins de Oliveira (Portugal)  
Vice-Chairman: Captain David J F Bruce (Marshall Islands)

### *Opening of the session*

The Chairman thanked the Vice-Chairman for dealing with agenda items 5 to 8 in her absence.

### **1 Adoption of the Agenda**

The Administrative Council adopted the Agenda as contained in document 71FUND/AC.22/1.

### **2 Election of the Chairman and Vice-Chairman**

2.1 The Administrative Council elected Mrs Teresa Martins de Oliveira (Portugal) as its Chairman and Captain David J F Bruce (Marshall Islands) as its Vice-Chairman.

2.2 The Chairman on behalf of herself and the Vice-Chairman, 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
Australia	Ghana	Norway
Bahamas	Greece	Panama
Belgium	India	Papua New Guinea
Cameroon	Ireland	Poland
Canada	Italy	Portugal
China (Hong Kong Special Administrative Region)	Japan	Qatar
Colombia	Liberia	Republic of Korea
Cyprus	Malaysia	Russian Federation
Denmark	Malta	Spain
Estonia	Marshall Islands	Sweden
Finland	Mexico	United Arab Emirates
France	Monaco	United Kingdom
Gabon	Morocco	Vanuatu
	Netherlands	Venezuela

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

Angola	Latvia	Singapore
Argentina	Lithuania	Trinidad and Tobago
Bulgaria	Peru	Turkey
Dominican Republic	Philippines	Uruguay
Israel	Saudi Arabia	

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

*Intergovernmental organisations:*

European Commission  
 International Maritime Organization (IMO)  
 International Oil Pollution Compensation Fund 1992 (1992 Fund)  
 International Oil Pollution Compensation Supplementary Fund (Supplementary Fund)

*International non-governmental organisations:*

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)  
 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 20th session in October 2006, contained in document 71FUND/AC.22/2. The Director stated that this was his first report on the activities of the IOPC Funds since taking up office on 1 November 2006.
- 4.2 The Director expressed once again his gratitude and appreciation to the Government of Canada through the delegation of Canada for having hosted the June 2007 meetings of the IOPC Funds in Montreal.
- 4.3 The Director reported that the last 12 months had seen continued growth in 1992 Fund membership and that there were currently 98 Member States, with a further three States for which the Fund Convention would be in force by 30 March 2008. 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. The Director also stated that one further State had ratified the Supplementary Fund Protocol which would increase the number of Contracting States to 21 by 30 March 2008. He indicated that it was likely that a number of other States would also become Members of the 1992 Fund and Supplementary Fund in the near future.
- 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 Looking forward, the Director was pleased to note that despite the fact that the frequency of incidents had reduced over the years, the IOPC Funds still played an important role as illustrated in particular by the 1992 Fund's involvement in the *Solar 1* incident in the Philippines. He

stressed that the main priority for the IOPC Funds would continue to be the prompt payment of compensation to victims of oil pollution incidents. He expressed his hope that the Fourth Intersessional Working Group would, in fulfilling its mandate, develop proposals in respect of non-technical measures and guidelines for States and industry to promote quality shipping for the carriage of oil by sea which could, in the longer term, further reduce the occurrence of spills and the number of victims in need of compensation.

- 4.6 Some delegations expressed the view that the time had perhaps come for the IOPC Funds to start reviewing their activities given the decline in incidents.
- 4.7 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. It also thanked the lawyers and technical experts who had undertaken work for the 1971 Fund.

*Financial matters*

**5 Report on Investments**

- 5.1 The Administrative Council took note of the Director's report on the 1971 Fund's investments during the period July 2006 to June 2007, contained in document 71FUND/AC.22/3.
- 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.
- 5.3 The Council stated that it would continue to follow the investment activities of the 1971 Fund closely.

**6 Report of the joint Investment Advisory Body**

- 6.1 The Administrative 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.22/4.
- 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 The Council noted with satisfaction that none of the financial institutions used by the Funds for investment purposes was caught up in the recent turmoil in the financial markets, thanks to the Funds' strict and prudent investment criteria.
- 6.4 The Council further noted that the IAB had requested that the Exception Report, which sets out information as to when the maximum investment in any one financial institution had exceeded the approved limit and forms part of the 'Report on Investments' presented annually to the governing bodies, should also be submitted by the Secretariat to the IAB at its quarterly meetings.
- 6.5 The Council noted that the IAB had reviewed a document on the Funds' finance risks and had made recommendations as appropriate.
- 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.22/5 containing the Financial Statements of the 1971 Fund for the financial year 2006 and the External Auditor's Report and Opinion thereon.

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

- 7.2 The Administrative Council noted with appreciation the External Auditor's Report and Opinion contained in Annexes III and IV to document 71FUND/AC.22/5 and that the External Auditor had provided an unqualified audit opinion on the 2006 Financial Statements, following a rigorous examination of the financial operations and accounts in conformity with applicable audit standards and best practice. The Council also appreciated that the Report went into great depth and detail.
- 7.3 The representative of the External Auditor welcomed the positive way in which the Secretariat had accepted and implemented the recommendations made in the previous year's Report and commended the Fund on providing a responsible and effective standard of financial management and control.
- 7.4 The representative of the External Auditor recommended that the Secretariat should submit a proposal to the Council by its October 2008 session seeking the adoption of International Public Sector Accounting Standards (IPSAS) by the Fund, in principle from the financial year 2010. It was further recommended that the Secretariat prepare budgets that include staff time for the execution of project work to enable project teams to ensure that work is delivered on time and within budget.
- 7.5 With respect to the recommendations made for the previous year the representative of the External Auditor recommended that the Secretariat continue its efforts to return outstanding funds due to a contributor that was a dissolved joint venture between two oil companies.

