



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ADMINISTRATIVE COUNCIL
5th session
ASSEMBLY
14th extraordinary session
Agenda item 10

92FUND/AC.5/A/ES.14/9
18 June 2009
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RECORD OF DECISIONS OF THE FIFTH SESSION OF THE ADMINISTRATIVE COUNCIL

ACTING ON BEHALF OF THE 14TH EXTRAORDINARY SESSION OF THE ASSEMBLY

(held from 15 to 18 June 2009)

Chairman: Mr Jerry Rysanek (Canada)
First Vice-Chairman: Mr Edward K Tawiah (Ghana)
Second Vice-Chairman: Mr Ichiro Shimizu (Japan)

Opening of the session

- 0.1 It was noted that the Assembly's Chairman had attempted to open the 14th extraordinary session of the Assembly at 2.30 pm on Monday 15 June 2009, but that the Assembly had failed to achieve a quorum.
- 0.2 Only the following 45 Member States of the 1992 Fund had been present at that time, whereas a quorum required 52 States to have been present:

Algeria	France	Philippines
Angola	Gabon	Poland
Argentina	Germany	Portugal
Bahamas	Greece	Republic of Korea
Belgium	Italy	Russian Federation
Bulgaria	Japan	Singapore
Cambodia	Kenya	Spain
Cameroon	Liberia	South Africa
Canada	Malaysia	Sweden
China (Hong Kong Special Administrative Region)	Malta	Trinidad and Tobago
Cyprus	Marshall Islands	Turkey
Denmark	Netherlands	United Kingdom
Ecuador	Nigeria	Uruguay
Fiji	Norway	Vanuatu
Finland	Panama	
	Papua New Guinea	

- 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. He welcomed in particular the delegation of Ecuador, which was attending its first session as a Member State.

Procedural matters

1 Adoption of the Agenda

The Administrative Council adopted the Agenda as contained in document 92FUND/A/ES.14/1.

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 Angola, Cameroon, Papua New Guinea, Spain and Trinidad and Tobago were appointed members of the Credentials Committee.
- 2.3 The following Member States were present:

Algeria	Germany	Philippines
Angola	Ghana	Poland
Argentina	Greece	Portugal
Bahamas	Ireland	Republic of Korea
Belgium	Italy	Russian Federation
Cameroon	Japan	Singapore
Canada	Kenya	Spain
China (Hong Kong Special Administrative Region)	Liberia	Sweden
Cyprus	Malaysia	Trinidad and Tobago
Denmark	Malta	Turkey
Ecuador	Marshall Islands	United Kingdom
Fiji	Netherlands	Uruguay
Finland	Nigeria	Vanuatu
France	Norway	Venezuela
Gabon	Panama	
	Papua New Guinea	

- 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.14/2/1 that all except three of the above-mentioned members of the Council had submitted credentials which were found to be in order. It was noted that the Committee expected certain deficiencies in respect of the credentials of Bulgaria, Cambodia and South Africa to be rectified shortly after the sessions^{<1>}.
- 2.5 The Credentials Committee also took the opportunity to remind Member States that, in accordance with 92FUND/Circ.58, credentials should be addressed to the Director of the IOPC Funds and not to the Secretary-General of IMO.
- 2.6 The Administrative Council expressed its sincere gratitude to the Members of the Credentials Committee for its work during this session.
- 2.7 The following non-Member States were represented as observers:
- | | | |
|-----------|--------------------------|---------|
| Bolivia | Islamic Republic of Iran | Ukraine |
| Egypt | Saudi Arabia | |
| Guatemala | Syrian Arab Republic | |
- 2.8 The following intergovernmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:

International Maritime Organization (IMO)

International non-governmental organisations

Comité Maritime International (CMI)

International Association of Independent Tanker Owners (INTERTANKO)

International Chamber of Shipping (ICS)

International Group of P&I Clubs

International Tanker Owners Pollution Federation Ltd (ITOPF)

International Union of Marine Insurers (IUMI)

Oil Companies International Marine Forum (OCIMF)

World LP Gas Association (WLPGA)

3 Grant of observer status

- 3.1 The Administrative Council took note of the information contained in document 92FUND/A/ES.14/3 and decided to confirm the decision of the Executive Committee at its March 2009 session and grant observer status to Bolivia. It also decided to grant observer status to Guatemala.
- 3.2 The Bolivian delegation expressed its gratitude to the Administrative Council for its decision and stated that, whilst continuing to fulfil its responsibilities as a Flag State, Bolivia was also now committed to complying with the rules laid down by the IOPC Funds.
- 3.3 The Guatemalan delegation expressed its gratitude to the Administrative Council for having approved its request for observer status. That delegation confirmed that, as a responsible State, Guatemala paid particular attention to the sensitivity of the marine environment and was committed to becoming a Member State of the 1992 Fund. It stated that becoming an observer State was, for Guatemala, the first step and that the next step would be to ratify the 1992 Conventions.

