INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
26th session
Agenda item 6

92FUND/EXC.26/11
22 October 2004
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RECORD OF DECISIONS OF THE TWENTY-SIXTH SESSION OF THE EXECUTIVE COMMITTEE

(held from 18 to 22 October 2004)

Chairman:	Mr Jerry Rysanek (Canada)
Vice-Chairman:	Mr Volker Schöfisch (Germany)

Opening of the session

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document 92FUND/EXC.26/1.

2 Examination of credentials

2.1 The following members of the Executive Committee were present:

Australia	Greece	Poland
Cameroon	Grenada	Singapore
Canada	Japan	Sweden
France	Marshall Islands	United Arab Emirates
Germany	Netherlands	

The Executive Committee took note of the information given by the Director that all the above-mentioned members of the Committee had submitted credentials which were in order.

2.2 The following Member States were represented as observers:

Algeria	Latvia	Republic of Korea
Antigua and Barbuda	Liberia	Russian Federation
Argentina	Malta	Sierra Leone
Bahamas	Mexico	Spain
Belgium	Morocco	Trinidad and Tobago
China (Hong Kong Special Administrative Region)	New Zealand	Tunisia
	Nigeria	Turkey
Cyprus	Norway	United Kingdom
Denmark	Oman	United Republic of Tanzania
Finland	Panama	Uruguay
Ghana	Philippines	Vanuatu
Ireland	Portugal	Venezuela
Italy	Qatar	

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

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

Malaysia

Other States:

Brazil	Iran, Islamic Republic of	Saudi Arabia
Chile	Peru	

2.4 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

International non-governmental organisations:

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

3 Incidents involving the 1992 Fund

3.1 Overview

The Executive Committee took note of document 92FUND/EXC.26/2, which contained summaries of the situation in respect of all 16 incidents dealt with by the 1992 Fund since the Committee's 23rd session, held in October 2003.

3.2 Incident in Germany, *Dolly* and *Victoriya* incidents

3.2.1 The Executive Committee took note of the developments in respect of three incidents set out in document 92FUND/EXC.26/3.

Incident in Germany

3.2.2 It was recalled that the German authorities had taken legal action against the owner and the insurer of the ship *Kuzbass* suspected of having caused pollution in Germany in 1996. It was also recalled that the shipowner and the insurer had maintained that the oil which caused the pollution did not originate from the *Kuzbass*. It was further recalled that the German authorities had brought action against the 1992 Fund to protect their right to claim compensation from the Fund, should the attempt to recover their costs for clean-up operations from the owner of the *Kuzbass* and his insurer be unsuccessful. It was also recalled that a Court of first instance had held the owner and the insurer jointly and severally liable for the pollution damage, but that they had appealed against the judgement.

3.2.3 It was also recalled that the German authorities had submitted a statement of response to the appellants' grounds for appeal. The Committee noted that in January 2004 the Fund had also submitted a statement of response, which was largely along the same lines as that of the German authorities. It was also noted that the hearing of the Appeal Court was scheduled for 1 December 2004.

Dolly

3.2.4 The Executive Committee recalled that the *Dolly* had sunk in 20 metres depth in Robert Bay (Martinique), while carrying some 200 tonnes of bitumen and that so far no cargo had escaped. It was also recalled that there was a national park, a coral reef and mariculture near the grounding site, that artisanal fishing was carried out in the area and that there were fears that the fishery and mariculture would be affected if the bitumen were to escape.

3.2.5 It was recalled that, since the shipowner had not taken any measures to prevent pollution, the French authorities had arranged for the removal of 3.5 tonnes of bunker oil and had requested three international salvage companies to investigate what measures could be taken to eliminate the threat of pollution by bitumen.

3.2.6 It was recalled that the French Government had taken legal action against the shipowner and the 1992 Fund claiming provisionally FFr1.2 million or €232 000 (£151 000) in respect of the costs of removing the bunker oil from the *Dolly* but that further costs would be claimed in respect of the removal of the wreck and cargo.

3.2.7 The Committee noted that in August 2004 the French authorities had informed the Fund that a contract had been awarded to a consortium comprising a French diving company and the managers of a yacht marina in Martinique. It was also noted that the operations were due to commence in late October. It was further noted that the first stage involved righting the wreck on the seabed before removing the three cargo tanks containing the bitumen from the vessel's hold and that the tanks would then be towed to a dry dock and the bitumen removed.

Victoriya

3.2.8 The Executive Committee recalled that on 30 August 2003 the Russian tanker *Victoriya* had suffered a fire and explosion at a terminal near Syzran on the Volga River, Russian Federation, while loading crude oil and that a significant but unknown quantity of the oil had been spilled into the river. It was also recalled that the *Victoriya* was insured for pollution liabilities with Terra Nova Protection and Indemnity. It was further recalled that the shipowner had engaged a number of contractors to undertake clean-up operations and prevent the further escape of oil

from the vessel. It was noted that the clean-up of the river banks had been largely completed by the end of November 2003.

3.2.9 It was recalled that at its 22nd session held in October 2003 the Executive Committee had considered the questions of whether the *Victoriya* was a 'ship' for the purpose of the 1992 Civil Liability Convention and whether the 1992 Conventions applied to pollution damage in the inland, non-tidal reaches of rivers. The Committee recalled that most delegations, whilst noting the unusual nature of the incident with respect to its location in the upper reaches of a river, had nevertheless considered that the 1992 Conventions were applicable, since the *Victoriya* was a sea-going vessel and the pollution damage had been caused in the territory of a Contracting State. It was also recalled that the Committee had decided that the 1992 Civil Liability Convention and the 1992 Fund Convention applied to the *Victoriya* incident (document 92FUND/EXC.22/14, paragraph 8.13).

3.2.10 The Committee noted that in February 2004 the shipowner's insurer had informed the Fund that claims totalling about US$500 000 (£300 000) were anticipated for the costs of clean-up and preventive measures and that a claim by a local fish processing company for US$380 000 (£224 000) was also expected for economic loss due to interruption of its activities.

3.2.11 It was noted that the 1992 Fund had not been able to obtain any further details regarding the claims situation but that on the basis of the claims submitted in February 2004, it seemed that the aggregate amount of claims would fall well below the limitation amount applicable to the *Victoriya*, ie 3 million SDR (£2.4 million).

3.3 *Erika*

3.3.1 The Executive Committee took note of the developments regarding the *Erika* incident as set out in documents 92FUND/EXC.26/4 and 92FUND/EXC.26/4/Add.1.

Amount available for compensation

3.3.2 It was recalled that the maximum amount available for compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention (135 million SDR) had been calculated by the Director at FFr1 211 966 811, corresponding to €184 763 149 (£126 million), that the Executive Committee had endorsed this calculation at its April 2000 and October 2001 sessions and that in October 2000 and October 2001 the Assembly had endorsed the Committee's decision.

Claims situation

3.3.3 The Committee noted that 6943 claims for compensation had been submitted for a total of FFr1 355 million or €207 million (£142 million). It was noted that 6564 claims totalling FFr1 223 million or €186 million (£127 million), representing 94.5% of the total number of claims, had been assessed at a total of FFr675 million or €103 million (£70 million). It was also noted that 804 claims totalling FFr154 million or €24 million (£16 million) had been rejected.

3.3.4 The Committee further noted that payments for compensation had been made in respect of 5 547 claims for a total of FFr645 million or €98.4 million (£64.4 million), out of which the shipowner's insurer, Steamship Mutual Underwriting Association (Bermuda) Limited (Steamship Mutual), had paid FFr84 million or €12.8 million (£8.8 million) and the 1992 Fund FFr561 million or €85.6 million (£55.6 million).

3.3.5 It was recalled that the French Government had undertaken not to pursue claims for compensation against the 1992 Fund or the limitation fund established by the shipowner or his insurer if and to the extent that the presentation of such claims would result in the maximum amount of compensation available under the 1992 Conventions being exceeded, provided, however, that the French Government's claim would rank before any claim by TotalFinaElf. It

was also recalled that at its October 2003 session, the Executive Committee had authorised the Director to make payments in respect of the French Government's claim to the extent that he considered there was a sufficient margin between the total amount of compensation available and the Fund's exposure in respect of other claims. It was further recalled that after having reviewed his earlier assessment of the total level of admissible claims, the Director had decided in December 2003 that there was a sufficient margin to enable the 1992 Fund to commence payments to the French State and that on 29 December 2003 the 1992 Fund had paid €10 106 004 (£6 973 146) to the French State, corresponding to the French Government's subrogated claim in respect of the supplementary payments made by the Government to claimants in the tourism sector.

3.3.6 The Committee noted that having again reviewed the situation in the light of the developments during 2004, the Director had decided that there was sufficient margin to enable the 1992 Fund to make a further payment to the French State of €5 964 338 (£4 145 215) relating to the Government's supplementary payments made under the scheme to provide emergency payments to claimants in the fishery, mariculture, oyster farming and salt producing sectors administered by OFIMER. It was noted that this amount had been paid to the French State on 14 October 2004.

Legal proceedings in respect of claims against the 1992 Fund

3.3.7 The Executive Committee took note of the legal actions by 795 claimants referred to in section 7 of document 92FUND/EXC.26/4.

3.3.8 It was noted that out-of-court settlements had been reached with 393 of these claimants and that actions by the remaining 399 claimants (including 212 salt producers) were pending. It was also noted that the total amount claimed in the pending actions, excluding the claims by the French State and TotalFinaElf, was FFr451 million or €69 million (£47 million).

