



RECORD OF DECISIONS OF THE TWENTY-THIRD SESSION OF THE ADMINISTRATIVE COUNCIL

(held from 13 to 17 October 2008)

Chairperson: Captain David J. F. Bruce (Marshall Islands)
Vice-Chairperson: Mr Victor Koyoc Cauich (Mexico)

Opening of the session

- 0.1 In accordance with Rule 21 of the Rules of Procedure, Captain Jorge Manuel Semedo Da Silva, the representative of the delegation from which the Chairman of the previous session was elected (Portugal), presided until the Administrative Council had elected a Chairman for the session.
- 0.2 The Chairman noted that the previous Chairperson, Mrs Teresa Martins de Oliveira, had had to stand down as Chairperson and representative of the Portuguese delegation since taking up a new post. The Administrative Council expressed its appreciation for her participation in the work of the IOPC Funds and for chairing the 1971 Fund Administrative Council.

Procedural matters

1 Adoption of the Agenda

The Administrative Council adopted the Agenda as contained in document 71FUND/AC.23/1.

2 Election of the Chairman and Vice-Chairman

- 2.1 The Administrative Council elected Captain David J. F. Bruce (Marshall Islands) as its Chairman and Mr Victor Koyoc Cauich (Mexico) as its Vice-Chairman.
- 2.2 The Chairman, on behalf of himself and the Vice-Chairman, thanked the Administrative Council for the confidence shown in them.

3 **Participation**

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

Algeria	Greece	Norway
Australia	India	Oman
Bahamas	Ireland	Panama
Belgium	Italy	Poland
Cameroon	Japan	Portugal
Canada	Kenya	Qatar
China (Hong Kong Special Administrative Region)	Liberia	Republic of Korea
Cyprus	Malaysia	Russian Federation
Denmark	Malta	Spain
Estonia	Marshall Islands	Sweden
Finland	Mexico	Syrian Arab Republic
France	Monaco	United Kingdom
Gabon	Morocco	Vanuatu
Germany	Netherlands	
Ghana	New Zealand	
	Nigeria	

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

Angola	Ecuador	Trinidad and Tobago
Argentina	Latvia	Turkey
Bulgaria	Philippines	Ukraine
Dominican Republic	Saudi Arabia	Uruguay

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

Intergovernmental organisations:

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 22nd session in October 2007, contained in document 71FUND/AC.23/2. He drew the attention of the governing bodies to the fact that the 1971 Fund Convention had entered into force on 16 October 1978 and that on that same date in 2008 the IOPC Funds would have been in operation for 30 years. He felt that it was therefore particularly apt that the 1992 Fund's 100th Member State had become part of the international compensation regime in this anniversary year.

- 4.2 The Director expressed once again his gratitude and appreciation to the Government of Monaco for having hosted the March 2008 meetings of the IOPC Funds in Monaco and in particular to the delegation of Monaco for its excellent co-operation in organising these meetings.
- 4.3 The Director noted that the last 12 months had seen continued growth in the 1992 Fund membership and that there were currently 101 Member States, with a further State for whom the 1992 Fund Convention would be in force in December 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. He also noted that at the time this item was discussed 21 Member States had ratified the Supplementary Fund Protocol. It was noted, however, that during the course of the meeting week the Secretariat had been notified that Estonia had also ratified the Supplementary Fund Protocol on 14 October 2008, bringing the total number of Supplementary Fund Member States to 22 on 14 January 2009.
- 4.4 With respect to the 1971 Fund, the Director noted that there were outstanding third party claims in respect of seven incidents (*Aegean Sea*, *Iliad*, *Kriti Sea*, *Nissos Amorgos*, *Plate Princess*, *Evoikos* and *Alambra*) and that recourse actions taken by the 1971 Fund in respect of two incidents (*Vistabella* and *Al Jaziah 1*) were also pending.
- 4.5 With respect to risk management, the Director reported that a Risk Register had been developed, identifying thirteen risks as being key risks across the Secretariat and setting out the present safeguards in place to manage and mitigate these key risks. He said that, where appropriate, relevant controls, procedures and policies would be further developed, a time frame included and progress monitored and reported. The Risk Register had been reviewed by the Audit Body at its meeting in June 2008 and would continue to be reviewed on an annual basis. Furthermore, he said that the Secretariat would undertake an annual review of the key risks to ensure that the relevant procedures, controls and policies remained in place or were amended where appropriate.
- 4.6 The Director stated that the non-submission of reports on contributing oil receipts had been a recurring problem for both the 1971 Fund and the 1992 Fund and, although in recent years the situation had continued to improve, it continued to give rise to considerable concern. He reported that three States with reports outstanding for many years had submitted their reports and, in addition, Cambodia, which had reports outstanding for six years, had recently submitted reports for 2001-2006 although unfortunately they were incomplete. He further reported that by 29 September 2008, oil reports were outstanding for 28 1992 Fund Member States and six former 1971 Fund Member States. A number of these States had reports outstanding for several years. The Director stated that there were no outstanding reports in respect of the Supplementary Fund.
- 4.7 With respect to the Records of Decisions database on which work had begun in 2006, the Director reported that the former Deputy Director/Technical Adviser, Mr Joe Nichols, had completed work on categorising all the decisions and writing appropriate abstracts early in 2008 and that the former Director of the Funds, Mr Måns Jacobsson, was proofreading the information. A database interface had been developed to enable the database to be accessible online. It would then be kept up to date after each session of the governing bodies. It was anticipated that the database would be available in the first part of 2009.
- 4.8 The Director reported that the Secretariat had continued its efforts to increase the number of Member States to the 1992 Fund and the Supplementary Fund and that he and other members of the Secretariat had also participated in seminars, conferences and workshops in a number of countries and had given lectures on liability and compensation for oil pollution damage and on the operation of the IOPC Funds.
- 4.9 Looking ahead, the Director said that, although it was satisfying to note that the number of 1992 Fund Member States had grown from nine at the time of its establishment in 1996 to 102 by December 2008, it was hoped that more States would become members of both the 1992 Fund and

