



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

ADMINISTRATIVE COUNCIL  
3rd Session  
ASSEMBLY  
12th extraordinary session  
Agenda item 12

92FUND/AC.3/A/ES.12/14  
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## RECORD OF DECISIONS OF THE THIRD SESSION OF THE ADMINISTRATIVE COUNCIL

ACTING ON BEHALF OF THE 12TH EXTRAORDINARY SESSION OF THE ASSEMBLY

(held from 12 to 15 June 2007)

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

### *Opening of the session*

- 0.1 It was noted that the Assembly's Chairman had attempted to open the 12th extraordinary session of the Assembly at 9.30 am on Tuesday 12 June 2007, but that the Assembly had failed to achieve a quorum.
- 0.2 Only the following 39 Member States of the 1992 Fund had been present at that time, whereas a quorum required 50 States to have been present:

Algeria	Germany	Norway
Australia	Ghana	Panama
Bahamas	Grenada	Philippines
Belgium	Ireland	Poland
Bulgaria	Italy	Qatar
Cameroon	Japan	Singapore
Canada	Latvia	South Africa
China (Hong Kong Special Administrative Region)	Liberia	Spain
Denmark	Malaysia	Sweden
Estonia	Malta	Turkey
Finland	Marshall Islands	United Kingdom
France	Mexico	Venezuela
Gabon	Netherlands	
	Nigeria	

- 0.3 It was recalled that at its 7th session the Assembly had adopted 1992 Fund Resolution N°7 whereby, whenever the Assembly failed to achieve a quorum, the Administrative Council established under Resolution N°7 should assume the functions of the Assembly, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions.
- 0.4 In view of the fact that no quorum was achieved, in accordance with Resolution N°7, the items of the Assembly's agenda were dealt with by the Administrative Council.
- 0.5 It was recalled that, at its 1st session in May 2003, the Administrative Council had decided that the Chairman of the Assembly should *ex officio* be the Chairman of the Council (document 92FUND/AC.1/A/ES.7/7, paragraph 2).
- 0.6 The Chairman opened the session and welcomed the members of the Administrative Council, observer delegations and members of the public.
- 0.7 Mr Emile Di Sanza, Director General, Marine Policy, Canadian Department of Transport, welcomed, on behalf of the Government of Canada, all of the delegates and observers to the first meetings of the IOPC Funds to be held outside of London and wished everyone a pleasant stay in Montreal and in Canada. He expressed his expectation for a week of high calibre debates and his hope that those present would be able to work together to achieve their common goal.
- 0.8 He explained that Canada had joined the IOPC Funds in 1989 and had fortunately only experienced one incident in 1992, the *Rio Orinoco*. He stated that Canada placed great importance on the IOPC Funds since it represented a sense of multilateral co-operation which was evident with its more than 100 Member States.
- 0.9 Mr Di Sanza thanked delegates for coming to the meetings, many from very far away, and also thanked the Director and Secretariat for an exemplary cooperation with his Canadian colleagues in making the various arrangements for this meeting, as well as the ICAO staff for the very capable assistance they had provided.
- 0.10 The Director also welcomed delegations and members of the public to the meetings and expressed his gratitude to the Canadian Government for its kind invitation to hold the meetings of the IOPC Funds in Montreal. He commented on the outstanding venue and heart-warming welcome by the Chairman and his Canadian colleagues.

*Procedural matters*

**1 Adoption of the Agenda**

The Administrative Council adopted the Agenda as contained in document 92FUND/A/ES.12/1.

**2 Examination of credentials**

- 2.1 The Administrative Council recalled that, at its March 2005 session, it had decided to establish, at each session, a Credentials Committee composed of five members elected by the Assembly on the proposal of the Chairman to examine the credentials of delegations of Member States and that the Credentials Committee established by it should also examine the credentials in respect of the Executive Committee, provided the session of the Executive Committee was held in conjunction with a session of the Assembly. It was recalled that the Assembly had inserted provisions to this effect in the respective Rules of Procedure.
- 2.2 In accordance with Rule 10 of the Assembly's Rules of Procedure, the delegations of Algeria, Germany, Latvia, Panama and Singapore were appointed members of the Credentials Committee.



- 3.3 The Administrative Council further recalled that the submission of credentials was governed by Rule 9 of the 1992 Fund Assembly's Rules of Procedure and decided to adopt the Director's proposal, as set out in section 2 of document 92FUND/A/ES.12/3, to amend Rule 9 as follows:

'Each Member shall transmit to the Director the credentials of its representative, together with the names of any alternates or other members of its delegation not later than the opening day of the Assembly. The credentials shall be issued by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by an appropriate authority as determined by the Government and communicated to the Director. Where such authority is a person who is not a Government employee, such authorisation shall be communicated to the Director in advance of the opening day of the Assembly.'

- 3.4 The Administrative Council recalled that detailed guidance in respect of the form and content of credentials was given in Circular 92FUND/Circ.49, which was issued by the Director and endorsed by the 1992 Fund Assembly at its March 2005 session. The Administrative Council noted that the Director had incorporated the remainder of the changes referred to in paragraph 3.2 above into a revised version of the Circular, as contained in Annex I to document 92FUND/A/ES.12/3, which would be issued shortly.