3.3.9 The French delegation thanked the Director and expressed its satisfaction with the progress that had been made in dealing with the outstanding claims, which it hoped would continue.

Judgements by the Commercial Court in Lorient and the Court of Appeal in Rennes

3.3.10 The Committee recalled the judgements rendered in December 2003 by the Commercial Court in Lorient in respect of four claims in the tourism and fisheries sectors, which had been rejected by the shipowner, Steamship Mutual and the 1992 Fund.

3.3.11 The Committee recalled that one of the claims related to loss of income allegedly suffered by a claimant whose property in the affected area was to be let to other businesses (and not directly to tourists) but which, according to the claimant, could not be let due to the negative effects of the *Erika* incident.

3.3.12 It was recalled that in its judgement the Commercial Court had stated that it was not bound by the criteria for admissibility laid down by the 1992 Fund and that its function was to establish whether there was damage and, if so, to assess it in accordance with the criteria of French law. It was also recalled that the Court had held that, under French law, a claim for compensation was admissible if there was a sufficient link of causation between the event and it was shown that the damage would not have occurred if the incident had not taken place. It was further recalled that in the Court's view, the *Erika* incident had been the sole cause of the pollution and its economic consequences and that the Court had ordered the shipowner, Steamship Mutual and the 1992 Fund to pay compensation to the claimant for loss of rental income at €10 671 (£7 300).

3.3.13 The Committee recalled that the three other judgements related to claims by a person selling and letting machines for the production of ice cream, by a hotel situated in Carnac and by an oyster grower in Morbihan. It was recalled that these claims had been rejected by the

1992 Fund on the grounds that the claimants had not shown that there was a sufficient link of causation between the alleged loss and the contamination caused by the *Erika* oil spill. The Committee recalled that after having made the same statement in respect of the criteria to be applied as set out in paragraph 3.3.12, the Court had appointed an expert to investigate whether there was a link of causation between the alleged loss and the oil pollution.

3.3.14 The Executive Committee recalled that at its 24th session held in February 2004 it had decided that the 1992 Fund should pursue appeals against the four judgements, considering the importance of the issue for the proper functioning of the compensation regime based on the 1992 Conventions (document 92FUND/EXC.24.8, paragraph 3.1.27).

3.3.15 The Committee noted that the Court of Appeal had rendered its decision on 25 May 2004 in which the claim referred to in paragraph 3.3.11 was rejected. It was noted that, although the Court had not applied the 1992 Fund's criteria, which were considered not binding on national courts, the Court had held that the claimant had not shown that there was a sufficient link of causation between the event in question and the damage, nor had the claimant proven that any damage existed.

3.3.16 It was noted that the Fund's appeals against the three other judgements were pending before the Court of Appeal.

Judgement by the Civil Court in Nantes

3.3.17 The Committee recalled that in January 2004 the Civil Court (Tribunal de Grande Instance) in Nantes had rendered a judgement in respect of claims by the owners of two hotels in Nantes for pure economic loss, which had been rejected by the 1992 Fund on the grounds that they did not fulfil the Fund's criteria for admissibility in that there was not a reasonable degree of proximity between the alleged losses and the pollution. It was recalled that the Court had rejected the claims in the light of the Fund's criteria on the grounds that the claimants had not shown a link of causation between the alleged losses and the oil pollution caused by the *Erika* incident.

3.3.18 It was noted that the claimants had not appealed against the judgement.

Judgement by the Commercial Court in Rennes

3.3.19 The Committee recalled that in April 2004 the Commercial Court in Rennes had rendered a judgement in respect of a claim for €86 350 (£57 000) by a company in Rennes which had carried out activities both as a tour operator selling hiking tours in Brittany, Ireland and the Channel Islands and as a traditional travel agency. It was noted that the company had claimed compensation for losses allegedly suffered during 2000 as a result of a reduction of sales due to the *Erika* incident.

3.3.20 The Committee recalled that this claim had been rejected by the 1992 Fund. It was recalled that as regards sales through other tour operators (second degree tourism claims'), it had been considered by the Fund that there was not a reasonable degree of proximity between the contamination and the alleged losses and that no loss had been proven as regards sales direct to tourists. It was further recalled that the Court had rejected the claim. It was recalled that after having referred to the 1992 Fund's criteria for admissibility of claims for pure economic loss, the Court held that it had not been established that there was a reasonable degree of proximity between the contamination and the damage already suffered.

3.3.21 The Committee noted that the claimant had appealed against the judgement.

Judgement by the Commercial Court in Saint Brieuc

3.3.22 The Committee noted that in September 2004 the Commercial Court in Saint Brieuc had rendered a judgement in respect of a claim for €33 265 (£22 850) by a person operating a campsite in Côtes d'Armor, which was located in the northern part of Brittany, in respect of losses allegedly suffered in 2001 as a result of the *Erika* incident.

3.3.23 The Committee noted that the operator of this campsite had previously submitted a claim in respect of losses suffered during 2000 which had been settled and paid by the 1992 Fund in December 2002. It was noted that the Fund had considered that, although this campsite was located in northern Brittany, ie outside the area directly affected by the *Erika* oil spill, the spill had resulted in loss of business for the season of 2000. It was however noted that, with a few exceptions, there had been no remaining contamination on the beaches in Brittany after the end of the 2000 season and that therefore the 1992 Fund had rejected the claim for losses during the 2001 season on the grounds that any loss of business suffered by the operator of this campsite during that season had not resulted from the contamination of the beaches caused by the *Erika*.

3.3.24 The Committee noted that the Court had nevertheless held that the claim was admissible since it considered that the reduction in turnover in 2001 compared to 1999 had been caused by the *Erika* incident and that it had ordered the shipowner, Steamship Mutual and the 1992 Fund to pay compensation of an amount of € 26 719 (£18 350).

3.3.25 It was noted that the Director intended to lodge an appeal on behalf of the 1992 Fund against this judgement.

Judgement by the Civil Court in Saintes

3.3.26 The Executive Committee also took note of a judgement rendered in September 2004 by the Civil Court of first instance in Saintes. It was noted that the owner of a restaurant in Barzan in the Department of Charente-Maritime had presented a claim for €30 425 (£20 900) relating to losses allegedly suffered in 2000 as a result of the *Erika* incident. The Committee noted that the claim had been rejected by the Fund on the grounds that it did not fulfil the criteria for admissibility of claims relating to pure economic loss, in particular the requirement of geographic proximity between the claimant's activity and the contamination, the restaurant being located more than 130 kilometres from the nearest polluted beach in Charente-Maritime. It was noted however that the claimant had maintained that the contamination of some beaches in Charente-Maritime had had the consequence of discouraging tourists from visiting any destinations in the department and that therefore the claim fulfilled the Fund's criteria of geographic proximity.

3.3.27 The Committee noted that in its judgement the Court had noted that the governing bodies of the IOPC Funds had established uniform criteria for the application of the definition of 'pollution damage', including the requirement of a reasonable degree of proximity, ie a sufficient link of causation, between the contamination and the alleged loss, and that in order to determine whether such sufficient link of causation existed, account should be taken of the geographic proximity between the claimant's activities and the contamination, the degree to which the claimant was economically dependent on the affected resource, the extent to which the claimant had alternative sources of supply or business opportunities and the extent to which the claimant's business formed an integral part of the economic activity of the area effected by the oil spill. It was noted that the Court had stated that it was appropriate to apply these criteria for the interpretation of the 1992 Conventions, and that this had not been contested by the claimant.

3.3.28 The Committee further noted that the Court had made the point that the polluted beaches nearest to the claimant's restaurant were more than 100 kilometres away and the fact that these beaches were located in the same department was not sufficient for fulfilling the criterion of geographic proximity. It was noted that the Court had stated that there could not be any confusion in the minds of tourists between the polluted beaches and the part of the coast where the restaurant

was located and that in addition the claimant could not be considered economically dependant on the affected resource. It was further noted that the Court had stated that the claimant had not provided any evidence supporting the allegation that there was a link of causation between the contamination resulting from the *Erika* incident and a reduction in the number of tourists visiting the area where the restaurant was located or the reduction in the restaurant's turnover. The Committee noted that for these reasons the Court had rejected the claim, holding that it did not fulfil the criteria of geographic proximity and economic dependency adopted by the Fund's governing bodies and that there was not therefore a reasonable degree of proximity nor a sufficient link of causation between the incident and the alleged loss.

Other court cases

3.3.29 It was noted that a number of other cases had been heard during the period June-September 2004 by various Courts of first instance but that the Courts had not yet rendered their judgements.

3.4 *Al Jaziah 1* and *Zeinab* incidents

3.4.1 The Executive Committee took note of the information contained in document 92FUND/EXC.26/5 (cf document 71FUND/AC.15/14/5) concerning the *Al Jaziah 1* and *Zeinab* incidents which had occurred in the United Arab Emirates and which involved both the 1992 and the 1971 Funds.

Al Jaziah 1

3.4.2 It was recalled that the *Al Jaziah 1* had not been covered by any liability insurance, that claims totalling £1.4 million had been submitted to the Funds in relation to clean-up and pollution prevention and that these claims had been settled at £1.1 million and had been paid by the Funds. The Committee noted that all further claims had become time-barred and that therefore the Funds would not be required to make any further compensation payments.