the Supplementary Fund in the near future and that he hoped to make progress in respect of the winding up of the 1971 Fund. He also said that the Secretariat would continue to work actively on the preparations for the entry into force of the HNS Convention and the setting up of the HNS Fund which had, during the past year in particular, become a focus for discussion within the 1992 Fund Assembly.

- 4.10 The Chairman, on behalf of the Administrative Council, thanked the Director for his comprehensive Report.

Financial matters

5 Report on Investments

- 5.1 The Director stated due to the current turmoil in the financial markets the Secretariat had been constantly monitoring the situation and had been in contact with the brokers and financial institutions with which the Funds were dealing. He pointed out that the Secretariat had, in this regard, also been in constant contact with the Investment Advisory Body (IAB). He announced that this issue would be discussed in further detail under Agenda item 5, the Report of the joint Investment Advisory Body.
- 5.2 The Administrative Council took note of the Director's report on the 1971 Fund's investments during the period 1st July 2007 to 30th June 2008, contained in document 71FUND/AC.23/3.
- 5.3 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.
- 5.4 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.23/4.
- 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 took note of the extensive verbal report by the IAB with regards to the prevailing financial markets. It noted, in particular, the assurance provided by the IAB that the Funds' approved list of financial institutions met the highest investment criteria. It was further noted that it had always been the IAB's view that if any one of these financial institutions looked like failing due to lack of liquidity, then the central bank of that country would step in to provide the necessary liquidity for the bank to continue its operations. In this regard it was noted that the Funds' entire portfolio of assets was, at this moment, placed with European banks which, over the last few days, had been provided with government guarantees and, in some cases, with direct government investment. It also noted with satisfaction that the IAB was constantly monitoring the market and liaising with the Secretariat. It was further noted that the already strict and prudent investment criteria of the Funds might be further tightened.
- 6.4 The Administrative Council also noted that the IAB was considering the level of hedging that may be appropriate for the Funds to manage the risk of exposure to foreign currencies, especially in view of the requirement for South Korean Won and possibly Russian Roubles in respect of the *Hebei Spirit* and *Volgoneft 139* incidents.

- 6.5 The Administrative Council noted that the IAB would review the Funds' finance risks annually and make recommendations as appropriate.
- 6.6 In response to a question by one delegation as to whether there was a need to look at the Funds' Financial Regulations and practices in light of the financial crisis, the Director stated that in his view, after consultation with the IAB, the present Financial Regulations and Investment Guidelines did not seem to present any problems in the short term. The Director added that in the unlikely event that the Financial Regulations and Investment Guidelines would prove to be too restrictive in the current financial climate in that following them would actually put the Fund's assets at an undue risk, he would not hesitate, in consultation with the IAB and the Chairmen of the relevant Fund and the Audit Body, to not follow the Regulations in the interest of securing the assets of the Funds and would inform the governing bodies of the actions taken at their next session.
- 6.7 The Administrative Council noted the Director's comments that being an intergovernmental body did not in any way provide a safeguard for the assets of the Funds in the event of a financial crisis, and that even investment guidelines and policies as prudent as those of the Funds could not be seen as a guarantee in this context.
- 6.8 The Administrative 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.23/5 and 71FUND/AC.23/5/Add.1 containing the Financial Statements of the 1971 Fund for the financial year 2007, the External Auditor's Report and Opinion thereon and the 1971 Fund's response to the External Auditor's recommendations in his report on the 2007 Financial Statements. A representative of the External Auditor, Mr Graham Miller, Director International, introduced the External 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.23/5 and that the External Auditor had provided an unqualified audit opinion on the 2007 Financial Statements, following a rigorous examination of the financial operations and accounts in conformity with applicable audit standards and best practice. The Council noted that the unqualified audit opinion was confirmation that the Organisation's internal financial controls had operated effectively. The Council also expressed its appreciation to the External Auditor for the depth and detail of his Report.
- 7.3 The Administrative Council noted the recommendation set out in the External Auditor's report on the 2007 Financial Statements and the Secretariat's response to it. It welcomed the inclusion of the recommendations of previous years and the Secretariat's response to them in the Financial Statements.
- 7.4 The Council also noted the External Auditor's recommendation that, should the governing bodies approve in principle the adoption by the Fund of the International Public Sector Accounting Standards (IPSAS) from the financial year 2010, the Secretariat establish a formal project plan for its adoption with regular review by the Secretariat and the governing bodies of the implementation of the plan.
- 7.5 As regards the recommendations made in respect of the previous year, the Council further noted that the External Auditor was satisfied that adequate preparation was being made for the future implementation of IPSAS. It also noted that no major project work had been undertaken in 2007 which had required the budgeting of staff time.
- 7.6 The Administrative Council further noted that efforts were being made by the Secretariat to return outstanding funds due to a contributor which was a dissolved joint venture between two oil companies, and recommended that the Secretariat continue its efforts in this respect.

