



RECORD OF DECISIONS OF THE NINTH EXTRAORDINARY SESSION OF THE ASSEMBLY

(held during the period 15 to 22 March 2005)

Chairman:	Mr Jerry Rysanek (Canada)
First Vice-Chairman:	Mr José Aguilar-Salazar (Mexico)
Second Vice-Chairman:	Professor Seiichi Ochiai (Japan)

Opening of the session

1 Adoption of the Agenda

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

2 Election of the Chairman

- 2.1 It was recalled that at the Assembly's 9th session, held in October 2004, the present Chairman, Mr Willem Oosterveen (Netherlands), had informed the Assembly that after five years in office he had decided to stand down.
- 2.2 The outgoing Chairman expressed his belief that the IOPC Funds were truly remarkable Organisations, which fulfilled a very important role in the international community. He commented that they provided a crucial safety net for victims of major oil pollution incidents and that without the international regime many of those victims, especially the most vulnerable, would have been in danger of not being compensated properly. He stated that the Assembly should be proud of the 1992 Fund and of the way it had functioned over the years, and that he personally felt proud and privileged to have had the opportunity to chair the supreme governing body of that Organisation for five years.
- 2.3 He explained that he had always felt that the atmosphere in the Assembly had been such that fruitful discussions had been possible and satisfactory solutions had been able to be reached, even in the difficult circumstances that the Assembly had sometimes faced. He therefore expressed his gratitude for the Assembly's constructive and cooperative spirit and for the confidence shown in him over the years.
- 2.4 The outgoing Chairman expressed his gratitude to the Director and his staff for the support they had given him during his chairmanship and to the distinguished delegates who had served as vice-chairmen of the Assembly for the support they had given him on numerous occasions.

- 2.5 He considered that being elected as the chairman of the 1992 Fund Assembly was a vote of confidence, but that it came with obligations and responsibilities. He said that he had always been aware of this and had tried his best to live up to them. He expressed his belief that his successor would be equally aware of this and that he would faithfully fulfil the obligations and responsibilities that came with the post.
- 2.6 The outgoing Chairman explained that after five years it was time for him to make room for someone else to experience the privilege of chairing the Assembly of the Organisation, but hoped that perhaps in the future there might be another opportunity for him to make his services available to the Organisation.
- 2.7 Pursuant to Article 18.1 of the 1992 Fund Convention the Assembly elected Mr Jerry Rysanek (Canada) as Chairman to hold office until its next regular session.
- 2.8 Following his election as Chairman Mr Rysanek thanked all delegations for their confidence and support which he was honoured to share with both vice-chairmen. Speaking on behalf of the Assembly, the Chairman thanked the outgoing Chairman for his immense contribution to the work and smooth functioning of the Assembly during his term of office over the last five years.

3 Examination of credentials

- 3.1 The following Member States were present:

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

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

- 3.2 Malaysia, which had deposited an instrument of ratification to the 1992 Fund Convention but for which the Convention had not yet entered into force, was represented as an observer.
- 3.3 The following non-Member States were represented as observers:

Benin	Democratic People's	Peru
Brazil	Republic of Korea	Saudi Arabia
Chile	Ecuador	
Côte d'Ivoire	Iran (Islamic Republic of)	

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

Intergovernmental organisations:

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

International non-governmental organisations:

Advisory Committee on the Protection of the Sea (ACOPS)
BIMCO
Comité Maritime International (CMI)
Federation of European Tank Storage Associations (FETSA)
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of P&I Clubs
International Union of Marine Insurers (IUMI)
International Tanker Owners Pollution Federation Ltd (ITOPF)
Oil Companies International Marine Forum (OCIMF)

MATTERS RELATING TO THE ESTABLISHMENT OF THE SUPPLEMENTARY FUND

Procedural matters

4 Grant of observer status to the Supplementary Fund

The Assembly decided to grant observer status to the International Oil Pollution Compensation Supplementary Fund (Supplementary Fund), as proposed in document 92FUND/A/ES.9/2.

5 Amendments to Rules of Procedure

- 5.1 The Assembly adopted amendments to Rules 1, 4, 5 and 14 of its Rules of Procedure and decided to renumber Rules 42–47 as Rules 41–56, as proposed by the Director in document 92FUND/A/ES.9/3.
- 5.2 It was noted that the revised Rules of Procedure as adopted would be published in document 92FUND/A/ES.9/28/1.

Treaty matters

6 Status of the 1992 Fund Convention and the Supplementary Fund Protocol

- 6.1 The Assembly took note of the information contained in document 92FUND/A/ES.9/4 concerning the ratification situation in respect of the 1992 Fund Convention and the 2003 Protocol to the International Convention on the Establishment of an International Fund for Oil Pollution Damage 1992 (Supplementary Fund Protocol). It noted that there were at present 86 Member States of the 1992 Fund and that six more States would become Members within the next seven months.
- 6.2 The observer delegation of the Islamic Republic of Iran expressed its gratitude to the Director for his recent visit to Iran, during which time he had held discussions with Members of Parliament, representatives of the Ministry of Oil, the Ministry of Roads and Transportation and the Judicial Authorities of the Maritime Court and explained the importance and benefits of acceding to the 1992 Civil Liability and Fund Conventions, urging the relevant authorities to take the necessary steps towards ratification. That delegation informed the Assembly that accession to the Conventions was now under consideration by the Iranian Parliament.

- 6.3 The Assembly further noted that the requirements for the entry into force of the Supplementary Fund Protocol were fulfilled on 3 December 2004 and that the Protocol had therefore entered into force on 3 March 2005. The Assembly also noted that there were at present eight Member States of the Supplementary Fund and that one more State, Portugal, had deposited an instrument of ratification of the Protocol on 15 February 2005 and would become a Member of the Supplementary Fund on 15 May 2005.

Secretariat and Headquarters matters

7 Joint Secretariat with the Supplementary Fund

- 7.1 The Assembly recalled that during its consideration in May 2004 of the preparations for the entry into force of the Supplementary Fund Protocol, the Director had expressed the view that an arrangement under which the Supplementary Fund and the 1992 Fund shared a Secretariat headed by the same Director would have great practical and financial advantages, as already demonstrated by the 1992 Fund and 1971 Fund joint Secretariat. It was further recalled that at that session the Assembly had agreed that since it was highly likely that the 1992 Fund would have a wider membership and would be involved in significantly more incidents than the Supplementary Fund, the most practical solution would be for the 1992 Fund Secretariat to administer also the Supplementary Fund.
- 7.2 It was noted that the Assembly of the Supplementary Fund had decided, at its 1st session, that the Headquarters of the Supplementary Fund should be located in London. It was further noted that the Supplementary Fund Assembly had decided, subject to the agreement of the 1992 Fund Assembly and the 1971 Fund Administrative Council, that the Supplementary Fund, the 1992 Fund and the 1971 Fund should have a joint Secretariat, and that the Director of the 1992 Fund should be Director of the Supplementary Fund (in addition to being Director of the 1971 Fund). It was also noted that the Supplementary Fund Assembly had therefore requested the 1992 Fund Assembly and the 1971 Fund Administrative Council to authorise the Secretariat of the 1992 Fund to administer also the Supplementary Fund and to authorise the Director of the 1992 Fund to perform also the function of Director of the Supplementary Fund.
- 7.3 The Assembly agreed that the 1992 Fund and the Supplementary Fund should have a joint Secretariat and authorised the Secretariat of the 1992 Fund to administer, in addition to the 1971 Fund, also the Supplementary Fund. It also agreed that the Director of the 1992 Fund, Mr Måns Jacobsson should *ex-officio* be also Director of the Supplementary Fund.
- 7.4 The Assembly considered how conflicts of interests between the 1992 Fund and the Supplementary Fund should be dealt with. The Assembly noted that Article 17.2 of the Supplementary Fund Protocol provided that if the Secretariat and the Director of the 1992 Fund also performed the function of the Secretariat and Director of the Supplementary Fund, the Supplementary Fund should be represented, in cases of conflict of interests between the 1992 Fund and the Supplementary Fund, by the Chairman of its Assembly. It was also noted that the 1992 Fund Convention contained a corresponding provision (Article 36 quater (b)) in respect of conflicts of interests between the 1992 Fund and the 1971 Fund. It was further noted that conflicts of interests had arisen between those Funds in respect of three incidents and that these conflicts had been resolved by their respective governing bodies.
- 7.5 One delegation stated that whilst it supported the Director's proposal that the Supplementary Fund and the 1992 Fund should share a single Secretariat, it considered that further clarification was still needed as regards cases of conflict of interests between the 1992 Fund and the Supplementary Fund.
- 7.6 The Assembly agreed with the Director that the solution provided in the Supplementary Fund Protocol was adequate. The Assembly decided that if there were to be a real conflict of interests (as opposed to a hypothetical conflict) between the 1992 Fund and the Supplementary Fund, each of them could be represented by the respective Assembly Chairman. It also decided that if a