3.4.3 The Committee recalled that the Abu Dhabi Public Prosecutor had brought criminal proceedings against the master of the *Al Jaziah 1*. It was recalled that the Court had held, *inter alia*, that the vessel had caused damage to the environment and that it had not fulfilled basic safety requirements, had not been fit to sail, had had many holes in the bottom and had not been authorised by the Ministry of Communications of the UAE to carry oil. It was further recalled that the conclusion of the Court was that the sinking of the vessel had been due to these deficiencies and that the master had been fined Dhs 5 000 (£850) for causing damage to the environment.

3.4.4 It was recalled that, at their October 2002 sessions, the governing bodies of the 1971 and 1992 Funds had considered the question of whether to pursue recourse action against the owner of the *Al Jaziah 1*. The Committee recalled that in the view of the Funds' lawyers in the UAE the findings of the criminal court regarding the vessel's unseaworthiness would be persuasive in any civil action against the shipowner in the UAE. It was also recalled that it was the Director's view that the shipowner must have known or ought to have known that the ship was unseaworthy and that the sinking of the vessel had therefore been due to the fault or privity of the shipowner. It was further recalled that, in the Director's view, the shipowner was not entitled to limit his liability, pursuant to Article V.2 of the 1969 Civil Liability Convention, and that any attempt by the shipowner to limit his liability should be opposed by the Funds.

3.4.5 It was recalled that the governing bodies of the 1971 and 1992 Funds had decided that the Funds should pursue recourse action against the shipowner and that in so deciding it had been recognised that the decision to pursue a recourse action in this particular case represented a deviation from the Funds' policy of basing their decisions in part on the prospects of recovery in the event of a favourable judgement (documents 92FUND/EXC.18/14, paragraph 3.5.9 and 71FUND/AC.9/20, paragraph 15.10.9).

3.4.6 The Executive Committee recalled that the Funds had commenced legal action in the Abu Dhabi Court of first instance against the shipowning company and its sole proprietor in January 2003, requesting that the defendants should be ordered to pay Dhs 6.4 million (£1.1 million) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.

3.4.7 It was recalled that the defendants had in their pleadings argued that the Funds had not submitted admissible legal evidence in respect of the incident or details of the alleged losses suffered by the parties who had subrogated their rights to the Funds, that the subrogation of the claimants' rights had not been done correctly under UAE law and that these rights had not existed legally as the claimants had not exercised their right to claim against the shipowner under the Civil Liability Convention.

3.4.8 It was also recalled that in their pleadings the Funds had maintained that the shipowner had failed to set up a limitation fund in accordance with the 1969 Civil Liability Convention and the 1992 Civil Liability Convention and that the Funds had paid compensation to those who had suffered pollution damage instead of waiting for the shipowner to provide compensation under the Civil Liability Convention, since there was no indication that the shipowner had any intention to pay compensation. It was further noted that the Funds had argued that the subrogation of the claimants' rights was based on Article 9 of the Fund Conventions and not on UAE law, which required a court judgement for a party to acquire subrogated rights in order to be able to commence proceedings against a third party. The Committee noted that the Funds had also presented the Court with further evidence in relation to the incident and the losses caused, including documents issued by various government authorities.

3.4.9 It was noted that in November 2003 the Abu Dhabi Court of first instance had issued a preliminary judgement appointing an expert to investigate the nature of the incident and the payments made by the 1971 Fund. It was also noted that the Funds and their lawyers had met with the experts on two occasions and had provided supplementary information as requested by the expert and that the expert had not submitted his report. It was further noted that the Court was expected to render its judgement before the end of 2004.

Zeinab

3.4.10 The Committee recalled that the Georgian-registered vessel *Zeinab*, suspected of smuggling oil from Iraq, had sunk about 16 miles from the Dubai coastline in April 2001. It was recalled that the *Zeinab* had not been entered with any classification society or covered by any liability insurance.

3.4.11 It was recalled that the 1992 Fund Executive Committee and the 1971 Fund Administrative Council had decided at their June 2001 sessions that, since the United Arab Emirates was at the time of the *Zeinab* incident a Party to both the 1969/1971 Conventions and the 1992 Conventions, both sets of Conventions applied to the incident, and that the liabilities should be distributed between the 1992 Fund and the 1971 Fund on a 50:50 basis.

3.4.12 It was recalled that claims in relation to clean-up and pollution prevention measures had been settled at £1.0 million and had been paid by the Funds. It was also noted that all further claims had became time-barred and that therefore the Funds would not be required to make further compensation payments.

3.4.13 It was recalled that at their February 2004 sessions, the governing bodies of the 1971 and 1992 Funds had considered whether the Funds should pursue recourse action against the owner of the *Zeinab*. It was recalled that emphasising that the IOPC Funds should in principle take recourse action in order to discourage the operation of substandard ships, the governing bodies had decided not to pursue a recourse action against the owner of the *Zeinab* on the sole ground that it would be extremely difficult to pursue such an action for legal and practical reasons (documents 92FUND/EXC.24/8, paragraph 3.2.8 and 71FUND/AC.13/8, paragraph 3.2.8).

3.5 *Slops*

3.5.1 The Executive Committee took note of the information contained in document 92FUND/EXC.26/6 concerning the *Slops* incident which had occurred in Greece.

3.5.2 It was recalled that at its July 2000 session the Executive Committee had decided that the *Slops* should not be considered a 'ship' for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention and that these Conventions did not apply to this incident.

3.5.3 It was recalled that two companies that had carried out clean-up operations had taken legal action against the 1992 Fund and that in December 2002 the Court of first instance had rendered its judgement, holding that the *Slops* fell within the definition of 'ship'.

3.5.4 The Committee recalled that the 1992 Fund had appealed and that in February 2004 the Court of Appeal had overturned the judgement of the Court of first instance and rejected the claims against the 1992 Fund on the grounds that the *Slops* did not meet the criteria required by the Conventions and therefore could not be considered a 'ship'.

3.5.5 It was noted that the claimants had appealed to the Supreme Court arguing that the *Slops*, which by its construction had all the characteristics of a vessel carrying oil, had been anchored and used as a floating receiving and separating unit for oil products transferred from other vessels. It was noted that the claimants had stated that as a result of fire, a large quantity of oil loaded in bulk as cargo in the vessel's cargo tanks had been spilled. The Committee noted that the claimants had maintained that the Court of Appeal had made an incorrect interpretation of the definition of 'ship' in the 1992 Civil Liability Convention and that the wording of the definition and its purpose was not only to prevent pollution but also to compensate victims of oil pollution and those who contributed to the prevention of such pollution. It was noted that the claimants had further maintained that the definition of 'ship' also covered a craft which, by its construction, was designed to carry oil and which at the time of the incident did not perform voyages and (for a brief or longer period of time) was stationary, operating as a receiving and separating unit for oil or oily residues and carrying oil in its cargo tanks, particularly so when the craft had oily residues from the carriage on board and constituted a high risk of causing pollution in vital areas such as ports. It was also noted that in the claimants' view the Court of Appeal had considered an issue that had not been pleaded, holding that it could not support the view that there were oil residues from the *Slops*' last voyage at the time of the incident. It was further noted that the claimants had argued that the definition of 'ship' introduced a rebuttable presumption that there were residues on board and that the 1992 Fund had not rebutted this presumption.

3.5.6 It was noted that a hearing before the Supreme Court was set for late February 2005.

3.5.7 The Executive Committee endorsed the Director's intention to submit pleadings to the Supreme Court maintaining that the Court of Appeal had interpreted the definition of 'ship' correctly and that the appeal should be dismissed, referring to the reasons put forward by the Fund in the proceedings before the Court of Appeal, in particular that it was not possible that the residues from previous voyages had remained on board in view of the conversion of the *Slops* to a floating oil recovery facility, and arguing that in any event the alleged rebuttable presumption would not apply in this case. The Committee also endorsed the Director's intention to draw the Supreme Court's attention to Resolution Nº8 adopted in May 2003, which stated that national courts in States Parties to the 1992 Conventions should take into account the decisions of the governing bodies of the 1992 Fund and the 1971 Fund relating to the interpretation and application of the Conventions.

3.6 Incident in Sweden

3.6.1 The Executive Committee took note of the information contained in document 92FUND/EXC.26/7 concerning this incident.

3.6.2 The Committee recalled that in September 2000 persistent oil had landed on the shores of two islands to the north of Gotland in the Baltic Sea and on several islands in the Stockholm archipelago and that the Swedish authorities had undertaken clean-up operations. It was recalled that investigations by the Swedish authorities had indicated that the oil could have been discharged within the Swedish Exclusive Economic Zone to the east of Gotland, possibly from the Maltese tanker *Alambra*, which had passed the area at the assumed time of the oil spill on a ballast voyage to Tallinn (Estonia). It was noted that according to the Swedish Coastguard, analyses of oil samples from the polluted islands matched those taken from the *Alambra*. The Committee further noted that the shipowner and his insurer had maintained that the oil did not originate from the *Alambra*.

3.6.3 It was recalled that the Swedish authorities had incurred costs in respect of clean-up operations totalling SEK 5.3 million (£400 000) and that therefore the aggregate amount of the claims would fall well below the limitation amount applicable to the *Alambra*, 32 684 760 SDR (£27.6 million).

3.6.4 It was recalled that the Swedish authorities had made available to the 1992 Fund the results of the analyses of samples of oil carried on board the *Alambra* and of samples of oil found on several Swedish islands and that, after examination of the results, the Director had concurred with the conclusion of the authorities that the pollution samples matched closely those taken from the *Alambra*.