#### **4 Submission of oil reports**

- 4.1 The Administrative Council recalled that, at their October 2005 sessions, the governing bodies had instructed the Director to proceed with a number of measures which had been proposed to assist States to submit oil reports. The Council took note of the implementation of one of these measures, ie the production of an information document which could assist States in establishing procedures for the submission of oil reports (document 92FUND/A/ES.12/4).
- 4.2 One delegation suggested that it would also be useful for the Secretariat to produce a similar document but aimed at assisting contributors to submit oil reports.
- 4.3 Another delegation recalled that it was crucial that States fulfilled their obligations to submit oil reports and suggested that it would be useful to highlight the fact that, under Article 15.4 of the Convention, if the IOPC Funds suffered a financial loss because a State had not fulfilled its obligations, that State shall be liable to compensate the Funds for such loss.

#### **5 Headquarters Agreement**

- 5.1 The Administrative Council took note of document 92FUND/A/ES.12/5 presented by the Director.
- 5.2 It noted that, in the light of an issue regarding visa requirements which had been raised with the Secretariat by the representatives of a Member State, the Director had sought clarification from the United Kingdom Foreign and Commonwealth Office as to the visa status of delegates to IOPC Fund meetings held in the United Kingdom and, in particular, as to the interpretation of Article 15, paragraph 1(d) of the Headquarters Agreement which was currently in force between the Government of the United Kingdom of Great Britain and Northern Ireland and the International Oil Pollution Compensation Fund, 1992. It was noted that, since it was felt that this information could be of interest to many delegations, the Director had brought it to the attention of the Administrative Council.
- 5.3 The Administrative Council further noted that Article 15, paragraph 1(d) of the above-mentioned Headquarters Agreement provided as follows:
- (1) Representatives shall enjoy, while exercising their functions and in the course of their journeys to and from the place of meeting, the following privileges and immunities:
  - (d) exemption for themselves and their spouses from all measures restricting entry, from charges for visas and from registration formalities for the purpose of immigration control;

- 5.4 It also noted that the definition of 'representative' in the Headquarters Agreement means representatives of Member States of the 1992 Fund, and in each case means heads of delegations, alternates and advisers.
- 5.5 The Administrative Council noted that the view which had been received from the Legal Adviser of the Foreign and Commonwealth Office was that representatives of Member States were exempt from immigration control and visa requirements and that representatives of Member States for which a visa was required for entry into the United Kingdom, were entitled to an 'exempt status visa', which was provided free of charge (*gratis*). It was noted, however, that where a person qualified under the 'exempt' category but was only intending to visit the United Kingdom for a short official visit, it was common practice for British Embassies/High Commissions overseas to issue *gratis* 'visit' visas for periods not exceeding six months. It was also noted that the UK Visas Department had indicated that it would not issue *gratis* 'visit' visas for a period longer than six months.
- 5.6 It also noted that the Foreign and Commonwealth Office had indicated that it would look into any cases where representatives of Member States were being charged for visas to enter the United Kingdom for periods of six months or less and that these cases should be brought to the attention of the IOPC Funds Secretariat in the first instance.
- 5.7 The Administrative Council noted that texts of the revised Headquarters Agreements between the Government of the United Kingdom of Great Britain and Northern Ireland and the 1992 Fund and the new Headquarters Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the International Oil Pollution Compensation Supplementary Fund had been approved by the Assemblies of the 1992 Fund and the Supplementary Fund at their October 2006 sessions. These texts were awaiting approval from the United Kingdom Parliament.
- 5.8 It also noted that the IOPC Funds Secretariat would seek further clarification from the United Kingdom Foreign and Commonwealth Office in respect of the privileges and immunities of representatives of Member States when these two Headquarters Agreements entered into force.
- 5.9 In response to a question from one delegation as to whether the position taken by the United Kingdom Foreign and Commonwealth Office under the terms of the Headquarters Agreement applied to meetings of the IOPC Funds which were held outside the United Kingdom, the Chairman said that, in his view, it was the visa and immigration requirements of the country where the meetings were being held which would be applicable.

## **6 Lease Agreement in respect of premises for the Secretariat**

- 6.1 The Administrative Council took note of the information contained in document 92FUND/A/ES.12/6.
- 6.2 The Administrative Council recalled that in 2006 the landlord had informed the Director that any refurbishment of Portland House would be undertaken after March 2015 and offered the IOPC Funds the possibility to remain at Portland House up to March 2015.
- 6.3 It further recalled that at its October 2006 session, the 1992 Fund Assembly had authorised the Director to take the necessary decisions in respect of an extension of the lease of the IOPC Funds' premises in Portland House, provided that the United Kingdom Government agreed in respect of the rent and other financial arrangements and the duration of the lease.
- 6.4 It also recalled that, at the same session, the Assembly had confirmed the Director's authority to sign on behalf of the 1992 Fund any agreement, lease or any other document relating to the present office premises at Portland House and the extension of the lease in respect of these premises.
- 6.5 The Administrative Council noted that the premises were subject to a lease covering the period June 2000 – June 2010. It further noted that the rent had so far totalled £445 000 per annum (exclusive of VAT) for the 23rd floor and £6 000 per annum for the storage space in the basement.

