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PROCEDURES FOR RECRUITMENT OF FUTURE DIRECTORS

Reply to a request from the 1992 Fund Assembly and 1971 Administrative Council for guidance on procedures for recruitment of future Directors

Note by the Audit Body

1 Introduction

- 1.1 For any organisation, a change in the person ultimately responsible (in the case of the Funds, the Director) constitutes a risk. This is even more so for a small organisation which has been associated with the same Director for twenty years. The present Director, Måns Jacobsson, took over the management of the IOPC Fund when the Organisation was still in its infancy. At that time, there were no more than thirty Member States, major incidents were infrequent and the financial stakes were limited.
- 1.2 It is without any doubt because the governing bodies were aware of this situation that they invited the Audit Body to consider 'the procedures to be followed in the recruitment of future Directors and to give advice to the Assembly in this regard' (documents 92FUND/A.8/30, paragraph 26.10, and 71FUND/AC.12/22, paragraph 21.9).
- 1.3 The 1992 Fund Convention provides that the Assembly should appoint the Director by a two-thirds majority of the Member States present at the time of the vote (Article 33(b)). This requirement gives rise to two comments.
 - By providing for a two-thirds majority, the drafters of the Convention sought to ensure that the Director has as broad a support as possible at the time of his appointment.
 - This method of appointment is standard for an intergovernmental organisation. The Assembly is sovereign. No specific procedure was established for the preparation of the Assembly's decision. This is quite understandable in an intergovernmental organisation with a political dimension. It is however not totally adequate for organisations as unique as the IOPC Funds.
- 1.4 In any event, the Convention must be followed and the Audit Body's consideration of this issue should not be interpreted as proposing to limit in any way the 1992 Fund Assembly's sovereignty.
- 1.5 It is legitimate, however, to raise questions about the procedures for the recruitment of future Directors and how to limit the risks for the Organisations. The Audit Body considers it to be essential for the effective running of the Funds that the Director be someone of considerable

ability who is capable of providing effective leadership for the Funds. It follows that the recruitment process should have as a primary objective the selection of a future Director in whom the Assembly can have the highest possible confidence.

1.6 Three questions were considered by the Audit Body:

- Should the Director have a specific background?
- Notwithstanding the provisions of the Convention, is it desirable to establish procedures for preparing the 1992 Fund Assembly's decision on the appointment of a new Director?
- Once the appointment of the Director has been made, how can it be ensured that the transition from the outgoing to the incoming Director will take place under the best possible conditions?

2 Should the Director have a specific background?

2.1 The Director's duties are defined by the Convention. The Director's responsibilities are very diverse. They can be grouped into four broad categories.

- Settlement of compensation claims;
- Management of the Secretariat;
- Management of the IOPC Funds' assets, including levying of contributions;
- Preparation of the sessions and decisions of the Assembly and the Executive Committee as well as the implementation of these decisions.

2.2 In view of the small size of the Secretariat and the characteristics of the Funds, the Director is personally involved in all significant substantive aspects of the operations of the Organisations.

2.3 The Director is entrusted to manage relations with the victims of incidents and ensure settlement of compensation claims, which implies management of very concrete situations in the field. This requires the ability to take decisions and sensitivity for human relations, particularly as some of the victims find themselves in a situation of distress. It is also essential that he/she is a good negotiator.

2.4 The Director will also be in frequent contact with Governments and other public authorities and that requires different skills and experience of the public sector. The situation can sometimes become complicated when States are themselves victims or when they transmit claims of the victims to the IOPC Fund. In certain cases, political pressures may be exerted.

2.5 The involvement in the settlement of claims for compensation necessitates that the Director has the ability to understand complex technical questions, especially legal issues. The Director does not necessarily need to have a formal legal training but he/she must be able to make legal analyses of complex issues in a wide range of legal fields and understand different legal systems. He/she must be capable of managing crises, be sensitive to political aspects and capable of handling difficult political situations. He/she should understand the importance of public relations and be able to handle the media.

2.6 The Director has the overall responsibility for the financial aspects of the Funds' activities, including the management of the assets of the IOPC Funds. He/she should therefore have an understanding of financial issues.