## **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.22/6, containing the joint Audit Body's Report.
- 8.2 In his introduction, Mr Coppolani reminded the Administrative Council that the Audit Body had been elected in October 2005 and had met three times since the October 2006 sessions of the governing bodies.
- 8.3 Mr Coppolani drew the attention of the Council to the fact that the Audit Body had taken the decision this year for its members to attend the regular October sessions on an agreed rota system with only the Chairman and the 'outside expert' attending on a regular basis. It was, however, up to the Council to express a view as to whether the attendance of all the members was required, bearing in mind that this would have cost implications.
- 8.4 Mr Coppolani pointed out that in addition to its regular activities, at their October 2006 sessions the Funds' governing bodies had also entrusted the Audit Body with the task of preparing a detailed proposal for a procedure for the appointment of the External Auditor in the future. He explained that this report was the subject of a separate document and would be dealt with under a separate agenda item (cf section 10 below). He pointed out that, in the event that the governing bodies were to agree on the procedure set out in the document, the mandate of the Audit Body would need to be amended to include the organisation of the tender process when the time came as well as a recommendation to the governing bodies as to the choice of the External Auditor.
- 8.5 Mr Coppolani recalled that, in view of its continuing interest in issues related to claims handling, the Audit Body had decided that it would be useful to carry out a study to ascertain the level of satisfaction of claimants. He further recalled that the *N°7 Kwang Min* incident in the Republic of Korea had been chosen as a basis for the trial of a questionnaire and said that the main results had been summarised in the Audit Body's report. He pointed out that, in the Audit Body's view, although the questionnaire had not revealed any unexpected issues, it had been a useful exercise and that it could be worthwhile using a questionnaire, to be designed by an outside expert, on selected incidents in the future at the Secretariat's discretion. He took the opportunity to express

the Audit Body's support for the Secretariat's plans to complete the development of the claims handling database system which would generate improved management information.

- 8.6 Mr Coppolani drew attention to the Audit Body's examination of the accounts and thanked the External Auditor for his participation in the Body's deliberations, for having accepted to discuss his audit and for having 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. Mr Coppolani also referred to the very useful discussions which were held with the joint Investment Advisory Body on an annual basis.
- 8.7 Mr Coppolani also reported that the Audit Body had continued to monitor the risk management process which had been adopted by the Secretariat.
- 8.8 One delegation was of the view that it would be valuable for all members of the Audit Body to attend the October sessions if they so wished, as it was useful for them to exchange views with the members of the Council. In addition that delegation was of the opinion that the current mandate of the Audit Body was restrictive and that it would be appropriate to review it in the light of six years' experience. Other delegations expressed the opinion that there should be caution when reviewing the mandate and that the Audit Body itself would be the right body to suggest any amendments to it.
- 8.9 One delegation expressed concern that four new members of the Audit Body would have to be elected in October 2008 and wondered if the Audit Body could be asked to look at different options for overcoming this problem. This concern was not, however, shared by other delegations that took the floor.
- 8.10 In response, the Chairman of the Audit Body agreed that the time was right for the Audit Body to review its mandate, whilst reminding delegations that the Audit Body had already carried out additional tasks as requested by the governing bodies. With respect to the participation of all members of the Audit Body at the October sessions, he said that the Audit Body's concern had been one of economy. However, if the governing bodies so wished, all members of the Audit Body could attend the October sessions in the future. Regarding the election of a new Audit Body in October 2008, he did not envisage that the election of four new members would cause any problems, provided that the 'outside expert' with financial expertise was re-elected.
- 8.11 The Council noted that the Audit Body would review its mandate and make a proposal to the governing bodies at a future session. In addition it would look at the participation of all Audit Body members in future October sessions, taking into account cost implications.
- 8.12 The Council noted the Audit Body's recommendation that the governing bodies should approve the Financial Statements of the 1971 Fund for the financial year 2006.
- 8.13 The Council approved the Financial Statements of the 1971 Fund for the financial year 2006.
- 8.14 The Council expressed its gratitude for the important work being carried out by the Audit Body. It also noted the Audit Body's expression of gratitude to the Secretariat for its assistance and co-operation.
- 8.15 The Director expressed the sincere appreciation of the Secretariat to the Audit Body for its excellent co-operation and for the very useful contribution it made to the work of the Organisations.

## **9 Procedures for the Appointment of the External Auditor**

- 9.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document 71FUND/AC.22/7 submitted by the Audit Body.

- 9.2 Mr Coppolani reminded the Administrative Council that at their October 2006 sessions, the governing bodies had decided to re-appoint the Comptroller and Auditor General of the United Kingdom as External Auditor for the three Funds for a full term of four years from 1 January 2007, ie to audit the Financial Statements for the years 2007 to 2010. He also reminded the Administrative Council that they would at their October 2010 sessions either have to elect a new External Auditor or to re-elect the current External Auditor.
- 9.3 Mr Coppolani reminded the Administrative Council that it was for this reason that the governing bodies had requested the Audit Body at their October 2006 sessions to prepare a proposal for a procedure to be used for the selection and appointment of the IOPC Funds' External Auditor in future years. This proposal was to include the eligibility to tender, tender rules, timing, terms of reference, the factors that the Audit Body thought were essential as well as a proposed framework for the selection process.
- 9.4 He informed the Assembly that, as there would be a significant change in the composition of the Audit Body in 2008, the Audit Body had been conscious of the need to benefit from the experience gained during the early years of the existence of the Audit Body. He explained that the current Body had therefore decided to prepare the relevant documentation regarding the proposed procedure even though it would not be needed until the term of office of the Funds' current External Auditor had expired with the audit of the 2010 Financial Statements which will be conducted in 2011.
- 9.5 He drew particular attention to the fact that, should the proposed arrangements be approved by the governing bodies, it would be necessary for the mandate of the Audit Body to be amended to include the organisation of the tender process when the time came. He also pointed out that the Audit Body had recommended that it should be instructed by the Administrative Council to draw up a short list of candidates for interview in London in 2010 and that, in its view, it was essential for reasons of transparency that, in addition to the members of the Audit Body, the Chairmen of the 1992 Fund Assembly, the 1971 Fund Administrative Council and the Supplementary Fund Assembly should also participate in the interview process.
- 9.6 The Audit Body proposed that, as a result of the interview process, it would make a recommendation to the October 2010 sessions of the governing bodies as to the appointment of a new External Auditor or the re-appointment of the current External Auditor.
- 9.7 During the discussions some delegations expressed the view that, in order to avoid a possible conflict of interest if candidates short-listed for interview were from the same Member States as any of the Chairmen of the 1992 Fund Assembly, the 1971 Fund Administrative Council or the Supplementary Fund Assembly, the Vice-Chairman should be invited to attend in their place. Several delegations also expressed the view that all three of the Funds' working languages, ie English, French and Spanish, should be given equal treatment in the selection of the External Auditor. Other issues raised included the length of the mandate of the External Auditor and whether more than one candidate could be proposed by a Member State.
- 9.8 In response to the concerns raised by delegations, the Chairman of the Audit Body responded that the External Auditor must, in accordance with Regulation 14.1 of the Financial Regulations, be the Auditor-General (or officer holding the equivalent title) of a Member State and that therefore there could be only one candidature from each Member State. He also stated that it was the Audit Body's view that equal treatment should be given to candidates whose working language was one of the Funds' working languages but stressed that the day-to-day working language of the Secretariat was English and that, whatever the language of the External Auditor, he or she must be able to work in English. With respect to the length of the mandate, he stated that the Audit Body had considered that a continuation of the current four-year period was desirable but that the Financial Regulations did not stipulate any specific length. With regard to a potential conflict of interest as mentioned above, he indicated that the members of the Audit Body had felt that it was important that the Audit Body should work in the utmost transparency which is why the three Chairmen had been included in the selection process.

