



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
9th session
Agenda item 34

92FUND/A.9/31
22 October 2004
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RECORD OF DECISIONS OF THE NINTH SESSION OF THE ASSEMBLY

(held from 19 to 22 October 2004)

Chairman:	Mr Willem Oosterveen (Netherlands)
First Vice-Chairman:	Mr José Aguilar-Salazar (Mexico)
Second Vice-Chairman:	Professor Seiichi Ochiai (Japan)

Opening of the session

1 Adoption of the Agenda

The Assembly adopted the Agenda as contained in document 92FUND/A.9/1.

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 Willem Oosterveen (Netherlands)
First Vice-Chairman:	Mr José Aguilar-Salazar (Mexico)
Second Vice-Chairman:	Professor Seiichi Ochiai (Japan)

- 2.2 The Chairman, on behalf of himself and the two Vice-Chairmen, thanked the Assembly for the confidence shown in them.

3 Examination of credentials

3.1 The following Member States were present:

Algeria	Ireland	Qatar
Antigua and Barbuda	Italy	Republic of Korea
Argentina	Japan	Russian Federation
Australia	Latvia	Saint Vincent and the Grenadines
Bahamas	Liberia	Sierra Leone
Belgium	Malta	Singapore
Cameroon	Marshall Islands	Spain
Canada	Mexico	Sweden
China (Hong Kong Special Administrative Region)	Morocco	Trinidad and Tobago
Cyprus	Netherlands	Tunisia
Denmark	New Zealand	Turkey
Finland	Nigeria	United Arab Emirates
France	Norway	United Kingdom
Germany	Oman	United Republic of Tanzania
Ghana	Panama	Uruguay
Greece	Philippines	Vanuatu
Grenada	Poland	Venezuela
	Portugal	

The Assembly took note of the information given by the Director that all Member States participating had submitted credentials which were in order.

3.2 The following non-Member States were represented as observers:

States which have deposited instruments of ratification, acceptance, approval or accession to the 1992 Fund Convention:

Malaysia

Other States:

Brazil	Iran (Islamic Republic of)
Chile	Saudi Arabia

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

Intergovernmental organisations:

European Commission
International Maritime Organization (IMO)
International Oil Pollution Compensation Fund 1971

International non-governmental organisations:

Comité Maritime International (CMI)
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P&I Clubs
International Tanker Owners Pollution Federation Ltd (ITOPF)
Oil Companies International Marine Forum (OCIMF)

4 Report of the Director

- 4.1 The Director introduced his report on the activities of the 1992 Fund since the Assembly's 8th session in October 2003, contained in document 92FUND/A.9/2. In his presentation the Director made reference to the fact that the last 12 months had seen continued growth in 1992 Fund membership, a further five States having acceded to the 1992 Fund Protocol since the 8th session. 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 ten such States would soon do so.
- 4.2 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.
- 4.3 The Director referred to the meetings held in February and May 2004 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. He mentioned that at these meetings the Working Group had focused its discussions on whether or not the 1992 Conventions should be revised and that it had become clear that the Working Group remained divided on the issue.
- 4.4 The Director expressed the view that the development of the international compensation regime was a priority for the 1992 Fund so that it would continue to meet the needs of society. He pointed out that the outcome of the deliberations of the intersessional Working Group would be of great importance in this regard and that the entry into force of the Supplementary Fund Protocol would bring about a significant improvement within the present regime.
- 4.5 The Assembly congratulated the Secretariat on the 1992 and 1971 Funds' joint Annual Report for 2003 which had been published in English, French and Spanish and contained an instructive presentation of the activities of the 1992 Fund and 1971 Fund.
- 4.6 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.

5 Status of the 1992 Fund Convention

The Assembly took note of the information contained in document 92FUND/A.9/3 concerning the ratification situation in respect of the 1992 Fund Convention. It noted that there were at present 86 Member States of the 1992 Fund and five more States that would become Members within the next twelve months, including South Africa which had ratified the 1992 Conventions after that document was issued and would become a Member of the 1992 Fund on 1 October 2005.

6 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 contained in document 92FUND/A.9/4 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.

7 Reports of the 3rd intersessional Working Group

- 7.1 The reports of the third intersessional Working Group's seventh and eighth meetings, held in February and May 2004 respectively (documents 92FUND/A.9/5 and 92FUND/A.9/5/1), were introduced by the Group's Chairman, Mr Alfred Popp QC.

- 7.2 Mr Popp stated that significant changes had been made to the international regime, most notably the adoption of the Supplementary Fund Protocol that would shortly come into force. He also stated that any further changes in the regime could only be made by re-opening the 1992 Civil Liability Convention and the 1992 Fund Convention and that a number of proposals for change had been under discussion in the Working Group, which were detailed in the two reports.
- 7.3 Mr Popp stated that two matters had been under intensive consideration in the Working Group over the past few sessions, namely the adjustment of the burden of financial liability between the shipping industry and the oil cargo interests and the substandard transportation of oil. With regard to the first issue he drew attention to the study on the costs of oil spills undertaken by the Secretariat, which had revealed some interesting information on the sharing of the financial burden between the two sectors of the industry. As regards the substandard transportation of oil, he referred to the study by the Maritime Transport Committee of the Organisation for Economic Development and Co-operation (OECD) on the withdrawal of insurance in respect of substandard shipping. He noted that the report had not been available to the Working Group at its last session and that the Group had therefore not had an opportunity to consider the study's findings.
- 7.4 In summing up the work of the Working Group, Mr Popp stated that the Member States remained divided on the question of whether or not to re-open the 1992 Conventions in order to carry out a revision. He mentioned that some delegations felt that it was premature to re-open the Conventions at this stage and that it should be left to the industries to address the problem of the sharing of the financial burden through voluntary schemes and that the issue of substandard shipping was already being intensively addressed by measures agreed by the technical bodies of IMO. He also mentioned that other delegations felt strongly that a revision was needed urgently to address the balance of the financial burden between the two sectors of industry and that reliance on voluntary schemes was not a satisfactory solution in the long term. He noted that those delegations considered that there were also other shortcomings in the Conventions that it was essential to correct.
- 7.5 It was noted that the Working Group had decided that its next meeting should be held in February 2005.
- 7.6 It was noted that, as requested by the Working Group at its meeting in May 2004, the Secretariat had distributed a circular with the aim of compiling a list of email addresses in order to facilitate consultations between delegates as to what form any revision of the 1992 Civil Liability and 1992 Fund Conventions might take. It was also noted that this list had been circulated in October 2004 to those delegates who had indicated that they would like to be included. It was further noted that the list of email addresses would be updated regularly and circulated to these delegates from time to time, as appropriate, but would not be made available via the website.
- 7.7 It was noted that the report on the study carried out by the OECD's Maritime Transport Committee referred to in paragraph 7.3 above was now available to all interested parties (document 92FUND/A.9/5/2).
- 7.8 A number of delegations re-stated their opposition to any revision of the 1992 Conventions. Some delegations considered that the Working Group should be terminated. Some delegations considered that the Working Group, in addressing the issue of substandard shipping, had strayed into an area that was outside its remit, since the issue of substandard shipping was not within the field of competence of the 1992 Fund but fell within the exclusive competence of the IMO.
- 7.9 A number of other delegations expressed a contrary view, stating that whilst the Working Group should not continue to meet indefinitely, it had yet to complete its mandate with regard to a number of issues. Some delegations pointed out that, to the extent that substandard shipping had an impact on the international compensation regime, the Working Group had every right to address the issue, recognising that any recommendations of the Group would be referred to the Assembly, which in turn would refer these matters to the appropriate bodies of the IMO for final decision.