- 2.7 The Director is also responsible for the management of the Secretariat and is involved in the handling of staff matters.
- 2.8 The 1992 Fund Assembly Rules of Procedure provides that the 1992 Fund has three official languages (English, French and Spanish). It is essential that the Director is in full command of at least one of these languages. It would be desirable that he/she can work in at least one of the other two.
- 2.9 The duties of the Director call for multiple skills that are not easily found in one person. This means that the Assembly should take its decision based solely on an assessment of the qualifications and experience of the candidate or candidates.
- 3 **Notwithstanding the provisions of the Fund Convention, is it desirable to establish procedures for preparing the Assembly's decision?**
- 3.1 The first question is whether candidates for the post of Director should be sought only through the Governments of the 1992 Fund Member States, as is normal for the recruitment of the Executive Heads of intergovernmental organisations, or whether a wider search for candidates should be undertaken.
- 3.2 The Audit Body recognises the sovereign right of the 1992 Fund Assembly both to determine the nomination procedure and to take the appointment decision.
- 3.3 After due consideration of this issue, the Audit Body decided to recommend a widespread call for candidatures based on the job description of the present Director which is attached to this note. The recommendation of the Audit Body is made in the light of the development of the IOPC Funds and the need to ensure that the Assembly can be confident that the best candidate, drawn by selection from several qualified candidates, is chosen.
- 3.4 The second question is how the selection procedure should be organised. Recent debate on corporate governance has led to the creation of committees for remuneration, operations and selection that are responsible for preparing the decisions of the Boards. These committees do not replace the Boards, which remain sovereign, but they select and interview candidates for senior posts, examine the remuneration package and recommend one candidate to the Board. Once the appointment has been made, they prepare the financial terms of employment.
- 3.5 There is, in the Audit Body's view, an almost inevitable link between a procedure for a wide search for candidatures for the position of Director and the creation of a selection committee since it is likely that a large number of candidatures would be received. However, such a committee could also be useful if candidates were only sought through nomination by Governments of Member States in order to facilitate the Assembly's consideration of the candidatures, although in this case there would probably be fewer candidates
- 3.6 The Assembly may wish to consider whether it, and therefore collectively all the sovereign States of which it is composed, is ready to accept a consultative process which would in effect restrict its discretionary power of choice.
- 3.7 If such a committee were to be established its composition would need to be determined. In order to be effective, it should be composed of a small number of members, say less than ten. The members should be appointed in a personal capacity based on their knowledge of the Funds. It might be worth considering including on the committee a person from the private sector with experience in the recruitment of senior posts.
- 3.8 The members of the selection committee should not be allowed to present themselves as candidates.

- 3.9 The selection committee would need to be given a very clear mandate on how to proceed. The committee should examine the candidatures and make its recommendations based on specific criteria which would include the elements that the Assembly considers essential in the choice of Director. At the end of the process, the committee should propose one candidate to the Assembly.
- 3.10 If a selection committee were to be established, it would be necessary to fix a deadline for the presentation of candidatures well in advance (say six months) of the session of the 1992 Fund Assembly at which the appointment of the new Director would take place in order to enable the committee to examine the candidatures, hold the necessary interviews and present its report to the Assembly well in advance of that session.
- 3.11 The use of a selection committee would obviously result in significant costs but the costs can only be estimated once its composition and working methods have been decided. The costs will also depend on the number of candidates.

4 Management during the transitional period

- 4.1 Måns Jacobsson has developed the Secretariat since his appointment as Director of the IOPC Fund. Procedures have been established that ensure stability, and the Secretariat is well structured.
- 4.2 Nevertheless, the Organisations have a small Secretariat and much of the responsibility lies on the shoulders of the Director. For this reason, it is necessary for the new Director to be fully operational from the outset as he/she will not have any adaptation period after taking office. This would in particular be important were he/she to take up the post at the time of the occurrence of a major incident.
- 4.3 Under these conditions, the Audit Body recommends that the Assembly should designate the future Director at least six months before he/she takes office in order that he/she can have a period of familiarisation of some months during which the outgoing Director would still be in charge. This would allow the Director-designate to become familiar with the pending issues, become acquainted with operational procedures and meet with the main persons involved. He/she would thus be fully operational when the change in leadership takes place.

5 Relationship between the Chairmen of the governing bodies and the Director

- 5.1 In connection with the study requested by the governing bodies in respect of the procedures for recruitment of future Directors, the Audit Body suggests that each year the Chairman of the 1992 Fund Assembly and the Chairman of the 1992 Fund Executive Committee meet with the Director for an exchange of views on the operations and activities of the Funds. The Director could make them aware of any difficulties he/she is encountering and the Chairmen of the 1992 Fund's governing bodies could provide him/her with feedback from delegates on his work. The aim of this meeting would not be an assessment of the work of the Director but would rather permit an exchange of views so as to encourage the Director to make any changes if required.
- 5.2 It should be noted, however, that the Chairmen of the Funds' governing bodies do not have an executive role and should not be involved in the management of the Funds.
- 5.3 It would also be useful in this framework for the Chairmen to monitor the remuneration of the Director so as to enable them to make proposals to the governing bodies in this regard.

