

 <p><b>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</b></p>	<b>Agenda item: 9</b>	IOPC/MAR11/9/1	
	Original: ENGLISH	1 April 2011	
	1992 Fund Administrative Council	<b>92AC8/92AES15</b>	●
	1992 Fund Executive Committee	<b>92EC51</b>	●
	Supplementary Fund Assembly	<b>SAES4</b>	●
	1971 Fund Administrative Council	<b>71AC26</b>	●
1992 Fund Working Group	<b>92WG6/2</b>	●	

## RECORD OF DECISIONS OF THE MARCH 2011 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 29 March to 1 April 2011)

<b>Governing Body (session)</b>		<b>Chairman</b>	<b>Vice Chairmen</b>
<b>1992 Fund</b>	Administrative Council <b>(AC8/AES15)</b>	Mr Jerry Rysanek (Canada)	Professor Tomotaka Fujita (Japan) Mr Mohammed Said Oualid (Morocco)
	Executive Committee <b>(92EC51)</b>	Ms Welmoed van der Velde (Netherlands)	Mr Alan Lim Chun Shien (Singapore)
	Working Group <b>(92WGR6/2)</b>	Mr Volker Schöfisch (Germany)	
<b>Supplementary Fund</b>	Assembly <b>(SAES4)</b>	Vice-Admiral Giancarlo Olimbo (Italy)	Mrs Birgit Sølling Olsen (Denmark) Mr Isao Yoshikane (Japan)
<b>1971 Fund</b>	Administrative Council <b>(71AC26)</b>	Captain David J F Bruce (Marshall Islands)	Mr Andrzej Kossowski (Poland)

## CONTENTS

	<b>Page</b>
<b>Opening of the sessions</b>	<b>3</b>
<b>1 Procedural matters</b>	<b>7</b>
1.1 Adoption of the Agenda	7
1.2 Examination of credentials – Establishment of Credentials Committee	7
1.2 Participation	7
1.2 Examination of credentials – Report of the Credentials Committee	7
1.3 Examination of credentials – Proposal for change to credentials policy	8
1.4 Request for observer status	11
<b>2 Overview</b>	<b>11</b>
2.1 Report of the Director	11
<b>3 Incidents involving the IOPC Funds</b>	<b>13</b>
3.1 Incidents involving the IOPC Funds	13
3.2 Incidents involving the IOPC Funds – 1971 Fund: <i>Plate Princess</i>	13
3.3 Incidents involving the IOPC Funds – 1992 Fund: <i>Erika</i>	16
3.4 Incidents involving the IOPC Funds – 1992 Fund: <i>Prestige</i>	17
3.5 Incidents involving the IOPC Funds – 1992 Fund: <i>Solar 1</i>	19
3.6 Incidents involving the IOPC Funds – 1992 Fund: <i>Volgoneft 139</i>	20
3.7 Incidents involving the IOPC Funds – 1992 Fund: <i>Hebei Spirit</i>	23
3.8 Incidents involving the IOPC Funds – 1992 Fund: Incident in Argentina	28
<b>4 Financial policies and procedures</b>	<b>29</b>
4.1 Nominations for the election of members of the Audit Body	29
4.2 Appointment of an external expert to the Audit Body	30
<b>5 Secretariat and administrative matters</b>	<b>31</b>
5.1 Interim arrangements for Acting Director	31
5.2 Proposed new template for Director's contract	33
5.3 Headquarters Agreement	35
5.4 Improvement of Document Services, including the introduction of a new document server and database of decisions	35
<b>6 Treaty matters</b>	<b>37</b>
6.1 Status of the 1992 Fund Convention and the Supplementary Fund Protocol	37
6.2 HNS Convention and HNS Protocol	38
<b>7 Other matters</b>	<b>39</b>
7.1 Future sessions	39
7.2 Any other business	39
<b>8 1992 Fund sixth intersessional Working Group – second meeting</b>	<b>39</b>
<b>9 Adoption of the Record of Decisions</b>	<b>39</b>
<b>ANNEXES</b>	
<b>Annex I</b>	List of Member States, non-Member States represented as observers, intergovernmental organisations and international non-governmental organisations
<b>Annex II</b>	Statement by the delegation of Venezuela
<b>Annex III</b>	Revised template – Contract between the 1992 Fund and the Director

*Opening of the sessions*

- 0.1 Upon opening the sessions, the Chairman of the 1992 Fund Assembly stated, on behalf of all delegates in attendance and the IOPC Funds' Secretariat, that he was honoured and delighted to be in Marrakech at the invitation of the Moroccan Government. He expressed his sincere appreciation to Her Highness Princess Lalla Joumala Alaoui, Ambassador of the Kingdom of Morocco to the United Kingdom, whose initiative had led to the meetings taking place in such a magnificent location but who unfortunately had not been able to join the IOPC Funds in Marrakech. The Chairman introduced Mrs Amina Benkhadra, Minister of Energy, Mines, Water and the Environment of Morocco, and thanked the representatives of the various Ministries and public authorities, many of whom were present and whose efforts had led to the event taking place.
- 0.2 Before continuing with the official opening of the sessions, the 1992 Fund Assembly Chairman referred to the recent huge earthquake in Japan and its devastating consequences. On behalf of all the governing bodies of the IOPC Funds, he expressed his deepest sympathy and heartfelt condolences to the Japanese people and Government. In tribute to the lives lost, all persons present stood to observe a minute's silence. In response, the delegation of Japan expressed its appreciation for this tribute and for the support that the people of Japan had received from around the world.
- 0.3 On behalf of the Government of the Kingdom of Morocco, Minister Benkhadra officially welcomed all Member States, Observer States and Organisations, other observers and the IOPC Funds Secretariat to Marrakech and expressed her heartfelt gratitude to the governing bodies for having accepted the invitation of the Government of Morocco, which was very proud to host the discussions of one of the most important international maritime bodies.
- 0.4 Mrs Benkhadra expressed, on behalf of the Government of Morocco, her deepest sympathy and compassion to the Japanese delegation for the devastating natural phenomena which had recently hit their country.
- 0.5 She expressed her pleasure that, despite the fact that he was still recovering following a recent illness, the Director of the IOPC Funds, Mr Oosterveen, had been able to be present. She thanked the Director for making the journey to Marrakech at such a difficult time and wished him a speedy recovery.
- 0.6 Mrs Benkhadra paid tribute to Her Highness Princess Lalla Joumala Alaoui for her commitment to this event and her interest in developing and reinforcing the close relationship which the Kingdom of Morocco enjoyed with international organisations in general, and in particular, the maritime bodies which were based in London.
- 0.7 The Minister pointed out that as a result of having two separate coastlines, Morocco benefited from a strong geographical position with a large volume of maritime traffic passing the lengths of the Atlantic and Mediterranean coasts. She said that Morocco's favourable position lent itself to a significant maritime industry and to a larger contribution to the international business community.
- 0.8 She pointed out that Morocco was therefore exposed to the risk of major pollution incidents but commented, however, that events at sea resulting in such pollution were rare since the International Maritime Organization (IMO) had led States to increase maritime safety to the highest level. She acknowledged that the threat nevertheless remained, as demonstrated by the regrettable oil spill resulting from the *Hebei Spirit* incident which had polluted a large stretch of the coastline of the Republic of Korea. Mrs Benkhadra explained that the presence of such a threat had led Morocco to be amongst the first States to accede to the International Conventions pertaining to the safety of navigation at sea and marine pollution and pointed out that, most recently, the Kingdom of Morocco had joined the Supplementary Fund.
- 0.9 The Minister suggested that the hesitation of certain countries to adopt some international treaties could often be attributed to the financial implications inherent in such International Conventions. She pointed out, however, that in the case of the IOPC Funds, ratification was an act of solidarity with the

international maritime community. She stated that the cost was consequently negligible in comparison to the social and economic benefits of which Member States could take advantage in the event of a major oil pollution incident.

- 0.10 Mrs Benkhadra congratulated the IOPC Funds on their commitment to bringing about the entry into force of the HNS Convention.
- 0.11 Mrs Benkhadra informed the governing bodies that significant work had been carried out under the leadership of His Majesty King Mohammed VI in order to guarantee both a clean sea and safe shipping in Moroccan waters. She stated that the question of the protection of the environment and of sustainable development was of significant political importance to Morocco and explained that His Majesty the King had proposed a national charter on environment and sustainable development, which had been adopted in February 2011, following a wide consultation process involving all relevant stakeholders.
- 0.12 Mrs Benkhadra expressed her heartfelt gratitude to all members of the IOPC Funds Secretariat who had succeeded in organising the meetings in a timely and professional fashion, to the standard required for such an international conference. Having witnessed the scale of the tasks carried out in order for this meeting to take place, the Minister thanked the Moroccan team who had worked in perfect harmony with the IOPC Funds Secretariat to produce such an impressive event.
- 0.13 Finally, Mrs Benkhadra wished the IOPC Funds governing bodies every success in their work during the meetings. She expressed her hope that the sessions would lead to decisive actions which would enable the IOPC Funds to reinforce its fundamental role within the international maritime community.
- 0.14 A film presentation showing the importance and development of maritime activities in Morocco was projected.
- 0.15 The Chairman of the 1992 Fund Assembly thanked the Minister for her opening address and also for the film which, he stated, had clearly demonstrated how a country like Morocco could address the issues which could be faced within the field of maritime transport, including environmental issues, with a coordinated approach to protecting both the country's coastline and its population from the potentially tragic consequences of an oil pollution incident. He also recognised Morocco's efforts in promoting the swift entry into force of the HNS Convention. The Chairman also expressed his personal gratitude to the IOPC Funds' Secretariat for their work to ensure the smooth running of the meetings so far away from their usual base.
- 0.16 The Director, Mr Willem Oosterveen, expressed his sincere appreciation and thanks to the Government of the Kingdom of Morocco for its generous offer to host these important spring 2011 sessions of the IOPC Funds governing bodies in the magnificent city of Marrakech and in such a splendid conference centre. Speaking on behalf of the Secretariat, he expressed deep gratitude particularly to Her Highness Princess Lalla Joulala Alaoui, and also to Mr Mohammed Said Oualid and Mrs Wafae Benhammou and their team for their outstanding assistance, without which the meetings would not have been able to take place.
- 0.17 He thanked the Minister, Mrs Benkhadra, for her kind words in respect of his health and also took the opportunity to express his profound gratitude to everyone for the support and friendship that had been extended to him during such difficult personal circumstances. He explained that whilst it had been a difficult few months, he was beginning to recover and was very happy to be able to participate in this important event.
- 0.18 The Director clarified that the Acting Director, Mr José Maura, remained in charge of the meetings and took the opportunity to thank Mr Maura for his excellent work since September 2010 as well as the Secretariat. He expressed his hope that successful and fruitful meetings would take place this week and that he would have completely recovered to join delegates at the next meeting of the governing bodies, whether that should take place in July or October this year.

- 0.19 Mr Oosterveen took the opportunity, in the presence of a number of officials from the Moroccan Government, to explain the origins of the international oil pollution compensation regime and the importance of the uniform application of the Fund Conventions. He referred to the development and improvement of the regime over time, in particular as regards the adoption of the Protocols in 1992 which had created the current 1992 Civil Liability and Fund Conventions and also the adoption of the 2003 Protocol which had created the Supplementary Fund, to which he was very pleased that Morocco had become a Party in February 2010.
- 0.20 The Director pointed out that Morocco had had an ambitious agenda in recent years which, in his view, explained why it had become a major player amongst the African States. Having ratified the 1992 Conventions and having acceded to the Supplementary Fund Protocol, he stated that Morocco had taken the right initiatives to be prepared and protected in the event of an oil spill, at the same time underlining the importance its Government had attached to environmental issues, referring in particular, as Mrs Benkhadra also had, to the International Conference convened by IMO to adopt the Protocol to the Hazardous and Noxious Substances Convention in 2010, over which Her Highness Princess Lalla Joumala Alaoui had presided.
- 0.21 The Director expressed the view that there were many Moroccan achievements which had gone unnoticed or that had not always been given the credit they deserved. He pointed out, for example, that the Secretariat of the IOPC Funds had observed the thoroughness and punctuality in which the Kingdom of Morocco had submitted its reports for contributing oil, emphasising the importance of both the timely submission of oil reports and subsequent payment of contributions, which were essential to the proper functioning of the international compensation regime.
- 0.22 The Director concluded by saying that it was, in his view, very important to continue to look forward and that in order for the compensation regime to maintain its attraction to States, it must be ensured that it continues to meet the needs and aspirations of Member States and their citizens in the 21st century. He pointed out that the deliberations later on in the week of the 6th intersessional Working Group, which was set up to explore and develop possible measures to enhance the functioning in practice of the international liability and compensation regime, were an essential part of the 'looking forward' process.
- 0.23 The Chairman of the Supplementary Fund Assembly endorsed the words of the 1992 Fund Assembly Chairman and expressed appreciation on behalf of the Supplementary Fund Assembly, for the presentation of the Minister and of the film, which, he said, highlighted the great importance Morocco attaches to maritime issues and the role it plays within the international maritime community. He stated that the recent commissioning of the Maritime Rescue Coordination Centre, covering SAR services for north-west Africa, as well as the fully operational Vessel Traffic System (VTS), aimed at monitoring maritime activities along the Moroccan coastline, were clear evidence of Morocco's dynamism.
- 0.24 The Chairman of the Supplementary Fund Assembly expressed his profound gratitude for Morocco's participation at meetings of the IOPC Funds over many years and for hosting these spring 2011 sessions in Marrakech. He noted how courteous and friendly everyone had been since arriving in Marrakech and commented on the way in which the location provided both a beautiful and historical setting but also the latest technical facilities, which, in his view demonstrated how Morocco had jumped ahead in the international arena.
- 0.25 The Chairman of the 1971 Fund Administrative Council, reiterated the words expressed by his fellow Chairmen and, on behalf of the 1971 Fund Administrative Council, thanked the Minister for her generous welcome and wise words which, he stated, he was sure would be taken into account during the meetings. He thanked the Government of the Kingdom of Morocco for hosting the sessions in the beautiful and historical setting of Marrakech. He noted the impressive maritime heritage of Morocco, its geographical location as a maritime nation and the important contributions made by it to the maritime community. The Chairman described the venue as the ideal place in which to conduct the work of the governing bodies and expressed his hope that it would be conducive to making decisions as required during their deliberations.

- 0.26 The Chairman of the 1992 Fund Executive Committee added her appreciation to the Government of Morocco, on behalf of the members of the 1992 Fund Executive Committee, and expressed her expectation that the fairytale setting in which they found themselves conducting their discussions would lead to fruitful debates.
- 0.27 Many delegations took the floor to express their appreciation and gratitude to the Government of Morocco for hosting the sessions, for their generous welcome, for the beautiful setting, magnificent venue and excellent facilities.
- 0.28 The delegation of Malta, as Chairman of the Mediterranean Memorandum of Understanding (Med MoU) on Port State Control, explained that the Med MoU members had taken advantage of the location and had held a smaller meeting in Marrakech on Sunday and Monday. On behalf of the Med MoU Member States, he thanked the Government of Morocco for their continued support to the maritime sector.
- 0.29 One delegation expressed particular appreciation for the fact that, having now held three meetings of the IOPC Funds' governing bodies away from the IOPC Funds' Headquarters in London, the IOPC Funds had now had the occasion to hold its meetings in Europe (Monaco, March 2008), America (Canada, June 2007) and now Africa. As an African State, that delegation expressed its pride at having the opportunity to welcome the IOPC Funds to the continent and thanked the Moroccan Government for enabling this to take place.
- 0.30 Many delegations also took the opportunity to express their delight at the presence of the Director. They wished him a speedy recovery and stated that they looked forward to seeing him back with them at the next meeting of the governing bodies.
- 0.31 Mrs Benkhadra thanked the governing bodies for their kind words and wished them every success for the week ahead. She noted that there was a heavy agenda and that the delegations would have four full days of important discussions and offered any assistance to ensure the smooth running of the meetings.