- 7.10 In his summing up of the discussion, the Chairman noted that the Working Group was divided into two large groups, one of which was against any revision of the 1992 Conventions and the continuation of the Working Group whilst the other considered that there were a number of outstanding issues that needed to be addressed by the Working Group which could result in the revision of the 1992 Conventions. He also noted that some of those delegations that did not support a revision of the Conventions were, nevertheless, flexible on whether or not the Working Group should continue its work provided that a definite time limit for its work was set. He further noted that most delegations that had supported the continuation of the Working Group had recognised that it should not continue indefinitely and that it should be in a position to make a final recommendation to the 1992 Fund Assembly in October 2005.
- 7.11 The Assembly decided that the Working Group should meet in February 2005 as planned and make final recommendations to the October 2005 session of the Assembly on whether or not the Conventions should be revised, and if so, which items required revision for consideration at its October 2005 session.

8 Report on investments

- 8.1 The Assembly took note of the Director's report on the 1992 Fund's investments during the period July 2003 to June 2004, contained in document 92FUND/A.9/6.
- 8.2 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 Report of the Investment Advisory Body

- 9.1 The Assembly took note of the report of the 1992 Fund's Investment Advisory Body contained in the Annex to document 92FUND/A.9/7. It noted with interest the information given in Attachment II to the report on Dual Currency Deposits and the view expressed by the Investment Advisory Body that such deposits had proved to be a successful addition to the Fund's investment portfolio. The Assembly also took note of the Body's objectives for the coming year.
- 9.2 The Assembly expressed its gratitude to the members of the Investment Advisory Body for their valuable work.

10 Financial Statements and Auditor's Report and Opinion

- 10.1 The Director introduced document 92FUND/A.9/8 containing the Financial Statements of the 1992 Fund for the financial year 2003 and the External Auditor's Report and Opinion thereon.
- 10.2 A representative of the External Auditor, Mr Graham Miller, Director International, introduced the Auditor's Report and Opinion.
- 10.3 The representative of the External Auditor mentioned that a review had been carried out of the Secretariat's overall financial control systems, particularly in relation to claims payments, contributions and other income, administrative expenditure, cash management and investments. He stated that the review had found that the Secretariat continued to have satisfactory controls in place and continued to adhere to appropriate control procedures and the Fund's financial and investment policies. He also confirmed that claims had been verified and had been settled as promptly as possible, and that the settlements had properly taken into account the interest of the Fund and the claimants.
- 10.4 The representative of the External Auditor mentioned that the Fund's Secretariat was not large and provided a responsible and very effective standard of financial control and management.

- 10.5 The representative of the External Auditor added that the work of the Audit Body represented a significant contribution to the Fund's good governance and management of its operation.
- 10.6 The representative of the External Auditor stated that the External Auditor would be pleased to continue to assist the Secretariat and the Audit Body in drawing up a risk map for the Funds.
- 10.7 The Assembly noted with appreciation the External Auditor's Report and Opinion contained in Annexes II and III to document 92FUND/A.9/8, and that the External Auditor had provided an unqualified audit opinion on the 2003 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 Audit Body's Report and approval of accounts

- 11.1 The Chairman of the Audit Body, Mr Charles Coppolani, introduced document 92FUND/A.9/9 (document 71FUND/AC.15/6) containing the Audit Body's Report.
- 11.2 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 other issues which had been covered by the Body, eg the use of the Dual Currency Deposits, where assurance had been received from the Investment Advisory Bodies that this investment instrument satisfied some of the Funds' needs, and risk management where the Audit Body had noted with satisfaction that progress had been made by the Secretariat in the definition of the risks and putting in place of procedures to meet them. He mentioned that two members of the Audit Body had visited the *Prestige* Claims Handling Offices in La Coruña and Bordeaux and that positive conclusions had been drawn from these visits, both as regards the appropriateness of setting up these offices and as regards the claims handling procedures which had been put in place. Mr Coppolani drew the attention of the governing bodies to the difficulties encountered in recovering a certain number of outstanding contributions as well as to the importance of the submission of oil reports. He stated that in the coming year the Audit Body would continue to monitor the area of risk management as well as the claims handling procedure.
- 11.3 The Assembly noted the Audit Body's recommendation that the governing bodies should approve the accounts of the 1971 and 1992 Funds for the Financial Year 2003.
- 11.4 The Assembly approved the accounts of the 1992 Fund for the financial period 1 January - 31 December 2003.
- 11.5 The Assembly expressed its gratitude for the important work being carried out by the Body.
- 11.6 The Assembly noted that, since the mandate of the members of the Audit Body would expire by the October 2005 session of the Assembly, the Assembly would have to elect, at that session members of the Body for the next term of office.

12 Appointment of members of the Investment Advisory Body

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

13 Report on contributions

- 13.1 The Assembly took note of the Director's report on contributions contained in document 92FUND/A.9/11.
- 13.2 The Assembly invited Member States to assist the Secretariat to ensure that contributors in their States with outstanding contributions fulfilled their obligations.

14 Non-submission of oil reports

- 14.1 The Assembly considered the situation in respect of the non-submission of oil reports, as set out in document 92FUND/A.9/12 (cf document 71FUND/AC.15/9). It was noted that, since the document had been issued, three States (Algeria, Greece and India) had submitted their outstanding oil reports. It was also noted that a total of 29 States therefore still had outstanding oil reports for the year 2003 and/or previous years: 12 States in respect of the 1971 Fund and 23 States in respect of the 1992 Fund. It was further noted that a number of States had reports outstanding for several years.
- 14.2 The Assembly noted with satisfaction that one State, Côte d'Ivoire, which had had outstanding reports to the 1971 Fund for four years, had submitted all of these reports.
- 14.3 Many delegations expressed their very serious concerns as regards the number of Member States which still had failed to submit oil reports since the submission of these reports was crucial to the functioning of the IOPC Funds. It was emphasised that the non-submission of oil reports was a violation of States' treaty obligations under the 1992 and 1971 Fund Conventions. It was suggested that States that did not fulfil their duties had no rights.
- 14.4 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.
- 14.5 Several delegations stated that they strongly supported any sanctions that could be imposed on States which did not submit reports. The Director drew attention to the fact that the issue of sanctions had been considered by the Assembly on several occasions and that the Assembly had concluded that the present text of the 1992 Fund Convention did not make it possible to impose any sanctions against States (other than the one provided for in Article 15.4).
- 14.6 The Assembly 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.
- 14.7 It was noted that a real solution for the future could only come from a revision of the 1992 Conventions being considered by the intersessional Working Group. The Chairman invited all delegations to develop their ideas on this topic and to present them in the form of concrete proposals to the meeting of the Working Group scheduled for February 2005.
- 14.8 The Assembly instructed the Director to continue to bring the matter of the non-submission of oil reports to its attention at each regular session

15 Operation of the Secretariat

- 15.1 The Assembly took note of the information contained in document 92FUND/A.9/13 (document 71FUND/AC.15/10) regarding the operation of the Secretariat.
- 15.2 The Director gave additional information on the new software, 'Trados', that was being introduced to improve the efficiency of the translation services, by explaining that the software did not do the actual translation work but provided assistance to those carrying out the translations.
- 15.3 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 recently been expanded to include all 1971 and 1992 Fund Assembly Resolutions, Rules of Procedure of the governing bodies, the Internal, Financial and Staff Regulations, the Headquarters Agreements and the guidelines on observer status. He pointed out that the section on incidents had also been expanded to include links to information in the Annual Report and meeting documents in respect of all incidents with which the IOPC Funds had been involved during 2003 and 2004.

