



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

ADMINISTRATIVE COUNCIL  
4th session  
ASSEMBLY  
13th extraordinary session  
Agenda item 12

92FUND/AC.4/A/ES.13/9  
27 June 2008  
Original: ENGLISH

## RECORD OF DECISIONS OF THE FOURTH SESSION OF THE ADMINISTRATIVE COUNCIL

ACTING ON BEHALF OF THE 13TH EXTRAORDINARY SESSION OF THE ASSEMBLY

(held from 23 to 27 June 2008)

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 13th extraordinary session of the Assembly at 9.30 am on Monday 23 June 2008, but that the Assembly had failed to achieve a quorum.
- 0.2 Only the following 43 Member States of the 1992 Fund had been present at that time, whereas a quorum required 51 States to have been present:

Algeria	Gabon	Poland
Argentina	Germany	Portugal
Australia	Greece	Qatar
Bahamas	India	Republic of Korea
Belgium	Italy	Russian Federation
Bulgaria	Japan	Singapore
Cameroon	Latvia	Spain
Canada	Liberia	Sri Lanka
China (Hong Kong Special Administrative Region)	Malaysia	Sweden
Cook Islands	Marshall Islands	Trinidad and Tobago
Denmark	Mexico	Turkey
Fiji	Netherlands	United Kingdom
Finland	Nigeria	Uruguay
France	Norway	Venezuela
	Panama	

- 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, the Chairman concluded that, in accordance with Resolution N°7, the items of the Assembly's agenda would therefore be 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 to the newly-refurbished IMO building.
- 0.7 The Chairman reported with regret the extensive loss of life in the Philippines due to the capsizing of the *Princess of the Stars* ferry in the recent typhoon and asked the delegation of the Philippines to extend the sincere condolences of the 1992 Fund Administrative Council to the Government of the Philippines.
- 0.8 The Administrative Council discussed the use of the new television screens in the Conference Room which showed those who were speaking and, although some delegations felt that it could be intimidating to see oneself on a large screen, there was sufficient support for their use, albeit on a trial basis.

*Procedural matters*

**1 Adoption of the Agenda**

The Administrative Council adopted the Agenda as contained in document 92FUND/A/ES.13/1.

**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 Cameroon, Denmark, Malaysia, Panama and Republic of Korea were appointed members of the Credentials Committee.

2.3 The following Member States were present:

Algeria	Germany	Panama
Angola	Ghana	Papua New Guinea
Argentina	Greece	Philippines
Australia	India	Poland
Bahamas	Ireland	Portugal
Belgium	Italy	Qatar
Bulgaria	Japan	Republic of Korea
Cameroon	Latvia	Russian Federation
Canada	Liberia	Singapore
China (Hong Kong Special Administrative Region)	Lithuania	Spain
Colombia	Malaysia	Sri Lanka
Cook Islands	Malta	Sweden
Denmark	Marshall Islands	Trinidad and Tobago
Dominican Republic	Mexico	Tunisia
Fiji	Morocco	Turkey
Finland	Netherlands	United Kingdom
France	Nigeria	Uruguay
Gabon	Norway	Venezuela
	Oman	

2.4 After having examined the credentials of the delegations of the members of the Administrative Council, the Credentials Committee reported in document 92FUND/A/ES.13/2/1 that all except two of the above-mentioned members of the Council (Colombia and Tunisia) had submitted credentials which were in order. The Administrative Council noted that subsequent to the preparation of the Credentials Committee Report credentials had been received from Tunisia and that they were in order. The Council further noted that the Committee expected that Colombia would provide its credentials shortly after the sessions<sup><1></sup>.

2.5 The Administrative Council expressed its sincere gratitude to the Members of the Credentials Committee for its work during this session.

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

Benin	Kuwait	Syrian Arab Republic
Ecuador	Saudi Arabia	Ukraine

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

*Intergovernmental organisations:*

European Commission  
International Maritime Organization (IMO)  
Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)

*International non-governmental organisations:*

Comité Maritime International (CMI)  
European Chemical Industry Council (CEFIC)  
International Association of Independent Tanker Owners (INTERTANKO)  
International Chamber of Shipping (ICS)

<sup><1></sup> Note by the Director: Credentials in respect of Colombia had not been received when the final version of this Record of Decisions was issued.