^{<1>} Note by the Director: Credentials in respect of Cambodia and South Africa had not been received when the final version of this Record of Decisions was issued.

- 3.4 The Chairman, on behalf of the Administrative Council, welcomed Bolivia and Guatemala as observers to the 1992 Fund.
- 3.5 The Administrative Council took note of the information contained in document 92FUND/A/ES.14/3/Add.1, regarding a request for observer status from the World Liquid Petroleum Gas Association (WLPGA).
- 3.6 The representative of WLPGA thanked the Director for his invitation to attend the session and the Administrative Council for considering its request for observer status. He pointed out that WLPGA had a global membership of almost 180 companies in the LP Gas industry in nearly 90 States and stated that, since LPG was included in the HNS Convention, with one of the accounts of the HNS Fund dedicated to contributions based on receipts of LPG, he looked forward to the Association's application for observer status being granted and to participating in future meetings.
- 3.7 The Administrative Council decided to apply the procedure for the consideration of requests for observer status by international non-governmental organisations that had been decided at the 1992 Fund's October 2002 session (document 92FUND/A.7/29, paragraph 16.2) and to set up a group of five Member States to screen the request by WLPGA in order to establish whether WLPGA fulfilled the criteria set out in the 1992 Fund guidelines for the granting of observer status. The Administrative Council decided that, on this occasion, the group should consist of the same five States that had been appointed to the Credentials Committee (cf paragraph 2.2), ie Angola, Cameroon, Papua New Guinea, Spain and Trinidad and Tobago.
- 3.8 At the end of the Administrative Council's session, the Chairman of the group of five States reported that the group had screened the request by WLPGA and that it considered that WLPGA did fulfil the criteria set out in the 1992 Fund guidelines for the granting of observer status.
- 3.9 The Administrative Council decided to grant observer status to WLPGA.
- 3.10 The Chairman, on behalf of the Administrative Council, welcomed WLPGA as an observer to the 1992 Fund.

Secretariat and administrative matters

4 Organisation of meetings and documents

- 4.1 The Administrative Council recalled that, during the October 2008 meeting of the governing bodies, the Australian delegation had made a number of suggestions in respect of the organisation of meetings and documents, which had been strongly supported by a number of delegations. The Council recalled that that delegation had proposed that the Secretariat, in consultation with the Chairmen of the three Funds, should consider if there were a better way of running meetings of the IOPC Funds which would be more efficient and expeditious and make a proposal to the next session of the Assembly. The Council further recalled that the Assembly had decided that the Secretariat, in consultation with the Chairmen of the four governing bodies of the IOPC Funds, should make such a proposal to the next session of the Assembly, taking into account any appropriate legal or formal requirements (document SUPPFUND/A.4/21, paragraph 24.2).
- 4.2 The Council also recalled that, during the adoption of the Record of Decisions at the March 2009 session of the 1992 Fund Executive Committee, there had been a further discussion relating to the organisation of meetings and, in particular, the number of meetings required per year.
- 4.3 The Council took note of the Director's proposals in respect of a number of issues relating to the organisation of meetings and documents, as set out in document 92FUND/A/ES.14/4.

Number of meetings per year and number of days per meeting

- 4.4 As regards the number of meetings per year, a number of delegations considered that it would be better to book two meetings per year and arrange an additional one if necessary, however the majority were of the view that it would be preferable to book three meetings a year and cancel one if it were not needed. Various points were made during the discussion, in particular the desirability for delegates of planning meetings well in advance and the likelihood of delegates encountering budgetary and visa problems to attend meetings not previously scheduled and possibly called on short notice, particularly in respect of delegations with long distances to travel.
- 4.5 The Council decided that the Secretariat should continue to arrange three meetings per year but that one of the meetings should be cancelled if it were not required.
- 4.6 As regards the number of days per meeting, all delegations that spoke were of the view that, when deciding on the number of days per meeting, the Secretariat had in general struck a good balance between allowing sufficient time for discussions to be productive whilst avoiding wasting delegates' time.
- 4.7 The Council decided that the Secretariat should continue to use its judgement, in consultation with the relevant chairpersons, when deciding on an appropriate number of days per meeting.
- 4.8 As regards the question of whether the Secretariat should continue to report to the Executive Committee in respect of incidents where developments had taken place but where no decisions were required, ie where the documents were for information only, many delegations considered that it was important to continue to receive documents on these incidents but that the oral introductions of such documents could be much shorter or omitted entirely.
- 4.9 The Council decided that the Secretariat should continue to produce documents in respect of incidents where developments had taken place, but no decisions were required, but that the Secretariat should try to ensure that the documents were as concise as possible. The Council further decided that such documents would only be presented orally during the meeting if the Director felt it was important: otherwise such documents would not be presented orally and would only be debated if one or more delegations made an intervention in respect of the incident.