16 Appointment of the Director

- 16.1 The Assembly held a meeting in private, pursuant to Rule 12 of the Assembly's Rules of Procedure, to consider the appointment of the Director (document 92FUND/A.9/14). During the closed session, covered by paragraphs 16.2 and 16.3 below, only representatives of Member States of the 1992 Fund and former Member States of the 1971 Fund were present.
- 16.2 It was recalled that at the Assembly's 8th session in October 2003 the Director had informed the Assembly that, given his age, he would be prepared to continue to serve for a couple of years or so after the expiry of his current term but not for a full five year term (document 92FUND/A.8/30, paragraph 26.7). The Director informed the Assembly that he would be available for an extension of his contract for a period of two years from 1 January 2005.
- 16.3 The Assembly decided to extend the contract of the present Director of the 1992 Fund, Mr Måns Jacobsson, for a further term of office of two years, as from 1 January 2005, to include any period for smooth transition to the next Director as the Assembly would decide.
- 16.4 It was recalled that at its 4th extraordinary session, the Assembly of the 1971 Fund had decided that the Director of the 1971 Fund should *ex officio* be the person who held the post of Director of the 1992 Fund, provided that the Assembly of the 1992 Fund agreed and that the Director of the 1992 Fund agreed to carry out the functions of Director of the 1971 Fund (document 71FUND/A/ES.4/16, paragraph 15.1.27). The Assembly decided that the Director of the 1992 Fund should continue to be allowed to carry out the functions of Director of the 1971 Fund also.
- 16.5 The Assembly decided that the Director should continue to benefit from the same financial arrangements as decided by the 1971 Fund Assembly at its 17th and 19th sessions and by the 1992 Fund Assembly at its 4th session (documents 71FUND/A.17/35, paragraph 18, 71FUND/A.19/30, paragraph 24.2 and 92FUND/A.4/32, paragraph 18.3). In view of the fact that the present Director would at the end of his new term of office have served the IOPC Funds for over 20 years and would be 67 years of age, and that his retirement benefits in his home country would have been significantly reduced, the Assembly also decided that he should receive annually a further special contribution of £12 000 to the Provident Fund, payable on 1 January each year.
- 16.6 The Director accepted his reappointment, including the role of Director of the 1971 Fund, and expressed his gratitude for the renewed confidence shown in him. He informed the Assembly that he considered it a great privilege to be allowed to serve the IOPC Funds and the international community for two more years.
- 16.7 The Director stated that he had found the role of the Director both demanding and rewarding, due to the duties incumbent on the Director being so varied. He explained that this variety had also contributed to why he had enjoyed leading the IOPC Funds into the 21st century where questions relating to the marine environment continued to be high on the political and economic agenda as well as being of great importance to mankind.
- 16.8 The Director mentioned that he had been encouraged by the steady growth of the number of Member States from 30 to 91 during his term of office. He expressed the belief that this growth in membership was an indication that Governments had considered that the international compensation regime had in general worked well. He considered that this explained why the regime based on the 1992 Conventions had served as a model for the creation of liability and compensation systems in other fields, such as the carriage of hazardous and noxious substances by sea.
- 16.9 The Director took the opportunity to express his gratitude to shipowners and P&I Clubs, to contributors to the Funds and to the oil industry for the strong support that they had given the IOPC Funds. He also expressed his gratitude to each and every member of the Secretariat, past and present, for their loyalty and the quality of their work.

- 16.10 The Director stated that the experiences over the last 25 years had shown that the Fund Member States had been willing and able to adapt the international compensation regime to the needs of society. He referred to the fact that, as a result of recent major incidents, the compensation regime based on the 1992 Conventions had been subject to criticism for not providing adequate protection to victims of oil pollution but made the point that the 1992 Fund and its Member States had listened to this criticism and had taken it into account in a constructive way in the review of the adequacy of the regime which began in 2000.
- 16.11 The Director pointed out that the Funds' governing bodies had found new and innovative ways of implementing rapidly some of the changes that had been adopted in recent years. He expressed his conviction that this would also be the case in the future, and that it would be a great privilege for him to continue for some time to play a role in that respect.
- 16.12 The Director expressed his appreciation for the strong support which he and the Funds' Secretariat had received from all Member States over the years, without which it would not, in his view, have been possible for the Funds to function in such a smooth and efficient manner. He stated that he would continue to need their guidance and support to meet the further challenges which lay ahead. He emphasised the need for the necessary steps to be taken to ensure that the regime continued to meet the needs and aspirations of the international community in the 21st century.
- 16.13 The Director concluded by assuring the Assembly that when the time came he would make every effort to contribute to a smooth transition to his successor and to give him or her every possible support so as to ensure the continued efficient operation of the IOPC Funds and the smooth functioning of the international compensation regime.

17 Procedures for recruitment of future Directors

Guidance from the Audit Body on procedures for recruitment of future Directors

- 17.1 In the absence of the Chairman of the Audit Body, Mr Charles Coppolani, Dr Reinhard Renger, one of the members of the Audit Body, introduced document 92FUND/A.9/15 (document 71FUND/AC.15.12) setting out the Audit Body's guidance to the 1992 Fund Assembly and 1971 Fund Administrative Council on procedures to be followed in the recruitment of future Directors. He explained that the Audit Body had gone beyond its remit to the extent that it had looked not only at the recruitment procedure but also at the profile of the Director and at how to organise the transition between the outgoing and incoming Directors. He also drew to the attention of the Assembly the importance that had been felt by the Audit Body on the need for a transition period to ensure that the new Director would be fully operational when the change in leadership had taken place, although it would be a matter for the Assembly to fix the length of this period. He added that the Audit Body had also been of the view that it would be a good idea if a meeting took place each year between the Director and the Chairmen of the 1992 Fund Assembly and the 1992 Fund Executive Committee for an exchange of views on the activities of the Secretariat and on the events of the past year.
- 17.2 It was noted that the Audit Body had recommended a widespread call for candidatures based on the job description of the post of Director, which recommendation had been made in the light of the development of the IOPC Funds and the need to ensure that the Assembly could be confident that the best candidate was chosen.
- 17.3 It was also noted that the Audit Body had recommended the establishment of a selection committee to facilitate the 1992 Fund Assembly's consideration of candidates, that the selection committee should be composed of less than ten members, one of whom should come from the private sector with experience in recruitment of senior posts, and that the committee should recommend one candidate to the 1992 Fund Assembly.
- 17.4 It was noted that the Audit Body had recommended that the Assembly should designate the future Director at least six months before he/she would take office in order to ensure that he/she could

have a period of familiarisation of some months during which the outgoing Director would still be in charge.