International Group of Liquefied Natural Gas Importers (GIIGNL)  
International Group of P&I Clubs  
International Tanker Owners Pollution Federation Ltd (ITOPF)  
International Union of Marine Insurance (IUMI)  
Oil Companies International Marine Forum (OCIMF)

*Secretariat and administrative matters*

**3 Election of members of the Audit Body**

- 3.1 The Administrative Council took note of the information contained in documents 92FUND/A/ES.13/3 and 92FUND/A/ES.13/3/1.
- 3.2 The Administrative Council noted that the term of office of the current Audit Body would expire at the October 2008 sessions of the governing bodies and that an election of the members for a new term of office would take place at the same sessions. Four members of the current Audit Body elected from Member States had already served two terms of office and were therefore not eligible to serve a third term whereas the remaining two members were eligible to serve a second term of three years. He further stated that, in response to a circular from the Director calling for nominations, only five nominations, including two from those members who had only served one term, had been received from 1992 Fund Member States for the six available positions by the deadline of 16 May 2008.
- 3.3 The Director outlined the options proposed in paragraph 4.2 of document 92FUND/A/ES.13/3 as to how to proceed given that only five nominations had been received. These options were:
- (a) to send a second circular to 1992 Fund Member States calling for further nominations. When choosing this option, the Administrative Council would also have to decide whether the position of the five candidates whose nominations had been received within the deadline given in the first circular would be affected or not, given that, without a second circular, these candidates would have been elected with certainty in October 2008. This could be done either (i) by issuing the second circular only for the purpose of filling the remaining position or (ii) by deciding that all candidates, whether nominated in response to the first or to the second circular, should be on an equal footing at the October 2008 election; or
  - (b) a second circular would not be sent and the five candidates for whom nominations had been received within the deadline given in the first circular would be automatically elected to the Audit Body at the October 2008 sessions of the governing bodies, and outgoing members of the Audit Body having already served two three-year terms of office and not from a Member State which had submitted a new candidature would be asked if one of them would be willing to serve a third and final term.
- 3.4 With respect to option (b), the Director stressed that he had not discussed the possibility of an outgoing member of the Audit Body having already served two three-year terms serving a third term with the members concerned. He added that, as none of the options mentioned above guaranteed that a sixth nomination would be received, there was a possibility that, whichever option was chosen, the Audit Body would have only five members nominated by 1992 Fund Member States during its next term of office. He further stated that it would perhaps be wise to revise the composition and mandate of the Audit Body to avoid a similar situation arising in the future.
- 3.5 One delegation expressed his surprise that for the second time it was proving difficult to find candidates to fill the positions on the Audit Body and wondered whether this was possibly linked to the level of remuneration paid to the members of the Audit Body. Another delegation felt that

remuneration was not the cause of the problem as, in its view, it was an honour to serve on the Audit Body.