### *1992 Fund Assembly*

- 0.32 Following the opening ceremony, the Chairman of the 1992 Fund Assembly attempted to officially open the 15th extraordinary session of the Assembly at 11.30 on Tuesday 29 March 2011, but the Assembly failed to achieve a quorum.
- 0.33 Only the following 41 Member States of the 1992 Fund were present at that time, whereas a quorum required 53 States to be present:

Algeria	Germany	Oman
Angola	Ghana	Panama
Australia	Italy	Philippines
Brunei Darussalam	Japan	Poland
Bulgaria	Kenya	Qatar
Cameroon	Liberia	Republic of Korea
Canada	Malaysia	Singapore
China <sup>&lt;1&gt;</sup>	Malta	Spain
Denmark	Marshall Islands	Sweden
Ecuador	Mexico	Turkey
Estonia	Morocco	United Arab Emirates
Finland	Netherlands	United Kingdom
France	Nigeria	Venezuela (Bolivarian Republic of)
Gabon	Norway	

<sup><1></sup> The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.

- 0.34 It was recalled that, at its 7th session, the 1992 Fund Assembly had adopted 1992 Fund Resolution N°7 whereby, whenever the Assembly failed to achieve a quorum, the Administrative Council established under Resolution N°7 should assume the functions of the Assembly, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions.
- 0.35 In view of the fact that no quorum was achieved in the 1992 Fund Assembly, the Chairman of the 1992 Fund Assembly concluded that, in accordance with Resolution N°7, the items of the Assembly's agenda would therefore be dealt with by the 8th session of the 1992 Fund Administrative Council, acting on behalf of the 15th extraordinary session of the 1992 Fund Assembly<sup><2></sup>.
- 0.36 It was recalled that, at its 1st session in May 2003, the 1992 Fund Administrative Council had decided that the Chairman of the 1992 Fund Assembly should ex officio be the Chairman of the Administrative Council (document 92FUND/AC.1/A/ES.7/7, paragraph 2).

#### ***1992 Fund Executive Committee***

- 0.37 The 1992 Fund Executive Committee Chairman opened the 51st session of the Executive Committee. The Chairman informed the Committee that, since the 50th session of the Executive Committee, she had been informed that, due to her retirement, the current Vice-Chairman, Miss Judith Francis (Bahamas), would no longer be able to serve as Vice-Chairman. The Executive Committee expressed its best wishes to Miss Francis on her retirement and elected Mr Alan Lim Chun Shien (Singapore) as the new 1992 Fund Executive Committee Vice Chairman.

#### ***Supplementary Fund Assembly***

- 0.38 The Supplementary Fund Assembly Chairman opened the 4th extraordinary session of the Assembly.

#### ***1971 Fund Administrative Council***

- 0.39 The 1971 Fund Administrative Council Chairman opened the 26th session of the Administrative Council.

### **1 Procedural matters**

- 1.1
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|---|-------------|-------------|-----------|-------------|---------------|
| <b>Adoption of the agenda<br/>Document IOPC/MAR11/1/1</b> | <b>92AC</b> | <b>92EC</b> | <b>SA</b> | <b>71AC</b> | <b>92WGR6</b> |
|---|-------------|-------------|-----------|-------------|---------------|

The 1992 Fund Administrative Council, 1992 Fund Executive Committee, Supplementary Fund Assembly and 1971 Fund Administrative Council adopted the agenda as contained in document IOPC/MAR11/1/1.

- 1.2
- |  |             |             |           |             |               |
|--|-------------|-------------|-----------|-------------|---------------|
| <b>Examination of Credentials – Establishment of<br/>Credentials Committee<br/>Document IOPC/MAR11/1/2</b> | <b>92AC</b> | <b>92EC</b> | <b>SA</b> |             |               |
| <b>Participation</b>   |             |             |           | <b>71AC</b> | <b>92WGR6</b> |
| <b>Examination of Credentials – Report of the<br/>Credentials Committee<br/>Document IOPC/MAR11/1/2/1</b>  | <b>92AC</b> | <b>92EC</b> | <b>SA</b> |             |               |

- 1.2.1 The governing bodies recalled that, at its March 2005 session, the 1992 Fund Assembly had decided to establish, at each session, a Credentials Committee composed of five members elected by the Assembly on the proposal of the Chairman, to examine the credentials of delegations of Member

<sup><2></sup>

From this point forward, references to the '8th session of the 1992 Fund Administrative Council' should be taken to read '8th session of the 1992 Fund Administrative Council, acting on behalf of the 15th extraordinary session of the 1992 Fund Assembly'.

States. It was also recalled that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials in respect of the 1992 Fund Executive Committee, provided the session of the Executive Committee was held in conjunction with a session of the Assembly.

- 1.2.2 The governing bodies also recalled that, at their October 2008 sessions, the 1992 Fund Assembly and the Supplementary Fund Assembly had decided that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials of delegations of Member States of the Supplementary Fund (cf documents 92FUND/A.13/25, paragraph 7.9 and SUPPFUND/A.4/21, paragraph 7.11).
- 1.2.3 The Member States present at the sessions are listed in Annex I, including an indication of States having at any time been Members of the 1971 Fund, as are the non-Member States, intergovernmental organisations and international non-governmental organisations which were represented as observers.

***1992 Fund Administrative Council Decision***

- 1.2.4 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Administrative Council appointed the delegations of Cameroon, Canada, Finland, Malaysia and Panama as members of the Credentials Committee.

***1992 Fund Executive Committee and Supplementary Fund Assembly***

- 1.2.5 The 1992 Fund Executive Committee and the Supplementary Fund Assembly took note of the appointment of the Credentials Committee by the 1992 Fund Administrative Council.

*Debate*

- 1.2.6 After having examined the credentials of the delegations of the 1992 Fund and Supplementary Fund Member States, and of the delegations of States which were members of the 1992 Fund Executive Committee for which credentials had been submitted, the Credentials Committee reported in document IOPC/MAR11/1/2/1 that the credentials received from 39 Member States were in order but that no credentials had yet been received in respect of Kenya and Nigeria. The Credentials Committee reported that it expected that this would be rectified by the delegations of Kenya and Nigeria shortly after the session<sup><3></sup>.
- 1.2.7 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the March 2011 sessions.

<b>Examination of Credentials – Proposal for change to credentials policy Document IOPC/MAR11/1/2/2</b>	<b>92AC</b>	<b>92EC</b>	<b>SA</b>		
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- 1.3.1 The 1992 Fund Administrative Council, the 1992 Fund Executive Committee and the Supplementary Fund Assembly recalled that, at their October 2010 sessions, the Credentials Committee had drawn their attention to what was, in the view of the Credentials Committee, the disproportionate time that was spent by both the IOPC Funds' Secretariat and the Credentials Committee in attempting to rectify irregularities in credentials received and in pursuing missing credentials. The Credentials Committee had suggested, therefore, that the 1992 Fund Assembly might wish to consider reviewing its current policy with respect to the national authorities that were authorised to issue credentials for participation in sessions of the IOPC Funds' governing bodies. The governing bodies had instructed the Acting Director to further review the Funds' current policy in respect of credentials, and report on this matter at their next sessions (document IOPC/OCT10/11/1, paragraph 1.3.8).

<sup><3></sup> Note by the Secretariat: Shortly after the session credentials were received from Kenya and Nigeria which were examined by the Chairman of the Credentials Committee and found to be in order.



- 1.3.2 The governing bodies took note of the information contained in document IOPC/MAR11/1/2/2. They noted in particular that one of the main problems that had been identified by the Credentials Committee, not only in October 2010 but also on other occasions, was that credentials were often issued by the Ambassador or High Commissioner, acting in his/her own right and not stating from whom the authority had come. They further noted that this was not in conformity with the IOPC Funds' current policy with respect to the form and content of credentials and had led to the Secretariat having to ask the representatives of the respective Member State to arrange for new credentials to be re-issued, often during the meeting week itself.
- 1.3.3 The governing bodies noted that the Director had considered this issue and had, for comparison purposes, consulted several United Nations (UN) specialised agencies as well as various London-based intergovernmental organisations (listed in the Annex to document IOPC/MAR11/1/2/2) to ascertain their positions with respect to the national authorities which were authorised to issue credentials for participation in meetings of their respective organisations.
- 1.3.4 The governing bodies noted that only the two UN specialised agencies followed the UN policy on credentials and required that credentials be issued by the Head of State, the Head of Government or by the Minister of Foreign Affairs and only by the Ambassador or High Commissioner if the credentials stated that they were issuing credentials under instructions or under the authority or on behalf of the designated authority. The governing bodies further noted that the other intergovernmental organisations which had been consulted followed more flexible policies and allowed credentials to be issued not only by Ministers or relevant Ministries but also by Ambassadors or High Commissioners. In addition, one organisation also allowed the Diplomatic Mission of the Member State where a meeting took place to issue credentials. The governing bodies noted that, in the Director's view, this could be a useful option when sessions of the Funds' governing bodies were held outside London.
- 1.3.5 The governing bodies noted the Director's view that as the IOPC Funds were not UN bodies, there was room for flexibility within the arrangements for credentials for participation in sessions of the IOPC Funds' governing bodies.
- 1.3.6 The governing bodies further noted the Director's recommendation that the governing bodies adopt an amendment to the formal requirements as regards credentials to allow for credentials to be issued by the Ambassador or High Commissioner who was either accredited to the country where the Headquarters of the Organisation is located or where a session took place, providing that this was within the remit of the Ambassador or High Commissioner concerned. The governing bodies also noted that the Director had proposed a text for their consideration.

#### *Debate*

- 1.3.7 One delegation expressed concern that, although in its view the Director's proposal seemed reasonable, the proviso in paragraph 2.7 of document IOPC/MAR11/1/2/2 that the Ambassador or High Commissioner who was either accredited to the country where the Headquarters of the Organisation was located or where a session took place could issue credentials providing that this was within the remit of the Ambassador or High Commissioner concerned was not consistent with the new text proposed by the Director. In that delegation's view, it should not be up to the IOPC Funds' Secretariat to try to ascertain whether it was in the remit of the Ambassador or High Commissioner or not. Since that suggestion was not, however, part of the proposed revised text, that delegation agreed with the text proposed by the Director.
- 1.3.8 Another delegation stated that all Ambassadors and High Commissioners had plenipotentiary powers and so it was not necessary or appropriate to question whether the issuance of credentials was within their remit or not.
- 1.3.9 One delegation expressed its view that as the IOPC Funds had been established under the auspices of the IMO, they should maintain the formal UN policy with respect to credentials. That delegation recalled that the Annex to the Credentials Circular provided models of credentials and suggested that they should be put on a more prominent place on the Funds' website for ease of access.

- 1.3.10 Another delegation supported the Director's proposal but suggested that Permanent Representatives to specific organisations, eg to IMO, could also be authorised to issue credentials. Although there was some support for this proposal, most delegations which spoke on this point felt that it would be inappropriate to authorise Permanent Representatives to IMO or to other organisations to issue credentials for meetings of the IOPC Funds.
- 1.3.11 One delegation asked if the reference to the 'Headquarters of the Organisation' in sub-paragraph (a) of the Director's proposed new text was correct or whether it should read the 'Headquarters of the IOPC Funds'. The Secretariat thanked this delegation for having noticed this point and agreed with it that the text should read 'Headquarters of the IOPC Funds'.
- 1.3.12 In summing up, the Chairman noted that the majority of delegations that had taken the floor had agreed with the Director's proposal for an amendment to the formal requirements as regards credentials to allow for them to be issued by the Ambassador or High Commissioner who was either accredited to the country where the Headquarters of the IOPC Funds were located or where a session took place. He also noted that most delegations which spoke had made the point that it would be assumed that the Ambassador or High Commissioner had the necessary powers to issue credentials for meetings of the IOPC Funds' governing bodies. He also noted that the proposal that Permanent Representatives to IMO and to other organisations also be authorised to issue credentials for participation in IOPC Funds' meetings had not met with the agreement of the majority of delegations which had spoken.

#### ***1992 Fund Administrative Council Decision***

- 1.3.13 The 1992 Fund Administrative Council decided to amend the formal requirements as regards credentials to allow for the receipt of credentials as set out below (new text underlined):

As provided in Rule 9 of the Rules of Procedure of the 1992 Fund Assembly and of the Rules of Procedure of the Supplementary Fund Assembly, the credentials shall be issued:

(a) by the Head of State, the Head of Government, the Minister of Foreign Affairs or the Ambassador or High Commissioner either accredited to the country where the Headquarters of the IOPC Funds are located or where a session takes place.

or

(b) by an appropriate authority as determined by the Government and communicated to the Director. If the credentials are issued by such an authority, the text should make it clear who has given the authority to issue credentials and where such authority is a person who is not a Government employee, such authorisation shall be communicated to the Director in advance of the opening day of the Assembly.

- 1.3.14 The 1992 Fund Administrative Council further decided to make the appropriate amendment to Rule 9 of the Rules of Procedure of the 1992 Fund Assembly.

#### ***Supplementary Fund Assembly Decision***

- 1.3.15 The Supplementary Fund Assembly noted the decision of the 1992 Fund Administrative Council and therefore amended the formal requirements as regards credentials to allow for the receipt of credentials as set out below (new text underlined):

As provided in Rule 9 of the Rules of Procedure of the 1992 Fund Assembly and of the Rules of Procedure of the Supplementary Fund Assembly, the credentials shall be issued:

(a) by the Head of State, the Head of Government, the Minister of Foreign Affairs or the Ambassador or High Commissioner either accredited to the country where the Headquarters of the IOPC Funds are located or where a session takes place.

or

(b) by an appropriate authority as determined by the Government and communicated to the Director. If the credentials are issued by such an authority, the text should make it clear who has given the authority to issue credentials and where such authority is a person who is not a Government employee, such authorisation shall be communicated to the Director in advance of the opening day of the Assembly.

- 1.3.16 The Supplementary Fund Assembly further decided to make the appropriate amendment to Rule 9 of the Rules of Procedure of the Supplementary Fund Assembly.

***1992 Fund Executive Committee***

- 1.3.17 The 1992 Fund Executive Committee took note of the decision of the 1992 Fund Administrative Council and the Supplementary Fund Assembly in respect of this item.

1.4	<b>Request for observer status Document IOPC/MAR11/1/3</b>	<b>92AC</b>		<b>SA</b>		
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- 1.4.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of document IOPC/MAR11/1/3 regarding a request for observer status which had been received from the Government of Honduras. It was noted that, in accordance with Rule 4 of the Rules of Procedure, the Acting Director had invited the Government of Honduras to send observers to the 15th extraordinary session of the 1992 Fund Assembly. It was noted that the Government had informed him that whilst they were unfortunately unable to send observers to Marrakech, they very much looked forward to being represented at future meetings of the IOPC Funds' governing bodies in London.

***1992 Fund Administrative Council Decision***

- 1.4.2 The 1992 Fund Assembly welcomed the interest of Honduras in the work of the IOPC Funds and decided to grant the State observer status to the 1992 Fund.