Running meetings more efficiently

- 4.10 The Council considered the two proposals set out in document 92FUND/A/ES.14/4 in respect of methods of running meetings of the IOPC Funds more efficiently and, in particular, the Director's proposal to hold simultaneous meetings of the governing bodies, as set out in paragraph 3.4 (2) of that document.
- 4.11 The Chairmen of the 1971 Fund Administrative Council and the Supplementary Fund Assembly both stated that they supported the Director's proposal, which they considered would improve the running of the meetings.
- 4.12 The majority of delegations who spoke supported the Director's proposal. Some delegations stated that, although they were willing to try the new system, they had a few concerns as to how it would operate. The point was made that it would be important to ensure that it was very clear in the Record of Decisions which Funds had made which decisions in order to avoid any legal uncertainty.
- 4.13 The Council decided to endorse the Director's proposal to hold simultaneous meetings of the 1992 Fund Assembly, the 1971 Fund Administrative Council and the Supplementary Fund Assembly in respect of administrative matters in October 2009 on a trial basis.

- 4.14 The Council also decided to authorise the Chairmen of the 1992 Fund Executive Committee and the Supplementary Fund Assembly, in consultation with the Director, to operate a similar arrangement in the event of an incident occurring which involved both the 1992 Fund and the Supplementary Fund.

Establishing a unified system of documents

- 4.15 As regards the possibility of establishing a unified system of documents, the Chairmen of the 1971 Fund Administrative Council and the Supplementary Fund Assembly both stated that they supported the Director's proposal, which they believed would be clearer for delegates.
- 4.16 In response to a question from one delegation regarding possible financial consequences of the Director's proposal, the Director stated that the new system might be quicker, produce higher quality output and be more efficient for the Secretariat but that it would not necessarily produce any financial savings.
- 4.17 The Council instructed the Secretariat, in consultation with the relevant Chairmen, to develop a new system for numbering documents, with the aim of issuing one set of documents for meetings of the IOPC Funds from October 2009, and to develop a unified agenda and Record of Decisions, with the aim of implementing this system for the October 2009 sessions.

Contribution matters

5 Submission of oil reports

- 5.1 The Administrative Council took note of the information set out in document 92FUND/A/ES.14/5 in respect of the development of an electronic system for the submission of reports on contributing oil.
- 5.2 A presentation of the system was given by Dr Roy Livermore, Senior Information Officer, showing how the system will operate and setting out the advantages for Member States and contributors over the existing paper-based system. Dr Livermore made the point that the Secretariat was keen to ensure that the new system was user-friendly and reflected the needs of both Member States and contributors. He emphasised that any suggestions which delegates might have in respect of features that would be useful would therefore be much appreciated.
- 5.3 The Council noted that the Secretariat hoped to complete the development of a trial version of the system, which would initially be available in English only, by the end of 2009 and that any delegates who would like to be closely involved in the development of the trial system during the next few months, either by attending meetings in London or by email, were invited to contact the Secretariat. The Council further noted that, once the initial development had been completed, it was hoped that a small number of representative States (perhaps three to five States, including some with a number of contributors as well as those with fewer or none) would be willing to volunteer to trial the system during 2010. It was noted that the trial would run in parallel with the existing paper-based system, with the aim of ensuring that the electronic system worked correctly and was easy to use, and that any necessary changes to the Internal and Financial Regulations would then be proposed, probably during 2010. It was also noted that the system would then be made available for use by all States in all official languages, ie English, French and Spanish.
- 5.4 The Chairman, on behalf of the Administrative Council, thanked Dr Livermore for his presentation of the electronic oil reporting system.
- 5.5 Several delegations expressed their appreciation for the comprehensive presentation, as well as their support for setting up an online system as an alternative to the existing paper-based system. There was also general support for the Secretariat's intention to involve delegates in the development of the new system.