3.6.5 The Committee recalled that in September 2003 the Swedish Government had taken legal action in the Stockholm District Court against the shipowner and his insurer maintaining that the oil in question originated from the *Alambra* and claiming compensation of SEK5.3 million (£400 000) for clean-up costs. It was further recalled that the Government had also taken legal action against the 1992 Fund as a protective measure to prevent its claim against the Fund becoming time-barred, invoking the liability of the 1992 Fund to compensate the Government if neither the shipowner nor the insurer were to be held liable to pay compensation.

3.6.6 The Committee noted that, following a request by the 1992 Fund, the District Court had decided that the action against the Fund should be suspended until the action against the shipowner/London Club had been heard.

3.6.7 It was noted that the shipowner and his insurer had submitted pleadings in which they had rejected the Government's claim, maintaining that no evidence had been provided showing that the oil that polluted the islands originated from the *Alambra* and submitting evidence from experts from Heriot Watt University and AEA Technology in the United Kingdom who had carried out a comparative analysis of the oil samples taken from the Swedish coast and from the *Alambra*. It was noted that in the experts' view the conclusion by the Swedish Forensic Laboratory that the samples taken from the vessel corresponded to those taken from the Swedish coast was erroneous. It was also noted that the experts had argued that the pollution samples had the characteristics of crude oil whereas the ship samples were more typical of a mixture of crude oil and fuel oil.

3.6.8 The Committee noted that the Swedish authorities had argued that the pollution samples and the ship samples were very similar and that the small differences in the characteristics could be explained by weathering of the oil after it had been discharged. It was noted that the authorities had pointed out that if the pollution samples had been crude oil and the ship samples had been a mixture of both crude oil and fuel oil, there would have been many more, and marked, differences between the oils than those demonstrated by the analysis.

3.6.9 The Committee noted that after examining the evidence presented by the shipowner/his insurer and the Swedish authorities the Director had considered that the differences in the hydrocarbon profiles of the pollution and ship samples were very slight and were probably due to methodological and instrumental fluctuations rather than being indicative of differences in the

samples and that the hydrocarbon profiles of both the pollution and ship samples strongly suggested that they were crude oil rather than fuel oil.

3.6.10 The Committee endorsed the Director's conclusion that there were no grounds to disagree with the findings of the Swedish authorities that the pollution samples originated from the *Alambra*.

3.7 *Prestige*

3.7.1 The Executive Committee took note of the information regarding the *Prestige* incident contained in documents presented by the Director (document 92FUND/EXC.26/8), by the French and Spanish delegations (document 92FUND/EXC.26/8/1) and by the Spanish delegation (documents 92FUND/EXC.26/8/2 and 92FUND/EXC.26/8/3).

Removal of oil from the wreck

3.7.2 The Committee recalled that in December 2003 the Spanish Government had decided that the cargo remaining in the wreck should be removed using aluminium shuttle containers filled by gravity through holes cut in the tanks and that a contract to remove the remaining oil from the *Prestige* had been signed between the Spanish Government and the Spanish oil company Repsol YPF. The Committee noted that the removal of the oil, which had commenced in May 2004, had been finalised in September 2004. It was noted that the Spanish Government had estimated that the cost of the work was some €100 million (£68 million).

3.7.3 The Spanish observer delegation introduced document 92FUND/EXC.26/8/3, which contained a step-by-step account of the operations undertaken to remove the oil from the wreck of the *Prestige*. It was noted that a total of 13 600 tonnes of fuel oil had been removed representing 95% of the cargo that had remained on board. It was further noted that biological agents had been added to the tanks in the bow and stern sections, with the aim of accelerating the degradation of the remaining oil and minimising the risk of further pollution.

3.7.4 The Executive Committee was shown a DVD by the Spanish delegation, which illustrated the oil removal operations.

Claims situation in Spain

3.7.5 The Committee noted that the Claims Handling Office in La Coruña had received 632 claims totalling €673 million (£461 million), including a claim for €131.6 million (£90 million) from a group of 58 associations from Galicia, Asturias and Cantabria representing 13 600 fishermen and shellfish harvesters and three claims from the Spanish Government. It was recalled that the first claim from the Spanish Government was for €383.7 million (£261 million), submitted in October 2003, the second for €44.6 million (£30 million), submitted in January 2004, and the third for €85.5 million (£58 million), submitted in April 2004. It was also recalled that the claims by the Spanish Government related to costs incurred until the end of December 2003 in respect of at sea and onshore clean-up operations, compensation payments to fishermen and shellfish harvesters, tax relief for businesses affected by the spill, administration costs and costs relating to publicity campaigns. The Committee noted that one of the items claimed, relating to clean-up operations in the Atlantic National Park and amounting to €11.9million (£8 million), had been withdrawn since funding for these operations had been obtained from another source.

3.7.6 The Committee recalled that the first claim received from the Spanish Government had been assessed by the Director on an interim basis at €107 million (£73 million) and that a payment of €16 050 000 (£11.1 million), corresponding to 15% of the assessed amount, had been made in December 2003. It was also recalled that the Director had made a general assessment of the total of the admissible damage in Spain at €303 million (£206 million) and that, as authorised by the Assembly, he had also made in December 2003 a further payment of €41 505 000 (£28.8 million) against a bank guarantee provided by a Spanish bank, bringing the total amount paid by the 1992 Fund to the Spanish Government to €57 555 000 (£39.9 million).

3.7.7 In introducing document 92FUND/EXC.26/8/2, the Spanish delegation stated that the total amount paid by the 1992 Fund referred to in paragraph 3.7.6 above had been fully used to finance the system of advanced payments of compensation to victims in accordance with Royal Decree (Real Decreto-Ley) 4/2003 and Royal Decree (Real Decreto-Ley) 4/2004. The Spanish delegation mentioned that two systems for assessing and paying damages had been established, the first using objective estimates intended for those victims who received direct assistance when the accident occurred (ie shipowners, crew members, shellfish harvesters, net makers, workers in fish markets, fishermen's associations and wholesalers), of whom 90% had been catered for. It was stated that approximately €86.2 million (£58 million) had been paid under this system.

3.7.8 It was noted that the second system, which was being applied to the remaining claims, involved an individual evaluation by the Consorcio de Compensación de Seguros (the Consorcio), a State-owned insurance organisation, of the damage suffered. It was noted that the Consorcio was working closely with the 1992 Fund on these assessments.

3.7.9 The Spanish delegation stated that a third system involved the signing of agreements with the public administrations of towns and autonomous regions that had submitted claims totalling €37.6 million (£25 million) and €149.5 million (£101 million) respectively.

3.7.10 The Committee noted that the preparation of the fourth claim of the Spanish Government, for approximately €120 million (£81 million), was being finalised.

3.7.11 It was noted that since December 2003, a number of meetings had been held between representatives of the 1992 Fund and representatives of the Spanish Government and that a considerable amount of further information had been provided in support of the Government's claims. The Committee noted that discussions were being held with the Spanish Government to explore ways of speeding up the examination of the large volume of documents relating to the onshore clean-up operations.

3.7.12 It also noted that 279 claims other than those of the Spanish Government totalling €18.2 million (£12.4 million) had been assessed at €1.2 million (£829 000), that many of the remaining claims lacked sufficient supporting documentation and that such documentation had been requested from the claimants. It was noted that interim payments totalling €17 386 (£11 800) had been made corresponding to 15% of the assessed amounts in respect of 36 of the assessed claims. The Committee noted that 117 claims had been rejected, the majority because the claimant had not demonstrated that a loss had been suffered, that 29 claims were being examined by the shipowner's insurer, the London Steamship Owners Mutual Insurance Association (London Club) and the Fund and that the remaining claims were awaiting a response from the claimants or were being re-examined following claimants' disagreement with the assessed amount.

Claims situation in France

3.7.13 The Committee noted that 296 claims totalling €86.9 million (£59 million) had been received by the Claims Handling Office in Bordeaux. It was noted that claims totalling €631 944 (£430 000) submitted by 99 oyster farmers based in the Arcachon basin near Bordeaux for losses allegedly suffered as a result of market resistance due to the pollution had been examined by the experts engaged by the London Club and the 1992 Fund. It was also noted that 47 of these claims totalling €285 149 (£194 000) had been assessed at €114 305 (£78 000) and that the experts appointed by the London Club and 1992 Fund were examining the remaining 52 claims. It was further noted that 197 claims had been submitted mainly by businesses in the tourism sector and in respect of clean up, that 104 of these claims, for €6.8 million (£4.6 million), had been assessed at €3.2 million (£2.2 million), and that the remaining 93 claims were being examined.

3.7.14 The Committee noted that payments totalling €96 438 (£66 000) had been made corresponding to 15% of the assessed amount in respect of 25 claims.

3.7.15 It was noted that that experts appointed by the 1992 Fund and the London Club were assessing a claim for €67.5 million (£46 million) submitted by the French Government in May 2004 relating to costs incurred for clean up and preventive measures. It was also noted that in October 2004, representatives of the Fund and the Fund's experts had met with representatives of the French Government to discuss the assessment process and what further information was required for the assessment to be completed.

. *Claims situation in Portugal*

3.7.16 The Committee noted that the Portuguese Government had submitted a claim for €3.3 million (£2.2 million) in respect of clean-up and preventive measures. It was noted that a meeting had been held in July 2004 between representatives of the 1992 Fund and representatives of the Government departments involved, as a result of which the Portuguese Government had undertaken to provide additional information in support of its claim.