- 17.5 A number of delegations stated that it was important that the procedures adopted for the recruitment of the Director were robust, open and transparent and that since competency was the most important attribute of any Director, the selection should be based on objective criteria without any political dimension. Those delegations agreed in principle with the recommendations of the Audit Body, which they saw as facilitating the selection process, recognising that any final decision remained with the Assembly. Some delegations considered, however, that if the recommendations of the Audit Body to set up a selection committee were to be adopted, it would be important that the committee recommended more than one candidate for consideration by the Assembly.
- 17.6 A number of other delegations did not agree with the recommendations of the Audit Body, which in their view had gone beyond its mandate. Those delegations considered that the political dimension of the post of Director could not be ignored and that the selection process proposed by the Audit Body would not be transparent and would not be compatible with established procedures for the selection of heads of intergovernmental organisations. Those delegations considered that the Assembly should not delegate its responsibility and that it was for Member States to nominate candidates for the position. It was pointed out that the legitimacy of the Director derived from his being elected by Member States.
- 17.7 It was noted that the job description reproduced in the Annex to document 92FUND/A.9/15 was an internal job description of the Fund Secretariat and was not intended to be used in a selection procedure.
- 17.8 Some delegations considered that there was a need to draw up a detailed job description for the post that considered both the duties and the required qualifications of the post of Director so that Member States could nominate suitable candidates for consideration by the Assembly. Those delegations considered that a timetable needed to be drawn up, since it was important that the new Director should be selected at the October 2005 session of the Assembly.
- 17.9 There was a divergence of opinion on the length of the transition period for the handing over of responsibility from the outgoing to the incoming Director. Most delegates considered that a maximum of six months was required, but some delegations considered that one month might be sufficient. Those delegations favouring a shorter transition period made the point that the staff of the Secretariat was sufficiently experienced and competent to ensure the smooth running of the Funds in the absence of the Director.
- 17.10 In his summing up of the discussion the Chairman noted that delegations had expressed their gratitude to the Director for agreeing to an extension of his contract for a further two years and for his willingness to accept any transitional arrangement within that period to be determined by the Assembly. He noted that all delegations had agreed that whatever selection procedure was finally adopted, it must serve the best interests of the Funds. He also noted that all delegates had agreed that candidates should be selected on the basis of competence in the widest possible sense when considered against objective criteria.
- 17.11 The Chairman noted that most delegations had considered that the work carried out by the Audit Body had been a good starting point as regards ensuring the competency of candidates but that opinion was divided on the selection process. He noted that the establishment of a selection committee was seen by some as a good way forward but had certain drawbacks and could be expensive, whilst others favoured the development of a robust and transparent selection tool based on job description and required qualifications that would help the Assembly to select the best candidate.
- 17.12 Finally, the Chairman noted that all delegations agreed that the timing of the selection process was critical and that it seemed logical that the new Director should be chosen at the October 2005 session of the Assembly. To that end the Chairman proposed that the Audit Body should be asked

to draw up a detailed job description and the competences required for consideration by the Assembly at its extraordinary session planned for early 2005 in connection with the first Assembly of the Supplementary Fund. He proposed that once this exercise was completed a timetable should be set for the nomination of candidates and intersessional consultations with a view to completing the selection process in October 2005.

- 17.13 The Assembly decided that the Audit Body should be requested to prepare a detailed job description and competency requirements for the post of Director and to propose a timetable for the various stages of the selection process. The Audit Body was authorised to seek expert advice if considered useful to do so.

Term of office of future Directors

- 17.14 The Spanish delegation introduced document 92FUND/A.9/15/1 (document 71FUND/AC.15.12/1) sponsored by Italy and Spain, in which it had been proposed that the Assembly should adopt a Resolution setting a limit of four years for the term of office of the Director, renewable once. The Assembly noted that many United Nations specialised agencies had adopted term limits for their chief executives with the terms ranging from four to six years, renewable once.
- 17.15 During the discussion there was considerable support for the principle of rotation underlying the proposal, although a number of delegations considered that some flexibility was required regarding the number of terms of office, bearing in mind the unique nature of the IOPC Funds, which were not legislative bodies like IMO. The point was made that experience had shown that the Director needed to be someone with a profound knowledge of the workings of the compensation scheme and that a rotation scheme that was too rigid could hamper the selection of the best candidates.
- 17.16 Some delegations favoured five-year as opposed to four-year terms.
- 17.17 In his summing up of the discussion the Chairman stated that most delegates supported the principle of rotation underlying the proposal by Italy and Spain and suggested that further consultations take place to resolve any remaining differences of opinion.
- 17.18 The Assembly considered a revised draft Resolution prepared by the delegations of Italy and Spain (document 92FUND/A.9/15/1/Add.1 and 71FUND/AC.15/12/1/Add.1) which took into account the views referred to in paragraphs 17.15 and 17.16, setting a limit of five years for the term of office of the Director, renewable once but allowing the Assembly the flexibility of deciding upon a further extension of the Director's term of office in view of exceptional circumstances.
- 17.19 Although most delegations agreed in principle with the revised Resolution, some expressed concern regarding the interpretation of paragraph 3 of the Resolution on a possible further extension after a second term.
- 17.20 The Chairman made a proposal that the Assembly adopt the revised Resolution which, in his view, allowed flexibility as regards the duration of a possible third term in that it did not automatically assume that such a third term would be for five years. It was mentioned that it would be up to the Assembly to interpret the term 'exceptional circumstances'. On the basis of that interpretation the Assembly decided to adopt the revised Resolution, reproduced at Annex I to this document.

18 Amendments to Staff Rules

The Assembly noted the information contained in document 92FUND/A.9/16 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 10th session of the Assembly.

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

20 Review of observer status

20.1 The Assembly recalled that at its 7th session, held in October 2002, it had decided to review every three years the list of international non-governmental organisations having observer status in order to determine whether the continuance of observer status for any particular organisation was of mutual benefit.

20.2 It was further recalled that the first review had taken place at the Assembly's October 2003 session. It was also recalled that, in accordance with a decision taken at their October 2002 sessions, the governing bodies of the 1992 and 1971 Funds had set up a group of five States to consider whether the international non-governmental organisations granted observer status should continue to have such status. The Assembly recalled that the group had held a meeting during that session and had reported to the governing bodies which in turn had endorsed the group's recommendations.

Observer Status of ACOPS

20.3 It was noted that, as instructed by the Assembly, the Director had written to the Advisory Committee on the Protection of the Sea (ACOPS) stating that the Assembly was seriously concerned that ACOPS had not attended any meetings since the establishment of the 1992 Fund, despite enjoying observer status, notifying it of the meeting dates for 2004 and informing it that the Assembly intended to consider whether to withdraw the observer status of ACOPS at its session in October 2004.

20.4 It was further noted that the Director had not received any response to this letter in advance of the session and that ACOPS had neither attended any meetings of the IOPC Funds during 2004, nor submitted any documents.

20.5 The Assembly decided that there was no further advantage to the 1992 Fund in ACOPS continuing to have observer status and decided to withdraw it.

20.6 It was noted that the Director had received a letter from ACOPS during the session, requesting the Assembly to retain ACOPS' observer status. One delegation indicated that, in its opinion, ACOPS was a prestigious intergovernmental organisation but that it had a small staff and limited resources. Another delegation stated that attendance at meetings should not be the only factor taken into account when deciding whether to withdraw observer status.

20.7 The Assembly decided to reconsider the matter at its next session.

Clarification of the term 'truly international character'

20.8 It was recalled that the Assembly had granted the Conference of Peripheral Maritime Regions (CPMR) observer status on a provisional basis at its April/May 2002 session and that, at that session, one delegation had considered that it could be said that CPMR was not of a truly international character since it was a European organisation.