- 5.6 A number of questions were asked by delegates concerning specific aspects of the design. In particular, questions of data security and secure methods of authorisation of access to the system by contributors and Member States were discussed. The Secretariat assured the Administrative Council that the concerns expressed will be taken into account during the detailed planning stage and further development of the system.
- 5.7 Other questions concerned the availability of online help, the routing of reports from contributors via Member States to the Secretariat, and the possibility of exporting report summaries for use in external applications. A number of suggestions were also made regarding useful features of the system which could be developed, in particular in respect of the possibility for the system to assist Member States and the Secretariat with the monitoring of oil reporting, for instance by automatically flagging up inconsistencies and arrears.
- 5.8 The Administrative Council instructed the Director to continue the development of an electronic system for submission of reports on contributing oil, taking into account the concerns and suggestions expressed by delegations, with a view to running a trial of a prototype system in 2010 and implementing the system as soon as possible after that.

Budgetary matters

6 Transfer within the Budget

The Administrative Council authorised the Director to make the necessary transfer to Audit Body (under Chapter V), within the 2009 budget, from Chapter VI (Unforeseen expenditure) to cover costs that may exceed the amount that can be transferred under Financial Regulation 6.3.

Other matters

7 Development of a Database of Decisions

- 7.1 The Administrative Council took note of the information set out in document 92FUND/A/ES.14/7 in respect of the development of a database of all the decisions made by the governing bodies of the IOPC Funds since their inception in 1978.
- 7.2 The Council noted that the database contains all decisions that have been made by the governing bodies of the 1971 Fund (Assembly, Executive Committee and Administrative Council), the 1992 Fund (Assembly, Executive Committee and Administrative Council) and the Supplementary Fund (Assembly). The Council also noted that each decision is accompanied by an abstract of the decision which links directly to the relevant paragraphs in the source documents relating to the decision (Records of Decisions and background documents). It recalled that the database would, at least initially, be set up in English only (document 92FUND/A.11/35, paragraph 16.10).
- 7.3 A presentation of the database was given by Mr Rob Owen, IT Manager, showing the type of information contained in the database and demonstrating the various different ways of searching for decisions.
- 7.4 The Council noted that it is expected that the remaining work on the content of the database ie the examination of the decisions of the 1971 Fund Assembly and the Supplementary Fund Assembly and the non-incident-related decisions of the 1971 Fund Administrative Council, will be completed by autumn 2009.
- 7.5 It was noted that the Secretariat intends to make the database available via the Funds' website, in order that it can be used both by delegates and the general public and by the IOPC Funds Secretariat as well as by experts and lawyers working for the Funds. It was further noted that the Secretariat intends to develop a user-friendly website interface to enable users to search the database and display

relevant decisions and supporting documents and that any suggestions which delegates may have in this regard would be much appreciated.

- 7.6 All delegations who spoke expressed their appreciation for this valuable work by the Secretariat and noted that the database would be an extremely useful tool, not just for delegates but also for judges of national courts. Several delegations enquired as to whether it would be possible to include relevant decisions by national courts in the system. Mr Owen demonstrated that it was already possible to search for information on such decisions within the meeting documents.
- 7.7 The Chairman, on behalf of the Administrative Council, thanked Mr Owen for his presentation of the database.
- 7.8 In response to a question by one delegation about how the Secretariat intended to keep the database updated, the Director explained that searching for decisions within documents would be possible as soon as those documents were placed on the Document Server and that the Secretariat would ensure that abstracts of individual decisions made at a particular meeting would be made available well in advance of the following meeting.

8 International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention)

- 8.1 The Administrative Council took note of the information contained in document 92FUND/A/ES.14/8 concerning recent developments in respect of the preparations for the entry into force of the HNS Convention, including the outcome of discussions in IMO's Legal Committee regarding a draft Protocol to the HNS Convention. The Committee noted in particular that the Diplomatic Conference to consider the draft Protocol was tentatively scheduled for April 2010 and that the IMO Council was expected to make a decision as to the timing at its 102nd session, to be held during the week of 29 June 2009.
- 8.2 The Council also considered whether to update both the website software and the database of substances within the HNS Convention Contributing Cargo Calculator (HNS CCCC) to reflect the draft Protocol. All delegations that spoke considered that the HNS CCCC was a very useful tool which would be essential to States when preparing for the entry into force of the HNS Convention and supported the update. The majority of delegations, however, stated that it would be better to wait for the outcome of the Diplomatic Conference before commencing this work.
- 8.3 The Council instructed the Secretariat to commence the work immediately after the adoption of the draft Protocol, with the aim of having the updated HNS CCCC available as soon as possible.

9 Any other business

No items were raised under this agenda item.

10 Adoption of the Record of Decisions

The draft Record of Decisions of the Administrative Council, as contained in document 92FUND/AC.5/A/ES.14/WP.1, was adopted, subject to certain amendments.