- 9.9 The Administrative Council decided that Vice-Chairmen should be invited to participate in the selection process if there was any potential conflict of interest with the Chairman being of the same nationality as that of the candidate, but that all members of the Audit Body should attend, whatever their nationality. It also recognised that, while it was important for equal treatment to be given to all three official languages in the selection process, the working language for audit purposes was in practice English.
- 9.10 The Administrative Council endorsed the Audit Body's proposal and approved the arrangements proposed by the Audit Body regarding the procedure to be used for the selection and appointment of the IOPC Funds' External Auditor in future years as set out in document 71FUND/AC.22/7. The Administrative Council decided to follow the proposed timetable contained at Annex IV to that document.

*Contribution matters*

**10 Report on contributions**

The Administrative Council took note of the Director's report on contributions contained in document 71FUND/AC.22/8.

**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.22/9. It was noted that, since the document had been issued, three further States had submitted their outstanding oil reports: Madagascar and Tonga, which each had two years of outstanding reports, and Georgia, 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 34 States still had outstanding oil reports for the 1971 and 1992 Funds for the year 2006 and/or previous years: six States in respect of the 1971 Fund and 30 States in respect of the 1992 Fund. It was further noted that a number of States had reports outstanding for several years.
- 11.2 The Council noted that those States which had submitted reports for 2006 represented some 98.5% of the expected total contributing oil (cf document 92FUND/A.12/17, Annex I) and that a further six States (Kenya, Morocco, Nigeria, Panama, Russian Federation and Tunisia) which have all submitted reports within the last three years, represented the remaining 1.5%.
- 11.3 The Council noted with satisfaction that since the October 2006 sessions of the governing bodies, Albania had submitted all their outstanding reports, ie for ten years. It was also noted that a number of other States with outstanding reports, including Dominica, Panama, Russian Federation, Saint Kitts and Nevis and Saint Vincent and the Grenadines, had indicated their intention to submit their outstanding reports in the near future.
- 11.4 The Council noted that the failure of a number of Member States to submit oil reports had been a very serious issue for a number of years and that, whilst the situation might be slightly better than in previous years, it was still very unsatisfactory. The Council expressed its very serious concern as regards the number of Member States which had not fulfilled their obligations to submit oil reports, since the submission of these reports was crucial to the functioning of the IOPC Funds.
- 11.5 The Council noted the information contained in document 71FUND/AC.22/9/1, which reported on the implementation of measures encouraging the submission of oil reports.
- 11.6 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.

- 11.7 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 a 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.
- 11.8 It was recalled that the Council had decided at its October 2005 session not to take the proposed measure to 'shame' States into submitting oil reports by highlighting States with outstanding reports on the Funds' website and in the Annual Report. However, it was noted that the Administrative Council had decided at its October 2005 session during its discussion of the winding up of the 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).
- 11.9 The Council recalled that the implementation of the measures referred to in paragraphs 11.7(a), (b) and (d) and 11.8 had been reported to the governing bodies at their October 2006 sessions (cf document 71FUND/AC.20/9/1).
- 11.10 With regard to the measure referred to in paragraph 11.7(c), the Council noted that the Secretariat was proceeding with the establishment of an electronic reporting system for the submission of reports on contributing oil, similar to that which has been developed in the context of the HNS Convention. The Council also noted that the Secretariat hoped that a trial version of such a system would be available for demonstration to the governing bodies at their October 2008 sessions, at the latest.
- 11.11 As regards the measure referred to in paragraph 11.7(e), it was recalled that the 1992 Fund Administrative Council, acting on behalf of the Assembly, had noted at its June 2007 session that the Director had prepared an information document which could assist States in setting up

procedures for the submission of oil reports (cf documents 92FUND/A.ES.12/4 and 92FUND/AC.3/A/ES.12/14, paragraph 4.1). It was noted that this document is being distributed to States which currently have outstanding oil reports, as well as to new 1992 Fund Member States. It was further noted that, based on the feedback received at the June 2007 session, the Director is preparing a similar document aimed at assisting contributors, rather than governments, to establish procedures for the submission of oil reports.

- 11.12 The Council instructed the Director to continue to bring the matter of the submission of oil reports to its attention at each regular session.
- 11.13 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.22/10 regarding the operation of the Secretariat.
- 12.2 The Administrative Council noted that Mr Willem Oosterveen had taken up office as Director of the IOPC Funds on 1 November 2006 and that the previous Director, Mr Måns Jacobsson, had continued to be available until his retirement on 31 December 2006. The Director expressed his gratitude to the Secretariat for its support during his first year in office.
- 12.3 The Administrative Council noted that Mr Joe Nichols had retired from the post of Deputy Director/Technical Adviser on 17 August 2007. In response to a question by one delegation, the Director explained that, given that the role had been created as a result of the particular circumstances at the time, he was now taking the opportunity to rethink that post. He explained that whilst he considered the role of Technical Adviser very important within the Secretariat, he was unsure whether that post should continue to be combined with that of Deputy Director and wanted to give this matter careful consideration before reaching any conclusions.
- 12.4 It was noted that six posts were vacant in the Professional Category, ie those of Deputy Director/Technical Adviser, Claims Manager, Human Resources Manager, Information Officer and French and Spanish translators. It was also noted that recruitment to the post of Claims Manager would only be made if required due to an increase in workload and that the Director did not intend to fill the vacant posts of in-house translators in the foreseeable future but would continue to use freelance translators. It was further noted that one post was vacant in the General Services category, ie that of Publications Administrator.
- 12.5 The Director informed the Administrative Council that, as a result of two posts in the External Relations and Conference (ERC) Department becoming vacant in 2007, he had taken the opportunity to review the staff resources in that department. In order to provide better service to the increasing number of Member States and contributors as well as to further develop the Funds' outreach programmes, the Director requested the Administrative Council to approve the establishment of a new post in the Professional category in the ERC Department.
- 12.6 The Director explained that should the 1971 Administrative Council approve the establishment of the new post, he did not envisage the need for an increase in the administrative budget for 2008 (document 71FUND/AC.22/15). He proposed instead to use the funds allocated in the draft 2008 administrative budget for the vacant post of Claims Manager which would only be filled should the workload so require. One delegation pointed out, however, that an increase in the budget would in fact be required, were it to become necessary to fill the post of Claims Manager.