- 3.6 Whilst taking nothing away from the very valid candidatures which had already been received, the Director expressed his disappointment that not more candidatures had been received and felt that one reason was perhaps that the Audit Body was not yet sufficiently well-known amongst Member States. He suggested that an exchange of views on the role of the Audit Body might be useful at a future October session of the governing bodies to encourage more active participation from a larger number of Member States.
- 3.7 Most delegations which took the floor expressed their preference for the option found in paragraph 4.2(a)(i) although a small number of delegations expressed a preference for the option outlined in paragraph 4.2(a)(ii).
- 3.8 A number of delegations expressed their agreement with the Director's suggestion that the composition and mandate of the Audit Body be revised to avoid a similar situation arising in the future.
- 3.9 The Chairman concluded that there was almost unanimous support for the option proposed in paragraph 4.2(a)(i), ie that the candidates whose nominations had been received within the deadline given in the first circular would be automatically elected in October 2008 and that a second circular would be sent by the Director to 1992 Fund Member States calling for further nominations to fill the remaining position. If more than one candidature was received for this position, an election would take place.
- 3.10 The Chairman introduced document 92FUND/A/ES.13/3/1 and reminded the Administrative Council that the term of office of the member of the Audit Body not related to the Organisations ('outsider') with expertise and experience in financial matters would also expire at the October 2008 session of the governing bodies when he would have served two terms of office of three years each. He had received a letter from the Chairman of the Audit Body indicating the Audit Body's view that the experience of Mr Nigel Macdonald, the outside expert, was essential to the continuity of the functioning of the Audit Body and that, given that there would be a substantial change in the membership of the Audit Body in 2008, it would be wise to renew Mr Macdonald's term of office for a further and final three years so that the new Audit Body could benefit from the experience that he had obtained during his time in office.
- 3.11 The Chairman indicated that he shared the Audit Body's view and recommended that the Administrative Council decide that, as an exceptional measure, Mr Macdonald be allowed to be re-elected to the Audit Body in October 2008 for a further and final three-year term.
- 3.12 The Administrative Council endorsed the Chairman's proposal that he recommend Mr Macdonald for re-election in October 2008.

*Compensation matters*

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

- 4.1 The Administrative Council took note of document 92FUND/A/ES.13/4. It noted that at its 3rd session, held in June 2007, the Administrative Council, acting on behalf of the Assembly, had approved a revised version of the Technical Guidelines for assessing fisheries sector claims, which were intended to assist the 1992 Fund's worldwide network of fishery experts in assessing claims, and had instructed the Secretariat to publish this as a Fund document.
- 4.2 The Administrative Council further noted that, at the same session, it had instructed the Secretariat to develop a simplified version of the Guidelines for claimants in the subsistence fisheries sector and to present it to the 1992 Fund Assembly for consideration at its next session.

- 4.3 The Director had engaged a fisheries expert who had worked for the Funds in the past to prepare a simplified set of guidelines which would be easily understandable by claimants in this sector. The draft guidelines had been further circulated among other fisheries experts for comments.
- 4.4 The Administrative Council expressed its appreciation for the work of the Secretariat and the experts and for the contents and quality of the resulting document.
- 4.5 Some delegations asked whether the Secretariat planned to publish the Guidelines in the languages of countries where a spill occurred and whether there was a plan to prepare further guidelines for the other economic sectors which might be affected by an incident.
- 4.6 The Director explained that it had been decided to prepare guidelines for claimants in the subsistence fisheries sector since, in the Fund's experience, victims from this sector tended to be the most likely to need such guidance. He further explained that it had also been agreed that these guidelines could be based on the existing Technical Guidelines for experts for assessing fisheries sector claims. The Director stated that there were no plans at the moment to develop guidelines for any other economic sectors which might be affected by an incident. The Director also stated that the guidelines would, for the time being, be produced in the three official languages of the 1992 Fund, but that there was always the possibility of translating them into the language of a State affected by a major incident and that this had in fact been done in the past with the Claims Manual.
- 4.7 The Director informed the Administrative Council that, were the Council to decide that the Fund should publish the Guidelines as a Fund document, a disclaimer similar to the one in the Claims Manual would be added to the text. The Director also requested the Council's authorisation to make any editorial amendments that might be necessary prior to publication.
- 4.8 The Administrative Council reviewed the draft Guidelines and decided that the Fund should publish the Guidelines as a Fund document. It also decided that the Secretariat should make any editorial amendments as required before publication.

*Other matters*

**5 International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea - Report of the 5th intersessional Working Group (HNS Focus Group)**

