



## RECORD OF DECISIONS OF THE TENTH SESSION OF THE ASSEMBLY

(held from 17 to 21 October 2005)

Chairman:	Mr Jerry Rysanek (Canada)
First Vice-Chairman:	Professor Seiichi Ochiai (Japan)
Second Vice-Chairman:	Mr Edward K Tawiah (Ghana)

### *Opening of the session*

- 0.1 The Chairman referred to what he described as the very unfortunate developments recently involving the IOPC Funds, namely the anonymous accusations made of unethical conduct by senior executives of the Fund, in particular the accusation against Mr José Maura, one of the candidates for the post of Director. He referred to the two circulars (92FUND/Circ.52 and 92FUND/Circ.53) issued by the Director to ensure that this matter was treated with the utmost transparency and expressed his appreciation for his initiative and professional approach in dealing with the matter.
- 0.2 The Chairman explained that he had deliberately taken up this matter before starting the Assembly's work according to the agenda, to underline his firm belief that anonymous accusations had no place on the agenda of this Assembly. He explained that whatever the capacity in which those delegations present knew Mr Maura, whether as friends, colleagues or associates, he was sure he could express, on behalf of the Assembly, much regret that such allegations had been made against him.

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

The Assembly adopted the Agenda as contained in document 92FUND/A.10/1.

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

- 2.1 The Assembly elected the following delegates to hold office until the next regular session of the Assembly:

Chairman:	Mr Jerry Rysanek (Canada)
First Vice-Chairman:	Professor Seiichi Ochiai (Japan)
Second Vice-Chairman:	Mr Edward K Tawiah (Ghana)

- 2.2 The Chairman, on behalf of himself and the two Vice-Chairmen, thanked the Assembly for the confidence shown in them. He also expressed appreciation, on behalf of the Assembly, for the work of the outgoing First Vice-Chairman, Mr José Aguilar-Salazar (Mexico).

### **3 Examination of credentials**

- 3.1 The Assembly recalled that, at its March 2005 session, it had decided to establish, at each session, a Credentials Committee composed of five members elected by the Assembly on the proposal of the Chairman to examine the credentials of delegations of Member States and that the Credentials Committee established by it should also examine the credentials in respect of the Executive Committee, provided the session of the Executive Committee was held in conjunction with a session of the Assembly. It was recalled that the Assembly had inserted provisions to this effect in the respective Rules of Procedure.

- 3.2 In accordance with Rule 10 of the Assembly's Rules of Procedure the delegations of Algeria, Australia, the Republic of Korea, Sweden and Uruguay were appointed members of the Credentials Committee.

- 3.3 The following Member States were present:

Algeria	Greece	Philippines
Angola	India	Poland
Antigua and Barbuda	Ireland	Portugal
Argentina	Israel	Qatar
Australia	Italy	Republic of Korea
Bahamas	Jamaica	Russian Federation
Barbados	Japan	Saint Lucia
Belgium	Kenya	Saint Vincent and the Grenadines
Cameroon	Latvia	Singapore
Canada	Liberia	South Africa
China (Hong Kong Special Administrative Region)	Lithuania	Spain
Colombia	Malaysia	Sri Lanka
Croatia	Malta	Sweden
Cyprus	Marshall Islands	Trinidad and Tobago
Denmark	Mexico	Turkey
Dominica	Monaco	Tuvalu
Estonia	Morocco	United Arab Emirates
Finland	Netherlands	United Kingdom
France	New Zealand	Uruguay
Georgia	Nigeria	Vanuatu
Germany	Norway	Venezuela
Ghana	Panama	
	Papua New Guinea	

- 3.4 After having examined the credentials of the delegations of the members of the Assembly, the Credentials Committee reported in document 92FUND/A.10/2/3 that all the above-mentioned members of the Assembly, with the exception of Israel, which did not become a Member until 21 October 2005, had submitted credentials which were in order.

- 3.5 The Assembly noted that during the examination of credentials, the Credentials Committee had identified some inconsistencies. It was also noted that the Credentials Committee had therefore strongly urged States to use the two templates presented in circular 92FUND/Circ.49 when preparing credentials in order to ensure compliance with the existing requirements of the 1992 Fund Assembly. It was further noted that the Committee had also proposed that the Director should review the relevant Rules of Procedure and the guidelines given in circular 92FUND/Circ.49, in consultation with those States who had served on the first and second Credentials Committees, in order to clarify certain aspects of both the content of credentials and the procedure for submission, and report to the next session of the Assembly.

- 3.6 The Assembly endorsed the position taken by the Credentials Committee set out in paragraph 3.5 and instructed the Director to report to the Assembly as proposed by the Credentials Committee.
- 3.7 The Assembly expressed its sincere gratitude to the Members of the Credentials Committee for the heavy workload during this session.
- 3.8 The following non-Member States were represented as observers:

*Other States:*

Brazil	Iran (Islamic Republic of)	Saudi Arabia
Côte d'Ivoire	Kuwait	
Egypt	Peru	

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

*Intergovernmental organisations:*

European Commission  
International Maritime Organization  
International Oil Pollution Compensation Fund 1971  
International Oil Pollution Compensation Supplementary Fund 2003

*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 Salvage Union (ISU)  
International Tanker Owners Pollution Federation Ltd (ITOPF)  
International Union of Marine Insurance (IUMI)  
Oil Companies International Marine Forum (OCIMF)

#### **4 Report of the Director**

- 4.1 The Director introduced his report on the activities of the 1992 Fund since the Assembly's 9th session in October 2004, contained in document 92FUND/A.10/3. In his presentation the Director made reference to the entry into force of the 2003 Protocol to the International Convention on the Establishment of an International Fund for Oil Pollution Damage 1992 (Supplementary Fund Protocol) on 3 March 2005, which brought the total amount available for compensation for each incident for pollution damage in the States which become Members of the Supplementary Fund to 750 million SDR (£600 million), including the amount payable under the 1992 Civil Liability and Fund Conventions, ie 203 million SDR (£162 million). He mentioned that the administrative structures of the Supplementary Fund had been established at sessions of the governing bodies in March 2005 and drew particular attention to the fact that it had been decided that the Supplementary Fund should be administered by the 1992 Fund Secretariat and that the Director of the 1992 and 1971 Funds should also be the Director of the Supplementary Fund.
- 4.2 The Director also made reference to the fact that the last 12 months had seen continued growth in 1992 Fund membership. He stated that after the 1971 Fund Convention had ceased to be in force on 24 May 2002, a number of the former 1971 Fund Member States had ratified the 1992 Fund Convention, and that it was hoped that the remaining eight such States would soon do so.

- 4.3 The Director drew attention to the fact that the failure of a number of Member States to submit oil reports continued to give rise to serious concern.
- 4.4 The Director referred to the meeting held in March 2005 of the Working Group set up by the Assembly to consider whether the international compensation regime established by the 1992 Conventions needed improvement in order to continue to meet the needs of the international community. The Director stated that at its March meeting the Working Group had focused its discussions on the equitable sharing of the financial burden between shipowners and cargo interests and on whether there was a need for a revision of the 1992 Conventions. He mentioned that the Working Group had again been evenly split as to whether the Conventions should be revised but had recommended to the Assembly those issues which should be included if a limited revision of the 1992 Conventions were to be decided upon, and those issues which should be dropped.
- 4.5 The Director pointed out that the IOPC Funds would be giving a higher priority to the preparations for the entry into force of the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996 (HNS Convention).
- 4.6 The Director thanked the entire staff for their professionalism and loyalty, which had made it possible to operate the IOPC Funds in an efficient manner.
- 4.7 The Assembly expressed its gratitude to the Director and the other members of the joint Secretariat for the efficient way in which they had administered the 1992 Fund. It also thanked the staff of the Claims Handling Offices established in La Coruña (Spain) and Bordeaux (France) to deal with claims arising from the *Prestige* incident, as well as the lawyers and technical experts who had undertaken other work for the 1992 Fund.
- 4.8 The Assembly congratulated the Secretariat on the 1992 and 1971 Funds' joint Annual Report for 2004, which had been published in English, French and Spanish and contained an instructive presentation of the activities of the 1992 Fund and 1971 Fund.
- 4.9 One delegation drew attention to the fact that in his report the Director had not made any mention of technical assistance, for example in the field of measures to prevent pollution incidents, and that there was no appropriation in the budget for such activities. The Director stated that it had been decided in the early days of the 1971 Fund that technical assistance of that type fell outside its remit. He pointed out, however, that the Funds had developed a training package on the handling and assessment of claims and that several workshops on this matter had been held during the past two years.
- 4.10 One delegation stated that its country had benefited from the Fund workshops and had taken the decision to invite professional trainers to attend these workshops to enable them to pass on the information to a wider audience.
- 4.11 Another delegation suggested that the Funds should approach IMO Technical Cooperation Committee with a view to including the Funds' training package in the Integrated Technical Co-operation Programme (ITCP) for the next biennium. The Director pointed out that the Funds were often invited by IMO to participate in its seminars and workshops to describe the compensation regime, which made it possible for the Funds to reach a wider audience.

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

- 5.1 The Assembly took note of the information contained in document 92FUND/A.10/4 concerning the ratification situation in respect of the 1992 Fund Convention and the Supplementary Fund Protocol.

- 5.2 It was noted that at the end of the session there would be 92 Member States of the 1992 Fund and that four more States would become Members by October 2006, Switzerland having ratified the 1992 Fund Convention on 10 October 2005.
- 5.3 The delegation of Côte d'Ivoire informed the Assembly that Côte d'Ivoire would ratify the 1992 Civil Liability Convention and the 1992 Fund Convention very soon.
- 5.4 It was noted that eleven 1992 Fund Member States were Members of the Supplementary Fund.
- 5.5 It was noted that Italy had ratified the Supplementary Fund Protocol on 20 October 2005 and that the Protocol would enter into force for Italy on 20 January 2006. The Belgian delegation stated that Belgium would ratify the Supplementary Fund Protocol by the end of October or in early November 2005.

## **6 Implementation of the 1992 Civil Liability and Fund Conventions into national law**

- 6.1 The Assembly took note of the information in document 92FUND/A.10/5 in respect of the results of the Director's enquiries to all Member States as to whether the 1992 Conventions had been fully implemented into their national law. It was noted that, since the document had been issued, a reply had been received from Vanuatu confirming that the 1992 Conventions had been implemented.
- 6.2 The Assembly noted that at the time of the session only 37 replies had been received to the Director's enquiries.
- 6.3 The Assembly instructed the Director to make further efforts to obtain responses to the enquiries from all 1992 Fund Member States which had not already responded.

## **7 Application of the 1992 Fund Convention to the EEZ or an area designated under Article 3(a)(ii) of the 1992 Fund Convention**

The Assembly took note of the information in document 92FUND/A.10/6 as regards Member States which had provided information on the establishment of an EEZ or designated area under Article 3(a)(ii) of the 1992 Fund Convention.