- 12.7 One delegation requested a more detailed explanation as to why the new post was required, particularly given the reduction in the number of oil pollution incidents and the fact that the Administrative Council had already approved 17 professional-level posts within the Organisation.
- 12.8 The Director pointed out that the decline in the frequency of incidents did not necessarily lead to an immediate decline in the work of the Secretariat, in particular not outside the Claims Department. He further pointed out that the ERC Department had a wide range of responsibilities in addition to the running of the meetings, including the processing and checking of oil reports, publications, management of the website and preparations relating to the setting up of the HNS Fund.
- 12.9 The Director reminded the Administrative Council that it had been established during the early years of the IOPC Funds that the Secretariat would have few members of staff but would hire and manage experts as and when required. He pointed out that in order for the Secretariat to be able to work in this manner it was essential that staff members were skilled and of a sufficient level to manage both internally and externally.
- 12.10 He also pointed out that the two established posts of French and Spanish translators had remained vacant for a number of years since the Secretariat had continued to successfully use freelance translators to carry out the necessary work. He explained however, that these two vacant posts gave a somewhat distorted view of the level of staffing within the ERC Department. He suggested that these two posts could in fact be removed from the structure of the Secretariat should the Administrative Council consider it necessary to do so.
- 12.11 Several delegations expressed their satisfaction at the reasoning given for the creation of the new post and their confidence in the Director's judgement, stating that the Director would only have put forward a proposal for new staff if he felt there was a compelling need to do so.
- 12.12 The Administrative Council approved the Director's proposal to establish a new post in the Professional category in the ERC Department.
- 12.13 The Administrative Council instructed the Director to seriously consider removing the two vacant posts of French and Spanish translators from the ERC Department.
- 12.14 Some delegations considered that there was a need in due course to review the structure of the Secretariat in view of the declining number of incidents.
- 12.15 The Administrative Council noted with satisfaction that the Secretariat's work on risk management had continued since the October 2006 sessions. It also noted the Director's objective that the work should be completed as soon as practically possible and hopefully by the summer of 2008.
- 12.16 The Administrative Council recalled the work carried out by the Secretariat towards the establishment of a database of the decisions taken over the years by the governing bodies. It noted that the former Deputy Director/Technical Adviser, Mr Joe Nichols, had begun work on categorising all the decisions and other relevant information, such as court judgements, into the database before his retirement in August 2007 and had by then covered the period 1978-1998. It also noted that in order to maintain the same style, the Director had decided to accept Mr Nichols' kind offer to complete the work. It was further noted that once the work had been completed and proofread, a database interface would be developed to render the database accessible online and that the database would then be kept up to date by the Secretariat after each session of the governing bodies.
- 12.17 The Administrative Council noted that a new claims handling database was in the process of being developed in-house and that it would assist in the handling of incidents where claimants, governments, experts etc, make large amounts of data available to the Fund, in that it would provide the Director with useful management information. The Administrative Council also noted that the database was expected to be available by the end of 2007.

**13 Documents for meetings**

- 13.1 The Administrative Council took note of the information contained in document 71FUND/AC.22/11, submitted by the Director, which dealt with the structure and content of documents for meetings.
- 13.2 It was recalled that at its 3rd session, held in June 2007, the 1992 Fund Administrative Council, acting on behalf of the Assembly, considered a number of options which might improve the usefulness of documents. It was also recalled that the Administrative Council had invited the Secretariat to submit a concrete proposal in the form of a document for consideration at the October 2007 session of the governing bodies, taking into account the discussion at that session (document 92FUND/AC.3/A/ES.12/14, paragraph 11.1.8).
- 13.3 The Council noted the Director's proposal for the following changes to incident-related documents:
- Both the amount and structure of the information currently provided in the summary box would be developed so as to be sufficient to enable the majority of delegates to take a view on the decisions to be taken, with more detailed information available in the body of the document for those that require it. References to paragraph numbers within the document would be provided in the summary to facilitate this and longer documents (eg five pages or more) would have a table of contents. The summary box would be structured in the form of: objective of document, developments/issues, recommendations, as appropriate, depending on the content of the document.
  - A standardised summary would be provided at the start of each incident document, giving basic factual information about the incident, similar to that currently provided in Annexes XXII and XXIII of the 2006 Annual Report. An overview of the development of the claims (ie the amounts claimed, assessed and paid) in comparison with the amounts available under the Conventions would also be provided. An example of the proposed information is provided in the Annex to document 71FUND/AC.22/11.
  - As appropriate, the length of documents would be significantly reduced by simply referring to information which is contained in previous documents or in other sources of information, such as the Annual Report, rather than quoting it verbatim.
  - To the extent possible, the text of the documents would also be structured in a standard way so that new information and developments would be easier for delegates to identify.
- 13.4 The Council noted that the Director did not propose to make any changes to other types of documents, ie not incident-related ones, at the current time.
- 13.5 The Council noted the Director's proposal as regards the Records of Decisions as follows:
- The Records of Decisions would be structured so that each topic was presented as follows: Background, Debate, Decision.
  - As regards Background, there would be no repetition of information which was contained in the documents but simply a relatively short reference to the location of the background information, eg in the form 'The Executive Committee discussed the Director's proposal to ..., as set out in document ...'. The Records of Decisions would therefore no longer be self-standing, but would have to be read in conjunction with the relevant meeting documents.
  - As regards Debate and Decision, the Records of Decisions would only contain the key points from the discussion by the governing bodies and a list of the decisions made.
- 13.6 The Council agreed with the Director's proposals as regards the structure and content of incident-related documents and Records of Decisions as set out in paragraphs 13.3-13.5 above.

13.7 The Council also noted the Director's intentions to review the impact of the changes after an appropriate period of time and, at that time, to also give further consideration to the following possibilities:

- Changes to not incident-related documents.
- Providing electronic links in PDF versions of documents in order to facilitate referring to previous documents or to other sources of information.
- Whether the Records of Decisions for the three Funds could be organised in such a way that the repetition between them would be reduced or eliminated.

*Compensation matters*

**14 Incidents involving the 1971 Fund**

14.1 Overview

The Administrative Council noted the information contained in document 71FUND/AC.22/12, which contained a summary of the situation in respect of all 12 incidents dealt with by the 1971 Fund during the past 12 months.