It also noted that the United Kingdom Government refunded 80% of the rent for the 23rd floor and for the storage space. It was noted that, under the lease agreement, a rent review was to be undertaken in June 2005 and any increase would have been effective from 24 June 2005.

- 6.6 It was noted that the rent review for the 23rd floor had been concluded, with the assistance of the United Kingdom Government, at the end of 2006 at £469 000 per annum (exclusive of VAT) with effect from June 2005. It was further noted that there had been no increase in the rent in respect of the basement storage area. It was also noted that an additional amount due to the landlord as a result of the review was paid by the 1992 Fund at the end of 2006, with the United Kingdom Government refunding 80% of this sum.
- 6.7 It was noted that, in accordance with the recommendation of the Fund's chartered surveyors and in agreement with the United Kingdom Government, the 1992 Fund and the landlord had agreed to surrender the lease dated 26 June 2000 for nil consideration and a new lease up to March 2015 had been granted on the following terms:
- a single new lease to cover the 11 000 square feet of office space at £41.30 per square foot and 700 square feet at £20.65 per square foot of auxiliary space on the 23rd floor as well as the 600 square feet of storage space at £12.50 per square foot in the basement and, in addition, two car parking spaces in the basement, the cost of which will be borne by the 1992 Fund only;
  - One free motorcycle parking space will be provided in the basement of Portland House, subject to availability;
  - the lease will expire on 24 March 2015;
  - the rent will be £480 500 per annum (exclusive of VAT) with a rent review fixed at 24 June 2010.
- 6.8 The Administrative Council noted that the new lease, which entered into force on 25 March 2007, had been signed by the Director on behalf of the 1992 Fund on 16 April 2007 and that the new rent would commence from 17 April 2007. It noted that the revised rent set out in paragraph 6.6 above would be payable until 24 June 2010.
- 6.9 It also noted that the date of the entry into force of the new lease had been set by the landlord to commence on 25 March 2007 so as to be in line with other leases in Portland House and with the landlord's quarterly billing cycle.
- 6.10 It further noted that the United Kingdom Government had indicated that it would continue to refund 80% of the rent relating to the offices of the IOPC Funds under the new lease.
- 6.11 It also noted that assurance had been received from the landlord that Portland House would continue to be run efficiently and that the services currently provided would be maintained at the present standard to March 2015. It noted that assurance had also been received that the service charges payable for the premises would not increase disproportionately and that no additional capital expenditure would be put through the service charges beyond what was currently being charged.
- 6.12 In response to a question from one delegation as to whether the IOPC Funds should examine the possibility of having their own premises which would be funded by Member States, the Director expressed his view that if Member States felt that this was an option which they wished to consider, a proposal to this effect should be submitted by Member States and not by the IOPC Funds Secretariat.

**7 Technical Guidelines on methods of assessing losses in the fisheries, mariculture and fish processing sectors**

- 7.1 The Administrative Council took note of the information contained in document 92FUND/A/ES.12/7 on the admissibility of claims relating to subsistence fishing. It was recalled that draft Technical Guidelines on methods of assessing losses in the fisheries, mariculture and fish processing sectors, which were intended to assist the 1992 Fund's world-wide network of fishery experts in assessing claims, had been prepared by the Director. It was also recalled that at its 9th session, held in October 2004, the Assembly had decided to establish a correspondence group to review the draft Technical Guidelines and to report to the Assembly with a recommendation on whether they should be published, and if so, in what form. It was further recalled that the Assembly had also decided that the correspondence group should address the need for more concise guidelines for claimants (document 92FUND/A.9/31, paragraphs 24.7 and 24.8).
- 7.2 It was recalled that, at its October 2006 session, the Assembly had noted the observations made by the six contributing delegations to the correspondence group, as contained in document 92FUND/A.11/22 on the admissibility of claims relating to subsistence fishing.
- 7.3 It was further recalled that, in view of the limited interest and the divergence of opinions of delegations, the Director had considered that there was no justification in proceeding further with the development of the Guidelines for experts or developing more concise guidelines for claimants.
- 7.4 It was also recalled that, whilst some delegations had supported the view expressed by the Director and had proposed that the Guidelines be simply included in the Funds' internal reference materials for use by their experts, a number of delegations had expressed a counter view, stating that it would be a great pity if the useful information included in the Guidelines was not made more widely available in the interests of facilitating the assessment of claims by experts.
- 7.5 It was recalled that the Assembly had decided to instruct the Director to publish the Guidelines as a Fund document.
- 7.6 The Administrative Council noted that the Secretariat had proceeded as instructed to reduce the size of the document in order to make it suitable for a more widespread publication. It noted the revised guidelines as contained in document 92FUND/A/ES.12/7/Add.1.
- 7.7 The Administrative Council noted that, in the Director's view, the revised draft, although smaller in size than the original Guidelines, was still, however, unsuitable for claimants and that for the reasons set out in section 3 of document 92FUND/A/ES.12/7, the publication of the Guidelines in a single document with the dual purpose of serving experts and claimants was neither useful nor practical.
- 7.8 The Administrative Council considered the Director's proposal that the priority should be to finalise the current revised draft Guidelines for publication with a view to their use by experts, and then to focus on preparing a shorter and simpler version for claimants if the Administrative Council were to so decide.
- 7.9 Most delegations supported the view that the revised Guidelines should be published by the Fund with a view to them being used by the Fund's experts in assessing claims relating to subsistence fishing. Most delegations also agreed with the Director's view that the publication of the Guidelines as a single document with the dual purpose of serving experts and claimants was neither useful nor practical.