***Supplementary Fund Assembly***

- 1.4.3 It was recalled that, at its first session, held in March 2005, the Supplementary Fund Assembly had decided that States which would be invited to send observers to meetings of the Assembly of the 1992 Fund, should have observer status with the Supplementary Fund. The Supplementary Fund Assembly therefore took note of the decision of the 1992 Fund Administrative Council and welcomed Honduras as an observer to the Supplementary Fund.

**2 Overview**

2.1	<b>Report of the Director</b>	<b>92AC</b>		<b>SA</b>	<b>71AC</b>	
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- 2.1.1 The Acting Director, Mr José Maura, before giving his oral report on the activities of the IOPC Funds since the October 2010 sessions, took the opportunity to express his sincere gratitude to the Government of Morocco for hosting the sessions of the IOPC Funds. He also added his thanks for the many kind words expressed during the opening session in respect of his work as Acting Director since the October 2010 sessions.

- 2.1.2 Mr Maura expressed, on behalf of the Secretariat, his sincere condolences to the delegation of Japan for the devastation caused by the recent earthquake and subsequent tsunami. He pointed out that he had personally expressed his regret to both Ms Akiko Yoshida, Legal Counsel within the Secretariat, and in writing to the Japanese Ambassador in London.

- 2.1.3 With respect to staff matters, Mr Maura said that he was sure that Member States will have been very pleased to see Willem Oosterveen back on the podium. He said that Mr Oosterveen had been back in the office since mid-January on a part-time basis attending management and other meetings and providing valuable advice to the Secretariat. He also reported that Mr Matthew Sommerville (United Kingdom) had been appointed as Technical Advisor/Claims Manager and had taken up his appointment in February 2011 and that Ms Katrin Park (Republic of Korea) had been appointed as External Relations Officer and would take up her post on 6 April 2011.
- 2.1.4 With respect to compensation issues, Mr Maura reported that a First Instance Court judgement had been received condemning the 1971 Fund to pay BsF 400 million (£58.3 million) in respect of the *Plate Princess* incident and that, although the 1971 Fund had appealed to the Court of Appeal, the 1971 Fund Administrative Council would very soon have to decide whether the 1971 Fund should pay in accordance with the judgement.
- 2.1.5 Mr Maura also reported that a global settlement with Total, RINA, Steamship Mutual (representing the shipowner's interests) and the 1992 Fund was being negotiated in respect of the *Erika* incident and would be discussed in a closed session of the 1992 Fund Executive Committee.
- 2.1.6 The governing bodies noted that progress had been made in the assessment of claims relating to the *Volgoneft 139* incident but that there were three obstacles that needed to be removed before any payment of compensation could be made. The governing bodies further noted that the 1992 Fund Executive Committee would be asked to authorise the Director to start making payments once these three issues had been resolved.
- 2.1.7 With respect to the *Hebei Spirit* incident, Mr Maura reported that this incident continued to generate a great deal of work for the Secretariat and the 1992 Fund's 75 experts. He also reported that a document had been submitted by the Government of Korea requesting that the level of payments be increased to 100% and that this would be discussed by the 1992 Fund Executive Committee.
- 2.1.8 The governing bodies noted that four nominations had been received from 1992 Fund Member States for election to the Audit Body in October 2011 and that the Chairman of the 1992 Fund Assembly had submitted a proposal nominating a candidate for the position of external expert. It was noted that these nominations as well as the procedure for inviting further nominations would be considered during the session.
- 2.1.9 With respect to the HNS Convention, the governing bodies were pleased to note that the Funds' Secretariat was working very hard with IMO so as to provide States with the support they needed to be able to ratify the 2010 HNS Protocol.
- 2.1.10 With respect to external relations, Mr Maura reported that the first informal regional lunch meeting for London-based delegates in 2011 had taken place in February and had been for the Latin America and the Caribbean region. The lunch had been well attended and the next lunch meeting was planned for May 2011. In addition, Mr Maura informed the governing bodies that he had attended the opening of the new Oil Spill Training Facility in Pusan, Republic of Korea, which is managed and operated by the Korea Marine Environment Management Corporation (KOEM). He also pointed out that since the beginning of 2011, members of the Secretariat had travelled to Australia to participate in a national oil pollution claims and compensation workshop and to Indonesia to give a national seminar on the international oil pollution compensation regime. Mr Maura also reported that the revamping of the document server was under way and that a demonstration of the part relating to document services (ie meeting documents and the decisions database) would be given later on in the week.
- 2.1.11 Finally, Mr Maura took the opportunity to express his appreciation to all members of the Secretariat for all their hard work and support which, he said, was essential to the smooth running of the IOPC Funds.

### 3 **Incidents involving the IOPC Funds**

3.1	<b>Incidents involving the IOPC Funds Document IOPC/MAR11/3/1</b>		<b>92EC</b>	<b>SA</b>	<b>71AC</b>	
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3.1.1 The 1992 Fund Executive Committee, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of document IOPC/MAR11/3/1, which contained information on documents for the March 2011 meetings relating to incidents involving the IOPC Funds.

3.1.2 The Chairman of the Supplementary Fund Assembly confirmed that there were no incidents that involved or may involve the Supplementary Fund.

3.2	<b>Incidents involving the IOPC Funds – 1971 Fund: <i>Plate Princess</i> Document IOPC/MAR11/3/2</b>				<b>71AC</b>	
	<b>Incidents involving the IOPC Funds – 1971 Fund: <i>Plate Princess</i> – Submitted by the Bolivarian Republic of Venezuela Document IOPC/MAR11/3/2/1</b>				<b>71AC</b>	
	<b>Incidents involving the IOPC Funds – 1971 Fund: <i>Plate Princess</i> – Submitted by the Bolivarian Republic of Venezuela Document IOPC/MAR11/3/2/2</b>				<b>71AC</b>	

3.2.1 The 1971 Fund Administrative Council took note of document IOPC/MAR11/3/2 submitted by the Director, and documents IOPC/MAR11/3/2/1 and IOPC/MAR11/3/2/2 presented by the delegation from the Bolivarian Republic of Venezuela (Venezuela), containing information on the *Plate Princess* incident.

3.2.2 The Chairman reminded the delegations that this incident had been considered for a number of years, and was of great importance for the 1971 Fund as it had consequences to all States that were members of the 1971 Fund in 1997.

3.2.3 The Chairman further reminded delegations that the Director's document requested the 1971 Fund Administrative Council to take note of the information contained in document IOPC/MAR11/3/2, and to give the Director such instructions as it deemed appropriate, whereas Venezuela's document requested the 1971 Fund Administrative Council to instruct the Director to make prompt payment of the compensation. A decision was therefore required from the Administrative Council as to whether the Director should be instructed to make prompt payment of compensation.

#### *Initial interventions by other delegations*

3.2.4 After hearing the submissions from the Director and the Venezuelan delegation, one delegation questioned how, if the 1971 Fund was never a defendant in the two actions commenced by Puerto Miranda Unión and FETRAPESCA respectively, the 1971 Fund was able to appeal the various judgements of the Venezuelan Courts, and asked whether the judgements concerned had ordered the 1971 Fund to pay the claimants.

3.2.5 The Acting Director responded that the claims by Puerto Miranda Unión and FETRAPESCA, were brought only against the shipowner and the Master, but that when the 1971 Fund was notified of the claim by Puerto Miranda Unión in October 2005, the 1971 Fund had joined the proceedings in that claim as an interested third party.

3.2.6 The Acting Director also stated that the Venezuelan Courts had considered the 1971 Fund's function to be simply as a source of payment, once the shipowner's limit had been reached. The Acting Director confirmed that the 1971 Fund had been ordered by the Maritime Court of Appeal to pay compensation.

3.2.7 Following the Acting Director's clarification, that same delegation referenced the provisions of Article X of the 1969 Civil Liability Convention (1969 CLC), which provided:

'Any judgement given by a Court with jurisdiction in accordance with Article IX which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any Contracting State, except:

- (a) where the judgement was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present its case'

3.2.8 In that delegation's opinion, it was clear that the 1971 Fund had not been given a fair opportunity to present its case, as it had not received the documents in support of the claim in time to answer the case, but had nevertheless been obliged to file a defence. Furthermore, the delegation expressed the view that the Venezuelan Court decisions were unfair, and that the documents submitted by Venezuela had not convinced the delegation otherwise.

3.2.9 That delegation continued stating that the only issue to consider was whether Article X(1)(b) of the 1969 CLC applied. That delegation repeated that, in its view, the procedure had been unfair and the documents had been provided too late.

*Statement by the Venezuelan delegation*

3.2.10 Given that the Venezuelan delegation was of the view that its comments on the Director's document and its responses to the questions raised by delegations were very important, it requested that its verbatim intervention, as transcribed by the Secretariat be attached in full to the Record of Decisions. That intervention is set out at Annex II.

*Intervention by the Chairman*

3.2.11 The Chairman noted that there were significant differences in the details between the information presented in document IOPC/MAR11/3/2 submitted by the Director, and the information contained in documents IOPC/MAR11/3/2/1 and IOPC/MAR11/3/2/2 submitted by the Venezuelan delegation. The Chairman requested the delegations to consider and concentrate upon the main issues having a direct impact and relevance on decisions to be reached.

*Intervention by one delegation*

3.2.12 One delegation emphasised that this was a very important case with implications for the entire compensation regime. Pointing out that the Fund regime represented an act of solidarity amongst Member States to provide compensation payments to victims of oil spill incidents, that delegation recalled that, on the previous day, the Director had drawn attention to the necessity for uniform application of the Conventions by national Courts, and had stressed that it was necessary for the various Conventions to be properly implemented and applied in the Member States which were signatories.

3.2.13 Noting the importance of Article X of the 1969 CLC, that delegation pointed out that sometimes national courts did not agree with the deliberations of the governing bodies and that it was accepted that this would occur, the most recent example of this being the *Slops* incident. However, that delegation continued, in accepting the principle that the decisions of national courts were binding on the Funds, the governing bodies also had to be satisfied that the procedure of due process had taken place, and that the Court procedures had been fair. In this instance, there was considerable doubt that this had been the case.

- 3.2.14 The same delegation noted that the Venezuelan delegation was of the view that the 1971 Fund had been given reasonable notice and opportunity to defend the claim. If, however, it was concluded that the process had not been fair, it was difficult to agree to instruct the Director to make prompt payment of claims. The same delegation noted that it had been troubled because it was recorded that the 1971 Fund Executive Committee had agreed in 1997 to make payments. That delegation stated that the Director had already given that delegation an explanation of the background to the authorisation given by the 1971 Fund Executive Committee to the Director in 1997, and would like the Director to provide the same explanation to the other delegations. This position was supported by a number of delegations.

*Acting Director's Response*

- 3.2.15 In response to this request for an explanation of the issue of authority to make payments given to the Director in June 1997, the Acting Director stated that the question of the grant of the Director's authority was governed by Internal Regulations 7.4 and 7.5. The Acting Director quoted Internal Regulations 7.4 and 7.5 in full and explained that the intention of these Regulations was to give the Director authority to settle claims up to a certain level, if a spill occurred between meetings of the governing bodies. The Director would then seek authority to pay above that level at the next meeting of the Executive Committee.
- 3.2.16 The Acting Director continued, saying that the intention of the decision recorded in document 71FUND/EXC.55/15, paragraph 2.2, was to remove the constraints imposed by the limit referred to in Internal Regulations 7.4 and 7.5. The Acting Director stated that in general, the Director would not be aware of the details or magnitude of the claims, at the time this authority was granted. The Acting Director stressed that the decision of the 1971 Fund Executive Committee was not related to specific claims.
- 3.2.17 Following the Acting Director's explanation, one delegation sought to clarify the issue, stating that the decision was an administrative arrangement, and that this did not relieve the claimants of their other obligations under the Conventions.

*Interventions by other delegations*

- 3.2.18 A large number of delegations indicated their agreement with the delegation that had considered the Venezuelan Court decisions to be unfair, and that the documents submitted by Venezuela had not convinced that delegation otherwise. These delegations also stated that they considered that the 1971 Fund had not been given reasonable notice and a fair opportunity to present its case, and that the 1971 Fund Administrative Council should not instruct the Director to make payment of compensation.
- 3.2.19 A few delegations commented that, in their opinion, the incident was important because of the negative precedent it could set. Furthermore, in relation to the fraudulent documents, it appeared that proper procedure had not been followed. One delegation stated that the Court procedures for requesting copies of documents provided to support the claim should have been known to the 1971 Fund's lawyers, and that the lawyers should have taken this into account, bearing in mind the problems that could be caused. That delegation further stated that the claim could not be time-barred if there had already been an agreement to pay. That delegation further pointed out that Article 7.6 of the 1971 Fund Convention stated that the Fund could not challenge a final judgement, even if it had not intervened in the proceedings.
- 3.2.20 The same delegation commented concerning the availability of funds to pay the claim and upon the requirement to establish a Major Claims Fund, noting that it could not understand why there was no money available to pay compensation, since Article 44(1)(a) of the 1971 Fund Convention required that, if the Convention ceased to be in force, the Fund should meet its obligations in respect of any incident occurring before the Convention ceased to be in force. That delegation further stated that it supported the request by Venezuela that payment to the claimants should proceed.

- 3.2.21 Another delegation, with observer status to the 1971 Fund, supported these views, and stated that the decisions of courts in some jurisdictions appeared to be classified as acceptable, whereas, in others, they were not.
- 3.2.22 A further delegation, also with observer status to the 1971 Fund, questioned whether the 1971 Fund Administrative Council could review the findings of national courts, but noted that the principle of the time bar was important, and if the principle was disregarded, the financial stability of the compensation regime might be at risk. The same delegation noted that, in the discussion in connection with the *Volgoneft 139* incident, the benefits of cooperation with the Russian Government had been highlighted, and expressed the hope that this process could be replicated with the Venezuelan Government.

*Summary by the Chairman*

- 3.2.23 The Chairman thanked the Venezuelan delegation for its statement, noting that this had emphasised many of the points made in its earlier interventions.
- 3.2.24 The Chairman, while recognising that the whole purpose of the Funds was to pay compensation and that it was never pleasant to deny payment of compensation to claimants, noted that 18 delegations, two of which had observer status to the 1971 Fund, had made submissions concerning the documents presented by the Director and the Venezuelan delegation.
- 3.2.25 The Chairman noted that a large majority of the delegations considered that the due process of law had not been followed in arriving at the judgements reached by the Venezuelan Courts, and furthermore that the 1971 Fund had not been given reasonable notice and a fair opportunity to present its case in accordance with Article 8 of the 1971 Fund Convention, and Article X of the 1969 CLC.
- 3.2.26 The Chairman proposed that the 1971 Fund Administrative Council instruct the Director not to make any payment in respect of the *Plate Princess* incident and to keep the Administrative Council advised of developments in the legal proceedings in the Venezuelan Courts.

***1971 Fund Administrative Council Decision***

- 3.2.27 The 1971 Fund Administrative Council decided to instruct the Director not to make any payments in respect of the *Plate Princess* incident and to keep the Administrative Council advised of developments in the legal proceedings in the Venezuelan Courts.

3.3	<b>Incidents involving the IOPC Funds – 1992 Fund: <i>Erika</i> Document IOPC/MAR11/3/3</b>		<b>92EC</b>			
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- 3.3.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/MAR11/3/3 regarding the *Erika* incident.