## **8 Review of the international compensation regime**

- 8.1 The report of the third intersessional Working Group's ninth meeting, held in March 2005 (document 92FUND/A.10/7), was introduced by the Group's Chairman, Mr Alfred Popp QC.
- 8.2 It was recalled that the Working Group had been instructed to make final recommendations to the Assembly at this session on whether or not the Conventions should be revised, and if so, which items required revision (document 92FUND/A.9/31, paragraph 7.11).
- 8.3 The Chairman of the Working Group stated that the Working Group had been evenly divided on the question of whether or not the Conventions should be revised and that the Group had therefore not been in a position to make a recommendation to the 1992 Fund Assembly on this issue and that it would therefore be for the Assembly to make a decision in the light of the debate. He stressed the importance of maintaining a global and universally applicable regime, and that for a revision of the Conventions to succeed, there had to be broad support.
- 8.4 The Chairman of the Working Group stated that for any revision of the Conventions to go ahead, it was essential to have broad support from Member States, since without it any attempt at even a limited revision would be a difficult struggle and that it would be necessary to have as short a transition period as possible to avoid fragmentation of the compensation regime.
- 8.5 The Working Group's Chairman further stated that since the Working Group had not been able to make any recommendation on the question of revision, it had decided to focus its attention on

preparing a list of items which should be included if a revision of the Conventions were to take place, recognising that this had been without prejudice to the position of those delegations that had opposed any revision of the Conventions.

- 8.6 It was noted that the Working Group had recommended to the Assembly that if it were to decide to proceed with a limited revision of the 1992 Conventions, the following issues should be included:
- (a) tacit amendment procedures;
  - (b) compulsory insurance;
  - (c) non-submission of oil reports;
  - (d) quorum for meetings of the 1992 Fund Assembly;
  - (e) definition of 'ship'; and
  - (f) uniform application of the Conventions.
- 8.7 The French delegation introduced document 92FUND/A.10/7/5 submitted by Australia, Canada, Finland, France, Ireland, Japan, Netherlands, New Zealand, Portugal, Sweden and the United Kingdom (Group of 11 States). The Assembly noted that the Group of 11 States wished to maintain the basic provisions incorporated into the existing Conventions, including the fundamental principle that only oil receivers should pay contributions to the Fund, and that if the Conventions were to be reopened, they were not proposing to revise or change the following:
- overall limits of the regime;
  - breaking of limitation of liability;
  - capping arrangements;
  - cargo owner liability;
  - minimum annual contribution to the 1992 Fund; and
  - problems faced by oil storage companies (to be revisited in the light of future experience with the HNS Convention).
- 8.8 During the discussions a member of the public, Mr Alain Malardé, interrupted the meeting and was removed from the meeting room by security staff. It was recalled that under Rule 12 of the Assembly's Rules of Procedure the Assembly may exclude at any time from a meeting held in public individuals who interrupted or disturbed the meeting. The Assembly decided, pursuant to that Rule, that Mr Malardé would be excluded from attending any meetings of any body of the IOPC Funds.
- 8.9 It was noted that the Group of 11 States had proposed a limited revision in respect of the six key areas referred to in paragraph 8.6, which had already received substantial support for revision in the Working Group.
- 8.10 It was also noted that the Group of 11 States had considered that it would be extremely damaging to the credibility of the regime not to address these areas in a revision and that a failure to do so could expose the regime to calls for radical changes in the event of a new incident that highlighted the regime's inability to evolve in the light of known deficiencies. It was further noted that these States had recommended that the issue of substandard transportation of oil should be added to the Working Group's mandate.

- 8.11 It was noted that the Group of 11 States had maintained that some rebalancing of the financial burden between shipowners and contributors was justified on the basis of the cost study carried out by the Secretariat and that the voluntary agreements proposed by the International Group of P&I Clubs (cf paragraph 8.16 below) suffered a number of drawbacks.
- 8.12 It was finally noted that the Group of 11 States had proposed that the Assembly amend the Working Group's terms of reference and instruct it to:
- develop appropriate treaty text on the six issues referred to in paragraph 8.6;
  - further discuss the issue of substandard transportation of oil, including the insurance proposal by the International Group of P&I Clubs, and bring back to the Assembly any recommendations on this issue; and
  - reserve the decision on rebalancing of the financial burden between shipowners and contributors until the Assembly had fully considered the treaty text on the six issues that had had the support of the members of the Working Group.
- 8.13 The Assembly took note of the proposal by the observer delegation of the Oil Companies International Marine Forum (OCIMF) set out in document 92FUND/A.10/7/7. It was noted that OCIMF had supported the proposal put forward by the Group of 11 States regarding the revision of the Conventions and had additionally proposed that the minimum shipowner's liability under the Civil Liability Convention should be increased to 20 million SDR and that the shipowner should also have a 50% stake in the Supplementary Fund, thereby resolving the current imbalance in the sharing of the financial burden between shipping and oil industries.
- 8.14 The Assembly took note of the proposal by the Greek delegation in document 92FUND/A.10/7/6, which was predicated on the importance of maintaining a global and universally applicable regime, that for a revision of the Conventions to succeed there had to be broad support and that support fell well short of being broad. It was noted that the Greek delegation had therefore proposed that the Assembly decide against a revision of the 1992 Conventions and terminate the activities of the Working Group.
- 8.15 It was noted that in document 92FUND/A.10/7/3/1, submitted by the observer delegation of the International Group of P&I Clubs, which largely superseded the Group's earlier document 92FUND/A.10/7/3, the International Group had shared the view that had been generally acknowledged at the March 2005 meeting of the Working Group that none of the so called 'house keeping' issues were crucial and would not on their own have justified a revision of the Conventions. It was noted that the concern of shipowners was that a prolonged process of revision might lead to a reconsideration of the test for breaking the shipowners right to limit liability, which lay at the heart of the sharing embodied in the present regime.
- 8.16 The Assembly recalled that the International Group of P&I Clubs had established the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) whereby shipowners and Clubs had undertaken to indemnify the 1992 Fund in respect of all claims up to 20 million SDR where the limitation amount under the 1992 Fund Convention was lower, namely for ships of 29 548 gross tonnage or less. It was also recalled that at the March 2005 meeting of the Working Group the International Group of P&I Clubs had put forward an alternative proposal establishing the Tanker Oil Pollution Indemnification Agreement (TOPIA) whereby those Clubs would indemnify the Supplementary Fund in respect of 50% of the amounts paid in compensation by the Supplementary Fund. It was further recalled that TOPIA had been put forward as an alternative to STOPIA and that if the TOPIA proposal were to have been accepted, the International Group of P&I Clubs would have required the simultaneous implementation of TOPIA and withdrawal of STOPIA.
- 8.17 The Assembly noted that the International Group of P&I Clubs had proposed that if the decision was taken to revise the Conventions, STOPIA would only apply in States that were party to the

Supplementary Fund Protocol, but that if the decision to revise the Conventions were to be put on hold, the Clubs would then be prepared to:

- (a) extend the contractually binding STOPIA to all States parties to the 1992 Civil Liability Convention; and
- (b) apply TOPIA to States parties to the Supplementary Fund Protocol.

- 8.18 It was noted that it was the view of the International Group that the sharing of the financial responsibilities of all States parties to the Supplementary Fund Protocol would be more balanced by an additional binding contractual agreement such as TOPIA. It was noted, however, that these proposals had been made in order to preserve the existing system and would not be available if revision were to proceed in relation to any issue, although this did not, in the International Group's view, preclude a review in 2010 in the light of experience of the voluntary system.
- 8.19 The Assembly took note of the views of the observer delegations of INTERTANKO and the International Chamber of Shipping (ICS) as set out in document 92FUND/A.10/7/8. It was noted that INTERTANKO and ICS were opposed to any revision of the Conventions on the grounds that it would entail a new protocol to the regime and would therefore inevitably lead to fragmentation of the regime and damage to its universal appeal.
- 8.20 It was noted that on the issue of sharing the financial burden, the shipping industry had supported the proposals made by the International Group of P&I Clubs to address the matter by means of voluntary binding agreements, which would avoid fragmentation of the existing system and could also be introduced immediately.
- 8.21 During the discussion in the Assembly, it was apparent that delegations remained divided on the question of whether or not to revise the Conventions.
- 8.22 It was noted that those delegations that were opposed to any kind of revision had been of the view that the proposal by the International Group of P&I Clubs had addressed the main issue, namely the equitable sharing of the financial burden of the compensation regime through contractually binding agreements. Those delegations considered that the transition from one regime to another would create problems, for example if there were to be two versions of the Civil Liability Convention with different definitions of 'ship', which would be detrimental to the victims. Some delegations doubted that it would be possible to limit any revision exercise to a small number of issues as proposed by the Group of 11 States once the decision had been taken to re-open the Conventions.
- 8.23 Those delegations that were in favour of a limited revision considered that it was necessary to revitalise the Conventions, and that it was normal practice to amend Conventions from time to time. Those delegations stated that the six issues identified by the working group could not be regarded as merely 'house keeping' since they related to matters of considerable importance for the future operation of the 1992 Fund. The point was made that States had, at the Diplomatic Conference held in May 2003 to adopt the Supplementary Fund Protocol, also adopted the Resolution on a review of the international compensation regime for possible improvement. Some delegations expressed their disappointment that the latest proposal by the International Group of P&I Clubs in respect of the voluntary agreements had been tabled so late, which had not allowed sufficient time for wider consultations. Other delegations took exception to the condition attached to the International Group's proposal that the voluntary agreements would not be available if revision were to proceed.
- 8.24 One delegation considered that the proposals by the Group of 11 States did not go far enough, that certain crucial elements were missing and that it could not support a limited revision, preferring instead to accept the proposal by the International Group of P&I Clubs and undertake a broader review of the Conventions at some future date.