- 7.10 Some delegations expressed the view that if a simplified version of the Guidelines were published for the use of claimants or their local government administrations, claimants would have a better chance of receiving compensation. These delegations therefore considered that a simplified version of the Guidelines should be published after ensuring that there was compatibility between the two versions.
- 7.11 The Administrative Council approved the experts' version of the Guidelines and instructed the Secretariat to publish this as a Fund document. It also instructed the Secretariat to develop a simplified version of the Guidelines for claimants, which should be compatible with the experts' version and to present it to the Assembly for consideration at its next session.

## **8 Admissibility criteria relating to claims for costs of preventive measures**

- 8.1 The Administrative Council noted that, as instructed by the Assembly at its 11th session, held in October 2006, the Director had developed, in consultation with the delegations of France and Spain, a set of sub-criteria relating to the admissibility of claims for costs of preventive measures, in particular for the removal of oil from sunken ships, based on the sub-criteria reflected in documents 92FUND/A.11/24 by the Director and 92FUND/A.11/24/1 by France and Spain, and taking into account the views expressed by the Assembly at that session.
- 8.2 The Administrative Council noted that, in the Director's view, the sub-criteria would primarily be useful in cases where various aspects of the case pointed in different directions and that by testing the case under consideration against other cases on the basis of these sub-criteria, a clearer picture would emerge as to the merits of the case under consideration in relation to the decisions taken by the governing bodies in previous, similar cases. It was further noted that the Funds' governing bodies had already been following such an approach for many years when determining whether there was a sufficiently close link of causation between the contamination and pure economic loss (cf Claims Manual, pages 29-30), and whether measures to prevent or mitigate pure economic loss were reasonable in the circumstances (cf Claims Manual, pages 25-26 and 28). The Administrative Council also noted the Director's expectation that, although the overarching criterion would remain the objective reasonableness of the removal operation as a whole, the sub-criteria would be taken into account and play a useful role in enhancing the quality of the decision, as well as promoting and facilitating equal treatment of claims of this kind over time.
- 8.3 It was noted that under the present text of the Claims Manual, certain parts of an operation to prepare for and carry out the removal of oil from a sunken ship could be considered reasonable whereas other parts could be considered not reasonable, for example, costs incurred for studies to establish whether oil removal should take place could fulfil the criterion of reasonableness, whereas in the light of the information gained from such studies the removal of the oil from the sunken ship could be considered as not fulfilling this criterion. It was also noted that in some cases certain elements of a particular operation could be considered as fulfilling the criteria, whereas other measures taken in parallel would be considered not to. The Administrative Council noted that the text proposed by the Director for inclusion in the Claims Manual did not intend to bring about any change in that respect.
- 8.4 It was recalled that at the October 2006 session a number of delegations and the Director had considered that the criterion proposed by the French and Spanish delegations in document 92FUND/A.11/24/1, which took into account the cost per unit of oil recovered compared with the unit cost from past oil removal operations, was not appropriate, since this represented too narrow a view and could preclude operations with a high cost per unit of oil recovered which could be justified on other grounds, for example if a sunken ship was located close to a very sensitive area which needed a high degree of protection from pollution. It was further recalled that, in the view of these delegations and the Director, the relevant criterion was the overall cost of removing the oil from a sunken ship in relation to the potential total pollution damage eventually resulting from leaving the oil in that ship.
- 8.5 The Administrative Council noted that the delegations of France and Spain, although not necessarily agreeing with the Director and a number of delegations on this point, had agreed in the interest of

consensus not to pursue the element of 'cost per tonne recovered' and had accepted the set of sub-criteria developed by the Director, set out in the annex to document 92FUND/A/ES.12/8. It was noted that the proposed text would be inserted in the Fund's Claims Manual on page 22 of the April 2005 version if approved by the Administrative Council.