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.23/6, containing the joint Audit Body's Report.
- 8.2 In his introduction Mr Coppolani reminded the Administrative Council that it was to some extent a sad occasion as it would be the last time that he would have the occasion to address the Administrative Council in his capacity as Chairman of the Audit Body which was last elected in October 2005 and was now coming to the end of its three-year term.
- 8.3 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.
- 8.4 Mr Coppolani also referred to the very useful discussions which were held with the joint Investment Advisory Body on an annual basis. He pointed out, as demonstrated by the current financial climate, that investments were subject to risk and it was important to be able to report to the Administrative Council that both Bodies worked closely together, each Body in its own area, on the management of these risks.
- 8.5 He stated that the Audit Body had continued to monitor the risk management process which had been adopted by the Secretariat and had been pleased to note the progress that had been made and the creation of a Key Risk Register, setting out the main risks across the Funds.
- 8.6 Mr Coppolani drew attention to the decision of the governing bodies in October 2007 to amend the mandate of the Audit Body to include the organisation of the selection process in respect of the appointment of the External Auditor when the time came. He stated that the Audit Body had taken this opportunity to look at its Composition and Mandate and was proposing in document 71FUND/AC.23/6/1 some additional amendments to take account of developments in its activities and responsibilities since its creation in 2002.
- 8.7 Mr Coppolani recalled the concern which had been expressed by the Audit Body on numerous occasions in respect of a number of Member States which had not fulfilled their obligations to submit oil reports. He also reminded the governing bodies that a document setting out the position of the Audit Body had been put forward at their October 2007 sessions. At those sessions, while the Audit Body's proposal appeared to have received considerable support, it had given rise to issues which required further study by the Audit Body. Therefore, the Audit Body had been invited by the 1992 Fund Assembly to refine the proposal in the light of the discussion and submit a document on the subject to a future session of the Assembly. A document providing the additional information had been submitted for the consideration of the 1992 Fund and Supplementary Fund Assemblies at their October 2008 sessions under a separate agenda item.
- 8.8 Mr Coppolani reminded the Administrative Council that at its June 2005 meeting, the Audit Body had decided that it would be useful to carry out a review of the transition of management control and structures following the appointment of the new Director in 2006. The conclusions of the review, which was carried out in 2008, had provided the Audit Body with assurance that the overall management control and organisation structure arrangements now in place had been very thoroughly considered by the current Director and that nothing had emerged from the review which had given rise to concern that the management control and structures in place were anything other than satisfactory. He drew the attention of the Administrative Council to the fact that a significant aspect of the evaluation had been the use of the 1998 Organisational Review of the IOPC Fund Secretariat as a comparator for part of the review.

- 8.9 Mr Coppolani noted that the Audit Body had discussed the implications for the IOPC Funds of the implementation of the International Public Sector Accounting Standards (IPSAS), requiring, in particular, the move from 'obligations' to 'accruals' which might cause a problem with accounting for payment of compensation. He pointed out that, although the Audit Body agreed with the proposal of the Secretariat to seek the approval of the adoption of IPSAS by the IOPC Funds, in principle, from the financial year 2010, it had reserved its position as to whether the Funds should be at the forefront of those organisations implementing IPSAS.
- 8.10 Mr Coppolani noted that the Audit Body had been given a presentation of the Funds' new web-based claims management system which was being used for the first time in respect of the *Hebei Spirit* incident, which had taken place in the Republic of Korea in December 2007. He expressed the Audit Body's opinion that the new system would provide the potential for both improving efficiency in assessing claims and in improving transparency for stakeholders.
- 8.11 Mr Coppolani drew the attention of the Administrative Council to the evaluation which the Audit Body had carried out of its work during the first six years of its existence. The annex to the Audit Body's written report to the governing bodies provided a summary of the work carried out over this six-year period as well as an outline of the philosophy and approach which the Audit Body had adopted. The Audit Body had felt that this document would be helpful to the new members of the Audit Body to be elected in October 2008 and that it might also assist the Funds' governing bodies to understand the underlying approach adopted by the Audit Body so as to be able to evaluate its contribution to the overall governance of the Funds' activities.
- 8.12 Mr Coppolani drew attention to the fact that when the Audit Body was established in 2002, the governing bodies had decided to review the functioning of the Audit Body every three years on the basis of an evaluation report from its Chairman. He added that, whilst it might be said that the Audit Body itself was not the proper entity to recommend its own continuation, it noted that the External Auditor had emphasised the importance that he attached to its existence and that the Director had stated that he considered that the Audit Body contributed significantly to the effective governance of the IOPC Funds.
- 8.13 The Administrative Council noted the Audit Body's recommendation that the governing bodies approve the Financial Statements of the 1971 Fund for the financial year 2007.
- 8.14 The Administrative Council approved the Financial Statements of the 1971 Fund for the financial year 2007.
- 8.15 Several delegations who spoke expressed their appreciation to Mr Coppolani for his important work as the first Chairman of the Audit Body as well as to the other members of the Audit Body who would be stepping down. On behalf of the outgoing members, Mr Coppolani said that the success of the Audit Body had been due to teamwork and to the support of the Secretariat, the representatives of the External Auditor and the Investment Advisory Body. He thanked Member States for the trust shown to the Audit Body.