- 8.25 The observer delegation of the European Commission made the following statement:
- 'The European Union, in particular the European Parliament and the Heads of 25 Member States have always wished to contribute to the effective functioning of the IOPC system. The European Commission has been following this debate very closely for the last five years. In our opinion, it is very important to preserve the global character of the system; however, if a present debate was to lead to the fragmentation of the system, the European Commission would not hesitate to look for regional solutions.'
- 8.26 In his summing up the Chairman stated that while there was only a slightly bigger majority in favour of the proposal by the Greek delegation not to revise the regime, it was clear that there was insufficient support for the proposal by the Group of 11 States. The Chairman therefore concluded that the Working Group's mandate had been carried out and that it was time to terminate its activities and to remove the revision of the Conventions from the Assembly's agenda. He stated that this left on the table the proposal by the International Group of P&I Clubs and the positive step by the Clubs to extend STOPIA to all States party to the 1992 Civil Liability Convention, although some delegations had objected to the language used by the International Group and the pre-conditions attached to the proposal. The Chairman invited the International Group to revise the proposal in consultation with the Fund Secretariat and with OCIMF for consideration by the Assembly.
- 8.27 The observer delegation of the International Group apologised for the late submission of its proposal and expressed regret at the way that the language had been perceived. That delegation stated that the offer to extend the scope of STOPIA could be implemented in the short term and would effectively revise the limits of the 1992 Civil Liability Convention. That delegation also stated that it was committed to achieving a 50:50 sharing of compensation costs and agreed to revise the voluntary agreements to make the language more acceptable. That delegation further stated that since the 50:50 sharing of compensation costs involved financial exposure at the higher reinsurance level, for which there was sufficient capacity in the market, it would not be possible to put this in place before 20 February 2006 (the date of renewal of P&I insurance).
- 8.28 One delegation, whilst accepting the Chairman's conclusion, drew attention to the particular problem regarding the definition of 'ship' in the 1992 Conventions as manifested in the *Slops* incident in Greece and the recent interest in the applicability of the Conventions to ship-to-ship oil transfer operations. That delegation stated that if there were to be no revision of the Conventions in the near future, it would be advisable to try and resolve the problem through a re-interpretation of the definition, and urged the Fund and the industry to make an effort in this regard. Several delegations agreed with that position.
- 8.29 The Assembly decided that the Working Group should be disbanded and that the revision of the Conventions should be removed from the Assembly's agenda.
- 8.30 It was noted that the proposals by the Venezuelan delegation in documents 92FUND/A.10/7/1/Rev.1, 92FUND/A.10/7/2/Rev.1 and 92FUND/A.10/7/4 contained a number of issues for consideration in the event of a revision of the Conventions. In the light of the Assembly's decision, the Venezuelan delegation indicated its interest in raising the issues set out in those documents at some point in the future.
- 8.31 The Director was instructed to collaborate with the International Group of P&I Clubs, acting on behalf of the shipping industry, and OCIMF before the voluntary agreement package was submitted to the Assembly for consideration at its next session and provide technical and administrative advice with a view to consolidating the package and ensuring that it was legally enforceable.

## **9 Report on investments**

- 9.1 The Assembly took note of the Director's report on the 1992 Fund's investments during the period July 2004 to June 2005, contained in document 92FUND/A.10/8.

- 9.2 The Assembly noted the number of investments made during the twelve-month period, the number of institutions used by the 1992 Fund for investment purposes, and the significant amounts invested by the 1992 Fund. The Assembly stated that it would continue to follow the investment activities closely.
- 9.3 One delegation stated that the report was not complete in that the Annexes did not set out interest earned on the call accounts nor contained details of investments that corresponded to the interest earned for the reporting period. The Director stated that the report provided the information required under the Financial Regulations and was consistent with previous reports. He added, however, that he would consider whether the report should be extended to take into account the views expressed.

## **10 Report of the joint Investment Advisory Body**

- 10.1 The Assembly took note of the report of the joint Investment Advisory Body of the 1992 Fund, the 1971 Fund and the Supplementary Fund contained in the Annex to document 92FUND/A.10/9. It noted the amended Internal Investment Guidelines relating to Money Market Investments and Foreign Exchange Transactions contained in the Attachment to the report and the Investment Advisory Body's recommendation that, once proper internal controls were in place, the Funds should use Business Internet Banking to carry out foreign exchange transactions. The Assembly also noted that, at the Investment Advisory Body's recommendation, the 1992 Fund had bought a Participating Forward Hedging instrument to cover part of the 1992 Fund's exposure in euros arising from the *Erika* and *Prestige* incidents. The Assembly also took note of the Body's objectives for the coming year.
- 10.2 The Assembly expressed its gratitude to the members of the joint Investment Advisory Body for their valuable work.

## **11 Financial Statements and Auditor's Report and Opinion**

- 11.1 The Director introduced document 92FUND/A.10/10 containing the Financial Statements of the 1992 Fund for the financial year 2004 and the External Auditor's Report and Opinion thereon.
- 11.2 A representative of the External Auditor, Mr Martin Sinclair, Assistant Auditor General, introduced the Auditor's Report and Opinion.
- 11.3 The representative of the External Auditor mentioned that a review had been carried out of the Secretariat's internal controls and had found these to be satisfactory in support of the overall audit opinion on the financial statements, particularly in relation to claims payments, contribution income, payroll, administrative expenditure and cash management. He further stated that the Funds had a commendable record in matters of governance, setting a best practice agenda appropriate to the size of the Funds and the Secretariat. He stated that the report focused on the adequacy of key governance arrangements established by the Funds, to ensure that they continued to provide the best level of assurance.
- 11.4 The representative of the External Auditor mentioned that in his Report the External Auditor had reviewed the Funds' existing arrangements to ensure transparency in financial management and had made a number of recommendations, including the establishment of registers of interest and for recording hospitality and gifts, a code of conduct for staff, annual declarations by staff to confirm compliance with the requirements of the Financial Regulations and Administrative Instructions, and the introduction of a whistle-blowing policy to ensure that staff had an appropriate mechanism for reporting misconduct and irregularity. He also mentioned that the External Auditor had recommended that the Secretariat give greater impetus to completing the process of identifying financial risks ensuring that a full and systematic risk management assessment was in place prior to the arrival of the new Director. The representative of the External Auditor welcomed the positive way in which the Secretariat had received the recommendations made in the report and stated that the External Auditor would work with the Secretariat on the implementation of these recommendations.

- 11.5 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 92FUND/A.10/10, and that the External Auditor had provided an unqualified audit opinion on the 2004 Financial Statements, following a rigorous examination of the financial operations and accounts in conformity with audit standards and best practice. The Assembly also appreciated that the Report went into great depth and detail.
- 11.6 The Assembly noted the recommendations set out in the External Auditor's Report.
- 11.7 The Director stated that in September 2005 he had informed the External Auditor that he intended to implement as a matter of priority all the recommendations made by the External Auditor.
- 11.8 The representative of the External Auditor stated that the work of the Audit Body represented a significant contribution to the Fund's good governance and management of its operation, and that the External Auditor had recommended therefore that the joint Audit Body should become a permanent part of the Organisations' structure.

## **12 Joint Audit Body's Report and approval of Financial Statements**

- 12.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document 92FUND/A.10/11 containing the joint Audit Body's Report.
- 12.2 In his introduction, Mr Coppolani drew particular attention to the involvement of the Audit Body in the audit process and noted with satisfaction the co-operative spirit in which the External Auditor had worked with the Audit Body. He referred to the discussions held with the joint Investment Advisory Body. He also referred to other issues which had been covered by the Audit Body, eg the procedures for recruitment of the next Director and risk management, where the Audit Body had noted with satisfaction that considerable work had been carried out on financial risks and that a timetable had been set for addressing other risk areas. He mentioned that the Audit Body was satisfied with the amendments to the Internal and Financial Regulations adopted by the Assembly in March 2005. Mr Coppolani drew the attention of the governing bodies to the importance of Member States fulfilling their obligations to submit oil reports for the proper functioning of the contribution system. He stated that as part of the phased programme of review work agreed upon at the first meeting of the Audit Body in 2002, a review of the efficiency of claims settlement procedures had been carried out and that a report of the review would be considered under Agenda item 13.
- 12.3 Mr Coppolani drew attention to the fact that when the Audit Body had been established in 2002 the governing bodies had decided that the functioning of the Audit Body should be reviewed every three years on the basis of an evaluation report from its Chairman and that such a review should be made at the present session. Mr Coppolani stated that the Audit Body formed part of the governance of the Funds. He reminded the Assembly that the External Auditor had emphasised the importance that he attached to the Audit Body and that the Director had stated that he considered that the Audit Body contributed significantly to the effective governance of the IOPC Funds. Mr Coppolani referred to the Audit Body's recommendation that the Body should be instructed to continue its work under such a mandate and with such membership composition as the Assembly may decide.
- 12.4 Mr Coppolani stated that the Audit Body, on the assumption that it would be maintained, recommended that the future work programme should include a continuing focus on risk management as well as effective financial control and efficient procedures, monitoring the transition of management control following the new Director taking over responsibility in November 2006, and a continuation of the review of the effectiveness of claims handling procedures.
- 12.5 Many delegations expressed their views on the vital role played by the Audit Body and that the Body's mandate should be reviewed at least once in every three years.

- 12.6 Many delegations also supported the view that the Audit Body should be maintained as a permanent structure of the Funds and that it should continue its work not only on the financial aspects of the Funds but also be involved with reviewing operational and management issues.
- 12.7 The Assembly decided to maintain the Audit Body as a permanent part of the IOPC Funds' structure. It was also decided that there was no need to amend the Audit Body's mandate at this stage but leave it to the Audit Body to recommend such amendments as it may deem appropriate. It was decided, however, that the Assembly should review the Audit Body's mandate in 2008.
- 12.8 The Assembly noted the Audit Body's recommendation that the governing bodies should approve the accounts of the 1992 Fund for the period 1 January – 31 December 2004.
- 12.9 The Assembly approved the accounts of the 1992 Fund for the financial period 1 January - 31 December 2004.
- 12.10 The Assembly expressed its gratitude for the important work being carried out by the Audit Body.

### **13 Joint Audit Body's Review of claims handling efficiency**

- 13.1 The joint Audit Body's report of its review of the claims handling efficiency of the Funds (document 92FUND/A.10/12) was introduced by Mr Nigel MacDonald, the member of the Audit Body who had carried out the review.
- 13.2 In his introduction, Mr MacDonald informed the Assembly that the Audit Body had confirmed at its December 2004 meeting that a review of claims handling procedures would be carried out in 2005 enabling the Body to form a view about the efficiency of those procedures. He mentioned that the review had been designed, in consultation with the Secretariat, to enable the pattern of claims management to be understood and, in particular, the timeliness and costs of claims assessment, in order to enable the Audit Body to form a view as to the underlying efficiency of the process. Mr MacDonald explained that a significant amount of invaluable preparatory work, extracting from files and existing databases suitable data to assist the analysis and review of claims handling had been carried out by the Secretariat during the first three months of 2005. He expressed his gratitude on behalf of the Audit Body to the Secretariat for providing this assistance.
- 13.3 Mr MacDonald explained that once he had carried out the efficiency review, his report thereon had been considered and endorsed (with minor modifications) by the Audit Body at its June 2005 meeting.
- 13.4 Mr MacDonald emphasised that the efficiency review had not been designed to re-assess individual past claims relating to specific incidents, but had rather sought to identify possible trends and patterns from which lessons for claimants or the Funds might be drawn, looking at a number of different incidents and, where necessary, looking at sample claims within those incidents to understand these matters better. He informed the Assembly that a selection of categories and specific incidents had been examined during the review, namely 'Major incidents', 'Moderate incidents', 'Non-insured incidents' and 'Incidents in one country'. He explained that the efficiency review had focussed on the costs of claims handling and the speed with which claims were assessed, approved and settled, as well as the way claims were handled and the management information available to the Secretariat to monitor and control this activity.
- 13.5 Mr MacDonald explained that considerable assistance had been provided by the Secretariat, both in preparation for this review of the efficiency of claims handling of the Funds, and whilst it was being carried out. He stated that this was the first review of this type undertaken and that it would not have been possible to carry it out without that assistance and expressed the Audit Body's appreciation for it.
- 13.6 Mr MacDonald informed the Assembly that, as set out in document 92FUND/A.10/12, the review had identified numerous factors that could cause delay in claims handling. He explained that

many of these factors were matters that fell outside the Funds' ability to resolve. The Assembly noted that a significant issue for the Funds was the tendency of claimants to make inflated claims and that when this led to questions and further enquiries, the claimants often delayed their responses, sometimes for weeks or months, perhaps because of fears of being accused of fraud if the claims were found to be unjustified.

