



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
40th session
Agenda item 5

92FUND/EXC.40/11
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RECORD OF DECISIONS OF THE FORTIETH SESSION OF THE EXECUTIVE COMMITTEE

(held on 11 and 13 March 2008)

Chairman: Mr John Gillies (Australia)
Vice-Chairman: Mr Léonce Michel Ogandaga Agondjo (Gabon)

Opening of the session

- 0.1 The Chairman opened the session and welcomed the members of the Executive Committee, observer delegations and members of the public.
- 0.2 His Excellency, Mr Jean Pastorelli, Government Counsellor for External Relations, welcomed the Executive Committee and Working Groups of the 1992 Fund to Monaco.
- 0.3 He stated that, as a small Mediterranean State with a significant coastline, Monaco's geography, history and the constant commitment of its monarchy demonstrated the concern of the Principality for the conservation of the marine environment.
- 0.4 Mr Pastorelli pointed out that HRH Prince Albert II was following in the footsteps of his forefathers in promoting the sustainable development of the planet and, in particular, had created a Foundation which was working in the areas of water management, climate change and biodiversity.
- 0.5 Mr Pastorelli underlined the importance of the work of the IOPC Funds, the creation of which he considered had constituted a fundamental step in compensating victims of oil pollution incidents, such as the *Haven* incident, which had impacted the Principality of Monaco in the 1990s. He also recalled more recent incidents such as the *Erika*, the *Prestige*, the *Solar 1*, and the *Shosei Maru*, which had shown the continuing vulnerability of States. He expressed his sympathy for the Republic of Korea, which had recently been affected by the *Hebei Spirit*, the worst oil spill incident in its history.
- 0.6 He also congratulated the IOPC Funds on the work currently being undertaken within the framework of the 1992 Fund Working Groups on both non-technical measures to promote quality shipping for the transportation of oil by sea and on the HNS Convention. In this regard, he informed the Committee that Monaco was studying the possibility of ratifying the HNS Convention in the near future. He ended by wishing delegates every success in their deliberations during the coming week.
- 0.7 The Director expressed his gratitude to the Government of Monaco for having invited the IOPC Funds to hold sessions of its governing bodies in the Principality and for all the financial and organisational support it had provided. He particularly thanked the Department of Maritime Affairs,

specifically Mr Gilles Blanchi, without whose assistance the organisation of the meetings would not have been possible. During the course of the debate all delegations also expressed their appreciation and gratitude for the kind invitation by the Government of Monaco and the excellent hospitality received during the meetings.

1 Adoption of the Agenda

The Executive Committee adopted the Agenda as contained in document 92FUND/EXC.40/1.

2 Examination of credentials

2.1 The Executive Committee recalled that the 1992 Fund Assembly had, at its March 2005 session, decided to establish, at each session, a Credentials Committee composed of five members elected by the Assembly on the proposal of the Chairman, to examine the credentials of delegations of Member States and that, when the Executive Committee held sessions in conjunction with sessions of the Assembly, the Credentials Committee established by the Assembly should also examine the credentials of the Executive Committee (Executive Committee's Rules of Procedure, Rule (iv)). The Committee also recalled that the Assembly had decided that, should the Executive Committee hold sessions that were not in conjunction with an Assembly session, as was the case at this session, the Committee should establish its own Credentials Committee composed of three members on the proposal of the Chairman. It was noted that the Assembly had inserted provisions to this effect in the relevant Rules of Procedure.

2.2 In accordance with Rule (iv) of the Executive Committee's Rules of Procedure, the delegations of Denmark, Japan and Qatar were appointed to the Credentials Committee.

2.3 The following members of the Executive Committee were present:

Australia	India	Netherlands
Bahamas	Italy	Qatar
Denmark	Japan	Republic of Korea
Gabon	Lithuania	United Kingdom
Germany	Malaysia	Venezuela

2.4 After having examined the credentials of the delegations of the members of the Executive Committee, the Credentials Committee reported in document 92FUND/EXC.40/2/1 that all the above-mentioned members of the Executive Committee had submitted credentials which were in order.

2.5 The following Member States were represented as observers:

Algeria	Greece	Philippines
Angola	Grenada	Portugal
Belgium	Ireland	Russian Federation
Bulgaria	Kenya	Singapore
Cameroon	Latvia	South Africa
Canada	Liberia	Spain
China (Hong Kong Special Administrative Region)	Malta	Sweden
Cyprus	Mexico	Tunisia
Estonia	Monaco	Turkey
Finland	Morocco	United Arab Emirates
France	Nigeria	Vanuatu
Ghana	Norway	
	Panama	

2.6 The Executive Committee decided to grant observer status to Ukraine on a provisional basis, pending the decision of the Assembly at its next session.