9 Composition and Mandate of the Audit Body

- 9.1 In his presentation of document 71FUND/AC.23/6/1, Mr Wayne Stuart, on behalf of the Audit Body, recalled that the governing bodies at their October 2007 sessions, had decided that the mandate of the Audit Body would need to be amended to include the organisation of the tender process in respect of the appointment of the External Auditor when the time came.
- 9.2 Mr Stuart said that the Audit Body had taken this opportunity to look at its Composition and Mandate and had proposed some additional amendments to take into account developments in its activities and responsibilities since its creation in 2002.

- 9.3 Mr Stuart said that many of the changes that were being proposed were of an editorial or streamlining nature, including the division of the Composition and Mandate into two sections, entitled 'Composition' and 'Mandate' but he drew the governing bodies' attention in particular to the following proposed changes of a more substantive nature:
- In paragraph 2, the Audit Body was proposing that the title of the one named individual not related to the Organisations with expertise and experience in financial and audit matters be changed from 'outsider' to 'financial expert' to reflect more appropriately the role of this member of the Audit Body;
 - In paragraph 2, the Audit Body was proposing that the Chairman of the 1992 Fund Assembly should, in consultation with the Chairpersons of the 1971 Fund Administrative Council and of the Supplementary Fund Assembly, propose one of the elected members of the Audit Body for consideration and approval by the governing bodies as Chairperson of the Audit Body;
 - In paragraph 3, the Audit Body was proposing that, should nominations for election to the Audit Body not be sufficient to fill vacancies at an election, existing members of the Audit Body having served two terms would be eligible for a once-only re-election, provided that they were re-nominated by one or more 1992 Fund Member States;
 - In paragraph 3, the Audit Body was also proposing that the 'financial expert' should hold office for three years, twice renewable. The rationale for this was that the financial expert was likely to have to acquire knowledge of the workings of the IOPC Funds during his/her first term and that the possibility of a third term of office would enhance the continuity and thus be more efficient and in the workings of the Audit Body;
 - In paragraph 4, the Audit Body was proposing the insertion of a new item relating to the payment of an honorarium to the members of the Audit Body and of a fee to the 'financial expert';
 - In addition to the inclusion of the organisation of the process for the selection of the External Auditor under the Mandate (paragraph 5 (f)), the Audit Body was proposing that the remit of the Audit Body be extended to include a review not only of the effectiveness of the Organisations' financial reporting but also of its management systems (paragraph 5 (a)); and
 - The Audit Body was also proposing the inclusion of a specific item to cover the undertaking of any other tasks or activities which it might feel appropriate, including any requested by the governing bodies (paragraph 5 (g)).
- 9.4 It was noted that the Audit Body's internal Rules of Procedure would have to be updated in due course in the light of the 1992 Fund Assembly's decision with respect to a revision of the Composition and Mandate.
- 9.5 The Council noted that the 1992 Fund Assembly had, at its 13th session, considered the proposed revised Composition and Mandate of the Audit Body as set out in the annex to document 71FUND/AC.23/6/1. During the debate the Audit Body responded to queries from some delegations and clarified a number of points within the Composition and Mandate. In particular, attention was drawn to paragraph 1 of the Composition in which the independence of the Audit Body was highlighted.
- 9.6 The Council noted the decision of the 1992 Fund Assembly at its 13th session to adopt the revised Composition and Mandate of the Audit Body as set out at Annex I to this Record of Decisions.

10 Adoption of International Public Sector Accounting Standards (IPSAS)

- 10.1 The Administrative Council took note of the information contained in document 71FUND/AC.23/7 relating to the adoption of new accounting standards.
- 10.2 The Council recalled that at its last session in October 2007 the representative of the External Auditor had recommended that the Secretariat submit a proposal to the Administrative Council seeking its approval for the adoption, in principle, of the International Public Sector Accounting Standards (IPSAS).
- 10.3 The Council noted that all organisations which were part of the United Nations system had been recommended to adopt IPSAS to replace the United Nations Accounting Standards from 1 January 2010.
- 10.4 The Council also noted that the move to IPSAS would result in changes to the format and content of the accounts of the IOPC Funds and that those changes would necessitate a review of the IOPC Funds' Financial Regulations, Internal Regulations and accounting policies to ensure compliance where appropriate with IPSAS. The Administrative Council noted that any changes would be agreed with the Audit Body and External Auditor prior to being put forward for adoption by the Administrative Council, which was planned for the 2009 autumn session.
- 10.5 The Administrative Council approved the adoption, in principle, of IPSAS by the IOPC Funds from the financial year 2010 and noted the proposed tentative timetable for its implementation.

Contribution matters

11 Report on contributions

The Council took note of the Director's report on contributions contained in document 71FUND/AC.23/8.

12 Submission of oil reports

- 12.1 The Administrative Council considered the situation in respect of the non-submission of oil reports, as set out in document 71FUND/AC.23/9. It was noted that, since the document had been issued, one further State, Algeria, had submitted its outstanding oil report. It was therefore noted that, whilst there were no outstanding reports in respect of the Supplementary Fund, a total of 32 States still had outstanding oil reports for the 1971 and 1992 Funds for the year 2007 and/or previous years: six States in respect of the 1971 Fund and 27 States in respect of the 1992 Fund. It was further noted that whilst the situation seemed slightly better than in previous years, a number of States had reports outstanding for many years.
- 12.2 The Council also noted that those States which had submitted reports for 2007 represented some 99.3% of the expected total contributing oil (cf document 92FUND/A.13/15, Annex I) and that a further six States (Cameroon, Colombia, Kenya, Mauritius, Nigeria and Venezuela), which had all submitted reports within the last three years, represented the remaining 0.7%.
- 12.3 The Council noted with satisfaction that since the October 2007 sessions of the governing bodies, ten States had submitted most or all of their outstanding reports. It was noted that Dominica, Saint Vincent and the Grenadines and Cape Verde, which had had reports outstanding for six years, five years and four years, respectively, had submitted all of their reports. The Council appreciated the efforts made by the authorities in these States to gather the information needed to make these reports.
- 12.4 The Council was also encouraged by contacts with the authorities of Cambodia, which had reports outstanding for seven years. It was noted that Cambodia had recently submitted reports for 2001-2006, but that unfortunately the reports were incomplete.