14.2 Al Jaziah I

14.2.1 The Administrative Council took note of the information contained in document 71FUND/AC.22/12/1 (cf 92FUND/EXC.38/8) concerning the *Al Jaziah I* incident which had occurred in the United Arab Emirates (UAE) and which involved both the 1971 and the 1992 Funds.

14.2.2 It was recalled that the *Al Jaziah I* incident had occurred in the United Arab Emirates (UAE) and involved both the 1992 and the 1971 Funds. It was also recalled that the *Al Jaziah I* had not been covered by any liability insurance, that claims totalling Dhs 7.9 million (£1.1 million) had been submitted to the Funds in relation to clean up and pollution prevention and that these claims had been settled and paid at Dhs 6.4 million (£870 000). The Council further recalled that the Funds would not be required to make any further compensation payments.

14.2.3 It was recalled that, at their October 2002 sessions, the governing bodies of the 1992 and 1971 Funds had decided that the Funds should pursue recourse action against the shipowner.

14.2.4 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 (£870 000) to the Funds, the amount to be distributed equally between the 1992 Fund and the 1971 Fund.

14.2.5 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.

14.2.6 The Council recalled 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 (£870 000) 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.

14.2.7 It was recalled that the expert had appeared to suggest that the Funds had paid claims without scrutinising them. It was also recalled 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 bad weather. It was recalled 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 recalled 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.

14.2.8 The Council recalled that in September 2006 the Funds had submitted a memorandum to the Court which set out their comments on the expert's report. The Council also recalled that the Funds had agreed with the main conclusions reached by the expert.

14.2.9 It was recalled that in the memorandum, the Funds had commented on the expert's view in relation to the payments made to claimants. It was further recalled 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 recalled 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 recalled 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 (£870 000).

14.2.10 The Council recalled that in October 2006 the shipowner had submitted a memorandum to the Court setting out his objections to the expert's findings, stating that the Abu Dhabi authorities should be responsible for at least 90% of the damages arising from the incident as they had allowed an unauthorised ship to load an oil cargo and subsequently allowed the ship to depart in bad weather and that the expert's findings as regards the payments made by the Funds should be rejected as the expert had relied on photocopied documents to reach his conclusion.

14.2.11 It was noted that in November 2006, the Court had instructed the expert to submit a supplementary report addressing the issues raised by the shipowner and the Funds. It was also noted that between November 2006 and September 2007 the Court had adjourned the case six times as the expert had not submitted the report.

14.2.12 The Council noted that in September 2007 the Funds had submitted pleadings to the Court setting out the work carried out by the Funds in order to assist the expert to complete the report and had requested the Court to instruct the expert to submit the report within a fixed time-frame. It was also noted that the Court had agreed with the Funds' request and had instructed the expert to submit the report by October 2007.

14.2.13 The Council noted that there had been no developments on this issue at the time of the session.

### 14.3 Nissos Amorgos

14.3.1 The Administrative Council took note of the information contained in document 71FUND/AC.22/12/2 concerning the *Nissos Amorgos* incident.

#### *Criminal proceedings*

14.3.2 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.

- 14.3.3 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.
- 14.3.4 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'<sup><1></sup>. 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.
- 14.3.5 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.
- 14.3.6 The Council noted that in October 2006 the public prosecutor had requested the Supreme Court (Constitutional Section) to revise the judgement of the Criminal Court of Appeal on the grounds that the Court had not decided in respect of the claim for compensation submitted by the public prosecutor on behalf of the Republic of Venezuela.
- 14.3.7 It was noted that in a judgement rendered in March 2007 the Supreme Court (Constitutional Section) had decided to annul the judgement of the Court of Appeal and send back the criminal file to the Court of Appeal where a different section would render a new judgement. It was noted that in its judgement the Supreme Court had stated that the judgement of the Court of Appeal was unconstitutional since it had not decided on the claim for compensation submitted by the Republic of Venezuela that had been presented to obtain compensation for the Venezuelan State for the damage caused.
- 14.3.8 The Council noted that the Director had met with representatives of the shipowner and the Assuranceforeningen Gard (Gard Club) to examine the consequences of the judgement by the Supreme Court. It was noted that at the meeting the Gard Club had informed the Director that it had also decided to let a recourse action against INC become time-barred. It was also noted that at the meeting surprise had been expressed that the public prosecutor had waited two years, and until the 1971 Fund and the Gard Club had decided not to bring recourse actions against INC, to request a revision of the Court of Appeal judgement. The Council noted that in the Director's view, the Supreme Court (Constitutional Section) judgement was likely to delay even more the resolution of this incident.

#### *CLAIMS FOR COMPENSATION IN COURT*

##### *Claim by Republic of Venezuela*

- 14.3.9 The Council recalled that the Republic of Venezuela had presented a claim for environmental damage for US\$60 250 396 (£30 million) against the master, the shipowner and his insurer, Gard

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<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.

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.

- 14.3.10 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 (£30 million). It was also recalled that the 1971 Fund had not been notified of the civil action.
- 14.3.11 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).
- 14.3.12 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 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.
- 14.3.13 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.

*Claims by fish processors*

- 14.3.14 The Administrative Council recalled that three fish processors had presented claims totalling US\$30 million (£15 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.
- 14.3.15 The Council recalled that in August 2003 the 1971 Fund had submitted pleadings to the Supreme Court arguing that the claimants had failed to demonstrate the extent of their loss and that 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'*

- 14.3.16 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'.

*Possible recourse action against Instituto Nacional de Canalizaciones (INC)*

- 14.3.17 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 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.
- 14.3.18 It was recalled that at its October 2006 session the Administrative Council had 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 that reason the Director needed instructions from the Council as to whether such action should be brought before that date. The Administrative Council recalled that it had, at that session, decided that the 1971 Fund should not take recourse action against INC (document 71FUND/AC.20/24, paragraph 15.4.25).

*Attempts to resolve the outstanding issues*

- 14.3.19 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 the Venezuelan 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.
- 14.3.20 The Council recalled 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 recalled that in February 2006 the 1971 Fund had written to the Venezuelan delegation setting out possible solutions to the outstanding issues. It was also recalled 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 recalled that the purpose of the meeting had been to brief the various parties as regards the current situation concerning the outstanding claims.
- 14.3.21 The Council recalled 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 recalled 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.
- 14.3.22 It was noted that the 1971 Fund had visited Venezuela in October 2006 where a meeting had been held at the Ministry of External Affairs attended by representatives of the Ministry of External Affairs, Ministry of the Environment, Public Prosecutor, Attorney General and the Instituto Nacional de los Espacios Acuáticos (National Institute of Aquatic Spaces), that at the meeting the participants had expressed a desire to resolve the outstanding issues without pursuing the claims in court but that there had been no progress on such a resolution since then.