- 20.9 It was also recalled that when the review of international non-governmental organisations having observer status was carried out in October 2003, it was decided that CPMR's provisional observer status would be reviewed at the Assembly's October 2004 session and that, in advance of that review, the Assembly should clarify the term 'truly international character'.
- 20.10 The Assembly agreed with the Director's opinion as contained in document 92FUND/A.9/18 (71FUND/AC.15/13) that an organisation should be considered to be of a truly international character if it had members, component branches or affiliated bodies in a sufficient number of countries, depending on the nature of the interest or interests represented by that organisation. It further agreed that, bearing in mind the relatively narrow range of subjects relevant to the work of the IOPC Funds, this term should be interpreted with a degree of flexibility in respect of individual applications for observer status.

Observer status of CPMR

- 20.11 As regards the provisional observer status of CPMR, the Assembly noted the updated membership list for CPMR contained in Annex I of document 92FUND/A.9/18 (71FUND/AC.15/13), which indicated that the Regions which were members of CPMR were located in 25 States, of which 23 were, or would shortly be, Members of the 1992 Fund, in three continents.
- 20.12 The Assembly endorsed the Director's opinion that CPMR did have members in a sufficient number of countries to be considered as being of 'truly international character' and decided to grant observer status to CPMR on a permanent basis.

21 Reports of the Executive Committee on its 23rd – 26th sessions

- 21.1 The Chairman of the Executive Committee, Mr J Rysanek (Canada), informed the Assembly of the work of the Committee during its 23rd – 26th sessions (cf documents 92FUND/EXC.23/2, 92FUND/EXC.24/8, 92FUND/EXC.25/6 and 92FUND/EXC.26/11). In his report the Committee's Chairman referred to the most important issues dealt with by the Committee at those sessions.
- 21.2 The Assembly approved the reports of the Executive Committee and expressed its gratitude to the Committee's Chairman and members for their work.

22 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)
Germany	Algeria
India	Australia
Italy	China (Hong Kong Special Administrative Region)
Japan	Finland
Netherlands	Portugal
Republic of Korea	Russian Federation
United Kingdom	United Arab Emirates
	Uruguay

23 Consideration of draft revised Claims Manual

- 23.1 The Assembly took note of the information contained in document 92FUND/A.9/20 and considered the draft revised Claims Manual contained in the Annex to that document.

- 23.2 The Assembly recalled that the Japanese delegation had proposed at the February 2004 session of the Executive Committee that the Claims Manual should be revised in order to facilitate the understanding of the document and the prompt handling of claims and that the proposal had been given further impetus by the Assembly at its May 2004 session when it had been agreed that consideration should be given to reviewing the Manual in order to make it more reader-friendly so as to give further assistance to claimants.
- 23.3 The Assembly noted that the proposed revised text had largely followed in substance the existing version of the Claims Manual, that changes had not been introduced for the sake of changes and that no attempt had been made to amend the 1992 Fund's policy as regards the handling or admissibility of claims. It was noted, however, that as requested by the Assembly, the Director had considered the question of whether more detailed admissibility criteria should be developed. It was further noted that the Director had concluded that, on balance, the introduction of more detailed criteria could be to the detriment rather than the benefit of claimants in that it could restrict the degree of flexibility needed to enable claims to be assessed on the basis of their own characteristics and in the light of the particular circumstances of the case.
- 23.4 It was noted that the Director had instead proposed that the admissibility criteria should be illustrated by way of specific examples for each claim sector, but that in order to do this, it had been found appropriate to alter the structure of the Manual so that claimants could focus their attention on those sections that dealt with their own particular claim sector.
- 23.5 It was also noted that the Director had given consideration to the proposal by the Japanese delegation to include in the Manual examples of actual assessments, but that he had concluded that such examples would have to be very simple and could be misleading in that they would not be sufficiently representative of most assessments and would not therefore be of any assistance to claimants in preparing their compensation claims. It was noted, however, that by introducing more details on the presentation of claims in each sector, the Director believed that claimants would have a clearer understanding of the way in which claims were assessed.
- 23.6 As regards the specific changes it was noted that Section I of the proposed revised version contained a simpler explanation of how the compensation regime worked, the types of claims that were compensable, how a claim should be submitted and how the Fund handled claims. It was also noted that reference had been made to the Supplementary Fund in this section.
- 23.7 It was noted that Section II of the revised text contained more detailed information on the Fund's claims handling procedures.
- 23.8 The Assembly noted that Section III was split into five sub-sections, each dealing with one of the main categories of claims covered by the Conventions. It was noted that although this had inevitably introduced some duplication, it had made it possible to provide specific examples to explain the admissibility criteria in the context of the different types of claims and to list the different types of supporting documents appropriate to different categories of claims.
- 23.9 The Assembly noted that in the sub-section on clean-up and preventive measures, a paragraph dealing with claims for the costs of cleaning and rehabilitation of oiled wildlife had been introduced, which had been based on the Secretariat's experience of dealing with such claims.
- 23.10 It was also noted that a paragraph dealing with subsistence fishing had been introduced, again based on the Fund's experience in dealing with such claims and the work carried out on the admissibility and assessment of such claims.
- 23.11 It was noted that the Secretariat had found in the past that as regards claims for pure economic loss, claimants had often had difficulty in understanding the criterion 'a reasonable degree of proximity between the contamination and the loss or damage', which had been adopted by the 1992 Fund Assembly in 1996 on the basis of the preparatory work within the 1971 Fund's 7th intersessional Working Group, and that experience had also shown that the expression did not translate easily in the context of continental legal systems. It was noted that the Director had

therefore proposed replacing it with the expression 'a sufficiently close link of causation between the contamination and the loss or damage'.

- 23.12 It was further noted the Director had proposed a slight modification to the text on environmental damage to reflect the fact that it was virtually impossible to bring a damaged site back to the same ecological condition that would have existed had an oil spill not occurred. It was also noted that a distinction had been made in the revised text between claims for costs of reinstatement measures and claims for economic losses caused by environmental damage and the different criteria that applied to these claims.
- 23.13 A number of delegations commended the Secretariat for the excellent work that had gone into the revision exercise and expressed their support for the format and content of the draft revised text, which in their view was more accessible to claimants and easier to read. Some delegations welcomed the inclusion of paragraphs dealing specifically with the cleaning and rehabilitation of oiled wildlife. Some delegations made suggestions for editorial modifications to the draft.
- 23.14 The Assembly approved the text of the revised Claims Manual as set out in the Annex to document 92FUND/A.9/20, subject to minor editorial changes proposed by various delegations. The Director was authorised to make appropriate editorial changes, to align the French, Spanish and English versions and to decide on the final layout of the Manual.
- 23.15 It was noted that the Director had given further consideration regarding the proposal that the 1992 Fund and the Supplementary Fund should issue a joint Manual. It was noted that, bearing in mind that the Supplementary Fund would not make its own assessment of claims for compensation, the Director was of the view that the Supplementary Fund did not need a Manual, and had proposed that the 1992 Fund Assembly should make a recommendation to the Supplementary Fund Assembly to this effect.
- 23.16 Some delegations supported the Director's proposal to recommend to the Assembly of the Supplementary Fund that it should not issue its own Manual, which would in any event be identical to the 1992 Fund Manual. Other delegations had a contrary view.
- 23.17 The Assembly decided that the question of whether the Supplementary Fund should have a Claims Manual would have to be considered again in the future and that any final decision would have to be left to the Assembly of the Supplementary Fund.