*Criminal proceedings*

- 3.3.2 The 1992 Fund Executive Committee recalled that in a judgement delivered in March 2010 the Court of Appeal in Paris had confirmed the judgement of the Criminal Court of First Instance who had held the following parties criminally liable for the offence of causing pollution: the representative of the shipowner (Tevere Shipping), the President of the management company (Panship Management and Services Srl), the classification society (RINA) and Total SA. It was also recalled that the Court of Appeal had held that Total SA could benefit from the channelling provisions in the 1992 Civil Liability Convention (1992 CLC) and was therefore exempt of civil liability. It was recalled, however, that the Court of Appeal had confirmed the civil liability imposed on the other three parties. It was further recalled that the Court of Appeal had assessed the total damages at the amount of €203.8 million.



- 3.3.3 The Executive Committee recalled that the four parties and a number of claimants had appealed against the judgement to the French Supreme Court (Court of Cassation). It was noted that the Court of Cassation was expected to deliver its judgement in November 2011.

*Possible global settlement*

- 3.3.4 The 1992 Fund Executive Committee noted that the total amount available to pay compensation for this incident under the 1992 Civil Liability and Fund Conventions was €84 763 149, that payments of compensation had been made for a total of €29.7 million, out of which Steamship Mutual had paid €2.8 million (ie the liability limit for the shipowner under the 1992 CLC) and the 1992 Fund had paid €16.9 million, and that therefore there now remained some €55 million available for compensation.
- 3.3.5 The Executive Committee also noted that the amount the 1992 Fund would have to pay if the 1992 Fund were to lose all the legal actions brought against it would be €19.9 million.
- 3.3.6 It was also noted that, in accordance with the decision by Total to 'stand last in the queue' after the French Government, and since Total had already paid the losses suffered by the French Government, the amount left after having paid all other victims in these legal proceedings would have to be paid by the 1992 Fund to Total.
- 3.3.7 It was further noted that there had been discussions between the 1992 Fund, the Steamship Mutual P&I Club, RINA and Total on a proposal for a possible global settlement.

*Debate (closed session)*

- 3.3.8 The 1992 Fund Executive Committee took note of the terms of a possible global settlement between the 1992 Fund, Steamship Mutual, RINA and Total, as explained by the Acting Director during a closed session, in which only 1992 Fund Member States, members of the Secretariat and members of the Audit Body were present.

***1992 Fund Executive Committee Decision***

- 3.3.9 The 1992 Fund Executive Committee authorised the Acting Director to continue exploring the possibility of a global settlement between the 1992 Fund, Steamship Mutual, RINA and Total, and instructed him to return to a future meeting of the Executive Committee with a proposal.

3.4	<b>Incidents involving the IOPC Funds – 1992 Fund: <i>Prestige</i> Document IOPC/MAR11/3/4</b>		<b>92EC</b>			
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- 3.4.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/MAR11/3/4 concerning the *Prestige* incident.

*Claims situation in Spain*

- 3.4.2 It was noted that as at 28 February 2011, the Claims Handling Office in La Coruña had received 845 claims totalling €1 037 million, including 15 claims from the Spanish Government totalling €84.8 million.
- 3.4.3 It was also noted that the claims by the Spanish Government had been assessed at €300.2 million, including an additional claim for the costs incurred in the treatment of solid oily residues, totalling €16 303 838, assessed at €12 563 623.

*Claims situation in France*

- 3.4.4 It was noted that as at 28 February 2011, 482 claims totalling €109.7 million had been received by the Claims Handling Office in Lorient, including claims by the French Government totalling €67.5 million.
- 3.4.5 It was recalled that the claims submitted by the French Government had been assessed at €38.5 million.

*Legal proceedings in Spain*

- 3.4.6 It was recalled that in May 2010 the Criminal Court in Corcubión had declared the investigative stage of the criminal proceedings as concluded. It was also recalled that in July 2010, the Criminal Court in Corcubión had decided that four persons should stand trial for criminal and civil liability as a result of the *Prestige* oil spill, namely, the Master, the Chief Officer and the Chief Engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain. It was further recalled that in the decision the Court had stated that the London Club and the 1992 Fund were directly liable (joint and several) for the damages arising from the incident and that the shipowner, the management company and the Spanish State were vicariously liable.
- 3.4.7 It was noted that as at 28 February 2011, some 2 122 claims, including claims by the Spanish Government and 31 French parties including the French Government, had been lodged in the legal proceedings before the Criminal Court in Corcubión (Spain). It was also noted that the experts engaged by the 1992 Fund had examined the vast majority of those claims and that excluding the claims by the Spanish Government and the French claimants, 1 883 of the claims had been assessed for €1 108 043. It was further noted that interim payments totalling €229 797 had been made at 30% of the assessed amount, taking into account the aid received from the Spanish Government, where applicable.

*Legal proceedings in France*

- 3.4.8 It was noted that actions by 127 claimants remained pending in court, with claims amounting to a total of €85.5 million, including €67.7 million claimed by the French Government. It was also noted that the courts had granted a stay of proceedings in 19 legal actions, either in order to give the parties time to discuss their claims out of court, or until the outcome of the criminal proceedings in Corcubión was known. It was further noted that some 31 French claimants, including various communes, had joined the legal proceedings in Corcubión, Spain.
- 3.4.9 It was recalled that in April 2010, the French State had brought a legal action in the Court of First Instance in Bordeaux against three companies in the group of American Bureau of Shipping (ABS), the classification society that certified the *Prestige*.
- 3.4.10 The Executive Committee took note of a judgement rendered by the Court of Appeal in Rennes in respect of a claim by two owners of fishing vessels, in which the court had agreed with the Fund's assessment.

*Court action in the United States*

- 3.4.11 The Executive Committee recalled that the Spanish State had taken legal action against ABS before the District Court of First Instance in New York, requesting compensation for all damage caused by the incident, estimated to exceed US\$1 000 million, arguing that ABS had been negligent and reckless in the inspection of the *Prestige* and had been negligent in granting classification.
- 3.4.12 It was recalled that, following an appeal against a judgement that had dismissed the Spanish State's claim, the District Court had issued its second judgement in August 2010, again granting ABS' Motion for Summary Judgement and dismissing Spain's claims against ABS.

- 3.4.13 It was noted that the Spanish State had appealed against the judgement and that two environmental organisations had filed a joint *amicus curiae* brief in favour of the Spanish State's position.

*Possible recourse action of the 1992 Fund against ABS in France*

- 3.4.14 The Executive Committee noted that the Director had been advised by the Fund's French lawyer that in a possible action against ABS in France in the context of the *Prestige* incident, the Court would most likely apply French law. It was noted that if, in the *Erika* incident, the Court of Cassation were to uphold the Criminal Court of Appeal's judgement, RINA would be held liable for the pollution arising from the *Erika* incident and that this could be a precedent that would be followed by a French court in an action against ABS in the *Prestige* incident.
- 3.4.15 It was also noted that the question of sovereign immunity would be another uncertainty, that in the *Erika* incident the Court had recognised RINA's right to foreign state immunity of jurisdiction, but that the Court had decided that RINA was not entitled to rely on that immunity due to its behaviour in not invoking it at the outset of the proceedings. The Executive Committee noted that it was uncertain whether a court, in the context of the *Prestige* incident, would hold that ABS had the right to immunity of jurisdiction.
- 3.4.16 It was noted that under French law a ten-year time-bar period would be applicable for a recourse action, and that therefore the 1992 Fund would have until 13 November 2012 to bring an action against ABS in France.
- 3.4.17 The Executive Committee noted that, since the Court of Cassation was expected to deliver its judgement in November 2011, the Director considered that it would be best to wait for that judgement before deciding whether to bring an action against ABS.

3.5	<b>Incidents involving the IOPC Funds – 1992 Fund: <i>Solar 1</i> Document IOPC/MAR11/3/5</b>		<b>92EC</b>			
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- 3.5.1 The 1992 Fund Executive Committee took note of document IOPC/MAR11/3/5, which contained information relating to the *Solar 1* incident.

*Claims for compensation*

- 3.5.2 It was noted that as at 29 March 2011, some 32 466 claims had been received, and that payments totalling PHP 987 million (£10.8 million) had been made in respect of 26 870 claims, mainly in the fisheries sector. The Executive Committee noted that, with one exception, all claims had now been assessed and that the local claims office had been closed.

*STOPIA 2006*

- 3.5.3 The 1992 Fund Executive Committee noted that this was the first incident involving the IOPC Funds to which the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 applies, and that in accordance with Clause IV of STOPIA 2006, the 1992 Fund is receiving regular reimbursements from the shipowner's P&I Club. The 1992 Fund Executive Committee also noted that Clause VI of STOPIA 2006 provides that the 1992 Fund's right of indemnification shall be extinguished unless an action was brought within four years of the date when the pollution damage occurred. It was further noted that in order to protect its claims for indemnification, the 1992 Fund had commenced legal proceedings against the shipowner before the English courts, but following an agreement not to invoke Clause VI of STOPIA 2006, the 1992 Fund had agreed not to serve the legal proceedings upon the shipowner, and to let the time expire.

*Claims in Court*

- 3.5.4 It was recalled that a civil action had been filed in August 2009 by a law firm in Manila representing claims by 967 fisherfolk, totalling PHP 286.4 million (£4.1 million) for property damage as well as economic losses. It was noted that the claimants had rejected the 1992 Fund's assessment of a 12-week business interruption period as applied to all similar claims in that area, and were arguing that fisheries were disrupted for over 22 months, without, however, providing any evidence or support. It was noted that the 1992 Fund had filed defence pleadings in response to the civil action and were awaiting developments.
- 3.5.5 It was also recalled that 97 individuals employed by a municipality on Guimaras Island during the response to the incident, had commenced proceedings in court against the mayor, the ship's captain, various agents, ship and cargo owners and the 1992 Fund on the grounds of not having paid for their services. It was also recalled that a claim by the municipality for overtime payments, including those rendered by the claimants, had been assessed and had been paid to the municipality. It was further noted that after a review of the legal documents, the 1992 Fund had filed pleadings of defence in court, noting in particular that the majority of plaintiffs were not engaged in activities admissible in principle, that the claim by the municipality had been paid as assessed, and that the claimants had not submitted individual claims outside those presented by the municipality.
- 3.5.6 It was also recalled that the Philippine Coastguard (PCG) had brought legal proceedings to safeguard its rights in relation to two claims for costs incurred during clean-up and pumping operations, and that the 1992 Fund had filed defence pleadings. It was also noted that recently the PCG had indicated that they had agreed in principle with the Fund's assessments for the costs claimed, that they would accept the 1992 Fund's offer of settlement for PHP 104.8 million for both claims and that they would withdraw their proceedings. It was noted that the 1992 Fund was liaising with the PCG in this regard.

3.6	<b>Incidents involving the IOPC Funds – 1992 Fund: <i>Volgoneft 139</i> Document IOPC/MAR11/3/6</b>		<b>92EC</b>			
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- 3.6.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/MAR11/3/6 concerning the *Volgoneft 139* incident.

*Legal proceedings and the 'insurance gap'*

- 3.6.2 The Executive Committee recalled that the owner of the *Volgoneft 139* was insured for protection and indemnity by Ingosstrakh (Russian Federation), but that the insurance cover was limited to 3 million SDR or RUB 116.6 million which was well below the minimum limit under the 1992 CLC of 4.51 million SDR and that there was therefore an 'insurance gap' of some 1.5 million SDR.
- 3.6.3 It was recalled that in September 2010, the Arbitration Court of Saint Petersburg and Leningrad Region had decided to maintain its original decision that the shipowner's limitation fund was 3 million SDR or RUB 116.6 million and that the Court had reached this decision on the grounds that the amendments to the limits available under the 1992 CLC and 1992 Fund Convention had not been published in the Russian Official Gazette at the time of the incident.
- 3.6.4 It was noted that the 1992 Fund had appealed against this decision on the grounds that, at the time this judgement was rendered, the new limit of the shipowner's liability, namely 4.51 million SDR, had been officially published in the Russian Official Gazette and therefore properly incorporated into Russian legislation.

*Legal actions*

- 3.6.5 The 1992 Fund Executive Committee noted that hearings had taken place in October and December 2010 and in January and March 2011. It was noted that at the March 2011 hearing, following a request by the Court, the 1992 Fund had submitted a report prepared by its experts dealing with the relation between the amount of oil spilled and the amount of waste collected, the main point of disagreement with the claimants.

*Claims for compensation*

- 3.6.6 The 1992 Fund Executive Committee noted that the claimed amount now totalled RUB 2 481.1 million (£54 million). It was noted that all the claims with supporting documentation had been assessed, for a total of RUB 325.4 million (£7 million).

*Meetings between the Russian authorities and the Secretariat*

- 3.6.7 The Executive Committee noted that the 1992 Fund, with its experts and lawyer, had visited the affected area in February 2011 to meet with claimants.
- 3.6.8 It was also noted that a meeting had taken place in London in late February 2011 between the 1992 Fund, its lawyer and experts and representatives of the Russian Ministry of Transport.
- 3.6.9 It was noted that the Fund, its lawyer and experts had made a further visit to Moscow in March 2011, to meet with representatives of the Russian Government and the insurer.

*Director's proposal*

- 3.6.10 It was noted that in the Director's view it was important to ensure that the 1992 Fund paid compensation to the victims of the *Volgoneft 139* incident as soon as possible. It was noted that claimants had cooperated with the 1992 Fund and its experts and that three years had already passed since the incident occurred and victims had not yet received any compensation.
- 3.6.11 The 1992 Fund Executive Committee took note of the Director's proposal that the Executive Committee authorise him to make payments of established losses, subject to the following conditions being met, namely:
- the insurer paying up to the limit recognised by the Arbitration Court of Saint Petersburg and Leningrad Region of 3 million SDR;
  - a solution to the 'insurance gap';
  - the submission of the outstanding oil reports for 2008, 2009 and 2010 by the Russian Federation.

*Debate*

- 3.6.12 Several delegations, whilst expressing sympathy with the claimants in this incident for not having received any compensation payments after more than three years, expressed doubts as to the need to take a decision now on the authorisation of payments, since there were still a number of steps to be taken, in particular the solution to the 'insurance gap'.
- 3.6.13 Some delegations supported the proposed solution to the 'insurance gap' to deduct the sum from a claim by the Russian Government, but stressed that this solution could only work if a claim was submitted and was assessed at a value of at least 1.5 million SDR. Those delegations requested further clarification from the Secretariat on this possible solution.

- 3.6.14 The Acting Director explained that the easiest solution for the 'insurance gap' would be if the 1992 Fund could assess a claim by the Federal Government for the payments made in relation to the clean-up operations and the assessment reached 1.5 million SDR (RUB 58 million). The Acting Director explained that if the Russian Government waived their right to claim for that amount, their position would be similar to the already established formula of a government 'standing last in the queue'.
- 3.6.15 One delegation suggested an intermediate solution which would consist of making compensation payments, without further delay, of non-government claims and then trying to recover the amounts paid by the 1992 Fund from the shipowner and its insurer. That delegation proposed that compensation of claims from government agencies would, however, be subject to the solution of the three problems mentioned in paragraph 3.6.11.
- 3.6.16 The Acting Director, in reply to the above-mentioned proposal, pointed out that the idea of paying non-government claims and then trying to recover the amounts paid from the shipowner and its insurer had been explored but it had not been pursued by the Secretariat due to uncertainties as to whether the Fund would, under Russian law, be entitled to subrogate claimant's rights. The Acting Director stated that there was a risk that the 1992 Fund's payments would be considered by the Russian Courts as voluntary payments and that, in that case, the Fund would not be able to recover the amounts paid. However, the Acting Director stated that the Secretariat would examine whether a possible solution could be found by taking inspiration from the proposal mentioned in paragraph 3.6.15.
- 3.6.17 One delegation pointed out that the 1992 Fund Convention does not subordinate the payment of claims to the submission of oil reports. Other delegations, however, stated that the condition of the submission of oil reports before making payments was a policy adopted by the 1992 Fund Assembly following a recommendation by the Audit Body (cf 92FUND/Circ.63).
- 3.6.18 When summarising the discussion the Chairman of the 1992 Fund Executive Committee acknowledged that, while all delegations recognised the improvements made towards the solution of this incident and the need to pay compensation as soon as possible, most delegations were not yet ready to approve the commencement of payments, since there were still uncertainties, especially concerning a solution to the 'insurance gap'.