*Considerations by the Administrative Council*

- 14.3.23 One delegation stated that it was unfortunate that the *Nissos Amorgos* case seemed to be back to the beginning and that therefore it would most probably be the case that would delay the winding up of the 1971 Fund for a considerable period of time. That delegation enquired for any indications as to when a judgement could be expected. The delegation also enquired from the Secretariat and from the Venezuelan delegation as to any possible measures that could be taken to resolve this case.
- 14.3.24 The Secretariat stated that it could not provide any time scale since that was dependent on the Venezuelan courts, that the Criminal Court of Appeal would have to render a new judgement on the criminal and civil liabilities, that the civil liabilities might be transferred to another court for decision and that this could take a long time.
- 14.3.25 The Venezuelan delegation agreed with the Secretariat in that it was not possible to provide any time frame as to when the court proceedings would be finalised and stated that it would inform the 1971 Fund of any developments.
- 14.3.26 One delegation enquired whether there was any room to reach a compromise, in particular on the part of the Venezuelan Government. The Venezuelan delegation stated that the judgement by the Court of Appeal was unconstitutional, since the court had not decided on the civil claims and that when a judgement in respect of all the issues had been rendered the parties could start working towards a solution of the case.
- 14.3.27 The Director pointed out that the 1971 Fund was always open to discuss possible solutions but that the Fund could not force other parties to do the same. He also pointed out that the Fund's position was that the two claims by the Republic of Venezuela were time-barred and that no loss had been proved in respect of the claims by the three fish processors and that therefore it would not be easy to compromise on these claims, in particular taking into account the Fund's policy on time bar.
- 14.3.28 The Chairman invited the Venezuelan delegation to bring the concerns of the Administrative Council to the attention of the relevant authorities in Venezuela with a view to resolving the outstanding issues as soon as possible.

14.4 Other incidents

- 14.4.1 The Administrative Council took note of the information contained in document 71FUND/AC.22/12/3 in respect of the following incidents: *Vistabella*, *Aegean Sea*, *Braer*, *Iliad*, *Kriti Sea*, *Plate Princess*, *Katja*, *Evoikos* and *Alambra* and *Pontoon 300*.

*Vistabella*

- 14.4.2 The Administrative Council recalled that in February 2004 the Court of Appeal in Basse-Terre (Guadeloupe) had confirmed the first instance Court's judgement ordering the shipowner's insurer to pay the 1971 Fund FF8.2 million or €1.3 million (£890 000) plus interest. It was also recalled that the shipowner's insurer had not appealed against the judgement to the Court of Cassation.
- 14.4.3 It was noted that the 1971 Fund had commenced legal action against the insurer in Trinidad and Tobago to enforce the judgement by the Court of Appeal in Guadeloupe.
- 14.4.4 It was noted that the 1971 Fund had submitted an application for a summary execution of the judgement in the High Court in Trinidad and Tobago, the place where the *Vistabella* was registered. It was also noted that the insurer had filed defence pleadings opposing the execution of the judgement on the grounds that it had been issued in application of the 1969 Civil Liability Convention to which Trinidad and Tobago was not a Party.

- 14.4.5 The Council noted that the 1971 Fund had submitted a reply arguing that it was not requesting the Court to apply the 1969 Civil Liability Convention, but that it was seeking to enforce a foreign judgement under common law.
- 14.4.6 It was noted that it was expected that the Court, having received submissions from both parties, would deliver its decision in November 2007.

*Aegean Sea*

- 14.4.7 The Administrative Council recalled that an agreement between the Spanish Government, the 1971 Fund, the owner of the *Aegean Sea* and his insurer had been signed in Madrid on 30 October 2002, settling all outstanding issues arising from this incident, whereby the Spanish Government had undertaken to compensate all victims who obtained a final judgement by a Spanish court against the 1971 Fund. It was recalled that pursuant to this agreement the 1971 Fund had paid the Spanish Government €38 386 172 corresponding to Pts 6 386 921 613 (£24.4 million).
- 14.4.8 It was noted that six claimants had not reached an agreement with the Spanish Government on the amount of their losses and that the Court of first instance of La Coruña had rendered judgements in respect of the six claims, holding that the Government and the Fund had joint and several liability to the claimants but awarding amounts much lower than those claimed.
- 14.4.9 It was also noted that the Court of Appeal had issued judgements in respect of the six mentioned claims. The Council noted that the Court had reduced the amount awarded in respect of three of the claims, that it had agreed with the Fund's assessment of the claim in one case, that it had upheld the Court of first instance's judgement in respect of another claim and that in one case the court had referred the case back to the Court of first instance for a decision on a procedural matter.
- 14.4.10 It was noted that the Court of Appeal had ordered the provisional execution of four of the judgements. The Council noted that the Spanish Government would, under the agreement with the 1971 Fund, pay any amounts awarded by these judgements.
- 14.4.11 It was also noted that two of the claimants had requested leave to appeal to the Supreme Court but that no decision had been made on these two requests.

*Braer*

- 14.4.12 The Administrative Council noted that all claims had been settled and that the total compensation paid amounted to some £51.9 million, of which the 1971 Fund had paid £45.7 million and the shipowner's insurer, Assuranceforeningen Skuld (Skuld Club), £6.2 million.
- 14.4.13 It was recalled that Shetland Sea Farms Ltd, a Shetland-based company, had taken legal action against the shipowner, the Skuld Club and the 1971 Fund. It was recalled that the Scottish Court of first instance had held that the claim was based on false documents and had reported the case to the Scottish Prosecuting Authority to consider whether three witnesses for Shetland Sea Farms should be prosecuted for their involvement in a scheme to defraud the 1971 Fund. It was however recalled that the Court had allowed the case to proceed, restricting it to a loss of profit issue and that the shipowner, his insurer and the 1971 Fund had appealed against that part of the Court's decision on the grounds that the loss of profit claim was based on alleged contracts which had been shown to be false. The Council recalled that in January 2005, the Appellate Court had issued a judgement confirming the decision of the Court of first instance but that the Court had issued an interim order in July 2006 requiring Shetland Sea Farms to pay the majority of the costs incurred by the shipowner, the Skuld Club and the Fund in relation to the Court proceedings in order to continue with the proceedings.
- 14.4.14 The Council noted that in January 2007 a settlement had been reached between Shetland Sea Farms, the Skuld Club and the 1971 Fund whereby the claimant had withdrawn its claim and had

paid the sums of £75 000 to the Skuld Club and £20 000 to the 1971 Fund as a contribution for the costs incurred in respect of the court action.