- 5.1 The Administrative Council recalled that the Assembly had decided to establish the HNS Focus Group at its 12th session held in October 2007, with the aim of facilitating the entry into force of the HNS Convention and with the mandate set out in the Annex to document 92FUND/WGR.5/9. It was further recalled that, in accordance with paragraph 1.4 of the Terms of Reference, the HNS Focus Group had been invited to develop a draft text of a protocol to the HNS Convention and to make recommendations to the Assembly upon the completion of its work, ideally at an extraordinary session of the Assembly to be held in June 2008.
- 5.2 The Administrative Council acting on behalf of the Assembly took note of the Report of the Chairman of the HNS Focus Group contained in document 92FUND/A/ES.13/5/3.
- 5.3 It was noted that the HNS Focus Group had held two meetings and that at the second meeting of the HNS Focus Group, held in June 2008, the Group had considered a draft text of a Protocol to the HNS Convention which had been revised in the light of the discussions at its first meeting in March 2008 (document 92FUND/WGR.5/10).
- 5.4 It was also noted that at its June 2008 meeting the Group had considered proposals by IMO to amend the text of Article 1 of the 1996 HNS Convention (definition of HNS) and Article 16 of the draft Protocol (signature, ratification, acceptance, approval and accession), as set out in documents 92FUND/WGR.5/10/2 and 92FUND/WGR.5/10/3. It was noted that the Group had decided to

amend the text of the draft Protocol (document 92FUND/WGR.5/10 and 92FUND/A/ES.13/5/1) as set out in the Annex, subject to any change that might be necessary in respect of Article 1, paragraph 5(a)(vii) of the Convention being agreed between the Secretariats of the IOPC Funds and IMO.

- 5.5 It was further noted that the HNS Focus Group had also considered proposals by Germany and the European Chemical Industry Council (CEFIC) in respect of the concept of receiver (documents 92FUND/WGR.5/12/1 and 92FUND/WGR.5/12) and that the Group had decided not to adopt these proposals.
- 5.6 It was also noted that at its first meeting the HNS Focus Group had decided to delete Article 5, paragraph 5, of the Convention but to revert to the question of whether the whole of Article 5 should be deleted at its next meeting and to make a decision then, when delegations had had more time to consider the matter (document 92FUND/WGR.5/8, paragraph 7.13). It was noted that the Group had decided not to delete the whole of Article 5.
- 5.7 As regards contributions to the LNG Account, it was noted that the HNS Focus Group had considered documents containing proposals to amend the text of the draft Protocol in respect of contributions to the LNG Account submitted by Italy, Japan and the Republic of Korea (document 92FUND/WGR.5/11/1), Singapore (document 92FUND/WGR.5/11/2) and the International Group of Liquefied Natural Gas Importers (GIIGNL) (document 92FUND/WGR.5/11).
- 5.8 It was also noted that the proposals contained in the three documents had in common the concept of the titleholder being the primary person liable for contributions to the LNG Account, with the receiver being liable in certain circumstances as a fallback.
- 5.9 It was noted that, after a lengthy discussion, the HNS Focus Group had decided to maintain the current wording of Article 7 of the draft Protocol, ie that the person liable for contributions to the LNG Account would be the receiver as defined in Article 1.4 of the Convention. However, it was noted that, whilst the majority of the Group had been in favour of maintaining the current wording, a significant number of delegations had supported the concept of the titleholder being the primary person liable for contributions.
- 5.10 It was noted that the differences between the two sides were of a political, economic and policy nature and not just a matter of drafting. It was further noted that it was essential for efforts to be made to bridge the gap between the two sides in order to reach a consensus on this issue quickly. It was noted that failure to reach a consensus by the time of the meeting of IMO's Legal Committee in October 2008 could threaten the viability of the Protocol, since the Legal Committee could only decide to recommend holding a Diplomatic Conference with the aim of adopting a Protocol if it were clear that there would be a good chance of success.
- 5.11 It was noted that a revised proposal on this issue could be considered by the Legal Committee at its October 2008 meeting. Delegates were reminded that any such proposal would have to be submitted to the IMO Secretariat in accordance with the Committee's deadlines, ie that basic and bulky documents (over six pages of text) should reach the IMO Secretariat not later than Friday 15 August 2008 and all other documents, including information documents, not later than Friday 19 September.
- 5.12 The Administrative Council noted the recommendations of the HNS Focus Group contained in document 92FUND/A/ES.13/5/3. The Council also noted that a full report of the meeting, including a detailed account of the discussion of all the proposals that had been considered by the HNS Focus Group, would be prepared for circulation to delegations after the meeting, in accordance with normal practice.