#### ***1992 Fund Executive Committee Decision***

- 3.6.19 The 1992 Fund Executive Committee decided not to authorise the Director to commence payments of established losses arising from the *Volgoneft 139* incident and instructed him to continue with the efforts to try to resolve the three outstanding issues, namely:
- payment by the insurer up to SDR 3 million
  - a solution to the 'insurance gap'; and
  - the submission of outstanding oil reports,
- and report back at the next session of the Executive Committee.

3.7	<b>Incidents involving the IOPC Funds – 1992 Fund: <i>Hebei Spirit</i> Document IOPC/MAR11/3/7</b>		<b>92EC</b>			
	<b>Incidents involving the IOPC Funds – 1992 Fund: <i>Hebei Spirit</i> – Submitted by the Republic of Korea Document IOPC/MAR11/3/7/1</b>		<b>92EC</b>			
	<b>Incidents involving the IOPC Funds – 1992 Fund: <i>Hebei Spirit</i> – Proposal to increase the level of payments to 100% – Submitted by the Republic of Korea Document IOPC/MAR11/3/7/2</b>		<b>92EC</b>			

- 3.7.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/MAR11/3/7, submitted by the Director and documents IOPC/MAR11/3/7/1 and IOPC/MAR11/3/7/2, submitted by the Republic of Korea.

DOCUMENT IOPC/MAR11/3/7, SUBMITTED BY THE DIRECTOR

*Claims situation*

- 3.7.2 The 1992 Fund Executive Committee noted that as at 30 March 2011, 28 581 claims totalling KRW 2 494 billion had been registered, including 272 group claims, altogether representing 127 810 claimants. It further noted that 13 085 claims on behalf of 54 083 claimants had been assessed at a total of KRW 137.7 billion and that 10 376 claims on behalf of 40 938 claimants had been rejected. It was further noted that the shipowner's insurer, Assuranceforeningen Skuld (Gjensidig) (Skuld Club) had made payments to 2 096 claimants totalling KRW 115.7 billion, and that the remaining claims were being assessed or additional information was being requested from the claimants. The Executive Committee noted that further claims were expected.

*Investigation into the cause of the incident*

- 3.7.3 It was noted that an investigation into the incident had been carried out by the Incheon District Maritime Safety Tribunal in the Republic of Korea. It was also noted that the owners of the two tugs and the owner of the *Hebei Spirit* had appealed to the Central Maritime Safety Tribunal against the decision of the Incheon District Maritime Safety Tribunal and subsequently to the Supreme Court against the decision of the Central Maritime Safety Tribunal.
- 3.7.4 It was noted that in February 2011, after the owner of the *Hebei Spirit* had discontinued their appeal proceedings, the Supreme Court had also dismissed the appeal by the owners of the two tugs and that the decision of the Central Maritime Safety Tribunal had therefore become final.
- 3.7.5 It was also noted that the appropriate authority in the ship's flag State administration in Hong Kong Special Administrative Region (China) had concluded its investigation into the cause of the incident and that the report on the investigation had been published in 2009.

*Legal proceedings against the 1992 Fund*

- 3.7.6 The Executive Committee noted that the legal proceedings against the 1992 Fund had been separately commenced by one clean-up company, one boat owner and a number of individuals for compensation of damages. It was noted that the 1992 Fund's Korean lawyers were following the cases.

*Limitation proceedings by the owner of the Hebei Spirit*

- 3.7.7 It was recalled that in February 2009, the Limitation Court had rendered an order for the commencement of the limitation proceedings by the owner of the *Hebei Spirit*. It was noted that 127 118 claims totalling KRW 3 932 billion had been submitted to the limitation proceedings and that the Limitation Court had appointed a court administrator to deal with the claims.
- 3.7.8 It was noted that a number of claimants had appealed to the Supreme Court of Korea against the decision of the Court to start limitation proceedings by the owner of the *Hebei Spirit*, that this appeal had been dismissed in November 2009 and that consequently the Court's decision to start limitation proceedings had become final.

*Recourse action*

- 3.7.9 It was recalled that in January 2009, the owner and insurer of the *Hebei Spirit* and the 1992 Fund had commenced recourse actions against Samsung C&T and Samsung Heavy Industries (SHI), the owner and operator/bareboat charterer of the two towing tugs, the anchor boat and the crane barge, in the Ningbo Maritime Court in the People's Republic of China, combined with an attachment of SHI's shares in two shipyards in China as security.
- 3.7.10 It was noted that both Samsung C&T and SHI had filed applications objecting to the jurisdiction of the Ningbo Maritime Court and, in the case of SHI, objecting to the attachment. It was also noted that submissions in response to the applications had been lodged on behalf of the 1992 Fund.
- 3.7.11 The 1992 Fund Executive Committee took note that in September 2010 the Ningbo Maritime Court had rejected Samsung C&T and SHI objections to its jurisdiction in both recourse actions. It further noted that Samsung C&T and SHI had appealed against the decision.
- 3.7.12 The Executive Committee noted that in February 2011, the Court of Appeal held that the Ningbo Maritime Court was a '*forum non-conveniens*' and that a Korean Court would be the appropriate jurisdiction to consider the case.
- 3.7.13 The Executive Committee noted that the 1992 Fund had lodged an application with the Supreme Court for a retrial.

## DOCUMENT IOPC/MAR11/3/7/1, SUBMITTED BY THE REPUBLIC OF KOREA

- 3.7.14 The 1992 Fund Executive Committee took note of document IOPC/MAR11/3/7/1, submitted by the Republic of Korea which gave an overview of the measures taken by the Korean Government in response to the spill and management of the incident.
- 3.7.15 The Executive Committee took note of the information provided by the Korean delegation regarding a meeting with the Secretariat held in February 2011. The Executive Committee recalled that in June 2010 it had endorsed the proposal by the Korean delegation to explore, together with the Director, the possibility of increasing the level of payments to 100%, in order to assist the victims in regaining their livelihoods as quickly as possible.
- 3.7.16 The Korean delegation informed the Executive Committee that a number of meetings had taken place between government agencies and local authorities in Korea to discuss the issue of the speed of progress in claims handling.
- 3.7.17 The Executive Committee noted that the Korean authorities had expressed concern at the perceived delays in assessing claims. The Executive Committee further noted that the Korean Government, referring to a previous estimate by the Fund's Secretariat that it hoped to be able to finalise assessment of all claims by the end of 2011, had requested the Executive Committee to instruct the Secretariat to complete all assessments by 2011.



- 3.7.18 The Executive Committee also noted that the Korean delegation requested that the current cut-off date in the tourism sector, ie 30 September 2008, should be extended for some areas, Taean county in particular, to a reasonable date.

*Debate*

- 3.7.19 While understanding the wish of the Korean Government for the assessment of claims for compensation to be completed by the end of 2011, a number of delegations considered that, in view of the high number of claims submitted and the volume of work involved, caution should be applied before establishing a deadline for completion of the assessment of all claims.

DOCUMENT IOPC/MAR11/3/7/2, SUBMITTED BY THE REPUBLIC OF KOREA

- 3.7.20 The 1992 Fund Executive Committee took note of document IOPC/MAR11/3/7/2, submitted by the Republic of Korea which contained a proposal by the Korean Government to increase the level of payments to 100% of the established claims.
- 3.7.21 The Executive Committee noted that after the October 2010 session of the 1992 Fund Executive Committee, the Korean Government had worked in close consultation with the Director in determining the conditions and measures required to increase the level of payments to 100%.
- 3.7.22 The Executive Committee noted that the Korean Government had recognised that in order for the 1992 Fund to increase the level of payment to 100% the following basic conditions should be met:
- (a) the principle of equal treatment of victims should be upheld;
  - (b) the payment of compensation should be made on the basis of assessments of claims by the 1992 Fund; and
  - (c) the 1992 Fund should be adequately protected against an overpayment situation.
- 3.7.23 The 1992 Fund Executive Committee noted that the Korean Government, in order to fulfil those conditions and after discussions with the Director, proposed to adopt the following measures:
- (i) the Korean Government would compensate all remaining claimants in full once the 1992 Fund had paid the total amount available for compensation under the 1992 Fund Convention, ie KRW 321 619 million;
  - (ii) the Korean Government would make the payments of compensation on the basis of assessment of individual claims by the 1992 Fund;
  - (iii) the Korean Government would pay any amount in excess of the total amount available for compensation, ie KRW 321 619 million, and would hold the 1992 Fund harmless in the event a judgement rendered by a Korean court, or any other competent court, were to hold the 1992 Fund liable for losses or damages suffered by victims of this incident in excess of the 1992 Fund's compensation limit; and
  - (iv) the Korean Government would issue a bank guarantee for KRW 130 billion as a safeguard to the 1992 Fund against an overpayment situation.
- 3.7.24 The Executive Committee noted that, although the amount of this bank guarantee would not be sufficient to fully protect the 1992 Fund in case a Korean court were to recognise the amounts claimed in limitation proceedings or the amounts claimed against the 1992 Fund, based on past experience in the Republic of Korea and on the current rate of settlement of claims arising out of the incident, the Korean Government considered it unlikely that the Korean Courts would award the full amounts claimed.

- 3.7.25 The Executive Committee further noted that the Korean Government intended to provide a bank guarantee from Suhyup bank, which however did not meet the investment guidelines of the IOPC Funds in its long-term ratings and its short-term ratings only met one of the criteria of the three rating agencies used by the Funds.

*Intervention by the Secretariat on level of payments*

- 3.7.26 The 1992 Fund Executive Committee noted the intervention by the Acting Director who recalled that in June 2008, the 1992 Fund Executive Committee, in view of the uncertainty as to the total amount of the admissible claims, had decided that the level of payments should, for the time being, be limited to 35% of the amount of the damage actually suffered by the respective claimants as assessed by the 1992 Fund's experts. It was also recalled that in October 2008, March, June and October 2009 and June and October 2010 the Executive Committee had decided to maintain the level of the Fund's payments at 35% of the established claims (cf document IOPC/MAR11/3/7, paragraph 13.1).
- 3.7.27 The Executive Committee noted that the most recent estimate by the 1992 Fund's experts of the total amount of the losses caused by the spill was some KRW 354 200 million.
- 3.7.28 The Executive Committee noted that the Director had proposed that the Executive Committee accept the proposal of the Korean Government subject to the safeguards being satisfactorily in place before the 1992 Fund commenced making payments.
- 3.7.29 The Executive Committee further noted that in view of the remaining uncertainty with regard to the final amounts assessed, the Director further proposed that, in case the safeguards proposed by the Korean Government were not in place by the time the 1992 Fund commenced making payments, the level of the 1992 Fund's payments should be maintained at 35%, to be reviewed at the next session of the 1992 Fund Executive Committee or until the safeguards were satisfactorily in place.
- 3.7.30 It was further noted that the Director had suggested to the Korean Government that the bank guarantee could be issued by Standard Chartered First Bank Korea, a full subsidiary of Standard Chartered Bank, which fulfilled the IOPC Funds' investment criteria.
- 3.7.31 It was noted that the suitability of both banks had been discussed in depth with the Investment Advisory Body (IAB) at its meeting in February 2011. It was further noted that, although Standard Chartered First Bank Korea's ratings were slightly below that of the parent bank, mainly due to local market conditions, it was the advice of the IAB to use Standard Chartered First Bank Korea in preference to Suhyup Bank since the long-term credit rating for Standard Chartered First Bank Korea met the IOPC Funds' investment criteria and also met the short-term criteria with one of the credit agencies and was just below the required ratings from other two rating agencies.

*Debate*

- 3.7.32 Whilst agreeing in principle to the proposal to raise the level of payments to 100%, a number of delegations expressed concerns and requested clarification as to the payment process when the 1992 Fund reaches its limit and on how the remaining claimants would be compensated.
- 3.7.33 One delegation questioned whether the Korean Government had a legal obligation towards the 1992 Fund in case of overpayment.
- 3.7.34 Another delegation suggested that, in view of the existing uncertainties pertaining to the Fund's exposure, a progressive approach to the increase of the level of payments could be followed, by increasing the level of payments in stages.

- 3.7.35 A number of delegations indicated that they were satisfied that the reassurance provided by the Korean Government that Suhyup Bank, although not meeting the investment criteria of the Fund, was sufficient to issue the bank guarantee. However, the majority of the delegations who took the floor expressed their preference for the bank guarantee to be issued by Standard Chartered First Bank Korea, since it did satisfy the criteria set by the IOPC Funds' Investment Guidelines.
- 3.7.36 Several delegations expressed concerns that the amount of the guarantee proposed by the Korean Government would not be sufficient to safeguard the 1992 Fund against the risk of overpayment and suggested that an additional guarantee should be given by the Korean Government to protect the 1992 Fund in the event that the bank guarantee as set out in document IOPC/MAR11/3/7/2 proved to be insufficient to protect the Fund from an overpayment situation.
- 3.7.37 Some delegations suggested that, to increase the level of safeguard of the guarantee, the Korean Government could consider issuing a sovereign guarantee in addition to the bank guarantee.
- 3.7.38 The Korean delegation, in response to questions from other delegations, stated that on the basis of their proposal, the Korean Government would pay all established claims once the 1992 Fund had reached its limit, on the basis of the 1992 Fund's assessments. The Korean delegation stated that the Special Law, enacted in the Republic of Korea, provided a legal obligation for the Korean Government to pay compensation to victims in excess of the total amount available for compensation under the Conventions. That delegation also stated that it would provide the 1992 Fund with a hold harmless agreement to protect the 1992 Fund from an overpayment situation.
- 3.7.39 The Acting Director stated that, in case a Korean court rendered a judgement ordering the 1992 Fund to pay compensation in excess of the total amount available for compensation under the Conventions, the Fund would request the Korean Government, under the hold harmless agreement, to pay the amount awarded by the judgement and that, if the Korean Government were not to pay, the 1992 Fund would execute the bank guarantee. The Acting Director also stated that, as a result, once the Fund had paid its total liability under the Conventions, contributors would not be required to make any further payments.

#### ***1992 Fund Executive Committee Decision***

- 3.7.40 The 1992 Fund Executive Committee decided to authorise the Director to increase the level of payments to 100% of the established claims, subject to the following safeguards being in place before the 1992 Fund commenced making payments:
- (i) an undertaking by the Korean Government to pay all established claims in full, in excess of the limits of the 1992 Civil Liability and Fund Conventions;
  - (ii) an undertaking by the Korean Government to hold the Fund harmless in case a Korean court were to render a judgement ordering the 1992 Fund to pay compensation in excess of the 1992 Fund's limit; and
  - (iii) a bank guarantee in the amount of KRW 130 billion to be provided by the Korean Government.
- 3.7.41 The 1992 Fund Executive Committee also decided that a bank guarantee issued by Standard Chartered First Bank of Korea would be acceptable to the 1992 Fund since it satisfied the long-term credit rating criteria established by the Funds' Investment Guidelines whereas a bank guarantee issued by Suhyup Bank would not be acceptable. The 1992 Fund Executive Committee further decided that the amount of the guarantee would be reviewed annually by the Executive Committee.
- 3.7.42 The 1992 Fund Executive Committee further decided that, if these safeguards were not put in place satisfactorily, the level of payments should be maintained at 35% of the established losses and that it should be reviewed at its next session.