major conflict of interest (ie a conflict of significant importance) were to arise, the matter should be referred to the respective governing bodies for decision on how the conflict should be resolved.

- 7.7 One delegation expressed its concern over the eventuality of one Member State occupying more than one of the three key posts in question, namely Chairman of the Supplementary Fund Assembly, Chairman of the 1992 Fund Assembly and Director of the Joint Secretariat, which could confer too much influence on one State. The Assembly noted the concern of that delegation but considered that such a situation was unlikely to occur.

8 Director's contract

- 8.1 It was noted that, as a result of the Assembly having agreed to a request by the Supplementary Fund Assembly that the Director of the 1992 Fund should also serve as Director of the Supplementary Fund, some editorial amendments would have to be made to the Director's contract to cover his duties as Director of the Supplementary Fund.
- 8.2 The Assembly authorised its Chairman to negotiate with the Director the appropriate amendments to his contract in order to permit him to carry out functions under the Supplementary Fund Protocol, and to sign the required document on behalf of the 1992 Fund.

9 Amendments to Staff Regulations

- 9.1 In the light of its decision that the Secretariat and the Director of the 1992 Fund should act also as Secretariat and Director of the Supplementary Fund, the Assembly adopted certain amendments to the 1992 Fund Staff Regulations to allow staff members of the 1992 Fund Secretariat to act also for the Supplementary Fund, as proposed by the Director in document 92FUND/A/ES.9/7.
- 9.2 It was noted that the revised Staff Regulations of the 1992 Fund as adopted would be published in document 92FUND/A/ES.9/28/2.
- 9.3 The Assembly noted that the Director intended to make the necessary amendments to the Staff Rules, and that these amendments would be reported to the Assembly at its October 2005 session.

10 Sharing of joint administrative costs with the 1971 Fund and the Supplementary Fund

- 10.1 The Assembly considered the apportionment of the costs of running the joint Secretariat between the 1992 Fund, the Supplementary Fund and the 1971 Fund (document 92FUND/A/ES.9/8). It was noted that, at its 1st session, the Assembly of the Supplementary Fund had proposed to the 1992 Fund Assembly and the 1971 Fund Administrative Council that the Supplementary Fund should pay a flat management fee to the 1992 Fund initially set at £150 000 per annum (corresponding to approximately 5% of the administrative expenses of the Secretariat) and that for the period 3 March - 31 December 2005 that fee should be £125 000, ie £150 000 per annum pro-rated for a ten month period from the date when the Protocol came into force, ie 3 March 2005.
- 10.2 It was suggested that in future a more detailed breakdown should be made of the actual expenses in respect of the Supplementary Fund. The Director undertook to provide more details of expenses which could be attributed specifically to the Supplementary Fund, but stated that it would be difficult to identify time spent by staff on Supplementary Fund matters.
- 10.3 The Assembly agreed to the distribution of joint administrative costs as set out in paragraph 10.1 above. It also agreed that the level of the management fee should be reconsidered for later years by the governing bodies in the light of experience in respect of the workload of the Supplementary Fund, as suggested by the Supplementary Fund Assembly.
- 10.4 The Assembly noted that the 1971 Fund Administrative Council had, at its 16th session, agreed to the payment of a flat management fee by the Supplementary Fund to the 1992 Fund as set out in paragraph 10.1 above.

11 Headquarters Agreement

- 11.1 The Assembly noted that the Director had entered into consultations with the United Kingdom Government as to whether the Headquarters Agreement between the United Kingdom Government and the 1992 Fund should be revised. It was also noted that the Director had submitted to the United Kingdom Government a draft text of a revised Headquarters Agreement for the 1992 Fund and a draft text of a Headquarters Agreement for the Supplementary Fund. The Assembly further noted that consultations with the United Kingdom Government on the draft texts were continuing.
- 11.2 The Assembly noted that it would be invited to consider the text of the Headquarters Agreement relating to the 1992 Fund once a provisional agreement on a revised text had been reached between the United Kingdom Government and the Director.

12 Lease Agreement in respect of the premises for the Secretariat

The Assembly noted that the lease agreement for the Portland House premises of the IOPC Funds Secretariat had been entered into on behalf of the 1992 Fund only, as the 1992 Fund Secretariat operated the 1992 Fund and the 1971 Fund (document 92FUND/A/ES.9/10). It was also noted that the lease allowed the use of the premises for the operations of other intergovernmental organisations which carried out similar functions to that of the 1992 Fund and that there was therefore no need to amend the lease agreement or to enter into a separate agreement on behalf of the Supplementary Fund.

13 Agreements with the International Maritime Organization on administrative arrangements

The Assembly authorised the Director to reach an agreement with the Secretary-General of IMO on an extension of the scope of the current Agreement and License to Occupy and the Underlease relating to the Funds' occupancy in the IMO building to cover also the activities of the Supplementary Fund, as proposed by the Director in document 92FUND/A/ES.9/11.

Compensation matters

14 Claims Manual

- 14.1 The Assembly recalled that the governing bodies of the 1971 and 1992 Funds had developed criteria for the admissibility of various types of claims which were set out in a Claims Manual which was a practical guide to presenting claims for compensation. It was noted that the latest version of the 1992 Fund's Manual, which had been approved by the 1992 Fund Assembly at its October 2004 session, would be published in Spring 2005.
- 14.2 It was recalled that at its 8th extraordinary session, held in May 2004, the 1992 Fund Assembly had agreed with the Director's proposal that the 1992 Fund and the Supplementary Fund should issue a joint Claims Manual, based on the 1992 Fund's Claims Manual (document 92FUND/A/ES.8/4, paragraph 3.6.6). It was further recalled that at the 1992 Fund Assembly's October 2004 session, the Director, after further consideration, had expressed the view that the Supplementary Fund did not need a Manual, and had proposed that the 1992 Fund Assembly should make a recommendation to the Supplementary Fund Assembly to this effect. It was also recalled that the 1992 Fund Assembly had decided that the question of whether the Supplementary Fund should have a Claims Manual would have to be considered again in the future and that any final decision would have to be left to the Assembly of the Supplementary Fund (document 92FUND/A.9/31, paragraph 23.17).
- 14.3 It was noted that the new version of the 1992 Fund Claims Manual would contain a number of references to the Supplementary Fund, including a statement that the criteria under which compensation claims qualified for compensation from the Supplementary Fund were identical to

those of the 1992 Fund. It was also noted that the Claims Manual stated that the 1992 Fund's claims settlement policy, set out in the Manual, also applied to compensation payments by the Supplementary Fund.