- 5.13 In the oral presentation of his Report, the Chairman of the HNS Focus Group stated that he was optimistic that in due course a compromise would be found in respect of contributions to the LNG Account that would facilitate the rapid entry into force of the HNS Convention.
- 5.14 The delegation of Malaysia offered to coordinate an informal correspondence group with the aim of developing a compromise proposal in respect of contributions to the LNG Account that would make the HNS Convention attractive to as many States as possible. He stated that the Correspondence Group would hopefully be able to submit a compromise proposal in the form of a document to the October meeting of the Legal Committee. That delegation invited any interested States and organisations to participate in the work of the Correspondence Group. He stated that those who wished to participate in the work of the Group should give their contact details to the Malaysian delegation in person or by email to razifahmad@marine.gov.my.
- 5.15 The Administrative Council expressed its gratitude to the Malaysian delegation for its very helpful and constructive proposal and noted that many States from both sides of the divide had expressed their intention to participate in the Correspondence Group.
- 5.16 During the discussion, some delegations referred to the Terms of Reference of the HNS Focus Group and stated that they intended to monitor any compromise proposal which was developed within the Correspondence Group to ensure that it would not be detrimental to the interests of developing States.
- 5.17 The Chairman of the HNS Focus Group stated that he sincerely hoped that there would be only one proposal for the Legal Committee to consider in respect of contributions to the LNG Account. He reminded delegations that, in order to recommend the holding of a Diplomatic Conference, the Legal Committee had to be convinced that there was a good chance of success and that that would only be possible if the Committee were able to approve a compromise proposal with broad support. He implored States to have an open mind when considering possible solutions and not to become entrenched in their positions.
- 5.18 The Administrative Council approved the text of the draft Protocol, as described in paragraph 5.4, and instructed the Director to finalise the text, retaining footnotes of a technical or editorial nature in order to aid the interpretation of the draft Protocol.
- 5.19 The Administrative Council instructed the Director to submit the text of the draft Protocol to the Secretary-General of IMO requesting him to refer it to the Legal Committee for consideration with a view to convening a Diplomatic Conference to consider the draft Protocol at the earliest opportunity.
- 5.20 The Administrative Council also instructed the Director to include with his letter to the Secretary-General the Record of Decisions of this session of the Administrative Council and to bring the following topics to his attention, where consideration of amendments to the Protocol by the Legal Committee might be beneficial:
- The time periods for the amendment procedure in Article 48, which might be brought into line with Article 24 of the Supplementary Fund Protocol.
  - The entry into force conditions in Article 46, since these will be crucial to ensuring the successful entry into force of the Convention.
- 5.21 The Administrative Council expressed its thanks to Mr Popp for his excellent work as Chairman of the HNS Focus Group and to the Secretariats of the IOPC Funds and IMO for their support.

## 6 Grant of observer status

- 6.1 The Administrative Council took note of the information contained in document 92FUND/A/ES.13/6 and decided to confirm the decision of the Executive Committee at its March 2008 session and grant observer status to Ukraine on a permanent basis.
- 6.2 The Ukrainian delegation expressed its gratitude to the Administrative Council for that decision and also to the Director for having invited Ukraine to attend both the meeting of the Executive Committee in March 2008 and the current sessions of the 1992 Fund Governing Bodies. That delegation stated that its participation in these meetings had led to a clearer understanding of the work of the IOPC Funds. This information had been passed on to the relevant authorities in Ukraine who were in the process of examining the 1992 Fund Convention and the appropriate procedures to follow if Ukraine were to decide to accede to the Convention. That delegation confirmed that it would remain in contact with the IOPC Funds' Secretariat, keeping them fully informed of any developments in this regard.
- 6.3 The Chairman, on behalf of the Administrative Council, welcomed Ukraine as an observer to the 1992 Fund and expressed satisfaction that it was considering ratification of the Convention.