- 8.6 It was noted that the sub-criteria also intended to incorporate the decision by the Administrative Council to reflect in the Claims Manual that, when considering the reasonableness of preventive measures, account should be taken not only of the potential direct economic effects of not taking a particular preventive measure, but also of the potential environmental damage which could be caused if the measures were not taken, since practically all preventive measures taken to prevent environmental damage would also have a direct or indirect economic benefit.
- 8.7 The delegations of France and Spain confirmed their support for the Director's proposed sub-criteria. It was mentioned that one of the advantages of the proposed text was that, under section A, 'Factors relating to the situation and condition of the sunken ship', other elements not specified in that section could also be included.
- 8.8 One delegation pointed out that the Executive Committee, at its October 2006 session, had approved a claim relating to the removal of oil from the wreck of the *Solar 1*. That delegation reminded the Administrative Council that the Committee had taken this decision on the basis of information provided by the Funds' experts, who had estimated that some 1 000 tonnes of oil remained in the wreck. That delegation pointed out that the information provided by the experts, based upon which the Committee's decision was made, was not accurate since only nine tonnes of oil were recovered from the wreck at a cost of some £3 million, which made the cost per tonne of oil removed very high. That delegation suggested that, when considering such claims in the future, accurate information on the amount of oil in the wreck should be available to avoid decisions being made in an untimely or rapid manner.
- 8.9 The Director stated that the Executive Committee had to make decisions based on the information available to it at the time and strongly cautioned against judging decisions with the benefit of hindsight. He pointed out that the expert advice available to the Fund at the time the decision regarding the removal of the oil from the *Solar 1* was taken had been that it could not be ruled out that the majority of the oil was still on board, rather than that the experts had indicated a specific quantity. He also explained that the text he had proposed for inclusion in the Claims Manual emphasised the importance of measuring the quantity of the oil remaining on board if possible, but recalled that in the case of the *Solar 1* this had not been possible without creating a significant risk of an untimely release of oil, and that in any event the measuring of the oil without creating such a risk would have been almost as expensive as the removal itself.
- 8.10 Another delegation expressed its support for the proposed sub-criteria under the condition that the criteria could be extended at some point in the future to take into account the criteria referred to under Article 6 of the Nairobi International Convention on the Removal of Wrecks, 2007, which had recently been adopted at the Diplomatic Conference in May 2007, to the extent that these were not already covered by the text proposed by the Director.
- 8.11 The Director responded that the Nairobi International Convention on the Removal of Wrecks, 2007 had not been taken into account when developing the text proposed for inclusion in the Claims Manual, since he had been instructed by the Assembly to amalgamate the two sets of sub-criteria proposed and discussed at its 11th session, held in October 2006, taking into account the discussion at that session.
- 8.12 Another delegation stated that it supported the Director's proposal. That delegation pointed out that under section B 'Factors relating to the likelihood, nature and extent of possible damage', other factors such as the socio-cultural perspective of victims could also be taken into account.
- 8.13 The Director stated that, in his view, the sub-criteria were sufficiently flexible to take this and other factors into consideration. He pointed out that the list of sub-criteria was not exhaustive and that

decisions applying the sub-criteria would be taken on a case-by-case basis, as had been the previous practice of the Fund.

- 8.14 The Administrative Council adopted the sub-criteria proposed by the Director for claims of costs of removing the remaining oil from sunken ships and instructed the Director to include the text set out in the Annex to document 92FUND/A/ES.12/8 in the 1992 Fund's Claims Manual.

**9 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea**

*Annual contributions to the LNG Account*

- 9.1 The Administrative Council took note of document 92FUND/A/ES.12/9/1 submitted by Canada, Denmark, France and Norway, which dealt with the provisions in the International Convention on Liability and Compensation for Damage in connection with the carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention) concerning the Liquefied Natural Gases Account (LNG Account) and in particular issues concerning contributors to the LNG Account that are not subject to the jurisdiction of any State Party.
- 9.2 The majority of delegations strongly supported the proposal in the document to establish an informal correspondence group to explore issues concerning contributions to the LNG Account and stressed the importance of finding a solution to this crucial issue before the Convention entered into force.
- 9.3 The Administrative Council decided to set up such an informal correspondence group and gave it a mandate of reflecting on and recommending elements that would be helpful in the implementation legislation of States Parties to the HNS Convention, in order to ensure as far as possible the payment of contributions to the LNG Account from contributors which were not subject to the jurisdiction of any State Party. That would include further consideration of the measures dealt with in paragraphs 4.2 and 5.7 of the document, as well as any other measures that interested parties might suggest. The group would consider the LNG sector of the General Account as well as the LNG Account itself and would take into account the impact on developing countries of any proposed solutions. Any proposed solutions would be within the scope of the current text of the Convention and would not require any revision of the text.
- 9.4 The Administrative Council further decided that the correspondence group would be led by Professor Røsæg of Norway and that the group would work quickly with the aim of presenting suggestions and recommendations to the October 2007 session of the Assembly. Interested delegations were invited to contact Professor Røsæg via his email address (erik.rosag@jus.uio.no).
- 9.5 The Administrative Council noted that finding a solution to this issue was crucial to the successful implementation of the HNS Convention and strongly encouraged all delegations, both States and observers, to monitor the work of the group, even if they were not able to participate actively.
- 9.6 The Administrative Council further noted that if a solution were not found the problem would have to be dealt with at the first session of the HNS Fund Assembly.