24 Admissibility of claims relating to subsistence fishing

- 24.1 The Assembly took note of the information contained in document 92FUND/A.9/21 on the admissibility of claims relating to subsistence fishing. The Assembly recalled that a key feature of claims for compensation in respect of small-scale fishing activities, including subsistence fishing, was that they were rarely supported by evidence as to normal levels of income against which to assess claims. It was further recalled that in order to assist the 1992 Fund in dealing with such claims in the future the Director had engaged a firm of fishery specialists to prepare technical guidelines on methods of assessing losses in fisheries, aquaculture and processing sectors where evidence was likely to be limited or totally lacking.
- 24.2 It was recalled that the Guidelines were aimed primarily at the claims staff of the Fund's Secretariat and the shipowners' insurers as well as their experts working in the field and local claims office staff. It was recalled that the Director had made the point that one of the benefits of the Guidelines would be that they would enable the 1992 Fund to extend its current network of fishery specialists to include those who were not familiar with the compensation Conventions and the Fund's policy on claims assessment.
- 24.3 It was recalled that at the Assembly's October 2003 session some delegations had stated that although the Technical Guidelines might be useful for the work of the Fund, it was not possible for Member States to authorise the publication of the Guidelines by either the Fund or the authors without first having had an opportunity to review them. It was also recalled that a number of

delegations had supported the 1992 Fund producing concise guidelines for claimants in the fisheries, mariculture and processing sectors and had considered that these might best be reviewed by a working group, although not the working group currently looking at the revision of the 1992 Conventions. It was further recalled that in view of the time constraints during the October 2003 session the Assembly had instructed the Director to submit a revised proposal to the next session of the Assembly, taking into account the observations made at that session.

- 24.4 The Assembly noted that as regards the draft Technical Guidelines, the Director remained of the view that there was merit in publishing them in one form or other, but that because of the size of the document, which ran to some 150 A5 pages, and the technical nature of the contents, it would be impracticable for the 1992 Fund Assembly itself to review the text in detail. It was noted that the Director had therefore proposed that the Assembly should establish a working party or correspondence group comprising representatives of interested delegations and observer delegations to review the draft for the purpose of making a recommendation to the Assembly on whether, and if so, in what form the Technical Guidelines should be published.
- 24.5 The Assembly noted that the revised text of the Claims Manual that had been approved at this session included a section dealing specifically with claims in the fisheries, mariculture and fish processing sectors, including subsistence fisheries, and also contained more detailed information for claimants in the commercial fisheries sector on the submission of claims for compensation. It was noted that in the light of the additional information provided to claimants in the proposed revised Manual, the Director was of the view that there was no need to produce more specific guidelines for claimants in a further publication.
- 24.6 A number of delegations supported the idea of establishing a group to review the Technical Guidelines, although most thought that a correspondence group should be able to undertake the work.
- 24.7 Some delegations felt that there was still a need for specific guidelines for claimants, particularly in relation to subsistence fishing, since the revised Claims Manual did not go into any great detail regarding how such claims were handled by the Fund.
- 24.8 The Assembly decided to establish a correspondence group to review the draft Technical Guidelines and to report to the 1992 Fund Assembly with a recommendation on whether they should be published, and if so, in what form. The Assembly also decided that the correspondence group should address the need for more concise guidelines for claimants and report to the Assembly in due course.
- 24.9 The Chairman invited those delegations that wished to participate in the correspondence group to provide the Secretariat with their e-mail addresses.

25 Sharing of joint administrative costs between the 1992 Fund and the 1971 Fund

- 25.1 The Assembly approved the Director's proposal that the 1971 Fund should pay a flat management fee of £325 000 to the 1992 Fund for the costs of running the joint Secretariat for the financial year 2005 (document 92FUND/A.9/22).
- 25.2 It was decided that the management fee payable by the 1971 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 the 1971 Fund.
- 25.3 It was noted that the Administrative Council of the 1971 Fund had agreed at its 15th session to the distribution proposed by the Director.

26 Working capital

- 26.1 The Assembly considered a document presented by the Director (document 92FUND/A.9/23) in which it was proposed to increase the 1992 Fund working capital from £20 million to £25 million.

- 26.2 Some delegates expressed the view that an increase in the working capital was not justified, in the light of the reduction of the number of incidents involving the 1992 Fund, the increased amount payable by the shipowner under the higher limits which had entered into force on 1 November 2003 and the ongoing renewal of the world tanker fleet. Other delegations, however, supported a smaller increase from £20 million to £22 million.
- 26.3 The Assembly decided to increase the working capital of the 1992 Fund from £20 million to £22 million.

27 Budget for 2005 and assessment of contributions to the General Fund

- 27.1 The Assembly considered the draft 2005 Budget for the administrative expenses of the 1992 Fund and 1971 Fund and the assessment of contributions to the 1992 Fund General Fund as proposed by the Director in document 92FUND/A.9/24.
- 27.2 The Assembly adopted the budget for 2005 for the administrative expenses for the joint Secretariat with a total of £3 372 600, as reproduced in Annex II to this document.
- 27.3 It was noted that the Administrative Council of the 1971 Fund had at its 15th session adopted the same budget appropriations for the administrative expenses for the joint Secretariat.
- 27.4 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.
- 27.5 It was noted that the Director had in document 92FUND/A.9/24 proposed a levy to the General Fund of £8.3 million. In view of the decision by the Assembly to increase the Working Capital to £22 million rather than to £25 million and having taken account of the reduced interest that would be earned, the Director adjusted his proposal to a levy of £5.4 million.
- 27.6 The Assembly decided to levy contributions to the General Fund for a total of £5.4 million, with the entire levy due for payment by 1 March 2005.
- 27.7 The Assembly noted the Director's estimate of £50 000 for expenses to be incurred in respect of the preparation for the entry into force of the HNS Convention.
- 27.8 The Assembly also noted the Director had included in the draft budget an amount of £30 000 to cover the costs of holding the first Supplementary Fund Assembly and related costs.

28 Assessment of contributions to Major Claims Funds

- 28.1 The Director introduced document 92FUND/A.9/25 which contained proposals for the levy of 2004 contributions to Major Claims Funds.
- 28.2 The Assembly endorsed the Director's proposal that no levy should be made to the *Erika* Major Claims Fund.
- 28.3 In order to enable the 1992 Fund to make payments of claims for compensation arising out of the *Prestige* incident, the Assembly decided to raise 2004 contributions to the *Prestige* Major Claims Fund of £33 million, the entire levy payable by 1 March 2005.
- 28.4 The Assembly noted that following the reimbursement to contributors to the *Nakhodka* Major Claims Fund of £37.7 million, a subsequent reconciliation of that Fund's account had shown that there would be a remaining balance on that Fund of some £680 000. It further noted that the remaining balance had been underestimated due to the very conservative assessment of the amount of interest that would have accrued up to the date of reimbursement (1 March 2004).