- 13.7 Mr Macdonald stated that the interplay between government relief activity for people affected by an incident and the Funds' procedures under the Conventions were also an area of potential complexity, particularly where claimants received hardship relief from their Government without having needed to demonstrate the extent of support for their claim that was required to allow the claim to be assessed and approved by the Funds.
- 13.8 It was noted that with one exception (the *Nakhodka* incident – the reasons for which were discussed further in the report) the time taken to assess claims followed a fairly consistent pattern, and the typical time for the majority of claims to be assessed was within six months of being received, with the bulk of all claims being assessed within 12 months, unless there were legal factors causing further delay.
- 13.9 Mr Macdonald stated that the Funds' costs were higher than the equivalent costs of an insurance company, because, in accordance with the Conventions, the Funds had to ensure that every claimant was treated fairly in accordance with legal principles. Mr Macdonald made the point that the practice of setting up a local claims handling office for the larger incidents made a great deal of sense and allowed the Funds to collect and manage the data in ways that were of considerable value in helping to identify and resolve delays and allowed effective oversight and control of costs.
- 13.10 Mr Macdonald emphasised that each incident was different, and that the challenge of carrying out a review of this type was to draw the correct generic lessons, whilst recognising that in specific cases the circumstances would differ and that flexibility and initiative were essential for the Funds to remain adaptable to new circumstances and problems, which was why the report contained a good deal of explanatory material and commentary, as well as recommendations.
- 13.11 The Assembly noted the recommendations relating to the time taken to handle claims, on the costs of claims, on interim payments and on the management of claims handling. It was noted that the review did not identify any serious past weaknesses or failures by the Funds or the Secretariat and no suggestion whatsoever of any impropriety.
- 13.12 The Assembly expressed its gratitude to the Audit Body for the interesting and useful report.
- 13.13 One delegation, whilst noting the management benefits of claims database systems, asked whether the data was protected and for how long it was retained once all claims arising from an incident had been dealt with. The Deputy Director stated that access to the database was restricted to claims staff in the Secretariat, the staff of claims handling offices and the claims staff of the shipowner's insurer. He further stated that all data relating to claims, whether in hard copy or electronic format, was archived after an incident was closed in case the Secretariat needed to refer to it in future, for example in connection with an efficiency review.
- 13.14 Another delegation asked whether any thought had been given to obtaining the claimants' perceptions of the Funds' claims handling efficiency. In reply Mr Macdonald stated that it might be difficult to obtain an objective view from many claimants.
- 13.15 In response to a question about the Funds' support and training programme the Director made the point that it was difficult to reach out to potential claimants prior to an incident, although the Funds' claims workshops had proved very successful and a number of Member States had invited the Funds to run them. The Director also referred to training workshops run by the Secretariat for its experts to ensure that claims were assessed in a consistent way and that assessment reports followed a similar format. It was noted that following the conclusion of major incidents it was the

Funds' practice to hold wash ups with all those involved in claims handling to review the lessons learned for use in future incidents.

- 13.16 The Assembly instructed the Director to submit a report to its next session setting out an action plan that the Secretariat had put in place in the light of Mr Macdonald's recommendations.

#### **14 Report on contributions**

- 14.1 The Assembly took note of the Director's report on contributions contained in document 92FUND/A.10/13.

- 14.2 It was noted that since the document was issued the entire outstanding contributions of £190 403 had been received from the contributor in Venezuela and an amount of £424 287 from the contributor in Trinidad and Tobago, leaving only an amount of £17 150 outstanding.

- 14.3 The Assembly noted that the Director had concluded an agreement with the Creditor's Committee of the Enron Bankruptcy with regard to a Belgian contributor, a company within the Enron group, which had gone into liquidation and owed the 1992 Fund an amount of £108 733. The Assembly noted that an amount of £55 312 had been received on 21 September 2005 and that the balance of contributions for that company would be written off in the financial statements for the year ending 31 December 2005.

- 14.4 The Assembly invited Member States to assist the Secretariat to ensure that contributors in their States with outstanding contributions fulfilled their obligations.

#### **15 Submission of oil reports**

- 15.1 The Assembly considered the situation in respect of the non-submission of oil reports, as set out in document 92FUND/A.10/14. It was noted that, since the document had been issued, one further State (Slovenia) had submitted its outstanding oil reports and that therefore a total of 28 States still had outstanding oil reports for the year 2004 and/or previous years: 11 States in respect of the 1971 Fund and 22 States in respect of the 1992 Fund. It was further noted that a number of States had reports outstanding for several years. It was also noted that two States (Argentina and Georgia) had indicated that the Secretariat would receive their outstanding reports shortly.

- 15.2 The Assembly noted with satisfaction that one State, Nigeria, which had had outstanding reports to the 1971 Fund for eight years, had submitted seven of these reports. It was also noted that Bahamas, Benin, Cambodia, Colombia, Congo and Morocco had submitted all their outstanding reports.

- 15.3 The Assembly 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 Assembly expressed its very serious concern as regards the number of Member States which had not fulfilled their obligation to submit oil reports, since the submission of these reports was crucial to the functioning of the IOPC Funds.

- 15.4 One delegation stated that it expected other States to follow Nigeria's example and that many States that had participated in the Assembly's session should also fulfil their treaty obligations under the 1992 and 1971 Fund Conventions.

- 15.5 The Assembly noted the information contained in document 92FUND/A.10/14/1, which contained recommendations as to further measures that might encourage States to fulfil their obligations to submit oil reports. The present procedures for obtaining the oil reports were noted as well as the consideration by the Audit Body of this issue. It also noted the initiatives that had been taken by the Secretariat and the Director's analysis of the factors contributing to the problem.

- 15.6 The Assembly considered the Director's suggestion that any further measures to encourage States to submit oil reports would have to focus on either assisting States to submit reports or 'shaming' them into doing so.
- 15.7 The Assembly noted the measures suggested by the Director as regards assisting States to submit oil reports, namely:
- 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.
  - 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 arose.
  - The Secretariat was considering establishing an electronic reporting system for the submission of reports on contributing oil, similar to that which had 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.
  - The Assembly might wish to consider whether when electing Chairman and Vice-Chairmen of various Fund bodies account should be taken of whether the States whose nationals were considered for election had fulfilled their obligations to submit oil reports.
  - The Assembly might wish to instruct the Director to invite a few States which had 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.
- 15.8 As regards 'shaming' States into submitting oil reports, the Assembly noted that, in addition to the suggestion that had been made at the 1992 Fund Assembly's October 2004 session that States with outstanding reports could be highlighted on the website and in the Annual Report, the Director had suggested that the Assembly or Administrative Council could invite those States with outstanding reports which were represented at the sessions of the governing bodies to report back at the next session with an explanation as to the reasons for that State's failure to submit reports.
- 15.9 Many delegations stated that they supported the proposed measures to encourage States to submit oil reports and several delegations mentioned that they were particularly interested in the development of an electronic reporting system.
- 15.10 As regards the proposed measures intended to 'shame' States into submitting reports, some delegations supported these measures but other delegations expressed their reservations.
- 15.11 During the discussion, it was mentioned that there were a number of reasons for the non-submission of oil reports. Several delegations mentioned that letters often did not reach the appropriate authority. One delegation suggested that the Secretariat could collect information from States on a regular basis as to the contact details of the government authority and the person responsible for the submission of oil reports. Several delegations suggested that the Secretariat should provide States with assistance to submit reports. One delegation considered that the Secretariat should try to engage with States at a high level.

- 15.12 One delegation drew attention to Article 29 of the Final Clauses of the 1992 Protocol to the 1971 Fund Convention under which, before the Protocol came into force for a particular State, that State should, when depositing its instrument of ratification and annually thereafter, communicate to the Secretary-General of IMO the name and address of any person who in respect of that State would be liable to contribute to the 1992 Fund as well as the quantities of contributing oil received by any such person.
- 15.13 The Assembly instructed the Director to proceed with the measures which had been proposed to assist States to submit oil reports listed in paragraph 15.7 but not with those intended to 'shame' States into submitting reports referred to in paragraph 15.8.
- 15.14 The Assembly also instructed the Director to continue to bring the matter of the submission of oil reports to its attention at each regular session.
- 15.15 The Assembly 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.

## **16 Operation of the Secretariat**

- 16.1 The Assembly took note of the information contained in document 92FUND/A.10/15 regarding the operation of the Secretariat.
- 16.2 The Assembly noted that a revised version of the 1992 Fund's Claims Manual, which had been approved by the 1992 Fund Assembly at its October 2004 session, had been published in English, French and Spanish in April 2005 and that the revised Manual had been well received.
- 16.3 The Assembly noted that the work on strengthening financial control had continued, taking into account recommendations made by the External Auditor and the Audit Body and that the Investment Advisory Bodies (since March 2005 the joint Investment Advisory Body) had also made valuable proposals in this regard.
- 16.4 The Assembly further noted that the Funds' risk management programme, including safeguarding the Funds' IT systems services was being pursued, and that in order to ensure business continuity, all electronic communications received in the Funds' office in Portland House were automatically copied to the Funds' offices in the IMO building and that all critical data were also replicated to systems in the Funds' offices in that building, thereby providing back-up in the event of the failure of the systems or services at the Portland House office.
- 16.5 The Assembly noted that a new publication in English, French and Spanish of the texts of the 1992 Civil Liability Convention, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol had been issued.
- 16.6 The Director drew attention to recent developments of the IOPC Funds' website, which in May 2004 had become available also in French and Spanish. He mentioned that the website had been further developed by expanding it to provide not only a wider range of information but also to facilitate more user-friendly navigation of the information contained in it. He also mentioned in particular that a section had been added which provided information on the governing bodies, the Secretariat and its staff, the Audit Body and the Investment Advisory Body. He informed the Assembly that further expansion of the IOPC Funds' website would take place during 2006 by adding new sections aimed at specific groups of users.
- 16.7 The Director also mentioned that in June 2005 the Secretariat had begun work on the expansion of the Document Server to contain all documents going back to the first session of the 1971 Fund Assembly in November 1978, a period involving more than 4 000 documents. He explained that the first stage of the project, covering some 2 400 meeting documents for the period 1996-2000, was under way, that all documents from the year 2000 had recently been uploaded to the

document server and that it was expected that by the end of 2005 all documents for the period 1996-2000 would be available on the Document Server.