3.8	<b>Incidents involving the IOPC Funds – 1992 Fund: Incident in Argentina Document IOPC/MAR11/3/8</b>		<b>92EC</b>			
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3.8.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/MAR11/3/8 concerning an oil spill that impacted the shoreline in Caleta Córdova, Chubut Province, Argentina, on 25-26 December 2007.

3.8.2 The Executive Committee recalled that an investigation into the cause of the incident by the Criminal Court of Comodoro Rivadavia (Argentina) had reached a preliminary decision that the spill originated from the *Presidente Arturo Umberto Illia* (*Presidente Illia*).

*Civil proceedings*

3.8.3 It was recalled that a claim for compensation had been submitted to the Court in Comodoro Rivadavia by the Chubut Province against the master and the owner of the *Presidente Illia*. It was also recalled that the shipowner had submitted points of defence denying his liability for the spill and requesting the Court to bring the 1992 Fund into the proceedings. It was noted that the Fund, based on the investigations of its experts, had submitted pleadings arguing that the most likely source of the spill was the *Presidente Illia*, although in its pleadings the 1992 Fund had also considered the possibility that the source of the spill could have been another ship, the *San Julian*, which was close to the area at the time of the incident.

3.8.4 It was also noted that in December 2010, the 1992 Fund had brought an action in a civil court in Buenos Aires against the owner of the *San Julian* and its insurer, in order to protect its compensation rights in case the Argentine courts were to find that the spilling vessel was not the *Presidente Illia* but the *San Julian*.

3.8.5 It was noted that several claimants had brought actions against the shipowner and its insurer, the West of England Ship Owners Mutual Insurance Association (Luxembourg) (West of England Club) in the Court of Comodoro Rivadavia and Buenos Aires and that some of those actions also included the 1992 Fund as a defendant.

3.8.6 The Executive Committee noted that in Buenos Aires an action against the 1992 Fund had also been brought by the owner of the *Presidente Illia* and the West of England Club, in order to protect their rights against the Fund.

*Agreement with the West of England Club*

3.8.7 It was recalled that discussions had been held between the 1992 Fund and the West of England Club, where it had been agreed that:

- the shipowner and his insurer would pay claims for compensation assessed and approved in accordance with the principles laid down in the 1992 Civil Liability and Fund Conventions;
- if it were finally established that the oil which impacted the coast did not come from the *Presidente Illia* but from another source, the shipowner and the West of England Club would attempt to recover the amounts of compensation paid from the party responsible for the oil spill; and
- if it were proved that the oil spill must have come from a tanker other than the *Presidente Illia* but it remained unknown which one, a so-called 'mystery spill', the shipowner and the West of England Club would recover the amounts of compensation paid from the 1992 Fund.

*Claims situation*

- 3.8.8 The Executive Committee noted that it seemed likely that the total admissible damage caused by the spill would be within the limit of the *Presidente Illia* under the 1992 CLC of some 24 million SDR.
- 3.8.9 It was noted that 261 claims by 320 individuals, totalling AR\$50 million and US\$126 617, had been submitted. It was also noted that 110 claims had been assessed at a total of AR\$3.4 million and US\$112 146 and that 78 claims had been paid for a total of AR\$2.8 million and US\$70 949. It was also noted that 16 claims had been rejected.

*Time bar*

- 3.8.10 The 1992 Fund Executive Committee noted that, given that the three-year anniversary of the incident was on 26 December 2010, in November 2010 letters about the time bar issue had been sent to all those who had submitted claims and with whom settlements had not been reached by that time.

**4 Financial policies and procedures**

4.1	<b>Nominations for the election of members of the Audit Body Document IOPC/MAR11/4/1</b>	<b>92AC</b>		<b>SA</b>	<b>71AC</b>	
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- 4.1.1 The governing bodies took note of the information contained in document IOPC/MAR11/4/1.
- 4.1.2 The governing bodies noted that the term of office of the current Audit Body would expire at the October 2011 sessions of the governing bodies and that an election of the members for a new term of office would take place at the same sessions. The governing bodies further noted that two members of the current Audit Body elected from Member States had already served two terms of office and were therefore not eligible to serve a third term whereas the remaining three members were eligible to serve a second term of three years<sup><4></sup>. The governing bodies also noted that, in response to a circular from the Director calling for nominations, only four nominations, including three from those members who had only served one term, had been received from 1992 Fund Member States for the six available positions by the deadline of 11 March 2011. The nominations received from 1992 Fund Member States by the deadline were as follows:

Mr Emile Di Sanza (Canada)	Nominated by Canada for a second term
Mr John Gillies (Australia)	Nominated by Australia
Mr Thomas Kaevergaard <sup>&lt;5&gt;</sup> (Sweden)	Nominated by Sweden for a second term
Professor Seiichi Ochiai (Japan)	Nominated by Japan for a second term

- 4.1.3 The governing bodies recalled that a similar situation had arisen in 2008 when only five nominations were received by the deadline for the six positions available for members elected from Member States in response to the Director's circular calling for nominations. The governing bodies further recalled that in June 2008 the 1992 Fund Administrative Council, acting on behalf of the 13th extraordinary session of the 1992 Fund Assembly, had decided that the candidates whose nominations had been received within the deadline given in the circular would automatically be elected in October 2008 (cf document 92FUND/A/ES.13/3, paragraph 4.2(a)(i)). It had further decided that a second circular would be sent by the Director to 1992 Fund Member States calling for further nominations to fill the remaining position and that if more than one candidature was received for this position, an election would take place. In response to the second circular, however, only one further nomination had been received and all six candidates were automatically appointed as members of the Audit Body for the period 2008-2011.

<sup><4></sup> Mr John Wren (United Kingdom), who had been elected in October 2008, sadly passed away on 6 October 2010.

<sup><5></sup> Formerly known as Mr Thomas Johansson.

- 4.1.4 The governing bodies noted that, as only four candidatures had been received for the six positions that will be vacant in October 2011, the Director, after discussions with the Chairman of the 1992 Fund Assembly and the Chairman of the Audit Body, had proposed that a second circular be sent by the Director to 1992 Fund Member States calling for further nominations. He had also proposed that the position of the four candidates whose nominations had been received within the deadline given in the first circular would not be affected given that, without a second circular, these candidates would have been elected with certainty in October 2011. The second circular would therefore only be for the purpose of filling the remaining two positions. The governing bodies noted that it was proposed that the closing date for responses to a second circular would be 30 July 2011.
- 4.1.5 The governing bodies further noted that, in the Director's view, if the situation were to arise whereby only one or no further nominations were to be received in response to a second circular, the 1992 Fund Assembly would have to decide in October 2011 if the number of members of the Audit Body nominated by 1992 Fund Member States could be reduced for the next three-year term. A decision could then be taken by the 1992 Fund Assembly at the end of the three-year period, on the basis of an assessment made by the Audit Body, in consultation with the Chairmen of the 1992 Fund Assembly, the Supplementary Fund Assembly and the 1971 Fund Administrative Council, as to whether to amend the Composition and Mandate to reflect a reduction in the number of members nominated by 1992 Fund Member States on a permanent basis.

***1992 Fund Administrative Council Decision***

- 4.1.6 The 1992 Fund Administrative Council decided that a second circular should be sent by the Director to 1992 Fund Member States calling for further nominations to fill the remaining two positions. It also decided that the position of the four candidates whose nominations had been received within the deadline given in the first circular (ie Mr Emile Di Sanza (Canada), Mr John Gillies (Australia), Mr Thomas Kaevergaard (Sweden) and Professor Seiichi Ochiai (Japan)) would not be affected given that, without a second circular, these candidates would have been elected with certainty in October 2011. The 1992 Fund Administrative Council decided that the second circular would therefore only be for the purpose of filling the remaining two positions and that the closing date for the receipt of nominations would be 30 July 2011.

***Supplementary Fund Assembly and 1971 Fund Administrative Council***

- 4.1.7 The Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the decision taken by the 1992 Fund Administrative Council in respect of this issue.

4.2	<b>Appointment of an external expert to the Audit Body Document IOPC/MAR11/4/2</b>	<b>92AC</b>		<b>SA</b>	<b>71AC</b>	
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- 4.2.1 The 1992 Fund Assembly Chairman introduced document IOPC/MAR11/4/2 and reminded the governing bodies that the term of office of Mr Nigel Macdonald, the member of the Audit Body not related to the Organisations ('external expert') with expertise and experience in financial matters, would expire at the October 2011 sessions of the governing bodies when he would have served three terms of office of three years each, having served an exceptional third term to facilitate the continuity and functioning of the Audit Body when there had been a substantial change in the membership of the Audit Body in October 2008, as well as to participate in the external audit tender process which had taken place.
- 4.2.2 The Chairman informed the governing bodies that three candidates to replace Mr Macdonald as external expert had been identified and interviewed by the Acting Director, the Head of Finance and Administration and Mr Macdonald in February 2011. The Chairman further informed the governing bodies that, as a result of the interview process, the name of Mr Michael Knight (United Kingdom) had been put forward to him by the Secretariat.

- 4.2.3 The governing bodies noted that the Chairman of the 1992 Fund Assembly had had the opportunity to meet with Mr Knight during a visit to London in March 2011 and was confident that he fulfilled the requirements for the position. The governing bodies further noted that it was therefore the Chairman's recommendation that the 1992 Fund Assembly appoint Mr Knight as external expert on the Audit Body for an initial term of three years from October 2011.
- 4.2.4 The governing bodies noted that Mr Knight would be invited to attend the June 2011 meeting of the Audit Body and to attend the October 2011 sessions of the governing bodies, should they agree with the recommendation of the 1992 Fund Assembly Chairman.
- 4.2.5 The governing bodies noted with gratitude Mr Macdonald's offer to provide all the assistance needed to ensure a smooth transition to his successor later in the year.
- 4.2.6 With respect to the remuneration of the external expert, the governing bodies noted that at their October 2009 sessions, the governing bodies had decided to set the level of remuneration for the external expert at £30 000 per annum but stated that this amount should be specifically linked to the present incumbent, Mr Nigel Macdonald, and would not necessarily apply to his successor. They had further decided that the remuneration should be indexed annually, using the UK Retail Price Index at the time of the preparation of the relevant budget (cf document IOPC/OCT09/11/1, paragraphs 6.2.8 and 6.2.9). In accordance with this decision, Mr Macdonald's remuneration had been increased in October 2010 to £31 500.
- 4.2.7 At the request of the Chairman of the 1992 Fund Assembly, Mr Macdonald outlined the selection process and described, in particular, the qualifications, experience and qualities that Mr Knight would bring to the position.

#### *1992 Fund Administrative Council Decisions*

- 4.2.8 The 1992 Fund Administrative Council agreed with the recommendation of the Chairman of the 1992 Fund Assembly and decided that Mr Michael Knight be appointed as external expert on the Audit Body for an initial term of three years from October 2011.
- 4.2.9 The 1992 Fund Administrative Council further decided to set the level of remuneration for Mr Michael Knight at £30 000 per annum from October 2011, to be index-linked annually, using the UK Retail Price Index at the time of the preparation of the relevant budget.

#### *Supplementary Fund Assembly and 1971 Fund Administrative Council*

- 4.2.10 The Supplementary Fund Assembly and the 1971 Fund Administrative Council noted the decisions taken by the 1992 Fund Administrative Council.

### **5 Secretariat and administrative matters**

5.1	<b>Interim arrangements for Acting Director</b>	<b>92AC</b>		<b>SA</b>	<b>71AC</b>	
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- 5.1.1 The governing bodies held a meeting in private pursuant to Rule 12 of the governing bodies' Rules of Procedure to consider this item. During the private meeting, covered by paragraphs 5.1.2 to 5.1.11 below, only representatives of Member States of the 1992 Fund, the Supplementary Fund, former Member States of the 1971 Fund and representatives of the Audit Body were present.
- 5.1.2 The Chairman of the 1992 Fund Assembly introduced this agenda item for which there was no document.
- 5.1.3 The governing bodies recalled that Mr Willem Oosterveen, Director of the International Oil Pollution Compensation Funds was, for medical reasons, unfortunately unable to act as Director for the time being, although they had been very pleased to see him on the podium in Marrakech earlier on in the week and had noted with satisfaction that he was back in the office on a part-time basis. The

governing bodies also recalled that at their October 2010 sessions, they had decided to appoint Mr José Maura as Acting Director with full responsibilities and powers as set out in Article 29 of the 1992 Fund Convention and of the 1971 Fund Convention and Article 16.2 of the Supplementary Fund Protocol until (a) the Director returned to perform his duties; or (b) the extraordinary session of the 1992 Fund Assembly to be held from 29 March to 1 April 2011, whichever occurred first.

5.1.4 The governing bodies also recalled that at their October 2010 sessions, the 1992 Fund Administrative Council had requested the Chairman of the 1992 Fund Assembly to monitor the situation at the Secretariat over the coming months and had decided that the issue of the interim arrangements put in place for the duration of the Director's absence would be reviewed at an extraordinary session of the 1992 Fund Assembly to be held in spring 2011.

5.1.5 The governing bodies noted that, in response to this request, the Chairman of the 1992 Fund Assembly had visited London in December 2010 and in March 2011 to meet with the Acting Director and the Secretariat. On the second occasion, he had had the opportunity to also meet with Mr Oosterveen who had advised him that at this stage he was not yet able to return to perform his duties within the meaning of the said provision in the appointment of the Acting Director.

5.1.6 Thus, the Chairman of the 1992 Fund Assembly proposed that the current appointment of Mr Maura, who had done an excellent job in carrying out his duties both as Acting Director and Head of Claims Department, be extended until:

(a) the Director returns to perform his duties; or

(b) the next extraordinary session; or

(c) regular session of the 1992 Fund Assembly,

whichever occurred first.

#### ***1992 Fund Administrative Council Decision***

5.1.7 The 1992 Fund Administrative Council decided to extend the appointment of Mr José Maura as Acting Director with full responsibilities and powers as set out in Article 29 of the 1992 Fund Convention and of the 1971 Fund Convention and Article 16.2 of the Supplementary Fund Protocol until:

(a) the Director returns to perform his duties; or

(b) the next regular session of the 1992 Fund Assembly to be held from 24-28 October 2011,

whichever occurs first.

5.1.8 The 1992 Fund Administrative Council decided that the Acting Director should *ex officio* also be the Acting Director of the 1971 Fund and Acting Director of the Supplementary Fund.

5.1.9 The 1992 Fund Administrative Council authorised the Chairman to sign, on behalf of the 1992 Fund, a new contract with the Acting Director on the same terms and conditions as agreed in October 2010 (cf paragraph 7.2.16 of document IOPC/OCT10/11/1).

5.1.10 The 1992 Fund Administrative Council also requested the Chairman to continue to monitor the situation at the Secretariat over the coming months.



**Supplementary Fund Assembly and 1971 Fund Administrative Council**

- 5.1.11 The Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the information contained in this document and endorsed the decisions taken by the 1992 Fund Administrative Council.