*Definition of 'receiver'*

- 9.7 The Administrative Council took note of document 92FUND/A/ES.12/9/2 submitted by Canada and the Netherlands, which proposed a common approach to the definition of 'receiver' in the HNS Convention, in particular in connection with packaged goods. The document set out a possible solution for a common interpretation of the term 'physical receiver' in order to provide a global level playing field amongst States ratifying the Convention.
- 9.8 The Administrative Council recalled that it had previously been agreed that States would implement the definition of receiver set out in Article 1.4(a) and not that in Article 1.4(b) and that any interpretation should be consistent with the current text of the Convention.

- 9.9 The observer delegation of CMI suggested that it might be possible to make progress by exploring a solution similar to the Absorption Insurance available to shipowners designed to provide cover for the General Average liabilities of cargo owners. Some delegations indicated their concern that a solution of this type would not comply with the reporting requirements of the HNS Convention.
- 9.10 The Administrative Council noted that, whilst there was some support for the proposal set out in the document, a number of delegations had serious reservations and considered that there were significant issues relating to the receipt of packaged goods which needed to be taken into account.
- 9.11 The Administrative Council invited the two delegations which had submitted the document to continue to work on the subject with a view to making a revised proposal to the next session of the Assembly in October 2007. It was noted that the concerns expressed by other delegations would have to be taken into account and that any other delegations were also welcome to contribute to this initiative, bearing in mind that the issue was too important to leave unresolved.

*Depositing instruments of ratification without accompanying contributing cargo reports*

- 9.12 The Administrative Council took note of document 92FUND/A/ES.12/9 in which the Director set out the results of his meeting with IMO as regards the deposit of instruments of ratification by States which were not accompanied by reports on contributing cargo.
- 9.13 Some delegations made the point that this was an important issue and that the Secretariat should take whatever measures possible in order to try to resolve it. In particular, it was pointed out that if the Secretariat did not receive any response to its letters to States then it might be necessary to request meetings with appropriate individuals in those States in order to draw attention to the requirement to submit reports and to the possibility that States which did not submit such reports could be required to compensate the HNS Fund in the event of it incurring a loss as a result.
- 9.14 One delegation stated that in order for States to prepare for the ratification of the HNS Convention it would be extremely helpful to have a complete and updated list of the substances covered by the Convention. The Secretariat stated that it would endeavour to produce such a list.
- 9.15 The Administrative Council took note of document 92FUND/A/ES.12/9/4 submitted by Canada, Denmark, the Netherlands and the United Kingdom, which proposed the text of a draft IMO Assembly Resolution, requesting IMO to reject further ratifications of the HNS Convention if such ratifications did not comply with Articles 43 and 45 of the Convention.
- 9.16 The delegation of IMO stated that this issue was of crucial importance to the entry into force of the Convention and to the operation of the HNS Fund but that it was also important to find a solution which was compatible with international treaty law in order to ensure that both IMO and the HNS Fund were able to carry out their responsibilities. That delegation made the point that IMO would implement the measures set out in document 92FUND/A/ES.12/9 as quickly as possible but that, whilst others might disagree, in its view rejecting ratifications was not an action which the Secretariat could lawfully take since it was not compatible with the text of the Convention nor with international treaty law, including depository practice.
- 9.17 The Administrative Council noted that this was a problem which could not be ignored. It was noted that the United Kingdom would continue to work on this issue together with the other delegations which had submitted the document, IMO, the IOPC Funds Secretariat and any other interested delegations, with a view to making proposals to the October 2007 meetings of the Assembly and of IMO's Legal Committee, provided that such proposals were adopted prior to ratification of the HNS Convention. It was further noted that IMO would make every effort to ensure that any resolutions which were drafted were in compliance with international treaty law.

*A common ratification date for the HNS Convention*

- 9.18 It was noted that, in the light of the outcome of the previous discussions on the HNS Convention, document 92FUND/A/ES.12/9/3 which dealt with a common ratification date for the

HNS Convention was not discussed. It was also noted that the document could be resubmitted to the October 2007 session of the Assembly, provided that the issues discussed in paragraphs 9.1 to 9.17 were resolved.