## 7 Any other business

### 7.1 Levy of contributions

- 7.1.1 The Administrative Council took note of the information contained in document 92FUND/A/ES.13/7, which set out the situation in relation to the *Volgoneft 139* and *Hebei Spirit* incidents, which occurred on 11 November 2007 and 7 December 2007 respectively, and considered possible ways of funding future payments of compensation by the 1992 Fund.
- 7.1.2 The Administrative Council noted the Director's proposals in relation to a possible levy of contributions in respect of the *Volgoneft 139* and *Hebei Spirit* incidents.
- 7.1.3 One delegation asked whether the use of the term 'loans' when lending funds from one Major Claims Fund to another was correct as Major Claims Funds were not separate legal entities. This delegation also asked why there was a need to charge interest as the funds belonged to one and the same legal entity, namely the 1992 Fund. In response, the Director said that funds for each Major Claims Fund were ring-fenced for that particular incident and therefore monies lent from one Major Claims Fund to another would, for the period involved, not generate interest from any investment to the benefit of the Major Claims Fund from which it was lent, as otherwise would have been the case. He also indicated that the term 'loans' was set out in the 1992 Fund's Financial Regulations, as approved by the Assembly.
- 7.1.4 As regards the *Volgoneft 139* incident, some delegations questioned the need to make decisions as to how to finance compensation payments in respect of this incident, given that the Executive Committee had decided at its 41st session not to authorise compensation payments in respect of this incident until various uncertainties concerning this incident had been addressed and clarified, hopefully at its next session. The Director stated that, in view of the decision taken by the Executive Committee, he agreed with this position. The Administrative Council decided that future funding for this incident should be reviewed at the next session of the Assembly.
- 7.1.5 In respect of the *Hebei Spirit* incident, one delegation asked what the risk would be if contributions were not levied for payment in 2008, which would lessen the administrative burden on contributors. In response, the Director stated that it could not be guaranteed that an agreement would be concluded between the Club and the Korean Government in the near future, enabling the Club to continue to make payments up to its CLC limit. He pointed out that, as long as there was not a fully operative agreement in place, there was a real risk that the Club would have to deposit the limitation amount with the competent court. In that case the Fund would, in accordance with past practice, be called

upon to make payments, probably for significant amounts. The Director concluded that without a decision at this session to levy, it could not be guaranteed that sufficient funds would be available to make payments prior to 1 March 2009.

7.1.6 The Administrative Council decided to levy contributions of £50 million to the *Hebei Spirit* Major Claims Fund payable by 1 November 2008.

7.1.7 The Administrative Council further approved the Director's proposal that, should the 1992 Fund be called upon to make payments in relation to the *Hebei Spirit* incident exceeding the amount payable from the General Fund prior to 1 November 2008, these payments should be financed through loans to the *Hebei Spirit* Major Claims Fund from the *Erika* and *Prestige* Major Claims Funds and, if required, from the General Fund.

7.1.8 It was noted that the contributions referred to in paragraph 7.1.6 would be calculated as follows:

Major Claims Fund	Date of incident	Oil year	Estimated total oil receipts (tonnes)	Payment by 1 November 2008	
				Levy £	Estimated levy per tonne £
<i>Hebei Spirit</i>	07/12/07	2006	1 503 530 682	50 000 000	0.0332551

## 7.2 Presentation of Claims Handling Database

7.2.1 The Administrative Council recalled that at its October 2007 session the Assembly had been informed of a new claims handling database (the Web-based Claims Management System (WCMS)). The Council also recalled that the system, which had been developed in-house, would greatly facilitate the handling of incidents, in particular those where claimants, governments, experts, etc, made large amounts of data available to the Fund, and would provide the Director with useful management information.

7.2.2 A presentation was given of the finalised database, which was now being used by the Secretariat and Claims Handling Offices for various incidents.

7.2.3 The Chairman, on behalf of the Administrative Council, thanked Ms Della Mea (Claims Manager) and Mr Owen (IT Manager) for an excellent presentation on the WCMS, showing how the new system operated and how the use of this new technology would assist the claims handling process. He noted that it was both useful and timely to see the system, which had only been put in place a few months ago, in operation.