- 16.8 The Director informed the Assembly that during 2004 and 2005 consideration had been given to the establishment of a database of the decisions taken over the years by the governing bodies. He explained that he had now approved a prototype Records of Decisions Database and that work had commenced on categorising all the decisions and other relevant information, such as court judgements, into an index. He expressed his hope that that phase of the project would be completed by the end of 2005. He explained that the second phase would involve preparing abstracts and incorporating them into the database and that the aim was to complete that phase by October 2006, by which time all the Funds' documents should have been added to the Document Server so that the database could be launched onto the Funds' website. He mentioned that at least initially the database would be set up in the English language only.
- 16.9 The Director mentioned that the Secretariat had set up a dedicated website for the HNS Convention ([www.hnsconvention.org](http://www.hnsconvention.org)), that the website was currently in English only but would be made available in French and Spanish in 2006 and that further development of the HNS website would be considered.
- 16.10 The Director thanked those Member States who had continually showed interest and support in the ongoing developments of the IOPC Funds' website and document server.
- 16.11 A number of delegations expressed their satisfaction at the ongoing developments in information management. One delegation looked forward to the new booklet containing the texts of the Conventions on the website, especially the Spanish version which had not previously been available.
- 16.12 One delegation noted the regrading of seven posts, which represented 25 per cent of the staff, and assumed that these posts had been regraded based on changes in duties and increased responsibilities. That same delegation further questioned whether it was worthwhile to maintain the posts of French and Spanish translators, which had been vacant since 2003. The Director replied that it was important for the Organisation to build on the staff's competencies and that an external consultant specialised in UN classification of posts had assisted him in determining whether posts should be regraded as a result of new duties and responsibilities. With regard to the two vacant translator posts, the Director stated that no budgetary appropriations had been made for these posts but that he considered it appropriate to maintain these established posts to enable the Secretariat to meet any significantly increased volume of translations.

## **17 Appointment of Director**

- 17.1 The Assembly recalled that as a result of the expiry of the contract of the current Director of the 1992 Fund, the 1971 Fund and the Supplementary Fund, Mr Måns Jacobsson, on 31 December 2006 the post of Director would become vacant. The Assembly further recalled its decision at its 9th session in October 2004, that the 1992 Fund Assembly would at its 10th session in October 2005 appoint a new Director who would also, *ex officio*, be Director of the 1971 Fund and the Supplementary Fund. It was also recalled that at its 9th extraordinary session, held in March 2005, the Assembly had decided that in order to ensure a smooth transition from the present Director to his successor, the present Director would retain full responsibility for the Organisations up to 31 October 2006, the newly-elected Director would join the Secretariat on 1 September 2006 and take over responsibility for the Organisations on 1 November 2006 and the present Director would continue to be available up to 31 December 2006 (document 92FUND/A/ES.9/28, paragraph 23.2.28.).
- 17.2 The Assembly recalled its decision at its March 2005 session that the nominations for the post of Director should be received by the IOPC Funds Secretariat by 30 June 2005. It was noted that by that date, two nominations had been received, namely Mr José Maura Barandiarán, nominated by the Government of Spain, received on 4 April 2005, and Mr Willem J G Oosterveen, nominated by the Government of the Netherlands, received on 31 May 2005. The Assembly also recalled

that the nominations, together with the supporting documents, had been circulated to 1992 Fund Member States in circulars 92FUND/Circ.45/1 and 92FUND/Circ.45/2, dated 5 April 2005 and 1 June 2005 respectively.

- 17.3 The Assembly took note of the information contained in document 92FUND/A.10/16 regarding the candidates for the next Director of the IOPC Funds.
- 17.4 The Assembly considered the procedures to be followed in relation to the election of the Director proposed by the Chairman, as set out in document 92FUND/A.10/16/1.
- 17.5 The Assembly noted that under Article 33.2(b) of the 1992 Fund Convention, read in conjunction with Article 32(c) and (d), the decision to appoint the Director required a two-thirds majority of the Member States present at the meeting at the time of the vote. It was noted that under Rule 54 of the Assembly's Rules of Procedure, the Assembly should vote in a secret ballot in a private meeting. It was noted that if neither of the two candidates were to obtain a two-thirds majority in the first ballot, one or more further ballots would be required.

- 17.6 The Assembly adopted the following timetable for the election:

First ballot	Wednesday 19 October, 2.30pm
Second ballot (if required)	Thursday 20 October, 11.30am
Third ballot (if required)	Thursday 20 October, 2.30pm

- 17.7 On the proposal of the Chairman, the Assembly elected Mr E Sampatakakis (Greece) and Mr M Lee (Singapore) to scrutinise the votes cast in accordance with Rule 38 of the Rules of Procedure.
- 17.8 The Assembly held a meeting in private on Tuesday 18 October 2005, pursuant to Rule 12 of the Assembly's Rules of Procedure, at which the two candidates made presentations. Following the presentations by the two candidates a brief question and answer session with the candidates was held. During the private meeting only representatives of Member States of the 1992 Fund and former Member States of the 1971 Fund were present. The Director and other members of the Secretariat did not attend the private meeting.
- 17.9 At a private meeting on 19 October 2005, at which only representatives of 1992 Fund Member States and former 1971 Fund Member States were present, the Assembly held a secret ballot under Rule 54 of the Rules of Procedure with the following result:

Mr Willem J G Oosterveen	42 votes
Mr José Maura Barandiarán	22 votes
Blank ballots	1

Since 65 delegations were present at the time of the vote, the required two-thirds majority of 44 votes was not achieved.

- 17.10 Subsequent to the ballot, the Chairman informed the Assembly that Mr José Maura Barandiarán had withdrawn his candidature.
- 17.11 In the light of the fact that there only remained one candidate for the post of Director, the Spanish delegation suggested, with the support of several delegations, that it would not be necessary to have a second secret ballot but that the election could be done by acclamation. Several other delegations considered, however, that in view of the importance of the election it was necessary for the provisions of the 1992 Fund Convention that required the Director to be elected by two-thirds majority as well as Rule 54 of the Assembly's Rules of Procedure to be observed and that a secret ballot should be held.

- 17.12 On 20 October 2005 the Assembly held a second secret ballot at a private meeting at which only representatives of the 1992 Fund Member States and former 1971 Fund Member States were present with the following result:

Mr Willem J G Oosterveen	54 votes
Blank ballots	8

- 17.13 Since 62 States were present at the time of the vote, the required two-thirds majority of 42 votes was achieved. The Assembly declared that Mr Willem J G Oosterveen (Netherlands) had been elected as the next Director of the 1992 Fund from 1 November 2006 and that he would *ex-officio* be Director of the 1971 Fund and the Supplementary Fund also.
- 17.14 The Assembly expressed its sincere gratitude to both candidates nominated for their willingness to serve as Director.
- 17.15 Mr Willem Oosterveen, Director Elect, stated:

First of all I would like to express my sincere gratitude to you all for electing me as the new Director of the IOPC Funds. I consider this to be a great honour and a privilege, and I will do my utmost to live up to your expectations and to be a worthy successor of Mr Jacobsson. In particular I want to stress that it is my sincere wish to be a Director for the Fund as a whole, and for all Member States: big or small, developed or developing, from next door or from far away.

In particular, I would like to thank those States that have consistently supported me over the last years and, although I will certainly thank them in private as well, I want to declare publicly here that it means a lot to me to know that I had their confidence all along the way.

Although I believe, as I have also indicated in my presentation on 18 October, that there is much more to the position of the Director, his core-task is to run the Secretariat in such a way that the IOPC Funds operate smoothly for the benefit of the international community, thus doing justice to the spirit of the Conventions governing the international compensation regime. In doing so, I will appreciate, and indeed need, the feedback from Member States and other stakeholders in respect of the functioning of the Secretariat and of the IOPC Funds as a whole.

Over the last period I have found out the hard way that it takes some courage to put yourself forward as a candidate for the Directorship of the IOPC Funds. My fellow candidate, José Maura, had that courage as well, which has made it possible for you, the members of the Assembly, to make a choice in this important matter, instead of having to eat what you were served. He deserves credit for that courage. Both of us have always been dedicated to the well being of the Funds and I hope both our candidatures have been seen in that light: as an expression of our willingness to bring our services to the Funds. It is something we shared, rather than something which divided us. Therefore, now that a decision has been reached, I call upon all of us to let the past be the past, and concentrate on the future of the Funds.

In doing so, I hope that I can count on the support and advice of all Member States. Even if we acknowledge our differences of opinion, let us never forget what binds us together in the Funds; even if we acknowledge the imperfections of the international compensation regime, let us never forget that it is endlessly better than no regime at all.

I sincerely hope that together we will succeed in involving as many Member States as possible in the core decision-making processes of the Funds, and that the excellent relationship between the Funds and all relevant parts of the industry will

be prolonged in the future, for the common benefit of the international community. I am also looking forward to an excellent relationship with Mr Mitropoulos, the Secretary General of IMO, which in a way is the mother organisation of the Funds.

Last, but certainly not least, I hope I can count on the expertise and dedication of the Secretariat, the workers in the engine-room of the Organisations, and that together, within the Secretariat we can ensure that working for the Fund is not only interesting, challenging and rewarding, but also simply a great pleasure.

17.16 Mr José Maura Barandiarán stated:

I would like to congratulate Mr Oosterveen for his election to the post of Director of the IOPC Funds and wish him the best of success in the future.

I would like to express my gratitude to the distinguished delegates and to the Member States who voted for me, for the support and trust they have given me. This campaign has been a most interesting experience and I am looking forward to the next step working with Mr Oosterveen. Mr Oosterveen has won and I pledge to him my full support and loyalty in the future. I have the intention to continue serving the Organisations and I shall be pleased to do so under his leadership. I have great appreciation for the qualities of Mr. Oosterveen and I hold him in high esteem.

I would like to end by thanking again all Member States who have supported my candidature and to the Spanish Government for the honour it has given me by presenting me as a candidate in this election. I accept the decision of the Member States and warmly congratulate Mr Willem Oosterveen for his successful election.

17.17 The present Director stated:

I hope that I may be allowed to say a few words on this historic occasion which marks the beginning of the transition from myself as Director of the IOPC Funds to Mr Willem Oosterveen whom you have just elected to take over the post of Director on 1 November 2006.

May I first of all extend my warmest congratulations to Mr Oosterveen. I am convinced that he will be able to lead the Funds in an excellent manner. I can assure him that he will face considerable challenges; the job of Director is difficult and sometimes tough but it is rewarding and, in any event, never dull. Mr Oosterveen will also have the great advantage of being supported by a very qualified and loyal staff.

The Assembly was in the fortunate position to be able to choose between two very strong candidates. However, only one of them could win. May I take this opportunity to extend to Mr José Maura my gratitude for all the support he has given me over the years. His enthusiasm, professionalism and loyalty are, and I am sure will continue to be, great assets to the Funds.

Reverting to the transition, my intention is to discuss with Mr Oosterveen as soon as possible how best to use the twelve-month period up to 1 November 2006 to ensure a smooth transition so that when I retire on 31 December 2006, he is in the best possible position to run the IOPC Funds in an efficient manner.