- 14.4 One delegation expressed the view that the Supplementary Fund should have a joint Claims Manual with the 1992 Fund. The majority of delegations considered, however, that the Supplementary Fund would not need a Claims Manual, since the Supplementary Fund would not normally be involved in the handling and assessment of claims.
- 14.5 It was noted that the Supplementary Fund Assembly had decided, at its 1st session, that in the light of the provisions in the Supplementary Fund Protocol and for practical reasons the Supplementary Fund should not have a Claims Manual.
- 14.6 The Venezuelan delegation enquired about the progress of the correspondence group established to develop methods for assessing claims in respect of subsistence fisheries and whether these methods would be included in the revised Claims Manual. That delegation also expressed an interest in contributing to the work of the correspondence group.
- 14.7 The Director stated that the 1992 Fund Assembly had adopted the revised Claims Manual at its October 2004 session and that there were no plans to defer its publication in order to take into account the correspondence group's conclusions. The Deputy Director stated that the correspondence group referred to by the Venezuelan delegation had been established to review draft technical guidelines on the assessment of fisheries sector claims, with special reference to subsistence fisheries. He further stated that the delegations of Australia, France, India, Italy, Republic of Korea, New Zealand and Japan as well as the International Tanker Owners Pollution Federation Ltd (ITOPF) had offered to participate in the work of the correspondence group, although he had not yet received any feedback from anyone. He welcomed Venezuela's participation in the correspondence group.

15 Sharing of joint costs in respect of incidents involving both the 1992 Fund and the Supplementary Fund

The Assembly agreed with the position taken by the Supplementary Fund Assembly at its 1st session, that, since it was likely that the Supplementary Fund would be involved in a very limited number of incidents, the apportionment of joint costs in respect of incidents involving both the 1992 Fund and the Supplementary Fund should be agreed by the governing bodies of the two Funds on a case-by-case basis.

Operational matters

16 Amendments to Internal Regulations

- 16.1 The Assembly adopted amendments to the Internal Regulations, as proposed by the Director in document 92FUND/A/ES.9/14, and instructed the Director to make the necessary amendments so as to render the text gender neutral.
- 16.2 The Assembly approved the proposed revised 1992 Fund oil reporting form and explanatory notes (which constituted an Annex to the Internal Regulations) as contained in Annex II of document 92FUND/A/ES.9/14/1 which enabled, *inter alia*, States to indicate whether a report to the 1992 Fund should be considered also as a report to the Supplementary Fund.
- 16.3 It was noted that the revised Internal Regulations as adopted would be published in document 92FUND/A/ES.9/28/3.

17 Amendments to Financial Regulations

17.1 The Assembly adopted amendments to the Financial Regulations, as proposed by the Director in document 92FUND/A/ES.9/15, provided that Financial Regulation 10.4(c) should read:

The maximum investment in any bank or building society of the 1992 Fund's assets shall not normally exceed 25% of these assets or £10 million, whichever is the higher.

17.2 The Director was instructed to make the necessary amendments to the Financial Regulations so as to render the text gender neutral.

17.3 It was noted that the revised Financial Regulations as adopted would be published in document 92FUND/A/ES.9/28/4.

18 Joint Audit Body

18.1 Subject to the agreement of the Supplementary Fund Assembly and the 1971 Fund Administrative Council, the Assembly decided that the Audit Body of the 1992 and 1971 Funds should also be the Audit Body of the Supplementary Fund.

18.2 The Assembly noted that the Supplementary Fund Assembly and the 1971 Fund Administrative Council had, at their 1st session and 16th session respectively, endorsed the decision set out in paragraph 18.1 that the three Organisations should have a joint Audit Body.

18.3 The Assembly considered that, subject to the agreement of the 1971 Fund Administrative Council and the Supplementary Fund Assembly, neither of those bodies should hold elections to the Audit Body and that this function should be left to the 1992 Fund Assembly.

18.4 The Assembly noted that, in view of the fact that all Supplementary Fund Member States would also be Members of the 1992 Fund, the Supplementary Fund Assembly had decided, at its 1st session, that it should not hold elections of the Audit Body Members but instead leave this function to the 1992 Fund Assembly. It was noted that the 1971 Fund Administrative Council had also decided, at its 16th session, to leave this function to the 1992 Fund Assembly.

18.5 In view of the decisions set out in paragraphs 18.2 and 18.4 and subject to the agreement of the Supplementary Fund Assembly and the 1971 Fund Administrative Council, the Assembly adopted the composition and revised mandate for the Joint Audit Body as contained in Annex I.

18.6 It was noted that the Supplementary Fund Assembly and the 1971 Fund Administrative Council had endorsed the composition and mandate of the Audit Body referred to in paragraph 18.5.

18.7 The Assembly noted that the term of office of the present members of the Audit Body would expire at the October 2005 sessions of the IOPC Funds' governing bodies, and that an election of the members for a new term of office would take place at that session.

18.8 The Assembly noted that the current mandate and composition of the Audit Body provided that three of the six members elected from Member States should not be renewable after three years.

18.9 At the same time the Assembly considered that continuity was very important for the Audit Body and that this objective would be best achieved by the procedure for election based on Option 2, as set out in paragraph 2.4 of document 92FUND/A/ES.9/16/1. The Assembly therefore decided as follows:

- (a) If no more than three of the present members stood for re-election, their period of office should be automatically renewed.

- (b) Should more than three members of the present Audit Body nominated by Member States stand for re-election, a first ballot would be held between all these candidates and the three candidates receiving the highest number of votes would be re-elected for a second and final term of three years.
 - (c) A second ballot would then be held between all other candidates nominated by Member States (ie other than present members) and the three receiving the highest number of votes would be elected for an initial term of three years.
 - (d) In the event that there were less than three new nominations from Member States, the requirement of the mandate that the term of office of three of the present members of the Audit Body should not be renewable would not apply. If there were more than three candidates from the present members of the Audit Body standing for re-election, the balance of the remaining seats would be filled from among the present members based on the number of votes received.
- 18.10 The Assembly noted that the seventh member ('outsider') was elected separately as set out in the mandate.

19 Joint Investment Advisory Body

- 19.1 It was recalled that the 1971 Fund and the 1992 Fund each had an Investment Advisory Body composed of external experts with special knowledge in investment matters, to advise the Director in general terms on such matters.
- 19.2 The Assembly decided, subject to the agreement of the Supplementary Fund Assembly and the 1971 Fund Administrative Council, that there should be a joint Investment Advisory Body for the 1992 Fund, the 1971 Fund and the Supplementary Fund, as proposed by the Director in document 92FUND/A/ES.9/17.
- 19.3 The Assembly further decided, subject to the agreement of the Supplementary Fund Assembly and the 1971 Fund Administrative Council, that, in view of the fact that all Supplementary Fund Member States would also be Members of the 1992 Fund, the Supplementary Fund Assembly and the 1971 Fund Administrative Council should not make appointments to the Investment Advisory Body but instead leave this function to the 1992 Fund Assembly.
- 19.4 The Assembly decided that in future the members of the joint Investment Advisory Body should be elected for a term of three years, and not annually as had hitherto been the case.
- 19.5 In view of the decisions set out in paragraphs 19.2 and 19.3, and subject to the agreement of the Supplementary Fund Assembly and the 1971 Fund Administrative Council, the Assembly adopted a revised mandate for the Joint Investment Advisory Body as set out in Annex II.
- 19.6 The Assembly noted that the Supplementary Fund Assembly and the 1971 Fund Administrative Council had, at their 1st session and 16th session respectively, agreed that the three Funds should have a joint Investment Advisory Body and that the Supplementary Fund Assembly and the 1971 Fund Administrative Council should not make appointments to the Body but instead leave this function to the 1992 Fund Assembly and had adopted the revised mandate of the Body referred to in paragraph 19.5.