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

Saudi Arabia
Ukraine

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

Intergovernmental organisations:

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

International non-governmental organisations:

Comité Maritime International (CMI)
European Chemical Industry Council (CEFIC)
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of Liquefied Natural Gas Importers (GIIGNL)
International Group of P&I Clubs
International Tanker Owners Pollution Federation Ltd (ITOPF)
International Union of Marine Insurance (IUMI)
Oil Companies International Marine Forum (OCIMF)

3 Incidents involving the 1992 Fund

3.1 Incident in Germany

Settlement and withdrawal of legal actions

3.1.1 The Executive Committee took note of the developments regarding the incident in Germany as set out in document 92FUND/EXC.40/3.

3.1.2 It was noted that in June 2007 the claim by the German authorities had finally been settled for DM2 513 055 or €1 284 905 (£954 000) (document 92FUND/EXC.40/3, paragraph 5.3).

3.1.3 It was also noted that in December 2007, as a result of the settlement, the 1992 Fund had paid a total of €1 766 903 (£1 214 151), which included interest, as well as €45 293 (£32 818) in respect of court costs incurred by the German Government. The Committee noted that, in accordance with the settlement agreement, the West of England Club had reimbursed the Fund 20% of the amounts paid by it (document 92FUND/EXC.40/3, paragraph 5.4).

3.1.4 The Committee further noted that following the conclusion of the settlement agreement, all actions brought by the German Government against the shipowner, the West of England Club and the 1992 Fund had been withdrawn.

3.1.5 It was noted that following the withdrawal of all legal actions the case had now been finalised (document 92FUND/EXC.40/3, paragraph 5.6).

Debate

- 3.1.6 The German delegation thanked the Secretariat for its successful efforts in resolving the outstanding issues regarding this incident.

3.2 *Erika*

- 3.2.1 The Executive Committee took note of the developments regarding the *Erika* incident as set out in document 92FUND/EXC.40/4 submitted by the Director and document 92FUND/EXC.40/4/1 submitted by France.

Claims situation

- 3.2.2 The Executive Committee noted that as at 19 February 2008, 7 130 claims for compensation, other than those made by the French Government and Total SA, had been submitted for a total of €11 million (£159 million) and that 99.7% of these claims had been assessed. It also noted that compensation payments totalling €29.5 million (£97.8 million) had been made in respect of 5 927 claims (document 92FUND/EXC.40/4, paragraphs 3.1 and 3.2).

Payments to the French State

- 3.2.3 The Committee took note of the information regarding the payments made by the 1992 Fund to the French State as set out in document 92FUND/EXC.40/4, paragraphs 4.1 to 4.3.

Criminal proceedings

- 3.2.4 The Executive Committee noted that the Criminal Court in Paris had delivered a judgement in January 2008, sentencing the representative of the registered owner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the classification society Registro Italiano Navale (RINA) and Total SA. It was noted that the judgement had also made the four parties jointly and severally liable for the damage caused by the incident and had assessed the damages at €192.8 million (£145.7 million), including €153.9 million (£116.3 million) for the French State (document 92FUND/EXC.40/4, paragraphs 5.4 and 5.5).
- 3.2.5 The French delegation informed the Committee that the Court had pointed to the general corrosion of the ship as one of the causes of the incident and pointed out that the compensation awarded was in addition to that paid by the 1992 Fund. That delegation also informed the Committee that the four persons who had been found guilty of the offence of pollution had appealed against the decision and against the decision to award compensation to 70 civil parties (document 92FUND/EXC.40/4/1).

Debate

- 3.2.6 The French delegation expressed its satisfaction that the judgement by the Criminal Court in Paris had awarded the French Government some €153 million in respect of the material damages it had suffered, after deduction of the sums already paid by the 1992 Fund. That delegation stated that it was the first judgement in France where a court had awarded compensation for damage to the environment in favour of some claimants, such as the Department of Morbihan, which had been able to show actual damage to sensitive areas for the protection of which it was responsible by law. That delegation also stated that the judgement recognised the right of environmental protection organisations, such as the League for the Protection of Birds (LPO), to claim compensation for material, moral and also environmental damage caused to the collective interest, which it was their purpose to protect. That delegation pointed out that since the four convicted persons and other parties had appealed against the judgement, the Fund would have to await the final decision by the Court of Appeal.