I would like to stress that I do not intend to be a lame duck Director from now until 1 November 2006. I will continue to make every effort to lead the Funds up to that date in the same manner as I have done for the last 21 years, but obviously in close consultation with my successor on important issues.

- 17.18 The Spanish delegation congratulated the Director Elect, wishing him every success in his future management of the IOPC Funds and assuring him of the active collaboration of Spain. This delegation pointed out that the process which had taken place for the election of the Director had been a demonstration of the proper democratic functioning of the Organisation.
- 17.19 The Assembly recalled 1992 Fund Resolution N°9, adopted at its 9th session, under which future IOPC Funds' Directors should be appointed for an initial term of five years, that the appointment may be renewed by the Assembly for one additional term of up to five years and that further extension of the Director's term of office may be decided by the Assembly in view of exceptional circumstances (document 92FUND/A.9/31, Annex I).
- 17.20 It was noted that the Assembly would revert to the Director Elect's contract at its next session.

## **18 Amendments to Staff Rules**

The Assembly noted the information contained in document 92FUND/A.10/17 with regard to the 1992 Fund's Staff Rules.

## **19 Appointment of members and substitute members of the Appeals Board**

The Assembly appointed the following members and substitute members of the Appeals Board to hold office until the 12th session of the Assembly:

Members	Substitute Members
Mr G Gasc (France)	Mr G Demetriades (Cyprus)
Mr N Yamagami (Japan)	Dr J D Enríquez Rosas (Mexico)
Sir Michael Wood (United Kingdom)	Mr E King (Trinidad and Tobago)

## **20 Insurance cover for staff members**

- 20.1 The Assembly took note of the information contained in document 92FUND/A.10/19 relating to insurance cover for staff performing official duties for the IOPC Funds.
- 20.2 It was noted that the 1992 Fund had insured staff members' rights to compensation under the Staff Regulations and Staff Rules in the event of illness, accident or death attributable to the performance of official duties on behalf of the IOPC Funds. It was further noted that in the light of the increased global risks from terrorism, the 1992 Fund's insurers had advised that they were unable to provide cover for damage caused or contributed to by an act of terrorism involving the use or release or the threat thereof of any nuclear weapon or device or chemical or biological agent and had introduced an exclusion clause to this effect in the 1992 Fund's insurance policy.
- 20.3 The Assembly recalled that at its 9th session, held in October 2004, it had instructed the Director to investigate further whether it would be possible to obtain insurance cover at a reasonable cost for Fund staff members in respect of the events referred to in paragraph 20.2 above (document 92FUND/A.9/31, paragraphs 33.2.3 and 33.2.4). It was noted that the Director had continued with his investigation of this issue but had so far not been able to obtain such cover.
- 20.4 The Assembly instructed the Director to continue to investigate whether it would be possible to obtain insurance cover for Fund staff members in respect of the events referred to in paragraph 20.2 at a reasonable cost and to report to the Assembly on the developments at its October 2006 session.
- 20.5 The Assembly agreed with the Director that, if such insurance cover could not be purchased, the 1992 Fund would need to bear the risks involved itself, ie to self-insure these risks.

**21 Headquarters Agreement**

- 21.1 The Assembly took note of the information contained in document 92FUND/A.10/20 regarding the preparation of a Headquarters Agreement between the United Kingdom Government and the Supplementary Fund and a revision of the Headquarters Agreement between the United Kingdom Government and the 1992 Fund.
- 21.2 The Assembly recalled that, as reported to the March 2005 session of the Assembly, the Director had submitted to the United Kingdom Government a draft text of a revised Headquarters Agreement for the 1992 Fund and a draft text of a Headquarters Agreement for the Supplementary Fund. It was also recalled that, as agreed with the United Kingdom Government, both texts had been drafted within the scope of the International Organisations Act 1968 (as amended) and that the texts followed, as closely as possible, the Headquarters Agreement between IMO and the United Kingdom Government, which had been concluded in 2002.
- 21.3 It was noted that consultations with the United Kingdom Government on the draft texts were continuing. The Assembly also noted that it would be invited to consider the texts of the Headquarters Agreements once a provisional agreement had been reached between the Government and the Director on these texts.

**22 Agreement with IMO on administrative arrangements**

The Assembly took note of the information contained in document 92FUND/A.10/21 regarding an agreement with the International Maritime Organization (IMO) on an extension of the scope of the Agreement and License to occupy and the Underlease relating to the Funds' occupancy in the IMO building to cover also the activities of the Supplementary Fund.

**23 Reports of the Executive Committee on its 27th – 30th sessions**

- 23.1 The Assembly took note of the reports of the Executive Committee's 27th – 30th sessions (cf documents 92FUND/EXC.27/2, 92FUND/EXC.28/8, 92FUND/EXC.29/6 and 92FUND/EXC.30/10).
- 23.2 The Assembly approved the reports of the Executive Committee and expressed its gratitude to the Committee's Chairperson, the Vice-Chairperson and its members for their work.

**24 Election of members of the Executive Committee**

In accordance with 1992 Fund Resolution N°5, the Assembly elected the following States as members of the Executive Committee to hold office until the end of the next regular session of the Assembly:

Eligible under paragraph (a)	Eligible under paragraph (b)
Canada	Algeria
France	Cameroon
Italy	China (Hong Kong Special Administrative Region)
Republic of Korea	Finland
Singapore	Portugal
Spain	Russian Federation
United Kingdom	Turkey
	Uruguay

**25 Technical Guidelines on methods of assessing losses in the fisheries sectors**

- 25.1 The Assembly took note of the information contained in document 92FUND/A.10/23 on the methods of assessing losses in the fisheries sectors. It was recalled that draft Technical Guidelines on methods of assessing losses in the fisheries, mariculture and fish processing sectors, which were intended to assist the 1992 Fund's world-wide network of fishery experts in assessing claims, had been prepared by the Director. It was also recalled that at its 9th session, held in October 2004, the Assembly had decided to establish a correspondence group to review the draft Technical Guidelines and to report to the Assembly with a recommendation on whether they should be published, and if so, in what form. It was further recalled that the Assembly had also decided that the correspondence group should address the need for more concise guidelines for claimants (document 92FUND/A.10/23, paragraph 2.5).
- 25.2 It was noted that eight 1992 Fund Member States delegations and one observer delegation had volunteered to join the correspondence group, but that only five respondents had submitted their comments. The Assembly expressed its gratitude to those respondents and took note of the replies received so far as analysed in section 3 of document 92FUND/A.10/23.
- 25.3 The Assembly instructed the Director to continue to seek the views of interested delegations on the draft Technical Guidelines for experts for the purpose of making a recommendation to the Assembly on whether, and if so, in what form the Guidelines should be published and whether more precise guidelines should be produced for claimants.

**26 Election of members of the joint Audit Body**

- 26.1 It was recalled that, at their October 2001 sessions, the governing bodies of the 1992 Fund and 1971 Fund had decided to establish a joint Audit Body for the two organisations. It was further recalled that, at their March 2005 sessions, the 1992 Fund Assembly, the Supplementary Fund Assembly and the 1971 Fund Administrative Council had decided that there should be a joint Audit Body for the three Funds elected by the 1992 Fund Assembly. It was also recalled that, at their March 2005 sessions, the governing bodies had decided the composition and mandate of the Audit Body as set out in Annex I of document 92FUND/A.10/24.
- 26.2 It was recalled that the first election of members of the Audit Body had been held in October 2002 and that since the mandate of the members of the Audit Body was three years, the 1992 Fund Assembly would hold elections of members of the Audit Body at the present session.
- 26.3 It was recalled that the governing bodies had decided at their March 2005 sessions that the Supplementary Fund Assembly and the 1971 Fund Administrative Council should not hold elections of the Audit Body Members but instead leave this function to the 1992 Fund Assembly.
- 26.4 It was noted that the joint Audit Body was to be composed of seven members elected by the 1992 Fund Assembly: one named Chairman nominated by 1992 Fund Member States, five named individuals nominated by 1992 Fund Member States and one named individual not related to the Organisations ('outsider'), with expertise and experience in audit matters nominated by the Chairman of the 1992 Fund Assembly.
- 26.5 It was recalled that under the Mandate of the Audit Body, three seats on the Audit Body should be filled by persons other than the present members of the Body. Since only two such persons had been presented as candidates, the Assembly elected the following as new members:

Mr Mendim Me Nko'o (Cameroon)

Mr Wayne Stuart (Australia)

- 26.6 It was further recalled that under the Audit Body's mandate, only three of the present members were eligible for re-election. It was also recalled that, at its May 2005 session, the Assembly had decided that in the event that there were less than three new nominations from 1992 Fund Member States, the requirement set out in the mandate that the term of office of three of the

present members of the Audit Body was not renewable would not apply. It also recalled that it had decided that if there were more than three candidates from the present members of the Audit Body standing for re-election, the balance of the remaining seats would be filled from among the present members based on the number of votes received. It was noted that five of the present members of the Audit Body had been presented as candidates, that there were four seats available and that consequently a ballot would have to be held to elect the remaining four members.

- 26.7 It was recalled that the election of members of the Audit Body should be by secret ballot in accordance with the Rules of Procedure of the Assembly (cf Rules 32, 38 and 40).
- 26.8 The Assembly elected Mr E Sampatakakis (Greece) and Mr M Lee (Singapore) to scrutinise the votes cast in accordance with Rule 38 of the Rules of Procedure.
- 26.9 The Assembly considered the nominations made by Member States circulated in document 92FUND/A.10/24. After a secret ballot held in accordance with the Rules of Procedure of the Assembly (cf Rule 32, 38 and 40) the Assembly elected the following previous members of the Audit Body for a period of three years:

Mr Charles Coppolani (France)  
Mr Maurice Jaques (Canada)  
Dr Reinhard Renger (Germany)  
Professor Hisashi Tanikawa (Japan)

- 26.10 The Assembly expressed its gratitude to the persons nominated for their willingness to serve on the Audit Body, which would operate in the general interests of the Funds.
- 26.11 The Assembly elected Mr Charles Coppolani (France) as Chairman of the Audit Body.
- 26.12 The Assembly elected Mr Nigel Macdonald as the member of the Audit Body not related to the Organisations ('outsider') for a final three-year term.
- 26.13 The Assembly expressed its gratitude to Professor Eugenio Conte (Italy) and Mr Heikki Muttillainen (Finland), the out-going members, for their valuable contribution to the work of the Audit Body.

## **27 Appointment of members of the joint Investment Advisory Body**

The Assembly reappointed Mr David Jude, Mr Brian Turner and Mr Simon Whitney-Long as members of the joint Investment Advisory Body for a term of three years.