Financial matters

20 Loans to the Supplementary Fund

- 20.1 It was noted that the Supplementary Fund Assembly had, at its 1st session, considered it preferable to postpone the first levy of contributions to the Supplementary Fund until an extraordinary session of that Assembly, to be held in October 2005. It was also noted that the

Supplementary Fund Assembly had requested the 1992 Fund Assembly to authorise the Director to make the necessary funds available to the Supplementary Fund in the form of loans.

- 20.2 The Assembly authorised the Director of the 1992 Fund to make the necessary funds available to the Supplementary Fund in the form of loans to be repaid, with interest, when the Supplementary Fund had received the first levy of contributions decided by its Assembly, to the extent that this could be done without prejudice to the operations of the 1992 Fund.

General administrative matters

21 Annual Reports

- 21.1 The Assembly decided that, in view of the close link that existed between the 1992 Fund, the Supplementary Fund and the 1971 Fund, the three Organisations should issue joint Annual Reports.
- 21.2 It was noted that the Supplementary Fund Assembly and the 1971 Fund Administrative Council had, at their 1st session and 16th session respectively, agreed to the publication of joint Annual Reports for the three Organisations.

22 Other administrative matters

22.1 Nomenclature

- 22.1.1 The Assembly decided that the following terminology should be used:

	1971 Fund Convention	1992 Fund Convention	Supplementary Fund Protocol
Full Name	International Oil Pollution Compensation Fund 1971	International Oil Pollution Compensation Fund 1992	International Oil Pollution Compensation Supplementary Fund
Abbreviated Expression	1971 Fund <i>or</i> IOPC Fund 1971	1992 Fund <i>or</i> IOPC Fund 1992	Supplementary Fund <i>or</i> IOPC Supplementary Fund

- 22.1.2 The Assembly noted that in certain circumstances it would be necessary or appropriate to refer to the 1971 Fund, the 1992 Fund and the Supplementary Fund together, and agreed that the following terminology should be used: 'International Oil Pollution Compensation Funds' as the full name, and 'IOPC Funds' as the abbreviated expression.
- 22.1.3 The Assembly noted that the Supplementary Fund Assembly and the 1971 Fund Administrative Council had, at their 1st session and 16th session respectively, agreed to the use of the terminology set out in paragraphs 22.1.1 and 22.1.2.

22.2 Logo

- 22.2.1 The Assembly agreed that the same logo as the one used by the 1971 Fund and the 1992 Fund should also be used by the Supplementary Fund.
- 22.2.2 The Assembly noted that the Supplementary Fund Assembly and the 1971 Fund Administrative Council had, at their 1st session and 16th session respectively, agreed that the same logo should be used for all three Organisations.

*OTHER MATTERS***23 Procedures for recruitment of the next Director**23.1 Job description and competence requirements

- 23.1.1 The Assembly considered the job specification and competence requirements for the post of Director prepared by the Audit Body, with the assistance of an external consultant, as set out in the Annex to document 92FUND/A/ES.9/21. It was noted that the Audit Body had suggested that the text adopted by the Assembly should be attached to the Note to be sent by the current Director to Member States informing them of the vacancy and inviting them to nominate candidates.
- 23.1.2 A number of delegations expressed the view that the required knowledge/professional experience and personal attributes of the successful candidate were somewhat idealistic. It was suggested that the requirements should have been split into those which were essential and those which were desirable of a Director.
- 23.1.3 The Chairman of the Audit Body mentioned that in drawing up the requirements, the Audit Body had given consideration to distinguishing between essential and desirable experience and attributes, but had decided that this could lead to an endless discussion of the relative merits of each requirement. He stated that the Audit Body therefore had decided instead to simply identify key requirements to assist the Assembly in the selection process.
- 23.1.4 Many delegations made the point that it would be very difficult for the Assembly to verify whether candidates met the demanding requirements for the post and that it was therefore incumbent on governments nominating candidates to ensure that only highly competent individuals fulfilling these requirements were put forward for the Assembly's consideration.
- 23.1.5 A number of delegations suggested modifications and additions to the list of skills and attributes required as proposed by the Audit Body. Some delegations expressed the view that the three official languages of the Funds should be given equal standing and that fluency in English as opposed to French and Spanish should not be an essential requirement. Other delegations made the point that since the Secretariat was based in London and tended to work in English on a day-to-day basis, a Director that was not fluent in English would be at a serious disadvantage.
- 23.1.6 The Assembly adopted the text of the Job Specification for the Post of Director proposed by the Audit Body as set out in the Annex to document 92FUND/A/ES.9/21, except for the section headed Candidate Profile, which was amended to read as follows:

CANDIDATE PROFILE

The successful candidate will have extensive administrative and management experience at senior level, demonstrated leadership experience and a strong track record in dealing with public and private sector organisations at senior level. He/she needs to be a highly effective communicator, with demonstrable skills in negotiation and diplomacy, and the ability to deal credibly and authoritatively with governments and other parties in the shipping, insurance and oil industries as well as with victims of oil pollution.

1. Knowledge/Professional experience

Specifically, the 1992 Fund Assembly has expressed the view that the successful candidate would **ideally** have the following knowledge and professional experience:

- expert knowledge of the Civil Liability and Fund Conventions and other related Conventions;
- experience in handling complex legal issues relevant to the work of the Funds and ability to understand various legal systems;

- experience of claim-handling matters;
- ability to assess and take decisions on expert advice in legal and other matters;
- experience in financial matters, general management and handling of staff matters;
- experience of the public sector and grasp of decision processes and reasoning of governments;
- familiarity with high-level negotiations;
- experience of working with governments at all levels as well as with public and private bodies;
- experience of international conferences and in intergovernmental meetings;
- experience in dealing with the media;
- excellent oral and written communication skills including ability to draft complex documents.

2. Personal attributes

In addition, the 1992 Fund Assembly has indicated that the successful candidate would be expected to have the following personal attributes:

- objectivity and integrity;
- fairness;
- diplomacy;
- sensitivity to political issues related to the work of the Funds;
- excellent decision-making skills;
- flexibility and openness to change;
- excellent inter-personal skills;
- organisational and management skills;
- ability to set priorities;
- ability to delegate and to motivate staff and others who work on behalf of the Funds;
- attention to detail;
- fluency in one of the official languages of the Funds (English, French and Spanish) and a good working knowledge of one of the other two official languages, bearing in mind the working environment of the Secretariat and related organisations.

23.1.7 It was decided that States nominating a candidate should validate the candidate's experience, skills and competencies against those set out in the Candidate Profile by indicating to what extent the candidate fulfilled these attributes and that this requirement should be stated in the Note to Member States inviting nominations.

23.2 Selection process

Timetable

23.2.1 It was recalled that the Assembly had decided at its October 2004 session that the appointment of the new Director should be made at its October 2005 session.

23.2.2 It was noted that the Audit Body had therefore proposed that once the Assembly had decided on the competencies, skills and experience required of a Director, the current Director should circulate a Note to Member States inviting them to submit candidatures by 30 June 2005. It was further noted that the Audit Body had proposed that the Director should circulate to Member States the candidatures received by the deadline of 30 June.