## STATEMENT BY THE ACTING DIRECTOR

- 5.1.12 The Acting Director, Mr Maura, thanked the governing bodies for the trust they continued to show in him. He reiterated his best wishes to Mr Oosterveen for his continuing recovery and for his speedy return as Director and also took the opportunity to thank the members of the IOPC Funds' Secretariat for their continued support.

5.2	<b>Proposed new template for Director's contract Document IOPC/MAR11/5/2</b>	<b>92AC</b>		<b>SA</b>	<b>71AC</b>	
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- 5.2.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council held a meeting in private, pursuant to Rule 12 of the Rules of Procedure of the governing bodies, to consider this item. During the closed session, covered by paragraphs 5.2.2 to 5.2.13 below, only representatives of Member States of the 1992 Fund, the Supplementary Fund, former Member States of the 1971 Fund and the Audit Body were present.
- 5.2.2 The governing bodies noted the information contained in document IOPC/MAR11/5/2, submitted by the Chairman of the 1992 Fund Assembly. They recalled that, in light of the absence of the Director of the IOPC Funds for medical reasons, the subject of the terms of the Director's contract had been raised by some Member States at the October 2010 sessions of the governing bodies, in particular if the Director was for reasons of health incapacitated for further service. At those sessions, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, had requested the Head of Finance and Administration Department to form a small consultation group consisting of the Chairmen of the governing bodies, the Chairman of the Audit Body and its external expert and a representative of the IMO, to review current practices in intergovernmental organisations and to ensure that any future contract with the Director of the IOPC Funds was consistent with contemporary business and management practices. In accordance with this request, a consultation group had been formed and had met in December 2010 and March 2011 to discuss possible modifications to the template for the Director's contract, to take into account concerns raised by some Member States.
- 5.2.3 The governing bodies noted that the Director's contract was not a public document and only the main elements (eg financial provisions) were ever discussed by Member States in private sessions, pursuant to Rule 12 of the Assembly's Rules of Procedure, and then conveyed to the 1992 Fund Assembly by its Chairman and that contracts between the Director and the 1992 Fund were signed by the Chairman of the 1992 Fund Assembly. The governing bodies also noted that the Director of the 1992 Fund was also *ex officio* Director of the 1971 Fund and the Supplementary Fund, as set out in the contract.
- 5.2.4 The governing bodies further noted that the review process had involved the study of contracts of Heads of five other London-based intergovernmental organisations, given that they too followed the United Nations common system. In that respect, it was highlighted that the 1992 Fund salaries, allowances, grants and the condition of entitlement, for all members of the Secretariat, except as may be otherwise provided by the Staff Regulations and Staff Rules, conformed whenever appropriate to the United Nations common system, as applied by the IMO. They also noted that the outcome of the consultation group's deliberations would not affect the current Director's contract in any way and that any modification to any future contract with the Director would not affect the contracts of other staff members of the IOPC Funds.
- 5.2.5 The governing bodies noted that the 1992 Fund Staff Regulations and Staff Rules embodied the fundamental conditions of service and the basic rights, duties and obligations of the Director and members of the Secretariat of the 1992 Fund and that this was expressly mentioned in the Director's contract. In relation to termination of contracts, the governing bodies also noted that, although

Staff Regulations 21 and 22 covered the termination by the Director of the appointment of a staff member before the expiry date of his or her appointment, the consultation group was of the view that Staff Regulation 21 was silent as to whether it included termination of the Director's contract though Staff Regulation 2 (Scope and Purpose) embodied the conditions of service and the basic rights, duties and obligations of both the Director and other members of the Secretariat of the 1992 Fund.

- 5.2.6 Notwithstanding Staff Regulation 2, the consultation group was of the view that it would be appropriate to include provisions in the Director's contract to address the issue of incapacity for further service for medical reasons and the corresponding compensation arrangements. In this regard, the group was of the opinion that, in the event of resignation by the Director or termination by the 1992 Fund Assembly for health reasons, the Director should be entitled to compensation equivalent to twelve months of the net base salary plus the application of the post adjustment multiplier in force at the time of separation, subject to a report from a medical practitioner appointed by the 1992 Fund confirming the incapacity of the Director for further service.
- 5.2.7 The governing bodies further noted that the consultation group proposed to include provisions in the Director's contract with respect to the diplomatic privileges and immunities under the Headquarters Agreement with the Host Government.
- 5.2.8 The governing bodies noted that the consultation group had prepared a revised template setting out the core provisions for the Director's contract for consideration by the governing bodies and that this template included provisions as outlined in paragraphs 5.2.6 and 5.2.7 above.

#### ***1992 Fund Administrative Council Decision***

- 5.2.9 The 1992 Fund Administrative Council decided that provisions with respect to the diplomatic privileges and immunities awarded to the Director were covered under the Headquarters Agreement with the host government and that it would not therefore be appropriate to include a paragraph in this respect in the Director's contract. It was decided, therefore, that paragraph 5 would be deleted from the draft template contained in Annex II of document IOPC/MAR11/5/4.
- 5.2.10 The 1992 Fund Administrative Council further decided that with respect to termination of the Director's contract on medical grounds, he/she shall be entitled to compensation equivalent to his/her net base salary plus the application of the post adjustment multiplier in force at the time of separation for the balance of his/her contract, not to exceed 12 months, and subject to a report from a medical practitioner appointed by the 1992 Fund confirming the incapacity of the Director for further service on medical grounds. The Administrative Council decided that the proposed template should be amended accordingly.
- 5.2.11 The revised template is at Annex III to this Record of Decisions.
- 5.2.12 In light of the above decisions, the 1992 Fund Administrative Council also requested the Head of Finance and Administration Department, in consultation with the Audit Body external expert and the Chairmen of the governing bodies, to review the current provisions in the Staff Rules regarding Termination Indemnity in case of incapacity, of any staff member, for further service for medical reasons and to submit to the governing bodies any modifications to the Staff Rules for its consideration.

#### ***Supplementary Fund Assembly and 1971 Fund Administrative Council***

- 5.2.13 The Supplementary Fund Assembly and the 1971 Fund Administrative Council endorsed the decisions taken by the 1992 Fund Administrative Council in respect of the template for the Director's contract.

5.3	<b>Headquarters Agreement Document IOPC/MAR11/5/3</b>	<b>92AC</b>		<b>SA</b>		
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- 5.3.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly recalled that in October 2006 a revised Headquarters Agreement between the United Kingdom Government and the 1992 Fund and a new Headquarters Agreement between the United Kingdom Government and the Supplementary Fund had been approved by the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, and by the Supplementary Fund Assembly respectively. The governing bodies also noted that these two Agreements had then been submitted to the United Kingdom Government for approval by Parliament and implementation by an Order in the Council.
- 5.3.2 The 1992 Fund Administrative Council and the Supplementary Fund Assembly further recalled that the principal revisions in the 1992 Fund Headquarters Agreement agreed by the United Kingdom Government related to the extension to the Deputy Director(s) (up to two persons holding this post) of the 1992 Fund (unless he/she is a national or a permanent resident of the United Kingdom) of the immunities enjoyed by a diplomatic agent (ie in respect of both acts done by him in the exercise of his functions and in respect of acts outside these functions); and the extension of the exemption not only from income tax but also from certain indirect taxes, in particular local taxes, customs duties on imported articles and duties and VAT on petrol to up to two Deputy Directors (unless he/she is a national or a permanent resident of the United Kingdom).
- 5.3.3 The 1992 Fund Administrative Council and the Supplementary Fund Assembly noted that in March 2011, the Secretariat had been informed by the United Kingdom Foreign and Commonwealth Office that these Agreements were on a list of 'Orders in the Council' and it that was hoped that the legislative process would be completed by the end of 2011.

*Debate*

- 5.3.4 The delegation of the United Kingdom referred to the letter from the UK Foreign and Commonwealth Office contained in the Annex to document IOPC/MAR11/5/3. That delegation reiterated that the UK Government remained fully committed to the Headquarters Agreement and explained that the UK parliamentary process was very thorough and could often take some time. That delegation confirmed, however, that it intended to do all it could to ensure that the process was completed by the end of 2011.

5.4	<b>Improvement of Document Services, including the introduction of a new document server and database of decisions Document IOPC/MAR11/5/4</b>	<b>92AC</b>		<b>SA</b>	<b>71AC</b>	
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- 5.4.1 Mr Thomas Liebert, Head of External Relations and Conference Department, introduced document IOPC/MAR11/5/4, regarding the improvement of document services, including the introduction of a new Document Server and Database of Decisions.
- 5.4.2 The 1992 Fund Administrative Council, Supplementary Fund Assembly and 1971 Fund Administrative Council were reminded that the IOPC Funds' Document Server in its current design was introduced in 2001 as a tool for Member States, Observer States and Organisations to access current and past documents issued for meetings of the governing bodies. Being a web-based system, it allowed all users to access and download relevant documents as and when required, thus limiting the reliance on paper copies and facilitating the circulation of information to Member States' delegations and to the general public.
- 5.4.3 The governing bodies noted the developments with regards to the creation of a database of all decisions made by the governing bodies of the IOPC Funds since their inception in 1978.

- 5.4.4 The governing bodies noted that in 2010, the Secretariat had undertaken to review its web-based systems, namely the IOPC Funds website and the Document Server within it, to identify any needs for improvements after ten years of operation. Following the review it was concluded that the website and Document Server needed to be completely redesigned as a matter of priority, primarily because the information technology used when the system was first built in 2001 was now obsolete and needed to be upgraded to a more contemporary platform.
- 5.4.5 The governing bodies noted that progress was being made on the creation of a Document Services website as part of the IOPC Funds' website, which had been designed to make available all meeting documents and decisions taken by the governing bodies of the IOPC Funds since 1978, as well as additional sections, including IOPC Funds' circulars and document templates.
- 5.4.6 The governing bodies noted that at the time of the meeting, the infrastructure of the Document Services website and overall design had been agreed and implemented, but work was still being carried out to make the website operational. It was noted that the Document Services website was expected to be fully operational by June 2011, which would allow enough time to migrate all documents from the existing Document Server to the new system and to make those documents searchable through the new search engine.
- 5.4.7 The governing bodies further noted that to facilitate the development phase and ensure the delivery of a quality result within the shortest timeframe possible, the interface of the Document Services website had been created in English only. Once fully operational, making that interface available in the three official languages was technically possible with a cost implication estimated at some £25 000. In the meantime, users were advised that they would be able to continue to access documents in French and Spanish in the same way as with the current Document Server.
- 5.4.8 With regards to the Decisions Database, the governing bodies took note that following the status report and presentation provided at its October 2010 sessions (document IOPC/OCT10/7/3), work on the database had continued to reach its final stage. It was noted, however, that the parallel development of the Documents Services website, that had used many of the features created for the database, had led to some further adjustments to ensure that the Decisions Database was fully integrated with the new website and as such, would be accessible to all users as part of the Document Services website by June 2011.
- 5.4.9 The governing bodies were also reminded that at its October 2010 sessions, one delegation had queried if the database would be available in French and Spanish. At that session the Acting Director had confirmed that the database would be made available in all three official working languages of the Organisation, but had stated that he could not confirm when this would be completed (document IOPC/OCT10/11/1, paragraph 7.5.4). It was noted that since then, an evaluation of the costs and the required timeframe to carry out the task had been conducted. The governing bodies were informed that, in order to translate all abstracts into French and those that related to documents available in Spanish, the costs had been evaluated at £80 000 and the time to complete the task was estimated to be some eight months. This was in addition to the cost of making the interface of the Document Services website available in the three working languages.
- 5.4.10 In addition to the information provided on the Document Services website, the Secretariat informed the governing bodies of the need to redesign the Funds web-based systems included the IOPC Funds' website and that, following the completion of the Document Services website, it planned to commence work on the redesign of the 'public' part of the IOPC Funds website in the latter part of 2011. It was expected that this project would be completed during 2012. It was noted that the overall cost of that project had been estimated to be around £100 000, to be spent over the two-year period and that the cost for 2011 was anticipated to be in the region of some £50 000.
- 5.4.11 Given the cost implications, Mr Liebert explained the 2011 budget appropriation and allocated expenditures as well as the additional cost implications in 2011 for the tasks described.

- 5.4.12 The governing bodies noted that it was envisaged that the projected overspend under this budget heading (Public Information) could be met under the overall administrative budget, Chapter II – General Services for 2011.
- 5.4.13 After introducing the document, Mr Liebert gave a short presentation of the redesigned Document Services website with a brief explanation of the individual sections.

*Debate*

- 5.4.14 The Chairman of the 1992 Fund Assembly thanked Mr Liebert for his presentation, stating that the new Document Services website appeared to be a very attractive and useful tool. One delegation, having congratulated the Secretariat on its work in redesigning the Document Server, stated that the option to download sets of documents was a particularly good initiative. That delegation also suggested that the Secretariat could consider if decisions on important subjects on the Decisions Database could be catalogued to show the most recent decisions. Another delegation suggested that it would be helpful if other useful documents, such as the texts of Conventions and various Rules of Procedure and Regulations could also be made available through the website.
- 5.4.15 In response, Mr Liebert explained that the texts of Conventions, relevant rules and regulations as well as many other useful documents were in fact already available on the current IOPC Funds' website but conceded that, due to the current design of the website, they were currently rather difficult to find. He drew attention to section 4 of document IOPC/MAR11/5/4, in which it was pointed out that the current 'public' part of the IOPC Funds' website was indeed the next major project on the horizon and, as part of the new design, publications and other useful documents would certainly feature more prominently on that site.
- 5.4.16 In response to a question from one delegation, Mr Liebert clarified that the translation costs referred to in paragraph 3.4 of document IOPC/MAR11/5/4 were for the translation into French and Spanish of the large volume of abstracts relating to each decision and reiterated that this was a one off cost and would be carried out later this year.

***1992 Fund Administrative Council, Supplementary Fund Assembly and 1971 Fund Administrative Council***

- 5.4.17 The governing bodies confirmed their support for the redesign of the IOPC Funds' web-based systems and their satisfaction that both the interface and documents and decision abstracts within the Document Services website, would be made available in the three official working languages of the IOPC Funds.

**6 Treaty matters**

6.1	<b>Status of the 1992 Fund Convention and the Supplementary Fund Protocol Document IOPC/MAR11/6/1</b>	92AC		SA		
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- 6.1.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information contained in document IOPC/MAR11/6/1 concerning the status of the 1992 Fund Convention and the Supplementary Fund Protocol.
- 6.1.2 The governing bodies noted that at present there were 105 Member States of the 1992 Fund with Benin having become a Member State on 5 February 2011. It was also noted that there were 27 Member States of the Supplementary Fund.
- 6.1.3 The governing bodies recalled that, in response to enquiries by the Director in 2006 as to whether the 1992 Civil Liability and Fund Conventions had been fully implemented into the national law of each 1992 Fund Member State at that time, 14 States had informed the Director that the Conventions had not been fully implemented. The governing bodies noted that in February 2011 the Secretariat had

undertaken to write to those States again in order to determine whether this remained the case and, if so, what further could be done by the Secretariat to facilitate the implementation process. It was further noted that the Secretariat was also in contact with three further States, in which it had become apparent that the Conventions had not been fully implemented into national law. It was noted that any developments within this matter would be reported at the next regular session of the 1992 Fund Assembly.