- 3.2.7 Several delegations took the floor to express their concern with regard to the award by the Criminal Court in Paris for moral and environmental damages. The point was made that Article I.6(a) of the 1992 Civil Liability Convention (1992 CLC) restricts compensation for impairment of the environment to the costs of reasonable measures of reinstatement actually undertaken or to be undertaken and that the judgement appeared to be in breach of this Article. A number of delegations also made the point that the judgement had interpreted Article III.4 of the 1992 CLC in such a manner that parties which normally would have been covered by the Article were found not to fall within its provisions. One delegation, however, expressed its satisfaction with the decision by the Criminal Court in respect of its interpretation of Article III.4 of the 1992 CLC. It was pointed out that the judgement could have serious consequences for the international regime which would need to be examined in detail by the Secretariat.
- 3.2.8 In a detailed intervention, the 1992 Fund's French lawyer explained the legal rationale followed by the Criminal Court in Paris in its judgement.
- 3.2.9 In response to a question raised, by one delegation the Director stated that the Secretariat would have to study the judgement in detail to examine the implications it might have for the 1992 Fund and that an examination of the possibilities of a recourse action against any of the parties found responsible for the damages caused by the incident would be part of such a study.

Legal proceedings in the civil courts

- 3.2.10 The Executive Committee noted that 420 legal actions against the shipowner, his insurer and the 1992 Fund had been taken by 796 claimants, that the courts had rendered 129 judgements and that 48 actions involving 94 claimants remained pending. It was also noted that 11 judgements by the Commercial Court in Lorient, the Court of Appeal in Poitiers and the Court of Cassation had been rendered since the October 2007 session of the Executive Committee (document 92FUND/EXC.40/4, paragraph 6.7 and 7.1.1 to 7.3.5).

3.3 *Prestige*

- 3.3.1 The Executive Committee took note of the developments regarding the *Prestige* incident as set out in document 92FUND/EXC.40/5 submitted by the Director and document 92FUND/EXC.40/5/1 submitted by Spain.

CLAIMS SITUATION

- 3.3.2 The Committee took note of the claims situation as set out in document 92FUND/EXC.40/5, paragraphs 3.1.2, 3.2.1 and 3.3.

Spain

- 3.3.3 The Executive Committee noted that as at 7 February 2008 claims totalling €763.9 million (£570.5 million) had been received by the Claims Handling Office in Spain (document 92FUND/EXC.40/5, paragraph 3.1.1). It was also noted that in February 2008 the Spanish State had submitted a new claim relating to the costs of the treatment of oily residues totalling €896 533 (£670 000) (document 92FUND/EXC.40/5/1, paragraph 1.2). It was further noted that the process of assessing claims in Spain continued.
- 3.3.4 In its presentation of document 92FUND/EXC.40/5/1 the Spanish delegation stated that the Government of Spain continued to work on the submission of their claims and that it had recently submitted further claims in respect of payments of compensation made to those affected by the incident. It also stated that Spain would provide the Secretariat with additional information in respect of European Union funding it had received as a result of the incident.

France

- 3.3.5 The Committee noted that claims totalling €109.7 million (£81.9 million) had been received by the Claims Handling Office in France (document 92FUND/EXC.40/5, paragraph 3.2). It was also noted that the process of assessing claims in France continued.

Portugal

- 3.3.6 It was recalled that the Portuguese Government had submitted claims for €4.3 million (£3.2 million) in respect of clean up and preventive measures in Portugal, that the claims had finally been assessed and that the Portuguese Government had accepted this assessment (document 92FUND/EXC.40/5, paragraph 3.3).

COURT ACTIONS

Spain

- 3.3.7 The Committee took note of the situation regarding court actions initiated in Spain as set out in document 92FUND/EXC.40/5, paragraphs 5.1 to 5.3.

France

- 3.3.8 The Committee took note of the situation regarding court actions initiated in France as set out in document 92FUND/EXC.40/5, paragraph 6.1.
- 3.3.9 It was noted that the Civil Court in Paris had rendered a judgement in October 2007 in an action lodged by the owners of a company selling boats, where the Court had stated that the criteria for admissibility of claims followed good sense and had rejected the claim (document 92FUND/EXC.40/5, paragraph 6.2).