- 12.5 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.
- 12.6 It was recalled that, at their October 2005 sessions, the governing bodies had instructed the Director to proceed with a number of measures to assist States to submit oil reports (documents 92FUND/A.10/37, paragraphs 15.6-15.13, SUPPFUND/A/ES.1/21, paragraphs 9.3-9.10, and 71FUND/AC.17/20, paragraphs 11.6-11.12). It was noted that one of these measures was the establishment of an electronic reporting system for the submission of reports on contributing oil, similar to the one which had been developed in respect of the HNS Convention. It was recalled that, at their October 2007 sessions, the governing bodies had noted that the Secretariat had 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 (documents 92FUND/A.12/28, paragraph 13.10, SUPPFUND/A.3/20, paragraph 12.11 and 71FUND/AC.22/18, paragraph 11.10). The Council noted that this had not been possible due to staff shortages in the External Relations and Conference Department, but that it was intended that the project would be a priority during 2009.
- 12.7 The Council instructed the Director to continue to bring the matter of the submission of oil reports to its attention at each regular session.
- 12.8 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

13 Secretariat matters

- 13.1 The Administrative Council took note of the information contained in document 71FUND/AC.23/10/Rev.1 regarding matters relating to the operation of the Secretariat.
- 13.2 The Council noted that the Director had decided not to fill the post of Deputy Director for the time being and had instead created a post of Technical Adviser/Claims Manager, graded at P5 level in the Professional category. It also noted that in his/her capacity as Technical Adviser, the incumbent would report to the Director and be a member of the Management Team. In his/her capacity as Claims Manager, the incumbent would report to the Head of the Claims Department and would deputise for him. The Council further noted that the successful candidate had been selected and that he/she was expected to take up the post in the near future.
- 13.3 In light of the above, the Council approved the Director's proposal to amend Internal Regulation 7.13 as set out in Annex I to the document, giving the Technical Adviser/Claims Manager authority to make final or partial settlements of claims or to make provisional payments not exceeding £500,000 for a particular claim.
- 13.4 The Council also approved the Director's proposal to amend Financial Regulation 9.2 to designate the Technical Adviser/Claims Manager as a signatory under Category B of the Financial Regulations.
- 13.5 The Council noted that the Director had established a new post of Finance Assistant within the Finance and Administration Department due to one of the Finance Assistants working part-time. This had resulted in there being one additional part-time (2/5) Finance Assistant within the Department.

- 13.6 The Council noted the Director's proposal to remove the two in-house translation posts from the structure of the Secretariat on the basis of discussions at its 22nd session, held in October 2007 (cf document 71FUND/AC.22/18, paragraph 12.13). It also noted that, as a result of discussions at its 13th session, the 1992 Fund Assembly had decided to retain the two in-house translation posts (French and Spanish) within the structure of the Secretariat.
- 13.7 The Council noted that at the 1992 Fund Assembly's 12th session, held in October 2007, it had approved an additional Professional Category post at P3 level to enable the Head of the External Relations and Conference (ERC) Department to better manage the increased workload of the Department. The Council noted that the creation of the additional post, combined with the fact that two staff members of the Department had left the Secretariat within a short period of time, had provided an opportunity to re-structure the Department and to review and re-allocate the various roles within the Department. The Council also noted that the ERC Department had been re-structured and now consisted of the Head of Department, two Professional category posts and five General Service category posts.
- 13.8 The Council further recalled that the re-structuring had also required a review of the classification of the posts involved, which had been carried out by an external UN-classifier who had worked for the 1992 Fund in the past and who had a long-standing experience of classification reviews for the International Maritime Organization (IMO).
- 13.9 The Council noted that as a result of this review one post in the General Service category had been recommended for re-classification, that this recommendation had been followed by the Director under the authority given to him by the Council and that the post involved had been re-classified from G6 to G7.
- 13.10 The Council noted that the post of Head of the ERC Department had also been recommended for re-classification from P5 to D1 and that, after studying the rationale for the recommendation for re-classification as set out in the advice of the UN-classifier, the Director had considered that the increased and diverse responsibilities of the Head of the ERC Department, as well as his/her crucial role in the preparation of the entry into force of the HNS regime, justified a re-classification of the post to D1 as recommended.
- 13.11 The Council further noted that, for the reasons given, the Director had proposed that the post of Head of the ERC Department be reclassified as D1.
- 13.12 The Council noted that at its 13th session, the 1992 Fund Assembly had agreed with the Director's proposal that the post of Head of the ERC Department be reclassified as D1 and that the present holder of the post be promoted from P5 to D1 with effect from 1 November 2008.
- 13.13 The Council noted the Director's proposal to amend Staff Regulation 24 on written notice of resignation and increase the notice required from Professional staff from 30 to 90 days so as to bring it into line with the situation at IMO. Several delegations who spoke expressed the view that although there might be a case for applying this to new appointments, it should not be enforced on staff with existing contracts. These delegations also felt that a period of 90 days notice of resignation was too long and that the original 30 day term should be retained.
- 13.14 One delegation stated that, whilst it believed that a period of notice of 90 days was too long, it recognised the frustration of the Director when faced with the difficulties of finding sufficiently highly qualified staff to replace a member of the Secretariat. That delegation therefore proposed that the Director consider using the Associate Professional Officers' (APO) Programme or Associate Expert Programme, which, it stated, were two of the oldest and largest programmes within the United Nations system. That delegation also pointed out that both IMO and the International Maritime Satellite Organization (IMSO), which was a tenth of the size of the Funds' Secretariat, had successfully used these programmes, and that, in that delegation's view, the use of such programmes was beneficial to both Secretariats of international organisations and to their Member States.