23.2.3 The Assembly decided, in accordance with the proposal by the Audit Body, that the Director should, as soon as possible after its present session, circulate a Note to Member States inviting them to submit candidates for the post of Director, which should be received by the IOPC Funds' Secretariat by 30 June 2005. The Assembly decided that only candidatures received by

30 June 2005 would be considered for the post of Director. The current Director was instructed to circulate to Member States candidatures as soon as they were received. It was decided that he should not circulate candidatures received after that date.

Screening Committee

- 23.2.4 The Assembly considered a proposal by the Irish delegation that in the event of there being more than six candidates for the post of the Director, a Committee comprising the current Director and the Chairmen of the governing bodies (excluding any of those who may themselves be applicants) should be set up to screen the applications (document 92FUND/A/ES.9/21/3).
- 23.2.5 A number of delegations, whilst recognising the practical difficulties that a large number of candidatures would present for the Assembly, were opposed to the establishment of a Screening Committee. The point was made that the screening of candidates by a small committee could lead to further problems if unsuccessful candidates were to appeal against non-selection.
- 23.2.6 The Assembly decided not to set up a Screening Committee.

Presentations by candidates

- 23.2.7 The Assembly considered the suggestion by the Audit Body that at the Assembly's October 2005 session each candidate for the position of Director should be requested to make an oral presentation to the Assembly of approximately 10 minutes' duration in support of his or her candidature, which could be followed by a short question and answer session with delegations.
- 23.2.8 Some delegations stated that whilst such a procedure was customary in other intergovernmental organisations for candidates for positions of high authority, presentations were of limited value given that most delegations would have received instructions from their Governments on their preferred candidate prior to the session of the Assembly at which the new Director would be elected. The point was made that candidates put forward for consideration would most probably be already well known to the Assembly and that oral presentations would be awkward and somewhat artificial and might not necessarily be a good basis on which to select the most suitable candidate. It was also pointed out that if a large number of candidates were put forward, oral presentations could take up an inordinate amount of time.
- 23.2.9 Other delegations proposed that each candidate should submit a written presentation in response to specific questions relating to the future working and management of the Funds.
- 23.2.10 Some delegations stated that they were not particularly concerned about a candidate's curriculum vitae or any general statement about the way a candidate would run the Organisations. Those delegations considered that a statement attesting to the fact that a candidate met most, if not all of the required criteria relating to knowledge, professional experience and personal attributes would be important.
- 23.2.11 A number of delegations suggested that Governments putting forward nominations should be given latitude to decide how best to present and promote their candidates and to demonstrate that they fulfilled the required standards for the post of Director.
- 23.2.12 The Assembly decided that it should be left to individual candidates and their sponsoring Governments to promote their candidatures as they saw fit.
- 23.2.13 The Assembly decided that it should not rule out the possibility of oral presentations, and that the Note to be circulated to 1992 Fund Member States inviting nominations should indicate that, depending on the number of candidates put forward, each candidate might be invited to make an oral presentation to the Assembly at its October 2005 session.

Ballot procedure

- 23.2.14 The Assembly considered proposals put forward by the Director in document 92FUND/A/ES.9/21/2 and the Irish delegation in document 92FUND/A/ES.9/21/4 regarding the procedures to be applied for the ballot for appointment of the Director.
- 23.2.15 It was noted that under Articles 32(c), 32(d) and 33 of the 1992 Fund Convention, the decision on the appointment of the Director shall require a two-thirds majority vote of those members present.
- 23.2.16 The Assembly considered how its Rules of Procedure concerning elections should be applied in respect of the appointment of the Director and noted that in the current Director's view they were not appropriate on some points, mainly due to the fact that the appointment of the Director required a two-thirds majority. It was noted that whatever the number of candidates, it was possible that no candidate would obtain the required two-thirds majority in the first ballot and that repeated ballots would therefore have to be held until one candidate obtained such a majority.
- 23.2.17 It was noted that should there be three or more candidates, under Rule 39 the second ballot should be confined normally to the two candidates having obtained the largest number of votes in the first ballot save where the Assembly decided otherwise. The Assembly further noted that if in any third ballot the votes were divided equally, the Chairman should decide between the candidates by drawing lots, but that since the appointment of the Director required a two-thirds majority, this provision could not reasonably be applied and that the voting would have to be repeated until one candidate obtained the required two-thirds majority.
- 23.2.18 The Assembly considered a proposal by the Irish delegation to address the situation where two candidates remained in contention leading to a multiplicity of ballots and a possible stalemate. It was noted that the Irish delegation had proposed that in such a situation Member States should be asked to accept or not to accept the candidate with the highest number of votes and that acceptance by two-thirds would be equivalent to selection and appointment.
- 23.2.19 The Director pointed out that the 1992 Fund Convention explicitly required a two-thirds majority and that for this reason, in his view, the proposal by the Irish delegation should not be adopted.
- 23.2.20 The Assembly decided that the following voting procedure should be followed for the election of the Director:
- (a) Voting concerning the appointment of Director shall be by secret ballot.
 - (b) Before holding each ballot, each Member State present shall receive a list of the names of all candidates standing in that ballot in alphabetical order.
 - (c) In each ballot each delegation of the Member States present shall indicate the candidate it supported by ticking the relevant box. If a list indicates support for more than one candidate, the vote is invalid.
 - (d) A candidate who obtains two-thirds of the votes of the Member States present at the meeting at the time of the vote shall be declared appointed as Director.
 - (e) If, in any ballot in which more than two candidates participate, no candidate is appointed in accordance with paragraph (d), a number of successive ballots shall be held in accordance with the following rules:
 - (i) The candidate who receives the least number of votes in the previous ballot, including the first ballot, shall not be included in the list of candidates for the subsequent ballot.

- (ii) If a candidate obtains two-thirds of the votes of the Member States present at the meeting at the time of the vote, he/she shall be declared appointed as Director.
- (iii) The ballots will continue until a candidate is appointed under subparagraph (ii) above.
- (f) If, in any ballot in which more than two candidates participate, two or more candidates receive the same number of votes so that the candidate to be excluded from the next ballot cannot be determined, an intermediate ballot shall first be held among those candidates to determine which of them should not be included in the next ballot. The candidate who in the intermediate ballot receives the least number of votes shall be excluded from the next ballot. If in an intermediate ballot there is a tie between any of the candidates, the Chairman shall draw lots between them and the last one to be drawn shall be excluded from the next ballot.

23.2.21 It was suggested that if multiple ballots were to take place, there should be a certain interval between consecutive ballots so as to allow delegations time for consultations.

23.2.22 The Assembly noted that Rule 55 of the 1992 Fund's Rules of Procedure for the appointment of the Director required that the 1992 Fund Assembly should vote in secret at a private meeting, but did not indicate who should be allowed to be present at such a private meeting. It was noted that in accordance with Fund practice, only 1992 Fund Member States would be allowed to be present at the private meeting.

23.2.23 The Assembly decided, however, that in view of the fact that the appointment of the Director should be of interest also to the former 1971 Fund Member States that were not Members of the 1992 Fund, those States should be permitted to be present at the private meeting, without voting rights.

Transition from the present Director to his successor

23.2.24 The Assembly recalled that the present Director's contract expired on 31 December 2006, including a period for a smooth transition to his successor, allowing a certain period for the new Director to become familiar with the operation of the IOPC Funds.