United States

- 3.3.10 The Committee took note of the information as set out in document 92FUND/EXC.40/5 regarding the court action brought by the Spanish State against the American Bureau of Shipping (ABS), the classification society that had certified the *Prestige* in the United States, in particular of the New York Court's judgement dismissing the claim on the grounds of lack of jurisdiction. It was also noted that the Spanish State had requested the 1992 Fund to file an *amicus curiae* brief before the New York Court of Appeal (document 92FUND/EXC.40/5, paragraphs 8.3.1 to 8.3.10).
- 3.3.11 The Committee noted that the Director was of the opinion that the decision taken by the Court that ABS fell under the provision of Article III.4(b) of the 1992 CLC, could well be criticised since it appeared questionable whether a classification society, which carries out a technical survey of the ship at certain, usually quite long, intervals, should be considered such a person by simply relying on the very general part of the language of the provision ('...any other person who...performs services to the ship'). It was also noted that, in a similar situation, the Criminal Court in Paris during the *Erika* trial, had recently come to the opposite conclusion, ie that RINA could not be considered to fall under Article III.4(b) of the 1992 CLC.
- 3.3.12 The Committee also noted that the Director was of the view that other considerations should also be taken into account, namely
- whether it would be appropriate for the 1992 Fund as an intergovernmental organisation to get involved in legal proceedings in a non-Member State on issues outside the scope of the Convention;

- whether it would be appropriate for the 1992 Fund to get involved in legal proceedings not directly related to the fulfilment of its core functions under the Conventions, ie the payment of compensation to victims of oil pollution incidents in Member States;
- that the decision had been taken in a lower court which would probably make the decision of little relative value as a precedent for future cases to be judged in a Member State on the basis of the Conventions; and
- that it would represent a diversion from the decision made by the Executive Committee not to take recourse action against ABS in the United States.

3.3.13 It was noted that the Director, on balance, had not recommended to file an *amicus curiae* brief.

Debate

3.3.14 The Spanish delegation thanked the Secretariat for the presentation made on the *amicus curiae* brief. That delegation stated that Spain had appealed against the New York Court's decision since, in its view, the New York Court's interpretation of Article III.4(b) was wrong.

3.3.15 One delegation suggested that the 1992 Fund, rather than by filing an *amicus curiae* brief, might wish to help the Spanish Government by asking IMO's Legal Affairs and External Relations Division to submit an opinion on this matter. Another delegation suggested that the Spanish Government could use the Record of Decisions containing the views expressed by the Executive Committee to support its case before the Court of Appeal.

3.3.16 Some delegations expressed support and some expressed doubts as to the Director's interpretation of Article III.4(b). Several delegations expressed concern that if the 1992 Fund were to file an *amicus curiae* brief, it would set a precedent for the future. Other delegations pointed out that if the 1992 Fund were to file an *amicus curiae* brief it would in fact depart from the decision made by the Executive Committee not to take recourse action against ABS in the United States.

Decision

3.3.17 On the basis of the considerations set out by the Director and the views expressed during the debate, the Executive Committee decided not to file an *amicus curiae* brief.

3.4 *Solar 1*

3.4.1 The Executive Committee took note of the developments regarding the *Solar 1* incident as set out in document 92FUND/EXC.40/6.

Claims for compensation

3.4.2 It was noted that as at 14 February 2008, 28 339 claims had been received and that payments totalling PHP909 332 154 (£11.5 million) had been made in respect of 22 447 claims, mainly in the fisheries sector (document 92FUND/EXC.40/6, paragraph 5.1).

3.4.3 It was noted that work had been carried out in the assessment of claims for the costs of shoreline clean up, in particular in respect of the claim submitted by Petron Corporation (document 92FUND/EXC.40/6, paragraph 5.5.3) and of claims in the fishery and mariculture sectors (paragraphs 5.6 and 5.7).

3.4.4 It was recalled that the incident was the first involving a vessel entered in the Small Tanker Owners Pollution Indemnification Agreement (STOPIA 2006) under which the shipowner/insurer have voluntarily agreed to increase the limitation amount applicable to the vessel under the 1992 CLC to 20 million SDR (£16.2 million) (document 92FUND/EXC.40/6, paragraph 4). It was noted that the

Fund, in accordance with the Agreement, was receiving regular reimbursements from the Shipowners' Club within two weeks of being invoiced by the Fund.

Debate

- 3.4.5 The delegation of the Philippines expressed its gratitude to the Secretariat for its prompt assistance in dealing with claims arising from the incident. It also expressed its hope that the claims by the local authorities would be settled in the near future.