- 13.15 The Council noted that at its 13th session, the 1992 Fund Assembly had decided not to amend Staff Regulation 24.
- 13.16 The Council noted the information contained in document 71FUND/AC.23/10/Rev.1 with regard to the 1992 Fund's Staff Rules.

Compensation matters

14 Incidents involving the 1971 Fund

14.1 *Al Jaziah I*

- 14.1.1 The Administrative Council took note of the information contained in document 71FUND/AC.23/11/1 (cf document 92FUND/EXC.42/7) concerning the *Al Jaziah I* incident.

RECOURSE ACTION

- 14.1.2 It was recalled that the governing bodies had decided in October 2002 that the 1971 and 1992 Funds should take recourse action against the shipowner on the grounds that the vessel was not seaworthy and that the shipowner was not entitled to limit his liability.
- 14.1.3 It was also recalled that in January 2003 the Funds had commenced legal action in the Abu Dhabi Court of First Instance against the owner of the *Al Jaziah I*, requesting that the defendant should pay Dhs 6.4 million (£870 000) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.
- 14.1.4 The Council noted that in a judgement rendered in March 2008 the Abu Dhabi Court of First Instance had decided that the shipowner should pay the Funds the amount of Dhs 6.4 million (£870 000) and that this amount should be distributed equally between the 1971 and 1992 Funds.
- 14.1.5 It was noted, however, that the IOPC Funds had been informed by its lawyers in the United Arab Emirates that the shipowner had debts of some Dhs 63 million (£9.8 million) including the amount awarded to the 1971 and 1992 Funds. It was also noted that the Funds' lawyers had advised the Funds that in the present circumstances it would be very difficult to recover the amounts awarded by the Court of First Instance.

Decision

- 14.1.6 The Administrative Council instructed the Director to approach the shipowner to discuss a settlement, taking into account his financial situation.

14.2 Other incidents

- 14.2.1 The Administrative Council took note of the information contained in document 71FUND/AC.23/11/2 concerning the *Vistabella*, *Aegean Sea*, *Iliad*, *Kriti Sea*, *Nissos Amorgos*, *Plate Princess*, *Katja*, *Evoikos*, *Pontoon 300* and *Alambra* incidents.

Plate Princess

- 14.2.2 It was recalled that in June 1997 two fishermen's unions had brought actions against the Master and the owner of the *Plate Princess*. It was also recalled that at its May 2006 session the Administrative Council had decided that those claims were time-barred in respect of the 1971 Fund.
- 14.2.3 It was noted that in April 2008 one of the fishermen's unions had submitted pleadings amending the claim, which now totalled BsF 2 million (£500 000) in respect of property damage and BsF 51.5 million (£12.9 million) in respect of economic losses. It was also noted that the

fishermen's union had submitted documentation in support of the claim. It was further noted that in the new pleadings the claimants had requested the Court to formally notify the 1971 Fund of an action for compensation brought against the shipowner under the 1969 Civil Liability Convention (1969 CLC) and the 1971 Fund Convention.

- 14.2.4 The Committee noted that the 1971 Fund had submitted pleadings stating that the claim was time-barred since the action had been taken against the shipowner and not against the Fund and that the Fund had not been notified of the action within the deadline of three years from the occurrence of the damage, as provided in Article 6 of the 1971 Fund Convention and in accordance with the decision by the Administrative Council at its May 2006 session. It was also noted that, without prejudice to its position on the time-bar issue, the 1971 Fund had engaged experts to examine the claim.

Nissos Amorgos

- 14.2.5 It was recalled that claims in respect of the *Nissos Amorgos* incident had been settled for Bs 350 075 468 (£69 000) and \$24 397 612 (£13 million) and that all the settled claims had been paid.
- 14.2.6 It was also recalled that claims for compensation by the Republic of Venezuela and by three fish processors were pending before the Courts.

CLAIMS BY THE REPUBLIC OF VENEZUELA

- 14.2.7 It was recalled that the Republic of Venezuela had presented a claim for environmental damage for US\$60 250 396 (£32.4 million) against the Master, the shipowner and his insurer in the Criminal Court in Cabimas. It was also recalled that the Republic of Venezuela had also presented the same claim before the Civil Court of Caracas.
- 14.2.8 It was recalled that in July 2003 the Administrative Council had decided that the components of the claims by the Republic of Venezuela did not relate to pollution damage falling within the scope of the 1969 CLC and the 1971 Fund Convention, that the claims should be treated as not admissible and that they were duplications, since they related to the same items of damage (document 71FUND/AC.11/3). It was further recalled that in October 2005 the Administrative Council had decided that the claims by the Republic of Venezuela were also time-barred *vis-à-vis* the 1971 Fund (document 71FUND/AC.17/20).