23.2.25 It was noted that the Audit Body had recommended that the present Director should have full responsibility for the October 2006 session of the Assembly and that the new Director should take up his/her functions and take over responsibility for the Organisations on 1 November 2006, with the present Director continuing to be available up to 31 December 2006. It was further noted that the Audit Body had taken the view that the new Director should not join the Secretariat on a permanent basis before 1 September 2006, but that the present Director and his successor should be given a certain flexibility on which steps should be taken to achieve a smooth transition, for example, that it appeared in the Audit Body's view useful for the new Director to follow, but not have responsibility, for the preparation of the administrative budget for 2007.

23.2.26 A number of delegations highlighted the need for sensitivity in dealing with the transition period bearing in mind that the incoming Director would be elected by the Assembly at its October 2005 session at which time the outgoing Director would still have a further 14 months of his contract to run.

23.2.27 Some delegations considered that one-year was too long for the new Director to have to wait before taking over, whilst others considered that the Director's contract, which terminated at 31 December 2006, should be fully respected.

23.2.28 The Assembly decided that in order to ensure the efficient functioning of the Organisations as well as a smooth transition, and in the interests of the incoming and outgoing Directors, the present Director should retain full responsibility for the Organisations up to 31 October 2006, the

newly-elected Director should join the Secretariat on 1 September 2006 and take over responsibility for the Organisations on 1 November 2006 and the present Director should continue to be available up to 31 December 2006.

Note to Member States

23.2.29 In the light of the discussions on the procedures for the recruitment of the next Director, the Assembly approved the text of a Note to be circulated to 1992 Fund Member States inviting nominations for the post of Director as set out in Annex III.

24 Credentials for 1992 Fund meetings

24.1 The Assembly considered a document submitted by the Director dealing with certain issues relating to credentials and notifications for 1992 Fund meetings (document 92FUND/A/ES.9/22).

24.2 The Assembly noted the Director's proposal as regards guidance to be given in respect of the form and content of credentials and notifications as set out in the document. It endorsed the proposed guidance and texts of model credentials reproduced in the Annex to that document.

24.3 It was noted that the models of credentials were intended solely to assist Governments in the preparation of the instruments and that they were not intended, in any way, to replace the form of instruments required by laws or practices of individual States.

24.4 In order to ensure that problems with credentials were resolved before any voting took place, the Assembly decided to establish, at each session, a Credentials Committee, composed of five members elected by the Assembly on the proposal of the Chairman. The Assembly decided to amend Rules 10 and 11 of its Rules of Procedure to read:

Rule 10

A Credentials Committee shall be appointed at the beginning of each session of the Assembly. It shall consist of five members who shall be appointed by the Assembly on the proposal of the Chairman. The Credentials Committee shall examine the credentials of delegations of Member States and report without delay.

Rule 11

Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the Assembly has given its decision.

24.5 The Assembly decided that the Credentials Committee established by it should examine also the credentials issued for Executive Committee sessions. It was also decided that, should the Executive Committee hold sessions that were not in conjunction with an Assembly session, the Executive Committee should establish its own Credentials Committee.

24.6 It was recalled that the introduction to the Rules of Procedure of the Executive Committee adopted by the Assembly provided that these Rules should be the same as those for the Assembly to the extent that they were relevant to and capable of applying to the proceedings of the Committee, subject to certain modifications.

24.7 The Assembly decided to add a new Rule (iii) *bis* to the Executive Committee's Rules of Procedure to read:

Rule (iii) *bis*

Rule 10 shall be replaced by the following text:

When the Executive Committee holds sessions in conjunction with sessions of the Assembly, the Credentials Committee established by the Assembly shall examine also the credentials of delegations of States members of the Executive Committee and report to the Executive Committee without delay. Should a session of the Executive Committee be held not in conjunction with a session of the Assembly, the Executive Committee shall at the beginning of the session appoint a Credentials Committee. It shall consist of three members who shall be appointed by the Executive Committee on the proposal of the Chairman. The Credentials Committee shall examine the credentials of delegations of States members of the Executive Committee and report without delay.

24.8 One delegation expressed the view that the status of individual delegates with respect to different meetings, as expressed in the credentials submitted for each meeting, may need to be reflected in any List of Participants.

24.9 It was noted that this issue could be resolved in a practical way by discussion between the Secretariat and any delegations that might have concerns in this regard.

25 Review of observer status

25.1 The Assembly noted the information contained in document 92FUND/A/ES.9/23 regarding the observer status of the Advisory Committee on the Protection of the Sea (ACOPS).

25.2 The delegation of the United Kingdom reminded the Assembly that ACOPS was a charitable organisation with a very small secretariat. That delegation and the observer delegation of Brazil expressed the belief that ACOPS was a truly international organisation which followed closely the work of the IOPC Funds and was very much concerned with marine pollution and environmental protection.

25.3 The Assembly decided to re-instate the observer status of ACOPS.

26 Small Tankers Oil Pollution Indemnification Agreement (STOPIA)

26.1 The Assembly took note of the information contained in document 92FUND/A/ES.9/24 regarding the offer by the International Group of P&I Clubs to the 1992 Fund to increase, on a voluntary basis, the limitation amount for small tankers, to be known as the Small Tankers Oil Pollution Indemnification Agreement (STOPIA), which came into force on 3 March 2005, the date of the entry into force of the Supplementary Fund Protocol.

26.2 The Assembly noted that STOPIA, which applied to pollution damage in a State for which the Supplementary Fund Protocol was in force, was a contract between owners of small tankers to increase, on a voluntary basis, the limitation amount applicable to tankers under the 1992 Civil Liability Convention. It was noted that the contract applied to all ships entered in one of the P&I Clubs that were members of the International Group and reinsured through the pooling arrangements of the International Group. It was further noted that the effect of STOPIA was that the maximum amount of compensation payable by owners of all ships of 29 548 gross tonnage or less would be 20 million SDR (£16 million). The Assembly noted that the 1992 Fund would not be a party to STOPIA, but that STOPIA conferred legally enforceable rights on the 1992 Fund of indemnification from the shipowner involved.

26.3 The observer delegation of the International Group of P&I Clubs stated that the Clubs had amended their rules to the effect that ships of up to 29 548 gross tons would automatically be entered into STOPIA and that although shipowners could opt out if they so wished, it was unlikely that they would since to do so would not result in a reduction in premium. That delegation stated that 97% by tonnage of the world's tanker fleet, corresponding to some 5 000

vessels, would be covered by STOPIA, including nearly 200 Japanese coastal tankers not covered by the International Group's pooling agreement. That delegation further stated that ships insured with underwriters not members of the International Group but which had reinsurance with the Group would be covered by STOPIA.