7.2.4 One delegation asked whether changes to claims handling practices and, in particular, the use of electronic systems to transmit and store data had any legal implications for the operation of the Convention, for example in respect of the application of the time-bar provisions. The Director explained that, whilst the use of the system facilitated the Fund's claims handling process, the rules governing the application of the Convention remained exactly the same. He stated that it was not possible to give a categorical answer as to whether electronic data transmission satisfied, for example, the requirements for notification laid down in the Convention, since this would differ between jurisdictions depending on the method of transmission used. He did not consider, however, that the use of the WCMS would bring about any changes in respect of the application of the time-bar provisions.

- 7.3 Entry into force of the International Convention on Civil Liability for Bunker Oil Pollution Damage (2001) ('Bunkers Convention')
- 7.3.1 The Administrative Council took note of the information contained in document 92FUND/A/ES.13/8 submitted by the observer delegation of the International Group of P&I Clubs.
- 7.3.2 Given that the next meeting of the IMO Legal Committee was due to take place only one month prior to the entry into force of the Bunkers Convention and that the subject would ordinarily be dealt with by that Committee, in introducing the document, the delegation of the International Group of P&I Clubs thanked the Director for allowing the document to be submitted for consideration by the Administrative Council.
- 7.3.3 The Administrative Council recalled that following the entry into force of the Bunkers Convention every ship that is registered in a State Party or enters or leaves a port in the territory of a State Party, and has a gross tonnage (GT) greater than 1 000, will be required to maintain insurance or other financial security in accordance with the provisions of the Convention and to obtain a certificate issued by a State Party attesting that such insurance or financial security is in place.
- 7.3.4 The delegation of the International Group informed the Council that since the March 2008 session of the Executive Committee, when this issue was first raised (document 92FUND/EXC.40/11, section 4.1), contact had been made with a number of States Parties to the Bunkers Convention to determine the situation with regard to the issue of certificates to vessels registered in non-contracting States and that, to date, the International Group was not aware of any State Party that was prepared to issue certificates to such vessels unless they were calling at a port or terminal in that State. The International Group reiterated its view that this situation was of concern to the industry and had the potential to cause significant problems when the Convention entered into force, in particular the risk of delays of vessels entering ports or terminals in a State Party.
- 7.3.5 That delegation pointed out that prudent shipowners were likely to want to have certificates even in the absence of immediate plans to call at a State Party and urged States to adopt a more flexible approach which would lead to a close cooperation among States Parties to facilitate the issue of such certificates to vessels registered in non-Contracting States.

## **8 Adoption of the Record of Decisions**

The draft Record of Decisions of the Administrative Council, as contained in document 92FUND/AC.4/A/ES.13/WP.1, was adopted, subject to certain amendments.

\* \* \*

## ANNEX

### Changes to Articles 3 and 16 of the draft text of the Protocol contained in document 92FUND/A/ES.13/5/1

#### Article 3

1 **Article 1, paragraph 5 is replaced by the following text:**

5 "Hazardous and noxious substances" (HNS) means:

- (a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:
- (i) oils, carried in bulk, ~~listed in appendix I~~ as defined in regulation 1 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;<sup>1</sup>
  - (ii) noxious liquid substances, carried in bulk, ~~referred to in appendix II~~ as defined in regulation 1.10 of Annex II<sup>2</sup> to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category ~~A, B, C or D~~ X, Y or Z in accordance with regulation ~~3(4)~~ 6.3 of the said Annex II;
  - (iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, ~~1983~~<sup>3</sup>, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph [1.1.~~36~~] of the Code;
  - (iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;
  - (v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk ~~1983~~<sup>4</sup>, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;'
  - (vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed-cup test);
  - (vii) solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended, to the extent that these substances are

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<sup>1</sup> As it stands in the HNS Convention, the definition of oil carried in bulk is restricted to a reference to the list in the appendix I of MARPOL, Annex I, regulation 1, thus giving the impression that the list is a closed one. The amendment suggested restores the list to its true, indicative, nature, as clearly stated in regulation 1, namely "without limiting the generality of the foregoing" (MARPOL, Annex I, regulation 1). The Secretariat proposes this change in light of advice given by its technical experts to the effect that the reference to the list would be confusing unless placed in the general indicative context of regulation 1.