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

- 28.1 It was recalled that at their October 2003 sessions, the governing bodies of the 1992 and 1971 Funds had decided that the distribution of the costs of running the joint Secretariat should be made by means of the 1971 Fund paying a flat management fee to the 1992 Fund. It was also recalled that at their March 2005 sessions the governing bodies of the 1992 Fund, the 1971 Fund and the Supplementary Fund had decided that the same approach should be used as regards the Supplementary Fund's contribution to the costs of running the joint Secretariat.
- 28.2 It was recalled that at the Assembly's March 2005 session the Director had undertaken to provide more details of expenses that could be attributed specifically to the Supplementary Fund.
- 28.3 The Assembly noted the Director's view that it would, with a few exceptions, be very difficult to identify the volume of work of individual staff members which should be attributed specifically to the Supplementary Fund or to the 1971 Fund without requiring all staff to maintain records of time spent on tasks relating to those Funds, which would have given rise to a considerable

administrative burden. It was noted that the Director had instead tried to assess how many working days per year the staff as a whole would, during 2006, devote to tasks relating to the 1971 Fund and the Supplementary Fund, that he had arrived at 20 days for the 1971 Fund and five days for the Supplementary Fund and that he had apportioned the costs on the basis of the daily costs of running the joint Secretariat based on the proposed administrative budget for 2006, resulting in a management fee for the 1971 Fund of £275 000 and for the Supplementary Fund of £70 000, payable to the 1992 Fund (document 92FUND/A.10/26, paragraphs 5 and 6).

- 28.4 The Assembly agreed with the approach taken by the Director and approved the Director's proposal that for 2006 the 1971 Fund and the Supplementary Fund should pay a flat management fee of £275 000 and £70 000 respectively to the 1992 Fund.
- 28.5 It was 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 both Funds.
- 28.6 It was noted that the Administrative Council of the 1971 Fund and the Assembly of the Supplementary Fund had agreed, at their 17th session and 1st extraordinary session respectively, to the apportionment of joint administrative costs set out in paragraph 28.4.

## **29 Working capital**

The Assembly decided to maintain the working capital of the 1992 Fund at £22 million, as proposed by the Director in document 92FUND/A.10/27.

## **30 Budget for 2006 and assessment of contributions to the General Fund**

- 30.1 The Assembly considered the draft 2006 Budget for the administrative expenses of the 1992 Fund, the 1971 Fund and the Supplementary Fund and the assessment of contributions to the 1992 Fund General Fund as proposed by the Director in document 92FUND/A.10/28.
- 30.2 The Assembly adopted the budget for 2006 for the administrative expenses for the joint Secretariat for a total of £3 601 900 as reproduced in the Annex to this document.
- 30.3 The Assembly decided to increase the honorarium payable to the six Audit Body Members nominated by Member States from £1 500 to £3 000 per annum. The Director stated that the increase would be met from within the appropriation for the Audit Body or from Chapter VI – Unforeseen expenditure.
- 30.4 One delegation asked whether the IOPC Funds provided insurance cover for members of the Audit Body or professional liability protection. The Director answered that the Fund had not so far taken out such insurance but that he would investigate whether it would be possible to provide insurance cover for personal injury and death of the members of the Audit Body in connection with their travelling to and from meetings of the Body and during their stay in London. He added that there were no indemnity arrangements for professional liability for the members.
- 30.5 It was decided to increase the annual remuneration for the members of the joint Investment Advisory Body from £10 000 to £12 500 per member.
- 30.6 The Assembly renewed its authorisation to the Director to create positions in the General Service category as required provided that the resulting cost would not exceed 10% of the figure for salaries in the budget (ie up to £138 000 based on the appropriation for Salaries in the joint Secretariat budget for 2006).
- 30.7 One delegation suggested that the Director should be allowed to engage additional staff for special projects as required.

- 30.8 The Assembly noted the Director's estimate of the expenses to be incurred in respect of the preparation for the entry into force of the HNS Convention.
- 30.9 The Assembly decided not to levy contributions to the General Fund.
- 30.10 The Assembly took note of the information contained in document 92FUND/A.10/28/Add.1 in respect of the likelihood that, due to refurbishment of the IMO Building, the IOPC Funds would be unable to hold meetings of the governing bodies or working groups in that building during a period of 14 months from July 2006. It noted that other venues in London would have to be used for meetings during this period, which would result in additional costs.
- 30.11 The Assembly authorised the Director to incur any additional necessary extra costs associated with holding meetings outside the IMO building during the period 1 July – 31 December 2006.
- 30.12 It was noted that since the 1992 Fund would not raise any levies for payment in early 2006 (cf paragraph 31.2 below), the Supplementary Fund Assembly had at its 1st extraordinary session considered it preferable to postpone the first levy of contributions to the Supplementary Fund until the autumn of 2006. It was also noted that the Supplementary Fund Assembly had requested the 1992 Fund Assembly to authorise the Director to make the necessary funds available to the Supplementary Fund in the form of loans (document SUPPFUND/A/ES.1/21, paragraph 19.5).
- 30.13 The Assembly authorised the Director to make the necessary funds available to the Supplementary Fund in the form of loans to be repaid, with interest, when the Supplementary Fund had received the first levy of contributions decided by its Assembly, to the extent that this could be done without prejudice to the operations of the 1992 Fund.

**31 Assessment of contributions to Major Claims Funds**

- 31.1 The Director introduced document 92FUND/A.10/29 which contained proposals for the levy of 2005 contributions to Major Claims Funds.
- 31.2 In order to enable the 1992 Fund to make payments of claims for compensation arising out of the *Erika* and *Prestige* incidents, the Assembly decided to raise 2005 contributions to the *Erika* and *Prestige* Major Claims Funds of £2.0 million and £3.5 million respectively, the entire levies to be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levies to these Major Claims Funds for payment during the second half of 2006, if and to the extent required.

**32 Co-operation with P&I Clubs**

- 32.1 The Assembly took note of the information contained in document 92FUND/A.10/30 and in particular the proposed text of a revised Memorandum of Understanding between the 1992 Fund/Supplementary Fund and the International Group of P&I Clubs as contained in Annex II to that document.
- 32.2 In view of the decision by the Assembly that the Director should collaborate with the International Group of P&I Clubs and OCIMF on a revision of the voluntary agreement package (cf paragraph 8.31 above), this agenda item was not considered.

**33 STOPIA**

In view of the decision by the Assembly that the Director should collaborate with the International Group of P&I Clubs and OCIMF on a revision of the voluntary agreement package (cf paragraph 8.31 above), this agenda item was not considered.

**34 Measures taken by the P&I Clubs to ensure safety of navigation**

- 34.1 The Assembly took note of the information contained in document 92FUND/A.10/32 submitted by the observer delegation of the International Group of P&I Clubs and the attached report at Annex I of the document, which provided details of the surveys and inspections currently undertaken by Classification Societies, Port States, insurance and cargo interests. In introducing the document that delegation stated that its purpose was to provide background information that would be useful for the Assembly's consideration of the establishment of an informal working group to consider what measures in the realms of liability, insurance and the administration of the international compensation regime could be taken to address the substandard transportation of oil (cf document 92FUND/A.10/7, paragraphs 7.3-7.7).
- 34.2 The Chairman stated that it was important to restrict the discussion to the proposal in principle and that it would not be appropriate to consider at this stage any terms of reference of such a working group. He also stated, however, that it was important that the working group did not stray into areas relating to technical standards, since these were clearly IMO's responsibility.
- 34.3 The Assembly recalled that there had been a fair degree of agreement in the intersessional Working Group that the Assembly should establish an informal working group to consider substandard transportation of oil.
- 34.4 Although a number of delegations expressed reservations about the proposal on the grounds that the issue of substandard transportation of oil was essentially a technical issue, the majority of delegations supported the idea in principle.
- 34.5 Some delegations proposed establishing a joint 1992 Fund/IMO working group, whilst others made the point that if the Fund were to reach some agreement on economic incentives to promote quality shipping or disincentives to substandard shipping, these could be referred to the IMO Legal Committee.
- 34.6 The observer delegations of INTERTANKO, OCIMF and IUMI expressed their support for the proposal.
- 34.7 The Assembly decided that the next step would be for one or more delegations to develop draft terms of reference, which were clear and precise so that the Assembly could consider these at its next session. The delegation of Denmark offered to facilitate the development of the terms of reference and invited other international delegations to communicate with it intersessionally.

**35 International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea**

- 35.1 The Assembly recalled that, in a Resolution of the Conference which had adopted the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention), the Assembly of the 1992 Fund had been invited to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the International Hazardous and Noxious Substances Fund (HNS Fund) in accordance with the HNS Convention. It was also recalled that at its 1st session, the Assembly had instructed the Director to carry out the tasks requested by the HNS Conference (document 92FUND/A.1/34, paragraphs 33.1.1 - 33.1.3), on the basis that all expenses incurred would be repaid by the HNS Fund.
- 35.2 The Assembly noted the developments in respect of the ratification and implementation of the HNS Convention since the 9th session of the Assembly as set out in document 92FUND/A.10/33. It was noted that eight States (Angola, Cyprus, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Slovenia and Tonga) had acceded to the HNS Convention.

- 35.3 The Assembly also noted that the Secretariat had established a website dedicated to the implementation of the HNS Convention ([www.hnsconvention.org](http://www.hnsconvention.org)).
- 35.4 The Assembly noted that the Secretariat had completed the development of a system to monitor contributing cargo under the HNS Convention, which included a database of all substances qualifying as hazardous or noxious substances (HNS). It was also noted that the final system had been circulated in August 2005 in the form of a CD-ROM containing software for installation on a user's personal computer. It was further noted that the Secretariat had developed a dedicated website for the system ([www.hnscccc.org](http://www.hnscccc.org)).
- 35.5 It was also noted that the Secretariat had originally estimated that the development of the system would cost a maximum of £150 000 and that the costs incurred so far amounted to some £68 000.
- 35.6 It was further noted that revised regulations to prevent marine pollution by ships carrying oil or chemicals had been adopted by IMO's Marine Environment Protection Committee (MEPC) at its 52nd session in October 2004. It was also noted that these revised regulations, which included Annexes I and II of the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto (MARPOL 73/78) and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983 (IBC Code), were expected to enter into force on 1 January 2007 under the 'tacit acceptance' procedure, whereby the amendments would enter into force on that date unless at least one third of the States Parties or States Parties having ships totalling at least 50% of the gross tonnage of the world's merchant fleet objected to the amendments by 1 July 2006.
- 35.7 It was also noted that the definition of HNS in Article 1.5 of the HNS Convention was largely based on lists of individual substances which were identified in a number of IMO Conventions and Codes designed to ensure maritime safety and prevention of pollution and that, in particular, parts (a)(i) to (a)(iii) of the definition of HNS in Article 1.5 were based on Annexes I and II of MARPOL 73/78 and the IBC Code, respectively.
- 35.8 It was further noted that if, as expected, the revised Annex II entered into force on 1 January 2007, the reference in Article 1.5(a)(ii) of the HNS Convention to 'noxious liquid substances carried in bulk referred to in appendix II of Annex II to MARPOL 73/78, as amended,...' would be meaningless from that date, as would the reference to '...those substances and mixtures provisionally categorised as falling in pollution category A, B, C or D in accordance with regulation 3(4) of Annex II'.
- 35.9 The Assembly recalled that, under Article 46.1, the HNS Convention would enter into force 18 months after ratification by at least 12 States, subject to two conditions, one of which was that in the previous calendar year a total of at least 40 million tonnes of cargo consisting of HNS other than oils, liquefied natural gas (LNG) or liquefied petroleum gas (LPG) had been received in States which have ratified the Convention. The Assembly therefore noted that it was essential that the issue relating to the definition of HNS under Article 1.5(a)(ii) was resolved as quickly as possible, since those substances that qualified as HNS under this part of the definition were likely to form a significant part of such contributing cargo.
- 35.10 The Assembly noted the Director's proposal for a possible pragmatic solution to this issue contained in paragraph 3.19 of document 92FUND/A.10/33.
- 35.11 During the discussion, several delegations mentioned that both the Legal Committee and the technical committees of IMO should be involved in any discussion of this issue.
- 35.12 The Assembly instructed the Director to discuss this issue with the Secretary-General of IMO with the aim of finding a practical solution to the issue and also of attempting to avoid similar issues arising in the future.
- 35.13 The Assembly also noted that the Secretariat had organised a Workshop on 28 and 29 June 2005 to facilitate States' preparations for ratification of the HNS Convention and that the Secretariat

had produced a revised version of the 'Guide to the Implementation of the HNS Convention', which had been developed to form the basis of that Workshop (document 92FUND/A.10/33, Annex).