3.5 *Shosei Maru*

- 3.5.1 The Executive Committee took note of the developments regarding the *Shosei Maru* incident as set out in document 92FUND/EXC.40/7.

Claims for compensation

- 3.5.2 It was noted that nine claims in respect of clean up and preventive measures had been assessed at ¥608 695 801 (£2.9 million) and that claims from local authorities for the cost of preventive measures had been assessed at ¥10 165 451 (£49 000). It was also noted that claims by a number of fisheries associations for loss and damage to seaweed farms, other fishing operations and costs of measures against the contamination had been assessed at ¥270 500 000 (£1.3 million) and that five other claims for costs related to cleaning hulls of commercial vessels had been assessed at ¥10 332 801 (£49 000). It was noted that the majority of the claims had been paid by the Japan P&I Club (document 92FUND/EXC.40/7, paragraphs 7.1 to 7.5).

Legal proceedings

- 3.5.3 The Committee noted that the owner of the *Shosei Maru* had made an application to commence limitation proceedings in accordance with the 1992 Civil Liability Convention (document 92FUND/EXC.40/7, paragraph 8.5).

Amount available for compensation

- 3.5.4 The Committee noted that the total cost of all claims paid by the Japan P&I Club (£4.3 million) exceeded the limitation amount applicable to the *Shosei Maru* and that therefore it was very likely that the 1992 Fund would be called upon to pay compensation in respect of this incident (document 92FUND/EXC.40/7, paragraphs 7.1 to 7.5).

Debate

- 3.5.5 The Japanese delegation expressed its gratitude to the Secretariat for the progress made in dealing with this incident.

3.6 *Volgoneft 139*

- 3.6.1 The Executive Committee took note of the information regarding the *Volgoneft 139* incident which took place on 11 November 2007 in the Kerch Strait, linking the Sea of Azov and the Black Sea between the Russian Federation and Ukraine, as set out in document 92FUND/EXC.40/8.

PowerPoint presentation by the Russian delegation

- 3.6.2 The Russian delegation stated that on 11 November 2007 there had been an unpredicted storm with hurricane winds which had created an emergency situation for vessels in the Azov and Black Sea basin, especially in the Kerch Strait. It was stated that as a result of the storm four people had died, four were missing and four vessels had sunk, three of which had been carrying cargoes of sulphur. It was also stated that more than ten vessels from Russia, Turkey and Georgia had suffered damage.

- 3.6.3 That delegation also stated that the tanker *Volgoneft 139* had broken in two, resulting in the spill of approximately 2 000 tonnes of fuel oil out of a total of 4 077 tonnes on board. It was stated that the aft section had been towed to Kavkaz where some 900 tonnes of fuel oil had been pumped out and that the sunken fore part had been partially lifted and 1 400 tonnes of fuel oil and oil emulsion had been removed. It was also stated that a diving inspection of the sunken vessels had been carried out which had led to the conclusion that none of them represented a danger to the environment.
- 3.6.4 That delegation stated that the Ministry of Transport of the Russian Federation, together with the Ukrainian authorities, had engaged a total of 15 vessels in the rescue operations, ten vessels from Russia and five from Ukraine. It was stated that an intergovernmental Russian/Ukrainian working group had been established to respond to the incident.
- 3.6.5 Regarding the cause of the incident, the Russian delegation made the following points:
- The incident had happened due to extreme weather conditions (hurricane winds and waves), which had not been experienced in the region for many years, and had not been predicted by the weather forecast.
 - There were a large number of vessels in the area between Russia and Ukraine.
 - All the sunken vessels were sea and river borne but they were not, however, capable of withstanding the weather conditions, especially the waves.
 - The four sunken vessels were over 30 years old.
- 3.6.6 That delegation also stated that, as a consequence of the incident, the Russian Federation intended to implement compulsory monitoring of the movement of vessels at sea and on inland waters and that it intended to adopt its law on the environmental protection of the seas.