CLAIMS BY FISH PROCESSORS

- 14.2.9 It was recalled that three fish processors had presented claims totalling US\$30 million (£16.1 million) in the Supreme Court against the 1971 Fund and the Instituto Nacional de Canalizaciones (INC), that the claims had not been substantiated by supporting documentation and that they should therefore be treated as not admissible.
- 14.2.10 It was recalled that in August 2003 the 1971 Fund had submitted pleadings to the Supreme Court arguing that, as the claimants had submitted and subsequently 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 indicated that the cause of any loss was not related to the pollution.

Debate

- 14.2.11 One delegation asked whether there had been any developments concerning the two claims submitted by the Republic of Venezuela (cf paragraph 14.2.7) and by the three fish processors (cf paragraph 14.2.9) and whether the 1971 Fund had pleaded in court that the claims by the Republic of Venezuela were time-barred.

14.2.12 The Head of the Claims Department stated that in 1999 the 1971 Fund had submitted defence pleadings before the Criminal Court of First Instance in Cabimas arguing that the claims by the Republic of Venezuela were not admissible under the Civil Liability and Fund Conventions, but that since then the legal proceedings had been passed on to the Court of Appeal, then the Supreme Court, then back to another section of the Court of Appeal and that the claims were now being considered by a new Criminal Court of First Instance in Maracaibo. It was pointed out that the 1971 Fund would plead the defence that the claims were time-barred when it had an opportunity to do so in the legal proceedings. With regard to the claims submitted by the three fish processors the Head of the Claims Department stated that the 1971 Fund had submitted preliminary defence pleadings before the Supreme Court in 2003 and that there had been no developments in the Court proceedings since then.

Operational matters

15 Winding up of the 1971 Fund

- 15.1 The Administrative Council recalled that the 1971 Fund Convention had ceased to be in force on 24 May 2002 and did not apply to incidents occurring after that date. The Council further recalled that, before the 1971 Fund could be wound up, all pending claims would have to be settled and any remaining assets distributed in an equitable manner between contributors.
- 15.2 The Administrative Council took note of the developments towards the winding up of the 1971 Fund set out in document 71FUND/AC.23/12, in particular as regards the outstanding incidents and the financial situation in respect of these incidents. The Council noted the Director's review of the problem caused by a number of States not having fulfilled their treaty obligations under the 1971 Fund Convention to submit reports on contributing oil receipts and his consideration of what further action should be taken in respect of contributors in arrears.
- 15.3 Introducing the document, the Director pointed out that the situation in respect of outstanding oil reports and contributors in arrears had been extensively discussed in the context of the relevant agenda items. He made the point that, regrettably, the developments in respect of outstanding incidents were not yet sufficient to make the winding up of the 1971 Fund a realistic prospect in the near future.

16 Election of members of the joint Audit Body

- 16.1 The Administrative Council noted that, at its 13th session, the 1992 Fund Assembly had elected the following members of the joint Audit Body nominated by 1992 Fund Member States for a period of three years:
- Mr Emile Di Sanza (Canada)
Mr Thomas Johansson (Sweden)
Mr Mendim Me Nko'o (Cameroon)
Professor Seiichi Ochiai (Japan)
Mr Wayne Stuart (Australia)
Mr John Wren (United Kingdom)
- 16.2 The Administrative Council also noted that the 1992 Fund Assembly had elected Mr Wayne Stuart (Australia) as Chairman of the Audit Body.
- 16.3 The Council further noted that the 1992 Fund Assembly had re-elected Mr Macdonald as the 'external expert' (formally called 'outsider') with expertise and experience in audit matters, as an exceptional measure, for a further and final three-year term.

- 16.4 The Council expressed its gratitude to Mr Charles Coppolani (France), Mr Maurice Jaques (Canada), Dr Reinhard Renger (Germany) and Professor Hisashi Tanikawa (Japan), the out-going members, for their valuable contribution to the work of the Audit Body.

17 Appointment of members of the joint Investment Advisory Body

- 17.1 The Administrative Council noted that, at its 13th session, the 1992 Fund Assembly had reappointed Mr David Jude, Mr Simon Whitney-Long and Mr Brian Turner as members of the joint Investment Advisory Body for a term of three years.
- 17.2 The Chairman congratulated the IAB members on their reappointment and on behalf of the Administrative Council expressed his gratitude for their valuable work in particular in these turbulent times in the financial sector.

Budgetary matters

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

- 18.1 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.
- 18.2 It was also recalled that it had been decided that the management fees payable by the 1971 Fund and the Supplementary Fund should be reviewed annually in view of changes of the total figure of the costs of running the joint Secretariat and the amount of work required by the Secretariat in the operation of these Funds.
- 18.3 The 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 2009 (document 71FUND/AC.23/15).
- 18.4 It was noted that the Assembly of the 1992 Fund and the Assembly of the Supplementary Fund had agreed, at their 13th session and 4th session respectively, to the distribution of joint administrative costs proposed by the Director.