14.4.15 It was noted that since the last outstanding claim had been resolved the case was now concluded.

*Kriti Sea*

14.4.16 The Administrative Council noted that most claims had been resolved except for three claims, ie those of the Greek State, a fish farm and a seaside resort, which were the subject of legal proceedings in the Greek Supreme Court.

14.4.17 It was recalled that, in judgements rendered in March 2006, the Supreme Court had overturned the Court of Appeal's decisions which had upheld the claims of the Greek State and the fish farm, on the grounds of lack of proper legal reasoning, and that it had also overturned the Court of Appeal's decision which had rejected the seaside resort's claim on the grounds of improper application of the law. It was also recalled that the Supreme Court had referred these claims back to the Court of Appeal to rehear the cases on their merits and to deal with the issue of quantum. It was noted that the Court of Appeal was expected to hear the case in March 2008.

14.4.18 The Council noted that, taking into account the interest which continued to accrue in relation to the pending court cases, and costs which might be awarded by the Court, it was not certain whether the aggregate amount of the settled claims and the final adjudicated sums in respect of the pending cases would remain below the limitation threshold.

*Plate Princess*

14.4.19 The Council recalled that in June 1997 two fishermen's unions had brought actions for compensation against the shipowner and the master of the *Plate Princess* claiming a total of \$47 million (£23.4 million). It was also recalled that at its May 2006 session the Administrative Council had decided that these claims were time-barred in respect of the 1971 Fund.

14.4.20 It was recalled that at the Administrative Council's 20th session held in October 2006 the Venezuelan delegation had stated that it intended to submit a document on the *Plate Princess* at a future session of the Administrative Council and had asked that the incident should therefore remain on the Council's agenda.

14.4.21 It was noted that there had been no further developments since October 2006.

*Katja*

14.4.22 The Administrative Council recalled that claims relating to clean up, property damage and loss of income in the fisheries sector had been settled at a total of €2.5 million (£1.7 million).

14.4.23 It was recalled that legal actions had been taken against the shipowner, his P&I insurer and the 1971 Fund relating to claims for the cost of clean-up operations incurred by the regional and local authorities, property damage and loss of income in the fisheries sector. It was also recalled that three claims remained pending in courts totalling €976 000 (£661 000), the largest of which was a claim by the Port Autonome du Havre (PAH) in respect of clean-up costs for €878 000 (£594 000).

14.4.24 The Council noted that it was virtually certain that the 1971 Fund would not be called upon to make any payments in respect of this incident.

*Pontoon 300*

14.4.25 The Council noted that at its October 2006 session the Administrative Council had decided to authorise the Director to increase the level of payments from 75% to 100% of all settled claims if the legal action by the Umm Al Quwain Municipality against the 1971 Fund was withdrawn.

- 14.4.26 It was recalled that, since the claim by the Umm Al Quwain Municipality had been withdrawn, the 1971 Fund had increased the level of payments to 100%. It was noted that the 1971 Fund had paid the remaining 25% of the settlement amount in respect of the majority of the settled claims. It was also noted that two claimants had not yet replied to the offers of payment of the outstanding amounts of their claims but that these claimants would receive payment in due course.

*Considerations by the Administrative Council*

One delegation pointed out that when presenting the information on these long standing 1971 Fund incidents it would be helpful to add some explanation as to when it was thought these incidents would be resolved. The Director stated that the Secretariat would do its best to provide that explanation but that in some incidents it would be difficult to predict when a solution could be reached.

**15 Winding up of the 1971 Fund**

- 15.1 The Administrative Council took note of the information contained in document 71FUND/AC.22/13 regarding the winding up of the 1971 Fund.

*Pending incidents*

- 15.2 The Administrative Council noted that it was anticipated that by the end of 2008 there would only be outstanding compensation and/or indemnification claims in respect of the *Nissos Amorgos* incident and, possibly, in respect of the *Iliad* and *Alambra* incidents. It also noted that the 1971 Fund may still be involved in recourse proceedings in respect of the *Vistabella* and *Al Jaziah 1* incident and that issues relating to costs may be outstanding in respect of some other incidents.

*Financial situation in respect of pending incidents*

- 15.3 The Administrative Council noted that payments in respect of the *Aegean Sea*, *Iliad*, *Kriti Sea*, *Plate Princess*, *Katja*, *Alambra* and *Al Jaziah 1* incidents would be made from the General Fund.
- 15.4 It also noted that as regards the *Plate Princess* incident, payments 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.
- 15.5 With respect to the *Alambra* incident, it was 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.
- 15.6 The Council noted that payments relating to the *Nissos Amorgos* and *Pontoon 300* and, in respect of costs, *Vistabella* incidents would be made from the respective Major Claims Funds.

*Distribution of the 1971 Fund's remaining assets*

- 15.7 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 (now the Administrative Council) 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).

- 15.8 The Council noted that once the final payment had been made in respect of the *Pontoon 300* incident there would be a surplus on the Major Claims Fund of approximately £2.3 million, including interest, as at 1 March 2008. The Council also noted that the Director had submitted a proposal to the Administrative Council for the reimbursement of £2.2 million of this surplus to contributors to this Major Claims Fund to be made on 1 March 2008 (document 71FUND/AC.22/16, paragraphs 5.3 and 5.4).
- 15.9 The Council further noted that after the reimbursement of the surplus on the *Pontoon 300* Major Claims Fund there would remain only two Major Claims Funds, namely those established for the *Vistabella* and *Nissos Amorgos* incidents. The Council noted that whilst it would not be necessary to levy further contributions to the *Vistabella* Major Claims Fund, it was not possible to predict whether more contributions would have to be levied to the *Nissos Amorgos* Major Claims Fund. It further noted that it may also become necessary to levy contributions and establish Major Claims Funds for the *Alambra* and the *Plate Princess*.
- 15.10 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*

- 15.11 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.
- 15.12 It was recalled 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.
- 15.13 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*

- 15.14 The Council noted there had been an improvement in the situation over the last five years and the total amount of the principal in arrears had decreased from £930 000 in October 2002 to £328 558 in October 2007, which represented some 0.085% of the total amount levied by the 1971 Fund during the period 1978-2003. The number of contributors in arrears had decreased from 27 to 11, out of which five were located in the former USSR (but not in the Russian Federation) and three were located in the former Socialist Federal Republic of Yugoslavia.