Statement by the observer delegation of Ukraine

- 3.6.7 The Ukrainian delegation stated that the joint action by Ukraine and the Russian Federation had helped to minimise the impact of the incident and to improve the environmental situation in the Kerch Strait. It stated that the Government of Ukraine was studying the condition of the sunken vessels and their cargoes in order to decide whether to arrange a removal operation.
- 3.6.8 That delegation stated that after the incident a delegation from the European Union had visited Ukraine with the purpose of rendering expert advice and technical assistance.
- 3.6.9 That delegation also stated that Ukraine was assessing the damage suffered in Ukraine and studying possible ways of obtaining compensation in court for the damage caused by the pollution. It stated that this incident had reminded the Government of Ukraine of the importance of its accession to the 1992 Fund Convention. It also stated that the Ukrainian Government lent great importance to the protection of the environment and that it wished to develop a fruitful cooperation with the 1992 Fund and its Member States.

The shipowner and its insurer

- 3.6.10 The Executive Committee noted that the ship was owned by JSC Volgotanker and insured for liability by Ingosstrakh (Russia). It was noted that the shipowner's P&I insurance cover was reportedly limited to US\$5 million (£2.5 million) and that, if this information were correct, this insurance cover would be well below the minimum limit under the 1992 CLC of 4 510 000 SDR (£3.6 million) (document 92FUND/EXC.40/8, paragraph 5.1).

Debate

- 3.6.11 A number of delegations asked the Russian delegation to clarify the legal situation in respect of this incident, in particular whether a certificate had been issued in accordance with the 1992 CLC. It was recalled that under Article VII.1 of the 1992 CLC the owner of a ship carrying more than 2 000 tonnes of oil in bulk as cargo was required to maintain insurance to cover his liability for pollution damage under the Convention. These delegations also enquired about the consequences for the 1992 Fund of the financial gap between the shipowner's insurance cover and his liability under the 1992 CLC and pointed out that the Fund should not cover that gap.
- 3.6.12 The Russian delegation expressed its belief that in the event that the financial security of the ship proved insufficient, it would not prevent the 1992 Fund from incurring its obligations under paragraph 1, Article 4 of the 1992 Fund Convention.
- 3.6.13 The Secretariat stated that the information about the shipowner's liability cover was uncertain and that it would have to be investigated further.

Contact between the 1992 Fund and the Russian authorities

- 3.6.14 The Executive Committee noted that the Director had contacted the Russian Embassy in London and that he had also met with the Minister and the Vice Minister of Transport of the Russian Federation while they were attending IMO Council held in London on 30 November 2007. It also noted that during the meetings the Director had offered the help of the 1992 Fund to the Russian authorities. The Committee noted that no official reply had been received from the Russian authorities (document 92FUND/EXC.40/8, paragraphs 6.1 and 6.2)

Debate

- 3.6.15 The Russian delegation invited the representatives of the 1992 Fund to visit the Russian Federation in the near future. Several delegations stated that the 1992 Fund should accept the invitation to visit the Russian Federation to discuss the incident at the earliest opportunity.
- 3.6.16 The Director thanked the Russian delegation for the invitation and stated that he was pleased that there was now an official invitation from the Russian authorities. He did however indicate that it was unfortunate that there had not been the possibility for the Fund's experts to visit the site of the spill in the early stages of the incident.

Claims for compensation

- 3.6.17 The Executive Committee noted that a claim from a Russian clean-up contractor in the amount of RUB 73 450 452 (£1.5 million) had been received and that the documentation provided with the claim was being translated and examined by the 1992 Fund's experts. It was also noted that the Fund had received a notification from the Arbitration Court of Saint Petersburg and Leningrad Region of proceedings brought by the contractor against the shipowner, the P&I insurer and the 1992 Fund and that a preliminary hearing had taken place on 11 March 2008 (document 92FUND/EXC.40/8, paragraphs 7.1 and 7.2)

Debate

- 3.6.18 One delegation expressed its surprise about the fact that there was already a court case so soon after the incident. Another delegation stated that it would be useful to have an explanation from the Russian authorities as to what sort of advice they had followed when responding to the incident.
- 3.6.19 The Russian delegation informed the Committee that search and rescue operations were organised immediately in response to those ships affected by the storm, including the *Volgoneft 139*. That delegation informed the Committee that the Government of the Russian Federation was investigating

the cause of the incident and that a comprehensive report would soon be available. That delegation stated that the Russian Ministry of Transport had adopted a number of measures to enhance safety navigation in the region including, *inter alia*, consolidated inspections of all vessels under Russian Federation flag on their compliance with national and international requirements relating to safety of navigation; the recommendation that harbour masters pay particular attention to ensure that vessels' statutory documents conform with the area of trading; and the prohibition of ships with limitations on wave regime from going on the high seas.