- 28.5 The Assembly endorsed the Director's proposal that a further reimbursement should be made to contributors to the *Nakhodka* Major Claims Fund of £600 000 and that the remaining balance on that Major Claims Fund, estimated at £100 000, should be transferred to the General Fund.
- 28.6 The Assembly noted that its decisions in respect of the levy of 2004 contributions and reimbursement to contributors to the *Nakhodka* Major Claims Fund could be summarised as follows:

Fund	Oil year	Estimated total oil receipts (tonnes)	Payment/repayment by 1 March 2005	
			Levy/repayment £	Estimated levy/repayment per tonne £
General Fund	2003	1 364 757 736	5 400 000	0.0039567
<i>Prestige</i>	2001	1 358 300 646	33 000 000	0.0242951
<i>Nakhodka</i>	1996	663 380 184	(600 000)	(0.0009045)
Total			37 800 000	

29 Preparations for the entry into force of the Supplementary Fund Protocol

- 29.1 It was recalled that an International Conference, held in May 2003, adopted the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992. It was further recalled that this Protocol established a Supplementary Fund which would pay additional compensation to victims of oil pollution when the compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention was insufficient to provide full compensation to them.
- 29.2 It was recalled that the International Conference which had adopted the Protocol had also adopted a Resolution on the Establishment of the International Oil Pollution Compensation Supplementary Fund, which requested the 1992 Fund Assembly to authorise and instruct the Director, on the basis that all costs and expenses that would be incurred would be reimbursed by the Supplementary Fund:

to perform, in addition to the Director's functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the Supplementary Fund in accordance with the provisions of the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, provided that the interests of Contracting States to the 1992 Fund Convention were not unduly affected;

to provide all necessary assistance for the setting up of the Supplementary Fund;

to make the necessary preparations for the first session of the Assembly of the Supplementary Fund, which was to be convened by the Secretary-General of IMO, in accordance with Article 22 of the Protocol;

to enter into negotiations with IMO with a view to enabling the Supplementary Fund to reach agreements, as soon as possible, regarding appropriate administrative arrangements;

to enter into negotiations with the Supplementary Fund at the appropriate time with a view to reaching a mutually advantageous arrangement enabling the 1992 Fund and the Supplementary Fund to share a single Secretariat, headed, if appropriate, by the same Director.

- 29.3 The Assembly took note of the information contained in document 92FUND/A.9/26 regarding the preparations for the entry into force of the Supplementary Fund Protocol.

- 29.4 The Assembly recalled that the Supplementary Fund Protocol would, under Article 21, enter into force three months from the date on which the following requirements were fulfilled:
- (i) at least eight States had signed the Protocol without reservation as to ratification, acceptance or approval, or had deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of IMO; and
 - (ii) the Secretary-General of IMO had received information from the Director of the 1992 Fund that those persons who would be liable to contribute pursuant to Article 10 have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil, including the quantities referred to in Article 14, paragraph 1.
- 29.5 It was noted that six States (Denmark, Norway, Finland, France, Ireland and Japan) had ratified the Protocol.
- 29.6 The German delegation stated that Germany would ratify the Protocol very shortly, as soon as the instrument of ratification had been signed by the President of the Federal Republic of Germany.
- 29.7 The Spanish delegation stated that Parliament was expected to approve the Protocol in early November 2005.
- 29.8 The delegations of Cyprus, Greece, Poland and Portugal stated that their States expected to ratify the Supplementary Fund Protocol by the end of 2004. The delegation of Italy stated that it was expected that Italy would ratify the Protocol at the latest in early 2005. The delegation of the Netherlands stated that ratification was expected in early 2005. The delegation of Sweden informed the Assembly that a Bill relating to ratification of the Protocol would soon be presented to Parliament and that it was expected that ratification would take place early in the spring of 2005. The delegation of Australia stated that consultations towards ratification were positive and that Australia was expected to ratify by mid-2005.
- 29.9 Since the first Assembly of the Supplementary Fund to be convened by the Secretary-General of IMO, under Article 22 of the Supplementary Fund Protocol, would have to be held within 30 days of the entry into force of the Supplementary Fund Protocol, the Assembly stressed the importance of Member States keeping the Secretary-General of IMO and the Director informed of their progress towards ratification of that Protocol.
- 29.10 It was noted that it was likely that the Protocol would enter into force early in 2005 and that the first session of the Supplementary Fund Assembly might therefore have to be held during February or March 2005.
- 29.11 The Assembly noted the draft revised agenda for the 1st session of the Supplementary Fund Assembly prepared by the Director and contained in Annex II to document 92FUND/A.9/26 which he intended to submit to the Secretary-General of IMO.
- 29.12 The Assembly noted that the Director was continuing to prepare for the entry into force of the Supplementary Fund Protocol in accordance with the views expressed by the Assembly at its May 2004 session.
- 30 International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea**
- 30.1 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.

- 30.2 The Assembly noted the developments in respect of the ratification and implementation of the HNS Convention since the 8th session of the Assembly as set out in document 92FUND/A.9/27. It was noted that six States, Angola, Morocco, the Russian Federation, Samoa, Slovenia and Tonga had acceded to the HNS Convention. It was further noted that the preparations for ratification were well advanced in a number of States and that Cyprus was expected to ratify the Convention within the coming weeks.
- 30.3 The Assembly noted that the Secretariat had completed the development of a database of all substances qualifying as hazardous or noxious substances (HNS). It was noted that IMO had very kindly agreed to provide data to the 1992 Fund in electronic format on the substances covered by the relevant IMO Conventions and Codes and that this had greatly facilitated the development of the database. It was further noted that the final system would be circulated within the next week or so in the form of a CD-ROM containing software for installation on a user's personal computer.
- 30.4 It was 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 £45 000.
- 30.5 It was noted that the Secretariat would as a matter of urgency set up a dedicated website for the system, which several States indicated would be crucial to their preparations for ratification. It was also noted that facilities for the registration of users would be set up so that they could be issued with a username and password which would allow them to access appropriate parts of the system.
- 30.6 It was noted that IMO was considering changes to some of the Codes and Conventions on which the definition of HNS was based, which were expected to take effect in 2007. In this connection, the Italian delegation raised the question whether the list of substances adopted in the present text of the HNS Convention was compatible with the criteria and the principle of self-classification of substances developed by UN Experts Group (like GHS, Globally Harmonised System). It was also noted that the Secretariat would monitor the issue carefully and that it intended to present a proposal to the Assembly at a later stage as to how these proposed changes could best be accommodated within the framework of the HNS Convention.
- 30.7 The Director stated that, as soon as the preparatory work on the setting up of the Supplementary Fund had been completed, the Secretariat would continue the preparations for the entry into force of the HNS Convention.

31 Developments within the European Union on matters of interest to the 1992 Fund

- 31.1 The Assembly took note of the information contained in document 92FUND/A.9/28 regarding the adoption of a European Union Directive on environmental liability and in respect of the decision of the Council of the European Union to authorise European Community Member States to become parties to the Supplementary Fund Protocol.
- 31.2 It was noted that under Council of the European Union Regulation No 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 7 and 8 of the Supplementary Fund Protocol dealt with matters falling within this exclusive competence.
- 31.3 It was noted that the Supplementary Fund Protocol did not allow the European Community to become party to the 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^{<1>} 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.

- 31.4 The Assembly further noted that the Council of the European Union had authorised Austria, the Czech Republic, Estonia, Hungary, Luxembourg and Slovakia to accede to the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol.
- 31.5 It also noted that the European Commission had proposed a Directive on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences the text of which would have to be agreed between the European Parliament and the Council of the European Union.
- 31.6 The Assembly expressed the view that it was valuable to be kept informed of developments in other organisations of interest to the 1992 Fund.

32 Future sessions

- 32.1 The Assembly decided to hold its next regular session during the week of 17 - 21 October 2005.
- 32.2 The Assembly recalled that it would be required to hold an extraordinary session in connection with the first session of the Supplementary Fund Assembly in February or March 2005.
- 32.3 It was noted that the weeks of 28 February and 31 May 2005 were also available for IOPC Fund meetings.