**10 Grant of observer status**

- 10.1 The Administrative Council took note of the information contained in document 92FUND/A/ES.12/10, setting out a request for observer status from the International Group of Liquefied Natural Gas Importers (GIIGNL).
- 10.2 The Council recalled that, in addition to his functions under the 1992 Fund Convention, the Director had been instructed by the Assembly to carry out the administrative tasks necessary for setting up the HNS Fund in accordance with the 1996 International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention) (document 92FUND/A.1/34, paragraph 33.1.3).
- 10.3 It was also recalled that, under that Convention, a system of compensation would be established similar to that created by the 1992 Civil Liability Convention and the 1992 Fund Convention and that the financial burden created by this system would be shared between the shipping industry and the cargo interests. It was noted that the primary liability would rest on the shipowner, with additional compensation available from the International Hazardous and Noxious Substances Fund (HNS Fund), financed by the cargo interests.
- 10.4 It was also noted that the HNS Fund would have up to four accounts, one of which would be for contributions based on receipts of liquefied natural gas (LNG). The Administrative Council noted that, in view of the work to be carried out under the auspices of the 1992 Fund in connection with the preparations for the entry into force of the HNS Convention, the Director was of the view that the granting of observer status to GIIGNL, which represents 53 member companies in 17 different countries involved in the LNG industry, would be beneficial to the work of the 1992 Fund in this field.
- 10.5 The Administrative Council decided to grant observer status to GIIGNL.
- 10.6 The representative of GIIGNL thanked the Administrative Council for granting the Organisation observer status and stated that it was looking forward to participating and sharing views in the meetings of the Funds, particularly in relation to the debates regarding HNS which were to take place at this session.

**11 Any other business**

**11.1 Documents for meetings**

- 11.1.1 The Administrative Council noted the Director's observation in document 92FUND/A/ES.12/11 that the length of documents and Records of Decisions had continued to increase over recent years, which had led to an increased workload both for delegates in preparing for meetings and for the Secretariat in producing these documents.
- 11.1.2 The Council noted that the Secretariat devoted considerable effort to providing comprehensive documentation for meetings in order to enable the governing bodies to make informed decisions but acknowledged that it was important to ensure that the information provided was appropriate and that it was presented in as clear and accessible a format as possible. It also acknowledged that improvements to the structure and content of documents could have significant benefits, in terms of the time required not only for delegates to prepare for meetings but also for the Secretariat to produce and translate documents, with the result that documents could be made available to delegates earlier in all three languages. It was noted that shorter documents would also reduce the costs of production and translation.

- 11.1.3 The Council considered the options set out in document 92FUND/A/ES.12/11 which might improve the usefulness of documents. The Director requested preliminary feedback from the Administrative Council as to whether it considered that the present format of documentation issued for meetings was adequate and whether it considered the options set out in the document could be beneficial. The Council noted that, based on any feedback received, the Director would develop more detailed proposals, as appropriate, for consideration by the governing bodies at their October 2007 sessions.
- 11.1.4 One delegation expressed its appreciation for the document submitted by the Director and explained that that delegation felt strongly that a number of initiatives could be implemented to improve document clarity, information presentation and the recording and actioning of decisions.
- 11.1.5 That delegation made a number of proposals for improvements to the production of documents for meetings covering general meeting documents, decisions made or precedents set by the governing bodies, records of decisions and deadlines.
- 11.1.6 Another delegation suggested that documents relating to incidents need not contain a lengthy history but should focus on the decisions and action to be taken by the governing bodies. That delegation also suggested that, given that the production of documents was an administrative function, the Secretariat should be tasked with trialling a new system as it saw fit.
- 11.1.7 Another delegation expressed concern that there should be a balance between omitting unnecessary information and providing sufficient information for those delegations which were new to the IOPC Funds. That delegation also expressed concern as regards the lack of deadlines for the submission of documents, particularly since this resulted in the late availability of documents in French and Spanish.
- 11.1.8 The Administrative Council invited the Secretariat to submit a concrete proposal in the form of a document for consideration at the October 2007 session of the governing bodies, taking into account the discussion at this session.
- 11.2 Future sessions
- 11.2.1 The Administrative Council noted that tentative arrangements had been made for sessions of the IOPC Funds' governing bodies in 2008 during the weeks of 10 March, 23 June and 13 October.
- 11.2.2 It was also noted that the IMO building was closed for refurbishment until early 2008. It was further noted that the Director had been advised that the current date for the IMO staff to move back into the IMO Building was 29 February 2008 although there was no guarantee at this stage that this would be the case. The Administrative Council noted that, in the Director's view, it would be risky to plan to hold the Funds' March 2008 meetings in the IMO Building and that another venue would therefore have to be found.
- 11.2.3 The Administrative Council noted the invitation of the Government of Monaco to hold the March 2008 sessions of the IOPC Funds' governing bodies in Monaco (document 92FUND/A/ES.12/12).
- 11.2.4 The Administrative Council noted that the Director considered that, given the experience of holding sessions outside the IMO Building and in Canada, it would be perfectly feasible to accept the invitation by the Government of Monaco. The Administrative Council also noted that the offer by the Government of Monaco to cover the costs of hire of an equipped conference room, simultaneous translation into three languages, IT equipment and reproduction of documents, coffee breaks and a reception was similar to the offer made by the Government of Canada. It was further noted that, in the Director's view, there were no objections to accepting this invitation neither from an organisational nor from a budgetary perspective.

11.2.5 The Administrative Council thanked the Government of Monaco for its kind invitation and decided to accept the invitation and hold sessions of the IOPC Funds' governing bodies in Monaco during the week of 10 March 2008.