- 3.6.20 The Russian delegation also informed the Committee that, to their knowledge, a claim against the shipowner for RUB 73 450 452 had been made by the Novorossisk Company for Emergency, Search and Rescue Work. That delegation suggested that several claims, including those of the relevant Government Ministries, were likely to follow.
- 3.6.21 The Russian delegation suggested that further information regarding the ship's insurance cover would be provided to the IOPC Funds either during the visit of its representatives to Moscow or at the next session of the Executive Committee, as soon as it became available.

3.7 Hebei Spirit

- 3.7.1 The Executive Committee took note of the information regarding the *Hebei Spirit* incident contained in documents 92FUND/EXC.40/9 and 92FUND/EXC.40/9/Add.1, which were submitted by the Director and introduced with the help of a PowerPoint presentation, and document 92FUND/EXC.40/9/1 submitted by the Republic of Korea introduced with a DVD presentation.

DVD presentation by the delegation of the Republic of Korea

- 3.7.2 The delegation of the Republic of Korea presented a DVD to the Executive Committee giving details of the *Hebei Spirit* incident and commenting on its environmental, economical and emotional impact on the areas and persons affected by the spill.

The incident

- 3.7.3 The Executive Committee noted that the *Hebei Spirit* was struck by the crane barge *Samsung N°1* while at anchor about five miles off Taean on the west coast of the Republic of Korea and that about 10 500 tonnes of crude oil had escaped into the sea from the *Hebei Spirit*. It was also noted that oil polluted some 375 kilometers of the western coast of the Republic of Korea (document 92FUND/EXC.40/9, paragraphs 2.1 to 2.5).

Claims for compensation

- 3.7.4 The Executive Committee noted that the 1992 Fund and the Skuld Club had established a Claims Office in Seoul to assist claimants in the presentation of their claims for compensation, that, as at 10 March 2008, 70 claims totalling Won 62.4 billion (£32 million) had been submitted and that interim hardship payments totalling Won 9 382.3 million (£5 million) had been made by the Skuld Club (documents 92FUND/EXC.40/9, paragraph 8 and 92FUND/EXC.40/9/Add.1, paragraph 3.1).

Intimidation of the experts appointed by the Skuld Club and the 1992 Fund

- 3.7.5 The Committee took note of the events regarding the intimidation of experts appointed by the Skuld Club and the 1992 Fund as set out in documents 92FUND/EXC.40/9, paragraphs 9.1 to 9.4 and 92FUND/EXC.40/9/Add.1, paragraphs 1.1 to 1.5. The Committee also noted the immediate measures taken by the Government of the Republic of Korea in response to these events.

Maximum amount available for compensation

- 3.7.6 The Committee noted that under Article 4.4(e) of the 1992 Fund Convention, the maximum amount of compensation payable in respect of the *Hebei Spirit* incident was 203 million SDR. It was recalled that the 1992 Fund Assembly had decided, at its second session, held in October 1997, that the conversion of the SDR into national currency should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Record of Decisions of the session at which the Assembly or Executive Committee took the decision which made payments of claims possible (document 92FUND/EXC.40/9/Add.1, paragraphs 4.1 to 4.3).

Decision

- 3.7.7 The Executive Committee decided that the conversion of 203 million SDR into Korean Won should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 40th session, ie 13 March 2008 at the rate of 1 SDR = Won 1 584.330.

Level of payments

- 3.7.8 The Committee took note of the preliminary estimation of the level of losses that was likely to arise from the *Hebei Spirit* incident, as set out in document 92FUND/EXC.40/9/Add.1, paragraphs 5.1 to 5.5. Note was also taken of the Director's considerations on the issue (paragraphs 6.1 to 6.5).
- 3.7.9 It was noted that, on the basis of the limited information available as at 26 February 2008, the total estimated amount of likely losses arising from the *Hebei Spirit* incident would be between Won 352 billion and Won 424 billion (£190-£229 million) (document 92FUND/EXC.40/9/Add.1, paragraph 5.5).
- 3.7.10 It was also noted that the Director had proposed that the Committee authorise him to make payments but that in view of the uncertainty as to the total amount of the claims, the payments should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimant.