Payments and financial assistance by the Spanish authorities

3.7.17 The Committee recalled that the Spanish Government and regional authorities had made payments of some €40 (£26.6) per day to all those directly affected by the fishing bans, including shellfish harvesters, inshore fishermen and associated onshore workers with a high dependence on the closed fisheries, such as fish vendors, fishing net repairers and employees of fishing co-operatives, fish markets and ice factories. It was recalled that some of these payments had been included in subrogated claims by the Spanish authorities pursuant to Article 9.3 of the 1992 Fund Convention, and that it was expected that further subrogated claims would be presented. It was further recalled that the Spanish Government had also provided aid to other individuals and businesses affected by the oil spill in the form of tax relief and waivers of social security payments.

3.7.18 It was further recalled that under the Royal Decrees (Real Decreto-Leys) referred to in paragraph 3.7.7, the Spanish Government had made available funds totalling € 249.5 million (£170 million). It was noted that the funds available for compensation of losses occurring during 2004 were limited by the Decree to €3 million (£2 million) and that claimants were required to submit claims for such losses by 31 March 2005.

Amount available for compensation

3.7.19 The Committee recalled that the limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention was approximately 18.9 million SDR or €22 777 986 (£16 million) and that on 28 May 2003 the shipowner had deposited €22 777 986 with the Criminal Court in Corcubión (Spain) for the purpose of constituting the limitation fund.

3.7.20 It was recalled that the maximum amount of compensation available under the 1992 Conventions in respect of this incident, 135 million SDR, corresponded to €171 520 703 (£121 million), including the amount actually paid by the shipowner and his insurer (Article 4.4 of the 1992 Fund Convention).

Level of payments

3.7.21 It was recalled that at the Executive Committee's 25th session held in May 2004 the Spanish Government had estimated the total damage in Spain to be €834.8 million (£554 million). It was further recalled that the overall losses in France had been estimated by the French Government to be in the range of €145.2 to 202.3 million (£96 to 134 million), although the maximum losses were expected to be around €176 million (£124 million). It was also recalled that the Portuguese delegation had stated that the total amount of the damage in Portugal was some €3.3 million (£2.2 million). The Committee noted that the Director had not received any further information from the Spanish, French and Portuguese Governments on the overall impact of the incident.

3.7.22 The Executive Committee took note of a document presented by the French and the Spanish delegations relating *inter alia* to the level of payments (document 92FUND/EXC.26/8/1).

3.7.23 The Committee noted that the delegations of Spain and France had held consultation meetings on the handling of the *Prestige* case in order to explore the possibilities of improving the settlement of claims. It was noted that in the view of these delegations the compensation level of 15% decided at the 21st session of the Executive Committee, held in May 2003, had left the victims in an unsatisfactory situation.

3.7.24 It was noted that the Spanish administration, as a result of the arrangement put in place to compensate victims, had been directly affected by the low level of payments since it had incurred very considerable expenditure to combat the effects of the incident and provide compensation to the victims.

3.7.25 It was also noted that in France the announcement of the 15% level, which was the lowest in the history of the 1971 and 1992 Funds, had triggered reactions of incomprehension and hostility towards the international system. It was noted that in the French delegation's view, despite the losses observed, the small number of claims submitted could be explained by the fact that, for many businesses, a 15% compensation level did not cover the extra cost of submitting a claim for compensation and the time spent answering subsequent queries from the experts.

3.7.26 It was noted that both Governments had considered that increasing the compensation level should be a priority for the 1992 Fund for the coming year, particularly with the approaching three-year time bar on claims. It was also noted that, in these Governments' view, in order to enable the victims who had not yet done so to submit a claim in time, it was necessary to send them a clear message so that they could judge, by reference to the financial loss they considered they had suffered and to what might be recovered, whether or not to take legal action before November 2005. It was further noted that, in both Governments' view, the claimants should be made aware as soon as possible of the possibility of being compensated, for it would be particularly damaging for the image of the Fund if any significant increases in the level of payments were to be decided after the expiry of the time bar period, leaving a number of victims without any possibility of taking appropriate action.

3.7.27 The Committee noted that both the Spanish and the French delegations had urged the Fund to take all necessary steps for the expeditious handling of the claims received (which represented a significant proportion of each State's estimated losses) in order to be able to determine realistically the possibility of increasing the level of compensation payments at the next session of the Committee and that to this end, they had renewed their undertaking to provide the Fund's experts with such explanations as they may need.

3.7.28 The Director stated that on the basis of the figures presented by the Governments of the three countries affected by the incident, the potential total claims exposure was some €1 038 million (£701 million) (cf document 92FUND/EXC.26/8, paragraph 8.4) and that it was therefore, in his view, not possible to increase the level of payments beyond 15% at this stage. He pointed out that, in accordance with the position taken by the IOPC Funds' governing bodies, the level of payments would have to be determined in the light of the potential exposure of the 1992 Fund and not on the basis of the Fund's assessment of the claims. The Director agreed that it would be important to make all claimants and potential claimants aware of the three-year time bar provisions of the Conventions, but that with another 12 months to go before the third anniversary of the incident, he considered it was premature to make any announcement on this subject at this stage. The Director proposed that in accordance with recent practice, details of the time bar provision could be publicised in the media and through bodies such as chambers of commerce, after consultation with the Spanish, French and Portuguese Governments, by early summer 2005.

3.7.29 A number of delegations stated that whilst they agreed that the current level of payment of 15%, the lowest in the Funds' history, was most unfortunate for claimants, the Fund had no option but

to maintain it at this level for the time being, but that it should be kept under review at every available opportunity.

3.7.30 In view of the remaining uncertainties as to the level of admissible claims, the Executive Committee decided to maintain the current level of payments at 15% of the loss or damage suffered by the respective claimants.

Investigations into the cause of the incident

3.7.31 The Committee recalled that the Court in Corcubión (Spain) was carrying out an investigation into the cause of the incident in the context of criminal proceedings. It was recalled that the Court was investigating the role of the master of the *Prestige,* one civil servant who had been involved in the decision not to allow the ship into a port of refuge in Spain and a manager of the ship's management company. It was also recalled that the Permanent Commission of Investigation of Maritime Incidents, under the authority of the Spanish Ministry of Infrastructure and Public Works, was gathering the necessary information to be able to issue a report on the *Prestige* accident but that given the scale of the incident, it would take some time for the investigation to be completed.

3.7.32 As regards France, the Committee recalled that an examining magistrate in Brest was carrying out a criminal investigation into the cause of the incident.

Court actions in Spain

3.7.33 The Spanish delegation stated that preliminary proceedings were continuing in the Examining Court (Juzgado de Instrucción) in Corcubión in which the master, chief engineer and the first officer of the *Prestige* were charged, together with the Director of Operations of the Universe Maritime, the vessel's owner and the former Director-General of the Merchant Marine. That delegation further stated that the Spanish administration had been supporting the request of the master of the *Prestige* for a review of the precautionary measures adopted by the Court prohibiting him from leaving Spanish territory and that an appeal by the master, supported by the administration was pending before the Court of Appeal (Audiencia Provincial).

3.7.34 The Committee noted that some 2000 claimants had joined the legal proceedings before the Criminal Court in Corcubión (Spain), that no details of the losses had been provided to the Court and that 149 of these claimants had also submitted claims to the Claims Handling Office in La Coruña. The Committee also noted that it was expected that some of these claimants who had settled with the Spanish Government under the Royal Decrees referred to in paragraph 3.7.7 would withdraw their claims from the Court proceedings.

3.7.35 It was noted that in July 2004 the Spanish Government had submitted a request to the Court in Corcubión for the release to it of the €22 777 986 (£15.5 million) deposited with the Court for the purpose of constituting the limitation fund, on the grounds that it was paying compensation to the victims of the spill. It was noted that the 1992 Fund and other parties in the legal proceedings before the Court in Corcubión had submitted pleadings opposing the request. The Committee noted that in its pleadings the 1992 Fund had argued that, in accordance with the 1992 Civil Liability Convention, the limitation fund should be distributed by the Court between all claimants who were entitled to obtain compensation for pollution damage in proportion to their established claims, that the incident had also impacted France and Portugal and that victims of pollution damage in those countries were entitled to a proportion of the limitation fund.

3.7.36 The Committee noted that in July 2004 the Court in Corcubión had rejected the Spanish Government's request on procedural grounds and that the Spanish Government had appealed against this decision. The Spanish delegation stated that in applying to the Court for the release of the limitation fund, it had never been the intention of the Spanish State to assert any right over the limitation fund and that had the State been able to use the fund to pay victims, the State

would have guaranteed the full availability of the fund in favour of the Court. That delegation further stated that the Spanish administration had withdrawn its appeal in October 2004 after it had weighed up all the circumstances of the matter.

Court actions in France

3.7.37 It was recalled that at the request of a number of communes, the Administrative Court in Bordeaux had appointed experts to establish the extent of the pollution at various locations in the affected area.

3.7.38 It was also recalled that in July 2003 five oyster farmers had commenced summary proceedings against the shipowner, the London Club and the 1992 Fund before the Commercial Court of Marennes d'Oleron requesting provisional payments of amounts totalling approximately €400 000 (£272 000). The Committee noted that in July 2004, the Court had rendered a summary judgement rejecting the request on the grounds that the claimants had not provided sufficient evidence to justify summary proceedings and had invited the claimants to submit their claims to the Claims Handling Office in Bordeaux.