<sup>2</sup> The paragraph needs to be updated in light of the revised Annex II to MARPOL which no longer contains an Appendix II; nonetheless, the "noxious liquid substances carried in bulk" referred to by this appendix remain covered by regulation 1.10 of revised Annex II. The effect of the revision of Annex II to MARPOL has been reflected in resolutions MEPC.160(50) and LEG.4(91).

<sup>3</sup> IBC Code was adopted in 1983. However, the title of the IBC Code does not include reference to the year of adoption. Accordingly, the Secretariat suggests deleting this reference.

<sup>4</sup> Idem.

also subject to the provisions of the International Maritime Dangerous Goods Code when carried in packaged form; and

- (b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.

**2 The following text is added as Article 1, paragraphs 5bis and 5ter, of the Convention<sup>5</sup>:**

5bis "Bulk HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(i) to (iii) and (v) to (vii) and paragraph 5(b).

5ter "Packaged HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(iv).

**3 Article 1, paragraph 10, of the Convention is replaced by the following text<sup>6</sup>:**

10 "Contributing cargo" means any bulk HNS which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

\* \* \*

## FINAL CLAUSES

### Signature, ratification, acceptance, approval and accession

#### Article 16

- 1 This Protocol shall be open for signature at the Headquarters of the Organization from [.....] to [.....] and shall thereafter remain open for accession.
- 2 Subject to the provisions in paragraphs 4 and 5, States may express their consent to be bound by this Protocol by:
- (a) signature without reservation as to ratification, acceptance or approval; or
  - (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
  - (c) accession.
- 3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 4 An expression of consent to be bound by this Protocol shall be accompanied by the submission to the Secretary-General of data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.
- 5 An expression of consent which is not accompanied by ~~such data~~ the data referred to in paragraph 4<sup>7</sup>

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<sup>5</sup> Note by Chairman: Definitions introduced to distinguish between bulk and packaged HNS in order to simplify drafting of article 1, paragraph 10 and article 9, paragraph 1.

<sup>6</sup> Policy proposal in respect of exclusion of packaged HNS from contributions to the HNS Fund has been implemented using new definition in article 1, paragraph 5bis: 'hazardous and noxious substances' changed to 'bulk HNS'

<sup>7</sup> This is an editorial amendment. No change in meaning.

~~shall not be valid and~~<sup>8</sup> shall not be accepted by the Secretary-General.

- 6 Each State which has expressed its consent to be bound by this Protocol shall annually thereafter on or before 31 May until this Protocol enters into force for that State submit to the Secretary-General<sup>9</sup> data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.
- 7 A State which has expressed its consent to be bound by ~~the~~ this<sup>10</sup> Protocol and which ~~is in breach of its obligation under paragraph 6 to submit data on contributing cargo~~ has not submitted the data on contributing cargo required under paragraph 6<sup>11</sup> for any relevant years shall, before the entry into force of the Protocol for that State, be temporarily suspended from being a Contracting State until it ~~has complied with this obligation~~ has submitted the required data<sup>12</sup>.
- 8 A State which has expressed its consent to be bound by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996<sup>13</sup> shall be deemed to have withdrawn this consent on the date on which it has signed this Protocol or deposited an instrument of ratification, acceptance, approval of or accession in accordance with paragraph 2.

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<sup>8</sup> On further reflection, the IMO Secretariat decided it would be better to delete any reference to validity in order to avoid any conflicting interpretation as to the legal effect of the expression of consent and in order to avoid any embarrassment to States in the event they are compelled to return to their parliaments for a fresh instrument.

<sup>9</sup> This is an editorial amendment. No change in meaning.

<sup>10</sup> This is an editorial amendment. No change in meaning.

<sup>11</sup> The IMO Secretariat is of the view that the use of term “obligation” is not appropriate due to the fact that, at this point in time, the Convention is not in force. The obligations of States can be considered when the Convention is in force. However, the practical effect of the new wording is no different.

<sup>12</sup> See footnote 11.

<sup>13</sup> This is an editorial amendment to clarify the meaning of this paragraph in the consolidated text of the Convention.