6 Further consideration

- 6.1 In the light of the governing bodies' request for guidance on procedures for recruitment of future Directors, the governing bodies are invited:

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- (a) to take note of the information contained in this document; and
 - (b) to consider the Audit Body's suggestions:
 - (i) that there should be a widespread call for candidates;
 - (ii) that a selection committee should be set up to facilitate the 1992 Fund Assembly's consideration of the candidates;
 - (iii) that the selection committee should be composed of less than ten members;
 - (iv) that one of the members of the committee should come from the private sector with experience in recruitment of senior posts; and
 - (v) that the committee should examine the candidatures and recommend one candidate to the 1992 Fund Assembly.
- 6.2 The Audit Body is willing to assist the governing bodies in the development of the details of any decisions as to the selection procedure which the governing bodies may adopt.

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ANNEX

Job Description

Post 1:	Director	Grade:	Unclassified
Department:	Director's Office	Effective Date:	

Role	The Director is the legal representative of the IOPC Funds and has overall responsibility for all aspects of the IOPC Funds' activities and for the operation of the Secretariat, pursuant to Article 29 of the 1992 and 1971 Fund Conventions. He/she has the primary responsibility to ensure that the Secretariat carries out its functions in accordance with the Fund Conventions, the Internal and Financial Regulations and the decisions of the governing bodies.
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TASK	
Strategy and policy	<p>Deal with matters of strategic importance, policy issues, long-term planning and high-level contacts with governments, non-governmental organisations and private entities.</p> <p>Consider sensitive issues and issues of political importance.</p> <p>Decide the position to be taken by the Funds on important legal, financial and technical matters.</p> <p>Provide authoritative advice to P & I Clubs, present and future Member States and lawyers; ensure consistency in interpretation of the Civil Liability and Fund Conventions; and transpose the Conventions' provisions and governing bodies' decisions into Funds policies, goals and objectives.</p> <p>Lead the preparations for the entry into force of the Supplementary Fund Protocol and HNS Convention.</p>
General management	<p>Ensure that the Secretariat is organised and managed according to best practices in similar organisations so as to enable it to function efficiently and meet the requirements in the Staff Regulations and Staff Rules and the established staff policies and to ensure that staff members are well-motivated and committed.</p> <p>Lead the meetings of the Management Team.</p> <p>Decide on appointments of new staff, promotions and grading of posts as well as on the engagement of temporary staff.</p> <p>Deal with issues relating to security, in particular for staff travelling abroad and local claims handling offices.</p>
Claims handling	<p>Ensure that the claims handling procedure is efficient and of high quality, that claims are dealt with in accordance with the Conventions, the Internal Regulations and the policy laid down by the governing bodies and that local claims offices and experts and lawyers engaged by the Funds carry out their work in an efficient manner, giving the Funds value for money.</p> <p>Consider issues relating to the admissibility of claims which give rise to questions of principle or are of a sensitive nature and decide whether claims should be submitted to the governing bodies for</p>

consideration.

Conduct ministerial or other high-level negotiations in States where important incidents have occurred.

Make final or partial settlements of claims, in particular where the claims cannot be settled under the authority which the Director has given to other staff members in Administrative Instruction N°4.

Financial control

Examine and approve the draft Financial Statements prepared by the Head of the Finance and Administration Department for submission to the External Auditor.

Examine and approve the draft budget prepared by the Head of the Finance and Administration Department for submission to the governing bodies.

Decide on the levying of contributions within the mandate given by the Assemblies, consider what steps should be taken when States fail to submit oil reports and decide what steps should be taken against contributors in arrears.

Decide on investments of the IOPC Funds' assets.

Represent the Funds at meetings of the joint Audit Body and the Investment Advisory Body, at which he/she ensures investment advice given is supported by sound, viable analysis.

Act as signatory on behalf of the 1992 Fund and 1971 Fund in accordance with Administrative Instruction N°3.

Meetings and documentation

Convene sessions of the 1992 Fund Assembly, the 1992 Fund Executive Committee, the 1971 Fund Administrative Council and Working Groups and any other Funds' bodies, and fix the agendas for such sessions.

Draft documents for the 1992 Fund Assembly, 1992 Fund Executive Committee, 1971 Fund Administrative Council and Working Groups and examine and approve drafts of such documents prepared by other staff members.

Participate in the preparation of the Annual Report and other information documents relating to the Funds.

Representation

Represent the Funds at the policy level at the International Maritime Organization meetings as well as with various national governments.

Represent the Funds at Conferences, Seminars and Workshops, giving speeches and presentations.

Give lectures and presentations at universities and to special interest groups.

Represent the Funds in relation to the media, including responding to emerging news items on oil pollution incidents.