Court actions in the United States

3.7.39 The Committee recalled that the Spanish State had taken legal action against the American Bureau of Shipping (ABS), the classification society of the *Prestige*, before the Federal Court of first instance in New York requesting compensation for all damage caused by the incident estimated to exceed US$700 million (£390 million). It was recalled that the Spanish State had maintained *inter alia* that ABS had been negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel and that it had been negligent in granting classification. It was also recalled that ABS had denied the allegation made by the Spanish State and that it had in its turn taken action against the State, arguing that if the State had suffered damage, this had been caused in whole or in part by its own negligence. It was further recalled that ABS had made a counterclaim requesting that the State should be ordered to indemnify ABS for any amount that ABS may be obliged to pay pursuant to any judgement against it in relation to the *Prestige* incident.

3.7.40 The Committee noted that the New York Court had dismissed the counterclaim by ABS on the grounds that the Spanish State was entitled to sovereign immunity but that ABS was seeking reconsideration by the Court or permission to appeal.

3.7.41 The Committee recalled that the Basque Region (Spain) had taken legal action against ABS in the Federal Court of first instance in Houston, Texas, claiming compensation for clean-up costs and payments made to individuals and businesses for US$50 million (£28 million), arguing inter alia that ABS had breached its duty to inspect the *Prestige* adequately and that it had classified the vessel as seaworthy when it was not. It was also recalled that this legal action had been transferred to the Federal Court of first instance in New York that was dealing with the claim by the Spanish State referred to above.

Recourse action by the 1992 Fund against ABS

3.7.42 The Executive Committee held a meeting in private, pursuant to Rule (iv) of the Committee's Rules of Procedure, to consider whether the 1992 Fund should take recourse action against the American Bureau of Shipping (ABS). During the closed session covered by paragraphs 3.7.43 – 3.7.72 below, only representatives of the 1992 Fund Member States were present.

3.7.43 The Director introduced document 92FUND/EXC.26/8/Add.1 containing an analysis of the issues involved.

3.7.44 The Executive Committee recalled the policy of the IOPC Funds in respect of recourse actions as laid down by the Assemblies which can be summarised as follows:

> The policy of the Funds is to take recourse action whenever appropriate. The Funds should in each case consider whether it would be possible to recover any amounts paid by them to victims from the shipowner or from other parties on the basis of the applicable national law. If matters of principle are involved, the question of costs should not be the decisive factor for the Funds when considering whether to take legal action. The Funds' decision as to whether or not to take such action should be made on a case-by-case basis, in the light of the prospect of success within the legal system in question.

3.7.45 The Committee recalled that in previous cases the IOPC Funds had normally not taken decisions as to whether to pursue recourse actions until the investigations into the cause of the incident by the competent authorities had been completed or the Funds had been able to receive sufficient information in this respect by other means. It was however recalled that in some cases, eg the *Erika* incident, the Fund had taken action at an early stage to prevent a recourse action becoming time-barred.

3.7.46 The Committee noted that in the case of the *Prestige* incident, the 1992 Fund had so far not been able to obtain any detailed information as to the cause of the incident and that the investigations carried out in Spain and France referred to in paragraphs 3.7.32 and 3.7.33 above had not been completed. It was noted that the Director had therefore not been able to take a final view as to whether the 1992 Fund should pursue recourse actions in relation to the incident and, if so, against which parties, but that as the Spanish State and the Basque Region had taken action against ABS, he considered that it would be advisable for the Executive Committee to consider at this stage whether the 1992 Fund should also take action against ABS.

3.7.47 The Committee noted that in the Director's view there were two main options for the 1992 Fund in respect of choice of jurisdiction, namely the United States, where the defendant was incorporated, and Spain where the major part of the pollution damage occurred. It was noted that although it might be possible to take such action in France, Portugal or the United Kingdom which had also been affected by the incident, the Director did not consider it appropriate or worthwhile for the Fund to take action in these jurisdictions.

Recourse action in the United States

3.7.48 The Committee noted that it was difficult to predict, at this stage, the likelihood of the Fund being successful in a recourse action against ABS in the United States. It was also noted that the United States' Courts had in general been reluctant to hold classification societies liable to third parties. It was noted that the 1992 Fund's American lawyers had informed the Director that they had so far not been able to identify any case in the United States where a classification society had been held liable to third parties.

3.7.49 The Committee noted that the prospects of success for the 1992 Fund in an action in New York could only be assessed properly once the procedure for discovery of documents had been completed in the light of the evidence available. It was also noted that part of the amount claimed by the 1992 Fund in a recourse action would relate to pure economic loss, and that the recovery for such losses might meet considerable difficulties in the United States.

3.7.50 It was noted that ABS was a legal corporation incorporated in the State of New York with its headquarters in Houston, Texas, and that since the Spanish State had taken action against ABS in New York, it might be possible for the Fund to coordinate its action with that of the Spanish State. It was also noted that the procedure for discovery of documents in civil cases in the United States would enable the Fund to obtain access to documents which could be of great assistance in the litigation. It was further noted that ABS's assets were mainly located in the United States and that it would therefore be relatively easy to enforce a judgement against ABS in the United States.

3.7.51 It was noted, however, that the discovery procedures would be very time consuming and that the costs arising from litigation in the United States were very high. The Committee noted that in case of a successful action, the 1992 Fund would normally not be able to recover its costs but that if the Fund were to be unsuccessful it would normally not be obliged to pay the costs incurred by ABS.

3.7.52 The Committee noted that the 1992 Fund's American lawyers had advised the Director that, although the time bar period was likely to be three years from the date of the incident, if the Fund were to take an action against ABS in the United States, such action should be taken as soon as possible so as to enable the Fund to pursue its action in parallel with the recourse actions taken by the Spanish State and the Basque Region.

Recourse action in Spain

3.7.53 The Executive Committee noted that the Director was unable to express a firm opinion at this stage as to the prospect of an action against ABS in Spain being successful. It was noted that the 1992 Fund's action would have to be based on ABS having been negligent in its inspections of the *Prestige*. It was also noted that although these inspections had not been carried out in Spain the effects of the allegedly negligent inspections, ie the breaking up of the vessel and the ensuing oil pollution, had occurred in Spain. The Committee noted that the Director had been advised by the Fund's Spanish lawyers that the Spanish Courts were likely to accept jurisdiction over a recourse action by the 1992 Fund against ABS, since the pollution damage had occurred in Spain, and since ABS, which had several offices in Spain operated by a company established in Spain (ABS Europe Ltd.), would not be exposed to an unreasonable burden defending itself in such a case in Spain.

3.7.54 The Committee however noted that an action against ABS would face procedural difficulties. It was recalled that, as mentioned in paragraph 3.7.32 above, criminal proceedings had been brought in a Spanish Court in relation to the *Prestige* incident. It was noted that when a criminal action has been brought, under Spanish law any action for compensation based on the same or substantially the same facts as those forming the basis of the criminal action, whether against the defendants in the criminal proceedings or against other parties, could not be pursued until the final judgement had been rendered in the criminal case. The Committee noted that the Fund's Spanish lawyers had advised that, although a recovery action by the Fund against ABS would not be based entirely on the same facts as those forming the basis of the criminal action, it was likely that the courts would consider that the Fund's action was based on substantially the same facts as the criminal action and that therefore such an action would be suspended pending the termination of the criminal proceedings, which would probably take many years.

3.7.55 The Committee noted that the time bar issue was also complicated in respect of Spain. It was noted that the 1992 Fund's Spanish lawyers had advised that criminal proceedings would interrupt the time bar in respect of actions for compensation based on the same or substantially the same facts, whether or not the parties in the two actions are the same. It was also noted that, in the light of Spanish jurisprudence, it was in their view likely that the criminal actions in the Court in Concurbión would have the effect of interrupting the time bar period within which the Fund should take recourse action against ABS, in which case an action against ABS by the 1992 Fund should be brought within one year of the final judgement in the criminal proceedings in the Spanish Courts in relation to the *Prestige* incident.

3.7.56 It was noted that in any event, under a general provision in the Spanish Civil Code, the time bar period for any type of action ran from the date when the claimant could exercise his right, unless there were special provisions to the contrary. It was also noted that the Fund's Spanish lawyers had advised that by bringing actions in the United States within one year of the incident, the Spanish State and the Basque Region had interrupted the one-year time bar period in respect of any damage covered by these actions, and that when the 1992 Fund paid compensation for any damage covered by these actions, it acquired by subrogation, up to the amounts paid, the rights of the victims, including their rights against ABS.

3.7.57 It was noted that the Spanish legal system did not have any procedure for discovery of documents of the type applicable in the United States and that it would therefore be more difficult for the 1992 Fund to obtain access to documents under the control of ABS. It was also noted that it would probably not be possible for the 1992 Fund to obtain access to the documents provided to the Spanish State in the New York proceedings under American discovery procedures, since under the rules governing these procedures the Spanish State would not be entitled to pass such documents to third parties.

3.7.58 It was also noted that when an action was brought in a Spanish court, the plaintiff should from the outset present the evidence on which the action was based. It was also noted that therefore, if the Fund were to take action against ABS in Spain, such an action should, in the view of the Fund's Spanish lawyers, not be brought until the results of the investigations into the cause of the incident were available.

3.7.59 The Committee noted that ABS had probably no significant assets in Spain and that if the Fund were to obtain a final judgement in Spain in its favour against ABS, it could be difficult to enforce the Spanish judgement against ABS in the United States.