19 Budget for 2009

- 19.1 The Administrative Council noted that the draft budget for 2009 for the administrative expenses for the joint Secretariat, adopted by the 1992 Fund Assembly at its 13th session, totalled £3 723 625 (including the cost of the external audit for the three Funds).
- 19.2 The Council considered the draft 2009 budget for the administrative expenses of the 1971 Fund as proposed by the Director in document 71FUND/AC.23/16.
- 19.3 The Council adopted the budget for 2009 for the administrative expenses of the 1971 Fund for a total of £475 300 (including the management fee of £210 000 payable to the 1992 Fund), as reproduced in Annex II to this Record of Decisions.
- 19.4 The Council noted the Director's observations as regards the balance on the General Fund.

20 Assessment of contributions to Major Claims Funds

The Administrative Council decided that there should be no levies of 2008 contributions in respect of the *Vistabella* and *Nissos Amorgos* Major Claims Funds.

Other matters

21 Future sessions

- 21.1 The Administrative Council decided to hold its next autumn session during the week of 12 October 2009.
- 21.2 It was noted that tentative arrangements had also been made with the IMO for meetings of the governing bodies during the weeks of 23 March and 15 June 2009. It was noted that at the 1992 Fund Assembly's 13th session its Chairman had pointed out, however, that the March meeting would be short and so would not occupy the whole of that meeting week. The Council noted that the Secretariat would arrange the meeting dates taking into account the convenience of the many delegates who attend both Fund meetings and IMO's Legal Committee. It was further noted that the Secretariat would explore with the IMO Secretariat the possibilities of swapping the meeting week with that of Legal Committee (30 March 2009) and that the exact meeting dates would be chosen, in consultation with the relevant Chairmen, at the beginning or end of the chosen week in order to avoid a gap before or after Legal Committee. It was also noted that changing the week of the March meeting might necessitate a change to the date of the June meeting in order to avoid the March and June meetings being too close together.

22 Any other business

No items were raised under this agenda item.

23 Adoption of the Record of Decisions

The draft Record of Decisions of the Administrative Council, as contained in documents 71FUND/AC.23/WP.1 and 71FUND/AC.23/WP.1/Add.1 was adopted, subject to certain amendments.

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ANNEX I

COMPOSITION AND MANDATE OF THE JOINT AUDIT BODY OF THE 1992 FUND, THE 1971 FUND AND THE SUPPLEMENTARY FUND

COMPOSITION

- 1 The members of the Audit Body shall perform their functions independently and in the interest of the Organisations as a whole and shall not receive any instructions from anyone, including their Governments.
- 2 The Audit Body shall be composed of seven members elected by the 1992 Fund Assembly: six named individuals nominated by 1992 Fund Member States and one named individual not related to the Organisations ('external expert') with expertise and experience in financial and audit matters, nominated by the Chairperson of the 1992 Fund Assembly. Nominations, accompanied by the curriculum vitae of the candidate, should be submitted to the Director in response to a call for nominations made by the Director. The Chairperson of the 1992 Fund Assembly will, in consultation with the Chairpersons of the 1971 Fund Administrative Council and of the Supplementary Fund Assembly, propose the name of one of the elected members of the Audit Body for consideration and approval by the governing bodies as Chairperson of the Audit Body.
- 3 Members of the Audit Body shall hold office for three years, once renewable. Should nominations for election to the Audit Body not be sufficient to fill vacancies at an election, existing members of the Audit Body having served two terms will be eligible for a once-only re-election, provided they are re-nominated by one or more 1992 Fund Member States. The external expert shall hold office for three years, twice renewable.
- 4 Travel and subsistence expenses of the members of the Audit Body shall be paid by the Organisations. The Assembly of the 1992 Fund will, from time to time, decide on the quantum of the honorarium paid to the six elected members and the fee paid to the external expert. The timing and method of payment will be agreed between the Audit Body and the Director.

MANDATE

- 5 The Audit Body shall:
 - (a) review the adequacy and effectiveness of the Organisations' management and financial systems, financial reporting, internal controls, operational procedures, risk management and related matters;
 - (b) promote the understanding and effectiveness of the audit function within the Organisations, and provide a forum to discuss matters referred to in (a) above and matters raised by the external audit;
 - (c) discuss with the External Auditor the nature and scope of each forthcoming audit and provide input to the development of the strategic audit plan;
 - (d) review the Organisations' Financial Statements and reports;
 - (e) consider all relevant reports by the External Auditor, including reports on the Organisations' Financial Statements, and make appropriate recommendations to the Funds' governing bodies;
 - (f) manage the process for the selection of the External Auditor; and
 - (g) undertake any other tasks or activities as requested by the Funds' governing bodies.

- 6 The Chairman of the Audit Body shall report on its work to each regular session of the 1992 Fund Assembly, the 1971 Fund Administrative Council and the Supplementary Fund Assembly.
- 7 Every three years the functioning of the Audit Body and its mandate shall be reviewed by the 1992 Fund Assembly, the 1971 Fund Administrative Council and the Supplementary Fund Assembly on the basis of an evaluation report from the Chairman of the Audit Body.

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ANNEX II

2009 ADMINISTRATIVE BUDGET FOR 1971 FUND

(Figures in Pounds Sterling)

STATEMENT OF EXPENDITURE		ACTUAL 2007 EXPENDITURE	2007 BUDGET APPROPRIATIONS	2008 BUDGET APPROPRIATIONS	2009 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund by 1971 Fund	275 000	275 000	210 000	210 000
II	Costs for Winding up of the 1971 Fund	-	250 000	250 000	250 000
III	Administrative costs including External Audit fees	10 000	10 000	15 000	15 300
1971 Fund Budget Appropriation		285 000	535 000	475 000	475 300