- 15.15 It was noted that since the October 2006 session the Director had continued his efforts to make those contributors who were in arrears pay the amounts due. The Council also noted that contributors were reminded by telefax or letter of their outstanding contributions and 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 the 1971 Fund may take legal action to recover outstanding amounts. It was also noted that in some cases the Fund's lawyers in the States concerned had contacted the contributor in arrears and pressed for payment. It was further noted that the Director sometimes made direct contact with persons within some defaulting entities to press for payment and that in some cases assistance had been given by members of the delegations of the States concerned to the governing bodies.
- 15.16 One delegation asked whether a cost-benefit analysis is made before taking legal action against a contributor in arrears. The Director pointed out that there was no urgent need yet to write-off contributions and therefore all efforts would be made to recover the contributions. It was noted that since the October 2006 session of the Council no contributions had been written off by the Director, pursuant to Financial Regulation 11.5. The Director stated that the Administrative Council would be informed of any write-off of contributions.
- 15.17 In response to a question by one delegation as to whether the Fund had actually taken legal action against one or more of the contributors referred to in paragraph 6.2 of document 71FUND/AC.22/13, the Director stated that this was the case in respect of the contributor in Greece.
- 15.18 The Director stated that he would continue his efforts and consider, on a case-by-case basis, whether legal action should be taken against a particular contributor and present a report on the developments to the Administrative Council's October 2008 session.

*Budgetary matters*

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

- 16.1 It was recalled that at their March 2005 sessions, the governing bodies of the 1971 Fund, the 1992 Fund and the Supplementary Fund had decided that the distribution of the costs of running the joint Secretariat should be made on the basis of the 1971 Fund and the Supplementary Fund paying a flat management fee to the 1992 Fund.
- 16.2 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.
- 16.3 The Administrative Council approved the Director's proposal that the 1971 Fund should pay a flat management fee of £210 000 to the 1992 Fund for the financial year 2008 (document 71FUND/AC.22/14).
- 16.4 It was noted that the Assembly of the 1992 Fund and the Assembly of the Supplementary Fund had agreed, at their 12th session and 3rd session respectively, to the distribution of joint administrative costs proposed by the Director.

**17 Budget for 2008**

- 17.1 The Administrative Council noted that the draft budget for 2008 for the administrative expenses for the joint Secretariat adopted by the 1992 Fund Assembly totalled £3 646 000 (including external auditor fees for the three Funds).

- 17.2 The Council considered the draft 2008 budget for the administrative expenses of the 1971 Fund as proposed by the Director in document 71FUND/AC.22/15.
- 17.3 The Council adopted the budget for 2008 for the administrative expenses of the 1971 Fund for a total of £475 000 (including the management fee of £210 000 payable to the 1992 Fund), as reproduced in the Annex to this document.
- 17.4 The Council noted the Director's observations as regards the balance on the General Fund.

## **18 Assessment of contributions to Major Claims Funds**

- 18.1 The Administrative Council noted the Director's proposal that there should be no levies of 2007 contributions in respect of the *Vistabella and Nissos Amorgos* Major Claims Funds, and decided accordingly.
- 18.2 The Council noted the Director's proposal for reimbursements of the surpluses on the *Pontoon 300* Major Claims Fund and decided to reimburse £2.2 million to contributors to the *Pontoon 300* Major Claims Fund on 1 March 2008 and to transfer the remaining balance to the General Fund.
- 18.3 The Council also decided that any outstanding contributions received after 1 March 2008 in respect of the closed *Pontoon 300* Major Claims Fund should be transferred to the General Fund.
- 18.4 The Council noted that its decision in respect of the reimbursement to contributors to the *Pontoon 300* Major Claims Fund could be summarised as follows:

Fund	Oil year	Estimated total oil receipts	Repayment by 1 March 2008	
			Amount £	Estimated repayment per tonne £
<i>Pontoon 300</i>	1997	1 258 608 291	2.200 000	-0.0017480

*Other matters*

## **19 Future sessions**

- 19.1 The Administrative Council recalled that at its 3rd session in June 2007, the 1992 Fund Administrative Council, acting on behalf of the Assembly, had decided to accept the kind invitation of the Government of Monaco and hold sessions of the IOPC Funds' governing bodies in Monaco during the week commencing 10 March 2008 (cf document 92FUND/AC.3/A/ES.12/14, paragraph 11.2.5). The Council noted the information contained in document 71FUND/AC.22/17 relating to the arrangements for those meetings.
- 19.2 The delegation of Monaco informed the Administrative Council that the conference centre where the March sessions would be held was very close to a number of hotels. He stated that the Government of Monaco had negotiated preferential rates with two of these hotels and had provisionally reserved a number of rooms. He explained that a website would be set up to enable delegates to reserve these rooms directly and pointed out that the nearest airport to Monaco was Nice.
- 19.3 The delegation of Monaco informed the Administrative Council that a leaflet drafted in collaboration with the Secretariat would be issued nearer the time and that it would contain a list of alternative hotels and additional information relating to the meetings which could be of use to delegates. That delegation invited delegates requiring further information relating to any aspects of the meetings in March to contact them.

- 19.4 The Administrative Council thanked the Government of Monaco again for its kind invitation to hold the March 2008 meetings in Monaco and also for the information provided at this session.
- 19.5 The Administrative Council decided to hold its next autumn session during the week of 13 October 2008. It was noted that tentative arrangements had also been made for meetings of the IOPC Funds in London during the week of 23 June 2008.

**20 Any other business**

No matters were raised under this item.

**21 Adoption of the Record of Decisions**

The draft Record of Decisions of the Administrative Council, as contained in documents 71FUND/AC.22/WP.1 and 71FUND/AC.22/WP.1/Add.1 was adopted, subject to certain amendments.

\* \* \*

ANNEX

2008 ADMINISTRATIVE BUDGET FOR 1971 FUND

*(Figures in Pounds Sterling)*

STATEMENT OF EXPENDITURE		ACTUAL 2006 EXPENDITURE	2006 BUDGET APPROPRIATIONS	2007 BUDGET APPROPRIATIONS	2008 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund by 1971 Fund	275 000	275 000	275 000	210 000
II	Costs for Winding up of the 1971 Fund	5 640	250 000	250 000	250 000
III	Administrative costs including External Audit fees	10 000	10 000	10 000	15 000
<b>1971 Fund Budget Appropriation</b>		<b>290 640</b>	<b>535 000</b>	<b>535 000</b>	<b>475 000</b>