Debate

- 3.7.11 The majority of the delegations expressed their support for the Director's proposal to authorise him to make payments, if necessary, and for the level of such payments to be limited to 60% for the time being.
- 3.7.12 Certain delegations expressed the view that such a level of payment so early after the incident might put the Fund at risk of over-payment and suggested a more cautious percentage. Those delegations stated that they would have a preference for fixing the level of payment at 50% in view of the uncertainty as to the total amount of the potential claims, but that they were prepared to accept a level of 60% if that was the preference of a majority of the delegations.
- 3.7.13 One delegation recalled that in previous incidents where there had been a risk of exceeding the amount available for compensation, the Governments involved had sometimes agreed to stand last in the queue and the question was raised as to whether the Republic of Korea intended to do so for its claims.
- 3.7.14 The delegation of the Republic of Korea stated that it understood that some delegations had reservations in view of the uncertainty as to the total amount of potential claims despite the figures produced by the Director on the basis of the estimates by the Fund's experts. That delegation informed the Executive Committee that, in order to further reduce the risk of over-payment and in the interest of the victims, it was prepared to consider standing last in the queue if the Committee decided that the level of payment was to be set at 60%.

Decisions

- 3.7.15 The Executive Committee decided to authorise the Director to make settlements of claims arising from this incident to the extent that they did not give rise to questions of principle not previously decided by the Committee.
- 3.7.16 The Executive Committee further decided to authorise the Director to make payments, but that, in view of the uncertainty as to the total amount of the potential claims, the payments should for the time being be limited to 60% of the amount of the damage actually suffered by the respective claimant as assessed by the Fund's experts. It was also decided that no payment would be made to the Korean Government, the regional or local authorities or any other government agency pending a final decision by the Korean Government in respect of it standing last in the queue. The Executive Committee decided to review the situation at its next session.

4 Any other business

4.1 Entry into force of the Bunkers Convention

- 4.1.1 The Executive Committee took note of the information contained in document 92FUND/EXC.40/10, submitted by the International Group of P&I Clubs, regarding the entry into force of the International Convention on Civil Liability for bunker oil pollution damage (2001) (Bunkers Convention). It was recognised that the issue would normally have been considered by the Legal Committee of IMO but that, given that the next meeting of the IMO Legal Committee was due to take place only one month prior to the entry into force of the Bunkers Convention, the International Group had considered it appropriate to raise the matter at this session of the 1992 Fund Executive Committee.
- 4.1.2 The Committee noted in particular the requirement for States Parties to the Bunkers Convention to provide compulsory insurance certificates and the need for those States to establish procedures well in advance of the entry into force of the Convention in order to ensure the efficient administration of the issuance of such certificates.
- 4.1.3 One delegation from a State Party to the Convention thanked the International Group of P&I Clubs for the information provided and asked whether electronic insurance certificates were likely to replace the paper certificates, since that delegation was developing the standard form based on paper certificates.
- 4.1.4 That delegation also asked the International Group of P&I Clubs if the authorities in the States Parties to the Convention would continue to be informed of the changes in insurance cover of shipowner-entered Members, notwithstanding any changes in information held by the P&I Clubs in their electronic ship search databases.
- 4.1.5 The International Group of P&I Clubs explained that P&I Clubs would provide hard copies of the insurance certificates if flag states of ships so required, and that, in the case of changes in insurance cover, the obligation to inform the State Parties would still remain on shipowners.
- 4.1.6 The delegation of the United Kingdom informed the Committee that its Government was planning to start issuing the certificate of the Bunker Convention to UK ships from May 2008 and to non-Member States' ships from August 2008. The Norwegian delegation stated that the Government of Norway was ready to ratify the Bunker Convention and would do so in the near future.

4.2 Nominations for the Election of Members of the Audit Body

The Director drew the Committee's attention to circular 92FUND/Circ.59 which had been issued to all 1992 Fund Member States in January 2008. He stated that it had been re-distributed to delegations at this session of the Executive Committee in order to remind them of the possibility of

nominating candidates for the election of the Audit Body which would take place at the October 2008 session of the Assembly. He pointed out that nominations would have to be made by 16 May 2008.

4.3 Expression of gratitude to the Government of Monaco

The Director, on behalf of the Executive Committee, expressed appreciation for the excellent venue and facilities provided by the Government of Monaco, which, he commented, had contributed to a very successful meeting week. He again thanked in particular Mr Gilles Blanchi of the Department of Maritime Affairs in Monaco, whose co-operation and assistance had been crucial in the organisation of the meetings. The Committee demonstrated its appreciation in a round of applause for Mr Blanchi.

5 Adoption of the Record of Decisions

The draft Record of Decisions of the Executive Committee, as contained in document 92FUND/EXC.40/WP.1, was adopted, subject to certain amendments.