33 Any other business

33.1 Transfer within the Budget

The Assembly authorised the Director to make the necessary transfer to Chapter IV (Travel) within the 2004 budget from Chapter I (Personnel) to cover the costs of travel for 2004.

33.2 Insurance cover for staff members

- 33.2.1 The Assembly took note of the information contained in document 92FUND/A.9/30 relating to insurance cover for staff performing official duties for the IOPC Funds.
- 33.2.2 It was noted that the 1992 Fund had insured staff members' rights to compensation under the Staff Regulations and Staff Rules to cover staff members in the event of illness, accident or death attributable to the performance of official duties on behalf of the 1992 Fund or the 1971 Fund. 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 have introduced an exclusion clause to this effect in the 1992 Fund's insurance policy.
- 33.2.3 The Assembly 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 32.2.2.
- 33.2.4 The Assembly noted the Director's view 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.

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

33.2.5 The Assembly expressed its appreciation that the Director had taken the initiative to ensure that the staff was given proper financial protection in cases of illness, accident or death.

33.3 IMO/UNEP Manual on Natural Resource Damage Assessment (NRDA)

33.3.1 The New Zealand delegation informed the Assembly that the OPRC-HNS Working Group had met during the week of 4 October 2004, immediately prior to the 52nd session of the IMO's Marine Environment Protection Committee (MEPC 52), to consider *inter alia* a draft Manual on NRDA. That delegation stated that the Working Group had concluded that it was important that the Manual was consistent with the international compensation Conventions and in particular the 1992 Fund's admissibility criteria in respect of claims for the costs of post-spill environmental studies and reinstatement measures. It also stated that it had been decided at MEPC 52 that a correspondence group should be established to undertake further work on the Manual with a view to presenting a revised draft to MEPC 53 in July 2005. It was noted that New Zealand had agreed to co-ordinate the work of the correspondence group and that the Fund Secretariat would be invited to participate in the group.

33.3.2 The Assembly decided that it was important that the Secretariat should participate in the work of the correspondence group.

33.4 Implementation of the 1992 Conventions into national legislation

33.4.1 The United Kingdom delegation drew attention to the possibility that the failure of some States to submit oil reports or of contributors in some States to pay contributions might, in some cases, be due to a lack of legislation implementing the Conventions into their national law. That delegation made the point that such failures to implement the Conventions could have other serious repercussions in the future, particularly in view of the increase in the financial limit of the 1992 Fund Convention.

33.4.2 The Director was instructed to write to all Member States to enquire whether the 1992 Conventions had been fully implemented into their national law.

33.5 Chairmanship of the 1992 Fund Assembly

33.5.1 The Chairman stated that after five years in office he felt that it was time to move on and that he would be holding consultations with delegations on the selection of a successor. He stated that he had enjoyed his time as Chairman, which he had found both rewarding and challenging.

33.5.2 The delegations of Italy and the United Kingdom, on behalf of the Assembly, thanked the Chairman for the extraordinary job that he had done during his time as Chairman and expressed their regret at his decision to stand down. The Director added his appreciation and gratitude to the Chairman on behalf of the Secretariat for his dedication and willingness to assist in all aspects relating to the successful running of the sessions of the Assembly.

34 Adoption of the Record of Decisions

The draft Record of Decisions of the Assembly, as contained in document 92FUND/A.9/WP.1, was adopted, subject to certain amendments.

ANNEX I

Resolution N°9

Appointment of the IOPC Funds' Director

Term of service

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992 (1992 Fund),

RECALLING Article 18 of the 1992 Fund Convention,

NOTING that the Assembly has appointed Directors for five-year terms with provision for renewal for such further periods as may be determined by the Assembly.

CONSIDERING the desirability of establishing a more specific term of office for future Directors,

CONSIDERING ALSO the normal practice within the United Nations agencies and subsidiary bodies, and especially the International Maritime Organization precedents.

CONSIDERING FURTHER Section IV, Regulations 17 and 18, of the 1992 Fund's Staff Regulations,

DECIDES that:

- 1 Future IOPC Fund Directors shall be appointed for an initial term of five years.
- 2 The appointment may be renewed by the Assembly for one additional term of up to five years.
- 3 A further extension of the Director's term of office may be decided by the Assembly in view of exceptional circumstances.
- 4 This resolution shall be referenced by footnote to Rule 55 of the Rules of Procedure of the Assembly.

ANNEX II

2005 ADMINISTRATIVE BUDGET FOR 1992 FUND AND 1971 FUND

STATEMENT OF EXPENDITURE		Actual 2003 expenditure for 1992 and 1971 Funds		2003 budget appropriations for 1992 and 1971 Funds		2004 budget appropriations for 1992 Fund 1971 Fund		2005 budget appropriations for 1992 Fund 1971 Fund	
		£		£		£		£	
SECRETARIAT									
I	Personnel								
(a)	Salaries	1 105 414		1 275 816		1 341 000		1 306 900	
(b)	Separation and recruitment	40 623		35 000		115 000		105 000	
(c)	Staff benefits, allowances and training	400 877		523 341		551 800		566 000	
	Sub-total		1 546 914		1 834 157	2 007 800		1 977 900	
II	General Services								
(a)	Rent of office accommodation (including service charges and rates)	236 049		249 700		249 700		259 200	
(b)	Office machines, including maintenance	46 870		71 500		90 000		90 000	
(c)	Furniture and other office equipment	8 366		17 500		17 500		17 500	
(d)	Office stationery and supplies	16 001		20 000		20 000		22 000	
(e)	Communications (courier, telephone, postage, e-mail/internet)	52 890		65 000		65 000		70 000	
(f)	Other supplies and services	28 565		41 000		41 000		51 000	
(g)	Representation (hospitality)	22 858		22 500		18 000		20 000	
(h)	Public Information	126 354		180 000		180 000		180 000	
	Sub-total		537 953		667 200	681 200		709 700	
III	Meetings								
	Sessions of the 1992 and 1971 Fund Governing Bodies and Intersessional Working Groups		111 913		126 500	145 000		145 000	
IV	Travel								
	Conferences, seminars and missions		58 056		70 000	100 000		125 000	
V	Miscellaneous expenditure								
(a)	External audit fees for Financial Statements-1992 and 1971 Funds	50 000		50 000		53 250		55 000	
(b)	Consultants' fees	118 924		125 000		125 000		180 000	
(c)	Audit Body	72 015		50 000		90 000		90 000	
(d)	Investment Advisory Bodies	30 000		30 000		30 000		30 000	
	Sub-total		270 939		255 000	298 250		355 000	
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		18 020		60 000	60 000		60 000	
Total Expenditure I-VI			2 543 795		3 012 857	3 292 250		3 372 600	
VII Expenditure relating only to 71Fund									
(a)	Management fee payable to 1992 Fund (cf documents 92FUND/A.9/22 and 71FUND/AC.15/15)					- 325 000	325 000	(325 000)	325 000
(b)	Costs for Winding up of the 1971 Fund		0	250 000			250 000		250 000
(c)	External audit fees for Financial Statements-1971 Fund only		0	0		- 15 000	15 000	(12 500)	12 500
2004 Budget for 1992 Fund and 1971 Funds respectively						2 952 250	590 000		
2005 Budget for 1992 Fund and 1971 Funds respectively								3 035 100	587 500