### 11.3 Co-operation with P&I Clubs

11.3.1 The Administrative Council took note of document 92FUND/A/ES.12/13, submitted by the delegation of the Netherlands. It recalled that at the February/March 2006 sessions of the 1992 Fund and Supplementary Fund Assemblies a Memorandum of Understanding had been approved between these Funds and the International Group of P&I Clubs regarding joint claims settlement procedures and the undertakings by the Clubs as set out in the voluntary arrangements of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) and the new Tanker Oil Pollution Indemnification Agreement (TOPIA).

11.3.2 It was recalled that at the meetings in February 2006 the Director was authorised to agree minor editorial amendments to the text with the International Group of P&I Clubs and the results thereof were presented at the second session of the 1992 Fund Administrative Council, held in May 2006 (document 92FUND/A/ES.11/6). It was also recalled that at that session the point was made about the possible consequences of the amendment to the last sentence of Clause 10F in the Memorandum of Understanding relating to TOPIA. The Council noted that, as pointed out by the delegation of the Netherlands, the amended text, as set out in paragraph 1.2 of document 92FUND/A/ES.12/13, would prevent the Supplementary Fund from making a claim against the Clubs not only if the Supplementary Fund had previously received notice of a Ship's cesser of entry in TOPIA, but also now, according to the additional text, in case of the Ship's non-entry at all in TOPIA.

11.3.3 It was noted that provision had originally been made for non-entry and cesser clauses in STOPIA, but not for a non-entry clause in TOPIA. It was noted that, in the view of the Netherlands delegation, the consequences of the new amendments to TOPIA appeared to be on a totally different scale to the contributors to the Supplementary Fund: potentially a maximum of 275 million SDR uninsured under TOPIA compared to a maximum of 15.5 million SDR uninsured under STOPIA.

11.3.4 It was noted that the aim of the voluntary offer by the International Group of P&I Clubs was, apart from indemnification of the Supplementary Fund, also to increase the limitation amounts applicable to small tankers. It was further noted that, in the view of the delegation of the Netherlands, it would therefore appear to be more consistent with this aim if the corresponding provisions in 9F of STOPIA on the non-entry and cesser clauses were amended in accordance with Clause 10F in the Memorandum of Understanding regarding TOPIA as originally drafted.

11.3.5 The delegation of the Netherlands stated that, since the offer by the International Group of P&I Clubs related to 50% of the compensation amounts to be paid under the Supplementary Fund Protocol and up to 20 million SDR for small tankers, at least some more clarification could be sought as to whether a better guarantee could be provided, for example, by amending the original versions of STOPIA and TOPIA as suggested in paragraph 11.3.4 above.

11.3.6 It was recalled that the operational aspects of STOPIA had also come to the attention of the 1992 Fund Executive Committee at its 36th session in view of the *Shosei Maru* incident (document 92FUND/EXC.36/10, paragraph 3.5). It was further recalled that the International Group of P&I Clubs had agreed to submit a document outlining details on the operational aspects of STOPIA, the number of tankers falling outside of STOPIA and the efforts that the Clubs were undertaking to encourage shipowners to enter their vessels into STOPIA.

11.3.7 It was noted that, in the view of the delegation of the Netherlands, the operational issues related to entry into STOPIA, as mentioned in paragraph 11.3.6 above, appeared also relevant as regards entry into TOPIA and that therefore, in that delegation's view, it appeared that both agreements could in this respect benefit from further amendments, for example, as suggested in paragraph 11.3.4 above.

- 11.3.8 The observer delegation of the International Group of P&I Clubs confirmed that the historical analysis given by the delegation of the Netherlands of the drafting of the revised clause 10F was correct. It reminded the Council that the inclusion of the non-entry provision in TOPIA was made for the purposes of consistency between both voluntary instruments, which were intended to work complementarily. That observer delegation reminded the Council that at the time that the amendment was made, Member States were fully aware that there would be a small number of vessels, which were entered in a P&I Club of the International Group but would not participate in the reinsurance programme of the International Group's pooling arrangements and would fall outside of STOPIA. That delegation pointed out that, whilst the International Group actively encouraged shipowners to enter into the Agreement, it could not compel them to do so.
- 11.3.9 The observer delegation of the International Group of P&I Clubs also reminded the Administrative Council that both STOPIA and TOPIA provided for a ten-year review, followed by five-year reviews, and that that would be the appropriate time to consider whether any amendment to the Agreements were necessary.
- 11.3.10 Several delegations, whilst considering that it was unfortunate that some ships were not entered into the Agreements, reminded the Council that, since the Assembly had decided not to pursue a revision of the international compensation regime based on the 1992 Conventions, STOPIA and TOPIA had been a compromise, and Member States had been aware that not all vessels would be covered.
- 11.3.11 Some delegations pointed out, however, that since they had implemented such a compromise, the Agreements should be as strong as possible.
- 11.3.12 The Administrative Council thanked the delegation of the Netherlands and instructed the Director to investigate the issue further and report to the Assembly at its next session.

## **12 Adoption of the Record of Decisions**

The draft Record of Decisions of the Administrative Council, as contained in document 92FUND/AC.3/A/ES.12/WP.1, was adopted, subject to certain amendments.

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