- 35.14 The Assembly further noted that the Guide together with the PowerPoint presentations given at the Workshop were available on the website dedicated to the implementation of the HNS Convention which the Secretariat had established (see paragraph 35.3).
- 35.15 The Assembly noted that the Director intended to organise a further Workshop on the HNS Convention in the Spring of 2006, focussing on more practical aspects of the implementation of the HNS Convention.

### **36 Future sessions**

- 36.1 The Assembly decided to hold its next regular session during the week of 23 - 27 October 2006, but noted that this session might be held at an alternative venue to the IMO building.
- 36.2 It was noted that the weeks of 27 February and 22 May 2006 were available for IOPC Fund meetings and that such meetings could take place at the IMO building.

### **37 Any other business**

#### **37.1 Information Management**

- 37.1.1 The Assembly noted the proposals by the Australian delegation, contained in document 92FUND/A.10/34, that a searchable database of Fund decisions and other administrative arrangements should be developed to address the risk of information management.
- 37.1.2 The Australian delegation informed the Assembly that it had submitted its proposal prior to the release of the document submitted by the Director on the Operation of Secretariat (document 92FUND/A.10/15), which answered the issues raised by Australia with regard to the IOPC Funds' developments in information management. The Australian delegation therefore decided to forego presenting its proposal and said it was pleased to see that the information management projects carried out by the Secretariat had begun and that it was looking forward to seeing a practical and user-friendly system.

#### **37.2 Developments within the European Union on matters of interest to the 1992 Fund**

- 37.2.1 The Assembly took note of the information contained in document 92FUND/A.10/35 regarding the decision of the Council of the European Union to authorise European Community Member States to become parties to the 1992 Civil Liability and Fund Conventions and the Supplementary Fund Protocol and in respect of the adoption of a Directive of the European Parliament and the Council of European Union on ship-source pollution and on the introduction of sanctions for infringements.
- 37.2.2 It was noted that under Council of the European Union Regulation N°44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, the European Community had exclusive competence in these fields. It was further noted that for that reason only the Community was competent to enter into international commitments governing these matters. It was recalled that Articles IX and X of the 1992 Civil Liability Convention, Articles 7 and 8 of the 1992 Fund Convention and Articles 7 and 8 of the Supplementary Fund Protocol dealt with matters falling within this exclusive competence.
- 37.2.3 It was noted that those instruments did not allow the European Community to become party to the Supplementary Fund Protocol. It was also noted that on 2 March 2004 the Council had adopted a

Decision (2004/246/EC) authorising the European Union Member States<sup><1></sup> to sign, ratify or accede to the Protocol. It was further noted that these States should become parties to the Protocol within a reasonable time and, if possible, before 30 June 2004, with the exception of Austria and Luxembourg, which were not parties to the 1992 Civil Liability Convention and the 1992 Fund Convention, and which should take the necessary steps to become parties to these Conventions and the Supplementary Fund Protocol, as far as possible before 31 December 2005.

37.2.4 The Assembly further noted that the Council of the European Union had on 24 September 2004 adopted a decision (2004/664/EC) to amend the Council Decision of 2 March 2004 so as to include in the proviso relating to Austria and Luxembourg the countries which became Members of the European Union on 1 May 2004 but which were not parties to the 1992 Conventions at the time when the original Council Decision was adopted (Czech Republic, Estonia, Hungary and Slovakia).

37.2.5 It was also noted that the Council of the European Union had adopted a Directive and a framework decision on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences which were published on 30 September 2005.

37.2.6 The Assembly expressed the view that it was valuable to be kept informed of developments in other organisations of interest to the 1992 Fund.

### 37.3 Application of the 1992 Conventions to ship-to-ship oil transfer operations

37.3.1 The Assembly considered the question of whether certain floating storage units (FSUs) involved in ship-to-ship (STS) oil transfer operations fell within the definition of 'ship' under the 1992 Civil Liability and Fund Conventions and the extent to which persistent oil received by such vessels should be considered as received for the purpose of Article 10.1(a) of the 1992 Fund Convention (cf document 92FUND/A.10/36).

37.3.2 The Director proposed that he should conduct a more detailed study on the extent to which such STS oil transfer operations were carried out globally with a view to presenting his findings to the next session of the Assembly.

37.3.3 Two delegations stated that on the basis of the 1992 Fund's current policy with regard to the extent to which offshore craft, including FSUs, should be regarded as 'ships' under the 1992 Conventions, their preliminary analysis suggested that, contrary to the Director's view, craft of the type under discussion would not fall within the definition.

37.3.4 The Spanish delegation stated that as a result of the phasing out of single-hulled tankers under Article 13G of Annex 1 of MARPOL 73/78, if the vessel in question were to be used as an oil storage installation, this should be formally communicated to the Secretary General of IMO. That delegation also referred to a document in relation to STS operations that had been presented by Spain at a recent meeting of the Marine Environment Protection Committee of IMO.

37.3.5 The Malaysian delegation stated that the Malaysian Government had sought clarification from the Director with regard to contributing oil from the vessel in question and supported the proposal by the Director to conduct a more detailed study on ship-to-ship oil transfer operations globally.

37.3.6 The Director pointed out that any amendments to MARPOL were irrelevant as regards the interpretation of the definition of 'ship' in the 1992 Civil Liability Convention. He stated that he had not proposed that the Fund's policy as regards the interpretation of the definition of 'ship' should be modified but had addressed the issue of how the Fund policy should be applied to this particular operation, which was somewhat different to those previously considered by the intersessional Working Group and the Assembly.

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<1> With the exception of Denmark which is not bound by Regulation N°44/2001.

37.3.7 The Director was instructed to undertake an in-depth study of the issues involved and report to the Assembly at its next session.

**38 Adoption of the Record of Decisions**

The draft Record of Decisions of the Assembly, as contained in document 92FUND/A.10/WP.1, was adopted, subject to certain amendments.

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## ANNEX

## 2006 ADMINISTRATIVE BUDGET FOR 1992 FUND

STATEMENT OF EXPENDITURE		Actual 2004 Expenditure for 1992 and 1971 Funds		2004 budget Appropriations for 1992 and 1971 Funds		2005 budget Appropriations for 1992 Fund		2006 budget Appropriations for 1992 Fund	
		£		£		£		£	
<b>SECRETARIAT</b>									
<b>I</b>	<b>Personnel</b>								
(a)	Salaries	1 161 433		1 341 000		1 306 900		1 385 300	
(b)	Separation and recruitment	29 619		115 000		105 000		125 000	
(c)	Staff benefits, allowances and training	399 377		551 800		566 000		576 200	
	<b>Sub-total</b>		<b>1 590 429</b>		<b>2 007 800</b>		<b>1 977 900</b>		<b>2 086 500</b>
<b>II</b>	<b>General Services</b>								
(a)	Rent of office accommodation (including service charges and rates)	235 995		249 700		259 200		287 400	
(b)	Office machines, including maintenance	45 284		90 000		90 000		110 000	
(c)	Furniture and other office equipment	6 527		17 500		17 500		17 500	
(d)	Office stationery and supplies	12 448		13 587		22 000		22 000	
(e)	Communications (courier, telephone, postage, e-mail/internet)	55 193		65 000		70 000		68 000	
(f)	Other supplies and services	47 413		47 413		51 000		47 500	
(g)	Representation (hospitality)	16 875		18 000		20 000		25 000	
(h)	Public Information	86 027		179 560		180 000		180 000	
	<b>Sub-total</b>		<b>505 762</b>		<b>680 760</b>		<b>709 700</b>		<b>757 400</b>
<b>III</b>	<b>Meetings</b>								
	Sessions of the 1992 and 1971 Fund Governing Bodies and Intersessional Working Groups		<b>145 440</b>		<b>145 440</b>		<b>145 000</b>		<b>150 000</b>
<b>IV</b>	<b>Travel</b>								
	Conferences, seminars and missions		<b>84 415</b>		<b>100 000</b>		<b>125 000</b>		<b>160 000</b>
<b>V</b>	<b>Miscellaneous expenditure</b>								
(a)	External audit fees for IOPC Funds	53 250		53 250		55 000		60 500	
(b)	Consultants' fees	87 455		125 000		180 000		180 000	
(c)	Audit Body	82 075		90 000		90 000		110 000	
(d)	Investment Advisory Bodies	30 000		30 000		30 000		37 500	
	<b>Sub-total</b>		<b>252 780</b>		<b>298 250</b>		<b>355 000</b>		<b>388 000</b>
<b>VI</b>	<b>Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)</b>		<b>45 787</b>		<b>60 000</b>		<b>60 000</b>		<b>60 000</b>
<b>Total Expenditure I-VI</b>			<b>2 624 613</b>		<b>3 292 250</b>		<b>3 372 600</b>		<b>3 601 900</b>
<b>Total Expenditure I-VI excluding external audit fees for IOPC Funds</b>							<b>3 317 600</b>		<b>3 541 400</b>
<b>VII</b>	<b>Due from 71Fund</b>								
	Management fee payable to 1992 Fund by 1971 Fund	325 000		325 000		(325 000)		(275 000)	
<b>VIII</b>	<b>Due from Supplementary Fund</b>								
	Management fee payable to 1992 Fund by Supplementary Fund					(125 000)		(70 000)	
<b>1992 Fund Budget Appropriation excluding external audit fee for IOPC Funds</b>						<b>2 867 600</b>		<b>3 196 400</b>	
<b>1992 Fund Budget Appropriation including external audit fee for 1992 Fund only</b>						<b>2 914 600</b>		<b>3 243 400</b>	