- 26.4 The Assembly noted that the 1992 Fund would, in respect of ships covered by STOPIA, continue to be liable to compensate claimants if and to the extent that the total amount of admissible claims exceeded the limitation amount applicable to the ship in question under the 1992 Civil Liability Convention. It was also noted that if the incident involved a ship to which STOPIA applied, the 1992 Fund would be entitled to indemnification by the shipowner of the difference between the shipowner's liability under the 1992 Civil Liability Convention and 20 million SDR. It was further noted that the 1992 Fund would be entitled to indemnification even if the Supplementary Fund would not be called upon to pay compensation in respect of the incident.
- 26.5 It was noted that the Director had examined the text of STOPIA and taken legal advice on a number of issues and considered that the Agreement was, from a legal point of view, acceptable to the 1992 Fund.
- 26.6 It was noted that STOPIA was not a contract between the 1992 Fund and shipowners, but a unilateral offer by shipowners, which conferred on the Fund the right of enforcement. It was also noted that although STOPIA only applied to pollution damage occurring in States that were members of the Supplementary Fund, the 1992 Fund would be indemnified and so contributors to the 1992 Fund would be the beneficiaries, whether or not they were located in a Supplementary Fund Member State.
- 26.7 All delegations that intervened expressed their appreciation of the International Group of P&I Clubs' initiative in introducing the scheme, which they considered to be a significant step towards alleviating the inequality in the sharing of the financial burden between the shipping industry and oil cargo interests highlighted by the Secretariat's cost study undertaken in 2004.
- 26.8 Some delegations considered that STOPIA did not address the distortion of the financial burden created by the Supplementary Fund Protocol, but merely went some way towards correcting the imbalance that already existed under the 1992 Conventions in respect of small ships. Those delegations considered that STOPIA should apply to pollution damage in all States that were members of the 1992 Fund, whether or not they were members of the Supplementary Fund.
- 26.9 Some delegations regarded STOPIA as a useful interim arrangement but that it should not be seen as an alternative to a legal framework, particularly since the P&I Clubs reserved the right to withdraw the Agreement at any time. Those delegations stated that accepting the benefits of STOPIA should be without prejudice to the ongoing review of the compensation regime by the intersessional Working Group.
- 26.10 Other delegations saw distinct advantages in relying on voluntary schemes such as STOPIA as a long-term solution, namely that they could be implemented and amended without any of the delays that were inevitable with international treaties.
- 26.11 A number of delegations expressed the view that since STOPIA was a unilateral offer by shipowners, there was no need for the 1992 Fund to accept the Agreement formally. The Assembly decided that it was sufficient for the 1992 Fund to note the content of STOPIA and instructed the Director to inform the International Group accordingly.
- 26.12 The Assembly recalled that co-operation between the 1971 Fund and the P&I Clubs was governed by a Memorandum of Understanding signed in November 1980 by the International Group of P&I Clubs and the 1971 Fund. It was further recalled that the scope of the Memorandum had been extended in 1996 by an exchange of letters to cover also co-operation between the International Group and the 1992 Fund.

- 26.13 It was noted that the International Group of P&I Clubs had proposed that a new Clause 6A should be added to the Memorandum in order to implement STOPIA.
- 26.14 The Assembly decided that, since STOPIA was a unilateral offer, there was no need to include the proposed new Clause 6A in the Memorandum of Understanding. The Director was instructed to address any necessary administrative, technical and legal issues in respect of STOPIA by an exchange of letters between the International Group of P&I Clubs and the 1992 Fund.
- 26.15 In response to a question as to the basis on which the 1992 Fund could accept payments from shipowners, the Director stated that such payments should, in his view, be treated in the same way as a recovery following a successful recourse action and that contributors to the 1992 Fund would be reimbursed in the usual way from any surplus on a Major Claims Fund.

27 Any other business

27.1 Observer status

The Assembly decided to grant observer status to the International Union of Marine Insurance (IUMI).

27.2 Co-operation with the International Group of P&I Clubs

27.2.1 The Assembly instructed the Director to enter into discussions with the International Group of P&I Clubs on a revision of the Memorandum of Understanding of 1980 referred to in paragraph 26.12 in the light of developments.

27.2.2 The Assembly also noted that co-operation between the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) and the 1992 Fund was governed by a special Memorandum of Understanding signed in 1985 by the JPIA and the 1971 Fund, supplemented by an exchange of letters between JPIA and the 1992 Fund. The Assembly noted the Director's intention to discuss with JPIA the need for a special Memorandum of Understanding in respect of cooperation between the 1992 Fund and JPIA.

27.3 Joint Resolution on the Joint Secretariat

27.3.1 The Assembly noted the view expressed by the Director in document 92FUND/A/ES.9/27 that the relationship between the 1971 Fund, the 1992 Fund and the Supplementary Fund, which as decided by the governing bodies should be administered by a joint Secretariat and have a single Director, may not be easily understood by those who were not familiar with the treaty instruments establishing these Organisations. It was noted that the Director had concluded that it would be useful, therefore, if these decisions were consolidated in a single document. It was also noted that the Director had proposed that the governing bodies should adopt a joint Resolution on this matter. The Assembly noted the Director's view that such a Resolution might be useful in the Funds' dealings with banks and other financial institutions and when the Funds issued powers of attorney or became involved in legal proceedings.

27.3.2 The Assembly adopted the text of the draft of a Joint Resolution on the Joint Secretariat of the 1992 Fund, 1971 Fund and Supplementary Fund as contained in Annex IV.

27.4 IOPC Funds' website

27.4.1 The Director drew attention to the continuing developments of the IOPC Funds' website. He pointed out that the structure of the website had recently been modified to provide a more user-friendly navigation of the information contained in the website. The Director also mentioned that some new information had been added and that further improvements would be carried out throughout the year.

27.4.2 A number of delegations congratulated the Secretariat on the new format of the website which they found much easier to use.

27.5 HNS Convention

27.5.1 The Assembly recalled that, in a Resolution of the Conference which had adopted the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention), the Assembly of the 1992 Fund had been invited to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the International Hazardous and Noxious Substances Fund (HNS Fund) in accordance with the HNS Convention. It was also recalled that at its 1st session, the Assembly had instructed the Director to carry out the tasks requested by the HNS Conference (document 92FUND/A.1/34, paragraphs 33.1.1 - 33.1.3), on the basis that all expenses incurred would be repaid by the HNS Fund.

27.5.2 The United Kingdom delegation stated that the uniform interpretation and application of the HNS Convention was essential. That delegation considered that it was important to use the unique experience within the IOPC Funds' Secretariat to facilitate States' preparations for ratification of the HNS Convention. That delegation made the point that, although the IOPC Funds' Secretariat had already carried out considerable work relating to the preparations for the entry into force of the HNS Convention, it was important for the Secretariat to take a higher profile in this regard and suggested that the Secretariat should organise a workshop on the subject. A number of delegations supported this proposal.

27.5.3 The Director stated that work on the preparations for the entry into force of the HNS Convention had had to take a lower priority as a result of the considerable work required by the Secretariat in relation to the setting up of the Supplementary Fund but that it would now be possible to give the work on the HNS Fund much higher priority. He stated that he would give some thought to the organisation of a workshop on the HNS Convention, which could be held over one or two days in conjunction with the June 2005 meetings of the IOPC Funds, and that he would discuss with interested delegations the target audience and suitable topics to be dealt with at such a workshop. He made the point, however, that the IOPC Funds Secretariat did not have any experience of application of the HNS Convention.

27.5.4 The delegation of Cyprus mentioned that Cyprus had recently ratified the HNS Convention and referred to the fact that States considering ratifying the Convention could, through the IMO Legal Committee, seek technical assistance from the IMO Technical Cooperation Division.

27.6 Date of next session

It was noted that the Assembly would hold its next session during the week 17-21 October 2005.

28 Adoption of the Record of Decisions

The draft Record of Decisions, as contained in document 92FUND/A/ES.9/WP.3, was adopted, subject to certain amendments.