Executive Committee's considerations

3.7.60 It was noted that as regards the United States, the 1992 Fund would be pursuing an action in a jurisdiction of a non-Member State where litigation was very expensive and where there would be considerable uncertainty as to the likelihood of success. It was however noted that the Fund would, through the discovery process, have access to documents which might provide crucial evidence on which to base the action and that it would be relatively easy to enforce a judgement against ABS's assets.

3.7.61 The Committee noted that, according to the advice of the Fund's American lawyers, it was unlikely that an action by the 1992 Fund against ABS in the United States could be suspended pending the results of the investigations into the cause of the incident or the outcome of the action by the Spanish State against ABS and that, therefore, if the Fund were to commence action in the United States, it would incur considerable legal costs from the outset. It was also noted that once an action has been taken by the 1992 Fund against ABS in the United States it would, according to the advice of the Fund's American and Spanish lawyers, not normally be possible for the Fund to withdraw that action and commence new proceedings in Spain.

3.7.62 With respect to an action in Spain, the Committee noted that it was likely that such an action would be suspended until the criminal proceedings were terminated by a final judgement, that there were in Spain only limited possibilities of getting access to documents in the possession of the defendant and that it might be more difficult to enforce a favourable Spanish court judgement against ABS's assets in the United States.

3.7.63 As regards the likelihood of the courts holding ABS liable to the Fund, the Committee noted that the jurisprudence in respect of compensation actions outside contractual or quasi-contractual relations was not favourable to the 1992 Fund, neither in the United States nor in Spain, and that an action by the Fund would clearly relate to an extra-contractual situation.

3.7.64 The Committee noted, however, that in recent years the question of safety of navigation had become a major issue and that it was possible that the courts, in particular European courts, would be more inclined to impose liability also in extra-contractual situations on those who by negligence had caused or contributed to pollution incidents. It was further noted that the evidence that emerged during any legal proceedings might show that ABS had been negligent in its inspections of the *Prestige*.

3.7.65 The Committee noted that in view of the extent of the pollution damage caused by the *Prestige* incident in Spain, France and Portugal in relation to the total amount available under the 1992 Conventions, the Spanish State (like all other claimants) would be far from fully compensated

under the Conventions for the pollution damage suffered by that State and that even if the 1992 Fund's action against ABS – be it in the United States or in Spain – were to be successful, it was doubtful whether the Fund would be able to recover any significant amount. It was noted that the claim by the Spanish State against ABS was already for such a high amount that, even if the State's action were only partially successful, it was unlikely that ABS's insurance cover would be sufficient or that ABS itself would be able to pay the balance and that a successful recourse action by the 1992 Fund against ABS would result in the Fund competing with the Spanish State and the Basque Region in respect of the funds which might be available to meet judgements against ABS.

3.7.66 It was noted that in view of the very high legal costs which the 1992 Fund would incur if it were to take recourse action against ABS in the United States, the considerable risk that such an action would be unsuccessful and the difficulty for the Fund to recover payments in respect of pure economic loss, the Director considered that, if recourse action should be pursued, it would be preferable to pursue such an action in Spain. It was however noted that there was no certainty that an action in Spain would be successful and that there would be procedural difficulties, including issues of time bar.

3.7.67 As for the timing of a recourse action the Committee noted that, in the Director's view, if a recourse action was taken in Spain, such an action should not be taken until the results of the investigations into the cause of the incident were known but that if a recourse action was taken in the United States, such an action should, in the Director's view, be taken as soon as possible.

3.7.68 One delegation asked in the context of possible legal action in the United States, whether there could be any benefit in the 1992 Fund asking the two parties in the ongoing legal action to provide the Fund with any facts relating to the case. That delegation also asked whether any costs could be saved during the early stages of any proceedings by lowering the amount claimed against ABS. The 1992 Fund's American lawyer stated that it was highly unlikely that ABS would be prepared to share voluntarily any information with the Fund, and that any information obtained by the Spanish State as a result of the discovery proceedings would be confidential and could therefore not be disclosed to third parties. He further stated that legal fees were charged on an hourly basis, the rate being dependent on the experience of the particular lawyers acting for the Fund, and that costs did not vary according to the magnitude of the claim.

3.7.69 All delegations reaffirmed their support for the Fund's policy of pursuing recourse actions against third parties whenever it was appropriate to do so. However, a number of delegations expressed the view that it was premature to take a decision at this stage on whether or not to pursue a recourse action against ABS given the lack of evidence.

3.7.70 Most delegations expressed the view that the 1992 Fund should not pursue any recourse action in the United States since the costs would be very considerable and there was a low likelihood of success. Those delegations stated that if it were to be decided that recourse action was appropriate in the light of further facts obtained from ongoing investigations into the cause of the incident, it would be preferable to take such action in Spain. Those delegations also noted that commencing legal action in Spain was not constrained by imminent time bar considerations and that any decision should be deferred pending the outcome of those investigations.

3.7.71 The Executive Committee decided that the 1992 Fund should not take recourse action against ABS in the United States. It further decided to defer any decision on recourse action against ABS in Spain until further details surrounding the cause of the *Prestige* incident came to light. The Director was instructed to follow the ongoing litigation in the United States, follow the ongoing investigations into the cause of the incident and take any steps necessary to protect the 1992 Fund's interests in any relevant jurisdiction.

3.7.72 The Committee stated that this decision was without prejudice to the Fund's position *vis-à-vis* legal actions against other parties.

3.8 Korean incidents

3.8.1 The Executive Committee took note of the information contained in document 92FUND/EXC.26/9 in respect of six incidents in the Republic of Korea.

Buyang

3.8.2 The Committee recalled that the Korean tanker *Buyang* (187 GT) had struck a submerged rock under the Geoje Grand Bridge between Tongyeong City and Geoje Island (Republic of Korea), and that an estimated 35-45 tonnes of heavy fuel had subsequently been lost from a holed cargo tank.

3.8.3 The Committee noted that there were no outstanding claims arising from this incident and that in view of the fact that the total amount of the settled claims was well below the limitation amount applicable to the *Buyang*, the 1992 Fund would not be required to make any compensation payments.

Hana

3.8.4 The Committee recalled that the Korean coastal tanker *Hana* (196 GT), whilst moored alongside a landing wharf on Youngdo Island, Busan (Republic of Korea) had been struck by the *Haedong*, another coastal tanker (699 GT), and that as a result of the collision the shell plating of one of the *Hana*'s cargo tanks had been breached and around 34 tonnes of medium fuel oil had been spilled.

3.8.5 It was noted that there were no outstanding claims arising from this incident and that in view of the fact that the total amount of settled claims was well below the limitation amount applicable to the *Hana*, the 1992 Fund would not be required to make any compensation payments.

Duck Yang

3.8.6 The Committee recalled that the mooring ropes of the Korean tanker *Duck Yang* had parted whilst in the port of Busan (Republic of Korea) as a result of strong winds and heavy seas created by the typhoon 'Maemi', causing the vessel to strike a barge and the quay wall of the port's central pier before turning on its side and sinking. It was recalled that an estimated 300 tonnes of heavy fuel oil had been lost from two cargo tanks whose manhole covers had been open and another cargo tank whose shell plating had punctured. It was further recalled that the shipowner had engaged a local salvage company, which had successfully righted the vessel by means of floating cranes, and that the remaining oil on board had been transferred to another tanker.

3.8.7 The Committee noted that there were no outstanding claims arising from this incident and that in view of the fact that the total amount of settled claims was well below the limitation amount applicable to the *Duck Yang*, the 1992 Fund would not be required to make any compensation payments.

Kyung Won

3.8.8 The Executive Committee recalled that the Korean tank barge *Kyung Won* (144 GT), whilst moored near the port of Gwangyang, Namhae Island (Republic of Korea), had stranded on a breakwater during the passing of the typhoon 'Maemi'. It was noted that approximately 100 tonnes of heavy fuel oil had escaped from a cracked cargo tank.

3.8.9 It was recalled that the 1992 Fund had appointed a team of Korean surveyors and experts to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries and mariculture.

3.8.10 It was recalled that at its 22nd session, held in October 2003, the Executive Committee had decided that, since the *Kyung Won* had not been insured for pollution liabilities and the shipowner was unlikely to have the financial resources to make any significant compensation payments, the 1992 Fund should pay settled claims even if the shipowner did not make any payments (document 92FUND/EXC.22/14, paragraphs 3.11.17 - 3.11.18).

3.8.11 The Committee noted that claims totalling Won 3 117 million (£1.5 million) in respect of the costs of clean-up and preventive measures had been settled and paid by the 1992 Fund for Won 2 921 million (£1.4 million) and that fishery and mariculture claims totalling Won 3 672 million (£1.7 million) had been settled for a total of Won 407 million (£188 000). It was also noted that no further claims were anticipated in respect of this incident.

Jeong Yang

3.8.12 The Committee recalled that, shortly after departure from the L-G Caltex terminal near Yeosu (Republic of Korea), the laden Korean tanker *Jeong Yang* (4 061 GT) had collided with the unladen Korean tanker *Sung Hae* (5 914 GT). It was also recalled that two of the *Jeong Yang*'s cargo tanks had been holed leading to the spillage of some 700 tonnes of heavy fuel oil. It was recalled that in its attempt to avoid the collision the *Jeong Yang* had stranded on a muddy shore, but had been refloated with the aid of a tug. It was further recalled that the cargo remaining on board the *Jeong Yang* had been offloaded.