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ANNEX I

COMPOSITION AND MANDATE OF THE JOINT AUDIT BODY OF THE 1992 FUND, THE 1971 FUND AND THE SUPPLEMENTARY FUND

- 1 The Audit Body shall be composed of seven members elected by the 1992 Fund Assembly: one named Chairman nominated by 1992 Fund Member States, five named individuals nominated by 1992 Fund Member States and one named individual not related to the Organisations (“outsider”), with expertise and experience in audit matters nominated by the Chairman of the 1992 Fund Assembly. Nominations, accompanied by the curriculum vitae of the candidate, should be submitted to the Director at least six weeks in advance of the session at which the election will take place.
- 2 Members of the Audit Body shall hold office for three years, once renewable. Of the first Audit Body to be elected, the term of three of those elected from 1992 Fund Member States shall not be renewable.
- 3 The members of the Audit Body shall perform their functions independently and in the interest of the Organisations as a whole. The members elected from 1992 Fund Member States shall not receive any instructions from their Governments.
- 4 Travel and subsistence expenses of the six members of the Audit Body elected from 1992 Fund Member States shall be paid by the Organisations. The member not related to the Organisations (“outsider”) shall be paid travel expenses and an appropriate fee.
- 5 The Audit Body shall:
 - (a) review the effectiveness of the Organisations regarding key issues of financial reporting, internal controls, operational procedures and risk management;
 - (b) promote the understanding and effectiveness of the audit function within the Organisations, and provide a forum to discuss internal control issues, operational procedures and matters raised by the external audit;
 - (c) discuss with the External Auditor the nature and scope of each forthcoming audit;
 - (d) review the Organisations’ financial statements and reports;
 - (e) consider all relevant reports by the External Auditor, including reports on the Organisations’ financial statements; and
 - (f) make appropriate recommendations to the governing bodies.
- 6 The Audit Body shall normally meet at least twice a year. The Chairman of the Audit Body and the External Auditor may request that additional meetings should be held. The meetings shall be convened by the Director, in consultation with the Chairman of the Audit Body.
- 7 The External Auditor, the Director and the Head of the Finance and Administration Department shall normally be present at the meetings.

- 8** The Chairman of the Audit Body shall report on its work to each regular session of the governing bodies.
- 9** Every three years the functioning of the Audit Body and its mandate shall be reviewed by the governing bodies on the basis of an evaluation report from the Chairman of the Audit Body.

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ANNEX II

MANDATE OF THE JOINT INVESTMENT ADVISORY BODY OF THE 1992 FUND, THE 1971 FUND AND THE SUPPLEMENTARY FUND

- 1 The Investment Advisory Body of the International Oil Pollution Compensation Funds 1971 and 1992 and the International Oil Pollution Compensation Supplementary Fund is composed of three persons appointed by the Assembly of the International Oil Pollution Compensation Fund 1992 for three years.
- 2 The mandate of the Investment Advisory Body is:
 - (a) to advise the Director in general terms on investment matters;
 - (b) in particular, to advise the Director on the tenor of the Funds' investments and the suitability of institutions used for investment purposes;
 - (c) to draw the Director's attention to any developments which may justify a revision of the Funds' investment policy as laid down by the governing bodies; and
 - (d) to advise the Director on any other matters relevant to the Funds' investments.
- 3 The Body shall meet at least three times a year. The meetings shall be convened by the Director. Any member of the Body may request a meeting to be held. The Director, the Head of the Finance and Administration Department and Finance Manager shall be present at the meetings.
- 4 The members of the Body shall be available for informal consultations with the Director in case of need.
- 5 The Body shall submit, through the Director, to each regular autumn session of the governing bodies, a report on its activities since the previous autumn sessions of the governing bodies.

* * *

ANNEX III

NOTE TO BE CIRCULATED TO 1992 FUND MEMBER STATES

Nomination of candidates for the position of Director of the International Oil Pollution Compensation Funds

As a result of the expiry of the contract of the current Director of the International Oil Pollution Compensation Funds (IOPC Funds)^{<1>}, Mr Måns Jacobsson, on 31 December 2006, the post of Director will become vacant.

The International Oil Pollution Compensation Funds are world-wide inter-governmental organisations, i.e. set up by States, providing compensation to victims of oil pollution damage resulting from spills of persistent oil from tankers. The Funds are financed by levies on certain types of oil carried by sea. The levies are paid by entities which receive oil after sea transport, normally not by States. The Funds are administered by a joint Secretariat located in London with 27 staff members. The Secretariat is headed by a Director appointed by Member States.

Pursuant to the decision of the Assembly of the International Oil Pollution Compensation Fund 1992 (1992 Fund) at its 9th session in October 2004, the Assembly will at its 10th session in October 2005 appoint a new Director. At its 9th extraordinary session held in March 2005, the Assembly decided that in order to ensure a smooth transition from the present Director to his successor, the present Director should retain responsibility for the Organisations up to 31 October 2006, the newly-elected Director should join the Secretariat on 1 September 2006 and take over responsibility for the Organisations on 1 November 2006 and the present Director would continue to be available up to 31 December 2006.

It should be noted that the Director of the 1992 Fund is *ex officio* Director of the 1971 Fund and of the International Oil Pollution Compensation Supplementary Fund.

The Director has been instructed by the 1992 Fund Assembly to make the necessary preparations for the entry into force of the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention), the preparations to be based on the assumption that the present IOPC Funds Secretariat will administer also the Fund which will be established under the HNS Convention.

Nominations of candidates for the position of Director are invited from 1992 Fund Member States and must be received by the Fund's Secretariat by 30 June 2005. The Director will circulate to Member States, without delay, any candidatures received by that deadline. The Assembly has decided that candidatures received by the IOPC Funds Secretariat after that date will not be considered for the appointment of Director and such candidatures will not be circulated.

The relevant provisions of the 1992 Fund Convention and details on the responsibilities of the Director as well as desirable experience, skills and competences of the candidates are set out in the Annex.

States nominating a candidate should validate the candidate's experience, skills and competences against those set out in the Annex by indicating to what extent the candidate fulfils these attributes.

Depending on the number of candidates, the Assembly may wish to invite candidates to make a short oral presentation of approximately 10 minutes' duration in support of his/her candidature at the Assembly's October 2005 session.

* * *

<1> The International Oil Pollution Compensation Fund 1971 (1971 Fund), the International Oil Pollution Compensation Fund 1992 (1992 Fund) and the International Oil Pollution Compensation Supplementary Fund (Supplementary Fund)

ANNEX IV

**Resolution on the Joint Secretariat
adopted on 22 March 2005
by the Assembly of the International Oil Pollution Compensation Fund, 1992, the
Administrative Council of the International Oil Pollution Compensation Fund, 1971 and the
Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003**

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

THE ADMINISTRATIVE COUNCIL OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1971
(1971 Fund), and

**THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND,
2003** (Supplementary Fund),

NOTING that the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 entered into force on 3 March 2005, thereby establishing the Supplementary Fund,

AWARE that since the establishment of the 1992 Fund in 1996, the 1971 Fund and the 1992 Fund have been administered by a joint Secretariat headed by a single Director,

RECALLING that from 1996 to 1998 the Secretariat of the 1971 Fund administered the 1992 Fund, whereas since 1998 the Secretariat of the 1992 Fund has served as Secretariat of the 1971 Fund also,

RECOGNISING the benefits of the present arrangement,

BELIEVING that a similar arrangement in respect of the Supplementary Fund would be beneficial,

CONSIDERING that the 1992 Fund, the 1971 Fund and the Supplementary Fund should be administered by one Secretariat headed by a single Director,

TAKING THE VIEW that the most appropriate arrangement would be for the Secretariat of the 1992 Fund to function as the Secretariat not only of the 1971 Fund but also of the Supplementary Fund and that the Director of the 1992 Fund, in addition to being *ex officio* Director of the 1971 Fund, should also be *ex officio* Director of the Supplementary Fund.

DECIDE

1. The Secretariat of the 1992 Fund shall as hitherto administer the 1971 Fund and shall also administer the Supplementary Fund.
2. The Director of the 1992 Fund shall continue *ex officio* to be Director of the 1971 Fund and shall also *ex officio* be Director of the Supplementary Fund.