3.8.13 It was recalled that due to the high pour point of the oil and the ambient sea temperature, the spilt oil had solidified into mats up to 10 centimetres thick and drifted on the flood tide back towards the terminal from where the vessel had sailed, enabling the terminal personnel to contain most of the oil using a permanently deployed boom. It was however recalled that tar balls up to 20 centimetres in diameter had stranded over a four-kilometre stretch of shoreline on the island of Myodo to the north of the terminal and over a 22-kilometre stretch of coastline on Namhaedo to the east of the terminal.

3.8.14 The Committee recalled that the *Jeong Yang* was entered with the Sveriges Angfartygs Assurans Förening (Swedish Club) and the *Sung Hae* was entered with the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club). It was also recalled that the Swedish Club and the 1992 Fund had jointly appointed Korean experts to monitor the clean-up operations and assist with the assessment of claims for compensation for pollution damage.

3.8.15 It was recalled that in January 2004 the Korean authorities had ordered the shipowner to carry out post-spill environmental impact studies within three months of the date of the incident in compliance with the Korean Marine Pollution Prevention Act, which required such studies to be undertaken whenever the spill volume exceeded 50 KL and had, or was likely to, spread out to an area of 100 000 square metres or more. It was also recalled that the Act set out the subjects to be covered by such studies, namely the description of the natural environment and the impact of the oil on marine ecosystems, marine products and the socioeconomic environment. It was further recalled that in issuing the order the Korean authorities had provided the shipowner with the names of four research institutes from which to choose to carry out the required studies.

3.8.16 The Committee noted that the Swedish Club and the 1992 Fund had made representations to the Korean authorities expressing the view that any decision to undertake studies should be decided on a case-by-case basis and had drawn attention to the Fund's Claims Manual and its admissibility criteria relating to post-spill studies. It was noted that the Fund and the Club had made the point that most of the oil spilled from the *Jeong Yang* had been contained and recovered within a designated port located in a heavily industrialised area and as a result no major impacts on the marine environment were likely. It was also noted that the authorities had registered the concerns of the Club and the Fund but had stated that they had no alternative but to comply with the above-mentioned Act.

3.8.17 It was noted that in March 2004 two of the nominated research institutes had submitted detailed proposals for undertaking studies covering the subject areas referred to in paragraph 3.8.15, that the Fund had submitted comments on the two proposals, as a result of which one of the institutes had submitted a revised proposal addressing most of the Fund's concerns regarding the nature and extent of the sampling and analytical regime to be followed and the examination of the socio-economic impact of the spill. The Committee noted that on the basis of the revised submission the Swedish Club and the 1992 Fund had agreed that the costs of the study, which had been set at Won 140 million (£65 000), were admissible in principle.

3.8.18 The Committee noted that all claims in respect of costs of clean-up and preventive measures totalling Won 4 917 million (£2.3 million), had been settled for a total of Won 3 992 million (£1.9 million), that fishery claims totalling Won 1 065 million (£496 000) had been settled for a total of Won 78.4 million (£37 000) and that claims totalling Won 115 million (£54 000) in respect of alleged losses due to interruption of vessel operations in the port of Yeosu were being assessed.

3.8.19 It was recalled that the limitation amount applicable to the *Jeong Yang* under the 1992 Civil Liability Convention was 4.5 million SDR (£3.8 million). The Committee noted that in view of the fact that the total amount of settled and outstanding claims was well below that amount, the 1992 Fund would not be required to pay any compensation in respect of this incident.

N°11 Hae Woon

3.8.20 The Executive Committee noted that on 22 July 2004 the Korean tanker *N°11 Hae Woon* (110 GT) had collided with the Korean fishing vessel *N°5 Dae Woon* (94 GT) off Geoje Island (Republic of Korea) and that it was estimated that some 12 tonnes of heavy fuel oil had escaped from a cargo tank into the sea. It was noted that the shipowner had arranged for the remaining cargo on board the tanker to be transferred to two other vessels. It was also noted that after temporary repairs to the damaged hull had been completed the vessel had proceeded to Yeosu on 23 July for permanent repairs.

3.8.21 It was noted that the spilled oil had drifted towards a number of busy amenity beaches in and around Busan.

3.8.22 It was noted that Busan Marine Police, together with seven clean-up contractors, had mounted a major oil recovery operation at sea involving 32 response vessels and 14 fishing boats and that some 2 000 metres of boom had been deployed to deflect oil away from amenity beaches. As a result of a concerted effort to recover the oil at sea and a shift in the wind direction no shorelines had been affected. It was also noted that the clean-up operations had been terminated on 24 July when it had been established that the small quantity of oil remaining at sea no longer posed a threat to the Korean coast.

3.8.23 The Committee noted that the *N°11 Hae Woon* was insured for pollution liabilities with the Korean Shipping Association (KSA). It was noted that the Association and the 1992 Fund jointly had appointed Korean surveyors and experts to attend the incident to monitor the clean-up operations and to assist with the assessment of claims for compensation for pollution damage.

3.8.24 The Committee noted that the limitation amount applicable to the *N°11 Hae Woon* under the 1992 Civil Liability Convention was 4.5 million SDR (£3.8 million).

3.8.25 It was noted that claims totalling Won 232 million (£108 000) in respect of the costs of clean-up and preventive measures had been presented to the shipowner.

3.8.26 The Committee noted that in view of the fact that there had been no shoreline contamination or impact on fisheries and mariculture, the total cost of the incident was expected to be well below

the limitation amount applicable to the vessel and that therefore the 1992 Fund would not be called upon to make any compensation payments.

3.9 Incident in Bahrain

3.9.1 The Executive Committee took note of the information contained in document 92FUND/EXC.26/10 in respect of an oil spill in Bahrain.

3.9.2 The Committee recalled that on 15 March 2003 the Air Wing of the Bahrain Ministry of Interior had reported an oil slick 20 miles off the north coast of Bahrain. It was noted that a few days later some 18 kilometres of shoreline had been polluted with an estimated 100 tonnes of oil and that some oil had reportedly affected the coastline of the Kingdom of Saudi Arabia in the vicinity of the causeway linking Bahrain with the mainland.

3.9.3 It was recalled that on the basis of investigations carried out by the Bahrain authorities and the Marine Emergency Mutual Aid Centre (MEMAC), including chemical analyses, satellite imagery interpretation and slick trajectory analyses, the authorities had concluded that the spill had occurred on or about the 8 March 2003 in the vicinity of the anchorage for the Al Ju'aymah oil terminal, in Saudi Arabia but that no vessel had been identified as the source. The Committee noted that analyses of the polluting oil had indicated that it was highly likely that it was Iraq (Basrah) crude and that due to its relatively un-weathered condition it could not have been spilled in Iraqi waters.

3.9.4 It was recalled that in light of the evidence presented by the Bahrain authorities and MEMAC the Director had been satisfied that the source of the pollution had been a ship carrying oil in bulk as cargo engaged either in the transport of Iraq crude oil under the United Nations 'Oil for Food' programme or illegal oil smuggling operations. The Committee also recalled that the Director had therefore considered that claims for pollution damage arising from this incident were covered by the 1992 Conventions, and that in the absence of the identity of a specific vessel as the source, the 1992 Fund was liable to pay compensation.

3.9.5 It was recalled that at its 25th session in May 2004 the Executive Committee had decided that the claims arising from the incident were covered by the 1992 Fund Convention and that the claims by the Bahrain authorities were admissible in principle (document 92FUND/EXC.25/6, paragraph 3.3.16).

3.9.6 It was recalled that the Bahrain Coast Guard had assisted the Public Commission for the Protection of Marine Resources, Environment and Wildlife in clean-up operations at sea between 15 and 24 March 2003. It was also recalled that on 22 March the Presidency of Meteorology and Environment of Saudi Arabia had provided the Bahrain authorities with some 2 000 metres of oil containment boom and a skimming vessel and that this equipment had been returned to Saudi Arabia on 28 March.

3.9.7 It was recalled that the Ministry of Electricity and Water had deployed booms in the vicinity of the intakes of the Sitra and Hidd power/desalination plants and the Addur desalination plant and had also organised shoreline clean-up operations to prevent the oil contaminating the cooling systems and desalination feedstock of these facilities.

3.9.8 It was also recalled that from 19 March to 18 April 2003 the Ministry of Municipalities and Agriculture and the Bahrain Petroleum Company (BAPCO) had undertaken extensive shoreline clean-up operations and disposed of the oily waste.

3.9.9 The Committee noted that seven claims totalling US$1.1 million (£634 000) for the costs of preventive measures and clean-up operations had been assessed for a total of US$610 000 (£339 000) and that five of these claims, totalling US$560 000 (£311 000) had been settled by the Director for a total of US$477 000 (£265 000). It was also noted that claims totalling

US$1.6 million (£900 000) submitted by the Directorate of Marine Resources on behalf of 221 fishermen who had suffered property damage and economic losses had been assessed at US$485 000 (£270 000) but that so far these claims had not been settled.

4 Future sessions

4.1 The Executive Committee decided to hold its 27th session on 22 October 2004.

4.2 The Committee decided to hold further sessions during the weeks of 28 February and 31 May 2005, if required.

4.3 It was decided that the Committee would hold its normal autumn session during the week of 17 October 2005.

5 Any other business

No items were raised under this agenda item.

6 Adoption of the Record of Decisions

The draft Record of Decisions of the Executive Committee, as contained in document 92FUND/EXC.26/WP.1 was adopted.