6.2	<b>HNS Convention and HNS Protocol Document IOPC/MAR11/6/2</b>	<b>92AC</b>				
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6.2.1 The governing bodies recalled that, at its session in October 2010, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, in accordance with Resolution 1 of the International Conference on the revision of the HNS Convention, had instructed the Director:

- (a) to carry out, in addition to the tasks under the 1992 Fund Convention, the administrative tasks necessary for setting up the HNS Fund, in accordance with the provisions of the 2010 HNS Convention, on condition that this does not unduly prejudice the interests of the Parties to the 1992 Fund Convention;
- (b) to give all necessary assistance for setting up the HNS Fund; and
- (c) to make the necessary preparations for the first session of the Assembly of the HNS Fund, which is to be convened by the Secretary-General of the International Maritime Organization (IMO), in accordance with Article 43 of the 2010 HNS Convention.

6.2.2 In order for progress to be made, it was noted that a number of steps had first to be taken, in cooperation with IMO, to provide States with all the instruments and support required to be able to ratify the 2010 HNS Protocol, which included:

- (a) an updated list of HNS substances that fall within the definition of contributing cargoes under the HNS Protocol;
- (b) a model reporting form for providing data on the total quantities of contributing cargo liable for contributions received in a State to accompany any expression of consent by that State to be bound by the Protocol; and
- (c) a series of updated or new documents aimed at resolving any practical difficulties in setting up the new regime, with the aim of ratification, acceptance and approval of, or accession to, the HNS Convention.

6.2.3 The governing bodies took note of the actions which had been taken by the Secretariat at the time of the sessions with regards to the steps mentioned above. They noted in particular that:

- The IOPC Funds' Secretariat had been consulted and had provided IMO with comments on the draft consolidated text of the 2010 HNS Convention (document LEG 98/4) prior to its submission to the 98th session of the IMO Legal Committee which will be held in April 2011.
- The Secretariat had provided comments to IMO on draft amendments to the Overview of the HNS Convention document, to reflect the substantive changes introduced into the HNS Convention, 1996, by the 2010 HNS Protocol. This document has also been submitted for consideration at the 98th session of the IMO Legal Committee.
- The Secretariat had developed a draft model form for reporting on receipts of contributing cargo made in accordance with Article 20 of the 2010 HNS Protocol, which is to be used by States to accompany any expression of consent to be bound by the Protocol. It was noted that this form had been designed to assist in the ratification/accession process only and had also been submitted to the 98th session of the IMO Legal Committee for its consideration.

- With regards to the indicative list of substances to be covered under the HNS Protocol, progress was being made, in cooperation with IMO, on a consolidated list of HNS substances to be made available online in a searchable format, and in particular the progress made with the digitalisation of the IMDG Code 1996.

6.2.4 The governing bodies further noted that one of the methods being considered for accessing the list of substances was to use the HNS Convention Contributing Cargo Calculator (HNS CCCC) as a central tool, both for the purpose of calculating contributing cargo and for general use as an online catalogue of substances. It was noted, however, that although the HNS CCCC appeared to be the most efficient method of accessing the list online, the assessment of the HNS CCCC made by the Secretariat highlighted that the system needed to be completely redesigned before it could be operational. The main reason for this was the need for the current IT technology to be upgraded to a more contemporary platform, together with the need for an update to the data, taking into account the changes introduced by the 2010 HNS Protocol.

6.2.5 It was further noted that upgrading the HNS CCCC would take some time and cost in the region of £50 000. In presenting the document, Mr Liebert clarified the fact that there was a budget allocation of £150 000 in the 2011 General Fund budget and this was a loan to be paid back with interest by the HNS Fund once in place.

## 7 Other matters

7.1	<b>Future sessions</b>	<b>92AC</b>	<b>92EC</b>	<b>SA</b>	<b>71AC</b>	
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The governing bodies recalled their decision in October 2010 that the next regular sessions of the 1992 Fund Assembly and the Supplementary Fund Assembly and the autumn session of the 1971 Fund Administrative Council would take place during the week of 24 October 2011. It was also recalled that dates had also been agreed for possible sessions of the governing bodies, or meetings of their subsidiary bodies during the week of 4 July 2011, if required.

7.2	<b>Any other business</b>	<b>92AC</b>	<b>92EC</b>	<b>SA</b>	<b>71AC</b>	
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No items were raised under this agenda item.

## 8 1992 Fund sixth intersessional Working Group – second meeting

8.1	<b>Report of the second meeting of the 1992 Fund sixth intersessional Working Group Document IOPC/MAR11/8/11</b>					<b>92WGR6</b>
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The 1992 Fund sixth intersessional Working Group held its second meeting on 31 March 2011. In keeping with past practice, it was agreed that the Report of that meeting would be prepared by the Director, in consultation with the Working Group's Chairman, and issued at a later date. The Report will be considered by the 1992 Fund Assembly at its next regular session.

## 9 Adoption of the Records of Decisions

The draft Record of Decisions of the March 2011 sessions of the IOPC Funds' governing bodies as contained in documents IOPC/MAR11/9/WP.1 and IOPC/MAR11/9/WP.1/1 was adopted, subject to certain amendments.

## ANNEX I

1.1 Member States

	1992 Fund Assembly	1992 Fund Exec. Committee	Supp. Fund Assembly	1971 Fund Admin. Council
Algeria	•			•
Angola	•			
Australia	•		•	•
Brunei Darussalam	•			•
Bulgaria	•			
Cameroon	•	•		•
Canada	•		•	•
China <sup>&lt;1&gt;</sup>	•			•
Denmark	•		•	•
Ecuador	•			
Estonia	•		•	•
Finland	•		•	•
France	•		•	•
Gabon	•			•
Germany	•	•	•	•
Ghana	•			•
Italy	•	•	•	•
Japan	•	•	•	•
Kenya	•			•
Liberia	•			•
Malaysia	•	•		•
Malta	•			•
Marshall Islands	•			•
Mexico	•	•		•
Morocco	•	•	•	•
Netherlands	•	•	•	•
Nigeria	•	•		•
Norway	•	•	•	•
Oman	•			•
Panama	•			•
Philippines	•			
Poland	•		•	•
Qatar	•			•
Republic of Korea	•	•	•	•
Singapore	•	•		
Spain	•		•	•
Sweden	•		•	•
Turkey	•	•		
United Arab Emirates	•			•
United Kingdom	•		•	•
Venezuela (Bolivarian Republic of)	•			•

&lt;1&gt;

The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.  
IOPC/MAR11/9/1, Annex I, Page 1



1.2 Non-Member States represented as observers

	<b>1992 Fund</b>	<b>Supplementary Fund</b>	<b>1971 Fund</b>
Democratic People's Republic of Korea	•	•	•
Saudi Arabia	•	•	•

1.3 Intergovernmental organisations

	<b>1992 Fund</b>	<b>Supplementary Fund</b>	<b>1971 Fund</b>
Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)	•	•	•

1.4 International non-governmental organisations

	<b>1992 Fund</b>	<b>Supplementary Fund</b>	<b>1971 Fund</b>
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)	•	•	•
World Liquid Petroleum Gas Association (WLPGA)	•	•	

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**Statement by the delegation of the Bolivarian Republic of Venezuela  
as referred to in paragraph 3.2.10.**

I thank Canada for its comments on various matters with which we are totally in agreement and for asking whether the Fund would have had sufficient time to defend itself.

The Secretariat says that it did not have time. Venezuela's position is that it did have time. Who is right? We all think that we are right. This is where the Convention comes into play and establishes that it is up to the courts of the country concerned to resolve the dispute.

We now have three courts which have pronounced judgement in this respect, but it appears that the judgements are not valid because, in the opinion of some delegates, there is something strange. What I would like to know is what do they mean by 'strange'?

I would like them to tell me clearly whether if tomorrow there is a spill in Venezuela, or another country, the compensation is not going to be paid because someone finds it strange.

However, I am not surprised that it seems strange, considering that in the last three years the Secretariat has devoted itself to creating a web of opinion that the decisions of the Venezuelan courts are strange.

Strange, I could also say, is the fact that they previously gave [the text of] my intervention to the Fund's lawyers so that they could prepare the Secretariat's allegations in advance.

What is strange is that the Secretariat documents state matters which are untrue, yet they are considered to be true, despite the arguments and official documents presented by Venezuela.

That being so, how could the decision of the Venezuelan courts not appear strange if it so appeared even before their pronounced judgement?

We are not discussing here whether or not payment should be made, because there was already a decision in 1997 that payment should be made. What is being discussed here is the reasons why the payment has not been made, given that the Fund Secretariat has been recommending for several years that this discussion should take place in various instances of the Venezuelan Courts.

Now that they are no longer in their favour, are the decisions of those courts not valid? What happened to the investigation into the incident?

Before I finish, I would like to answer the distinguished delegate of Canada concerning the time taken by the Secretariat to defend itself.

It should be emphasised that:

- On 4 June 1997, 7 days after the incident occurred and before the authorities responsible for inspection of the damage completed their work, the victims submitted a claim against the shipowner, requesting that the 1971 Fund should be notified in accordance with article 7 of the Fund Convention, and further requesting the arrest of the ship, in order to ensure guarantees of limitation of liability before the ship sailed.
- On 13 October 1997, payment was ordered by the Executive Committee.
- On 10 January 2000, the shipowner requested the court to cancel the bank guarantee, as a result of which the cases became the subject of an avocamiento procedure and the proceedings were suspended.
- In 2005, the Fund was requested to compensate the victims and the Director stated that the claims were time-barred, despite their having been accepted and approved by the Executive Committee. It was decided in the Administrative Council that the time bar question would be decided in the local courts.

- The Fund having been notified in 2005, and when the victims believed they could start the proceedings, the shipowner requested the case to be transferred to the maritime courts, and the court required all the parties to the proceedings to be notified again. The victims again travelled to London in 2007, to notify the Fund for the second time, but it was only in March 2008 that they managed to notify the shipowner through public announcements in the media (the latter avoided the need for notification) .
- Having managed to notify all the parties to the proceedings and the case having been restarted, in April 2008 the victims presented the evidence in support of their claims, that being the only opportunity that they had had to do so throughout the entire proceedings.
- On 12 June 2008, the Fund presented arguments in defence in the proceedings, without having requested any copies of documents from the courts.
- On 17 June 2008, 73 days after the evidence had been submitted, the Fund's lawyers requested copies of the evidence which were provided by the Court on 29 July 2008.
- On 18 November 2008, the day on which judgement was to be given, the Fund's lawyers presented a document alleging that the evidence was false. The report was not admitted on the grounds that it was out of time, but the court accepted a complaint of procedural fraud presented by the Fund and the shipowner and, after examining it, declared it without merit in the judgement.

Finally, the explanation given by the Fund Director is incomplete because it does not mention the subsequent actions relating to the case presented in documents of the Funds themselves, concerning which the investigation of the incident agreed by the Secretariat is still awaited.

For the foregoing reasons, I have to state my total disagreement with the explanation given by the Director.'

\* \* \*

## ANNEX III

Revised template

Contract between  
the International Oil Pollution Compensation Fund 1992  
and  
[XXX]

Having regard to Article 16 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention),

Noting that the Assembly of the International Oil Pollution Compensation Fund 1992 (1992 Fund) elected, at its [xxx] session held in [Date], [XXX] as the next Director of the 1992 Fund from [Date],

Noting also that in accordance with the 1992 Fund Resolution N°9, adopted by the 1992 Fund Assembly at its 9th session in October 2004, the Director should be appointed for an initial term of five years,

Recalling that the Assembly of the International Oil Pollution Compensation Fund 1971 (1971 Fund) had decided that the Director of the 1992 Fund should *ex officio* also be Director of the 1971 Fund,

Recalling further that the Assembly of the International Oil Pollution Compensation Supplementary Fund (Supplementary Fund) had decided that the Director of the 1992 Fund shall *ex officio* be Director of the International Oil Pollution Compensation Supplementary Fund also,

Recognising therefore that [XXX] will, in addition to holding the post of Director of the 1992 Fund, hold the post of Director of the 1971 Fund and the post of Director of the Supplementary Fund (the three Organisations hereinafter referred to as the IOPC Funds),

Recognising that, in the event that the 1992 Fund Assembly were to decide, at the request of the Assembly of the International Hazardous and Noxious Substances Fund (HNS Fund), the Secretariat of the 1992 Fund should act also as Secretariat of the HNS Fund, the Director of the 1992 Fund should be also Director of the HNS Fund,

The [Assembly/Administrative Council] of the 1992 Fund has determined the terms and conditions of [XXX]'s contract as follows:

- 1 The appointment shall be for the period until [xx Date].
- 2 The fundamental conditions of service and the basic rights, duties and obligations of the Director are embodied in the Staff Regulations and Rules of the 1992 Fund as supplemented or amended by the 1992 Fund Assembly or by this contract.
- 3 The Director shall receive a salary equivalent to that of an Under Secretary-General (USG) in the United Nations salary scale increased by 10%, all subject to post adjustment and contributions to the Provident Fund. If eligible, he/she will receive the allowances available to staff members generally, together with an annual representation allowance of [£xxx] per annum.
- 4 The Director shall pledge himself by an oath that he/she will exercise, in all loyalty, discretion and conscience, as an international civil servant and the chief administrative officer of the IOPC Funds, the functions and duties assigned to him/her by the provisions of the 1992 and 1971 Fund Conventions and the Supplementary Fund Protocol and the Staff Regulations of the 1992 Fund; that he/she will discharge those functions and regulate his/her conduct with the interests of the IOPC Funds only in view and will not seek or accept instructions in regard to the performance of his/her duties from any government, authority or body external to the IOPC Funds.

5 During the term of his appointment, the Director shall not accept any honour, decoration, favour or remuneration from any source external to the IOPC Funds unless approved by the respective governing bodies. With respect to any gift offered by any such source, the Director shall be guided by the 1992 Fund's policy which applies to all staff.

6 Resignation by the Director:

(a) The Director's contract may be terminated by the Director's official resignation submitted in writing to the Chairman of the Assembly of the 1992 Fund, in which case the Director shall cease his/her functions three months after the date of communicating his/her resignation to the Chairman. If there is no Chairman of the Assembly, or if the Chairman cannot be contacted, the resignation will take effect three months after the Director has communicated his/her resignation to the Member States of the IOPC Funds. If required, the Director will, immediately after having communicated his/her resignation as set out above, convene an extraordinary session of the Assembly of the 1992 Fund to appoint a successor.

(b) If the Director shall resign for medical reasons, he/she shall be entitled to compensation equivalent to his/her net base salary plus the application of the post adjustment multiplier in force at the time of separation for the balance of his/her contract, but not to exceed 12 months, and subject to a report from a medical practitioner appointed by the 1992 Fund confirming the incapacity of the Director for further service on medical grounds. Staff Rule VI.1(d) will not apply to the Director.

7 Termination of the Director's contract by the 1992 Fund Assembly

(a) The Director's contract may be terminated by the 1992 Fund Assembly in accordance with the provisions of Staff Regulations 21 and 22.

(b) However, in the event of termination of the appointment by the 1992 Fund Assembly in accordance with Regulation 21(a)(iii) (ie for reasons of health incapacitated for further service), the Director shall be entitled to compensation equivalent to his/her net base salary plus the application of the post adjustment multiplier in force at the time of separation for the balance of his/her contract, but not to exceed 12 months, and subject to a report from a medical practitioner appointed by the 1992 Fund confirming the incapacity of the Director for further service on medical grounds. Staff Rule VI.1(d) will not apply to the Director.

8 Any disputes or differences in interpretation of this contract which cannot be settled by amicable agreement between the parties shall be submitted to an arbitrator appointed by the International Court of Justice. The arbitrator's decision shall be final.

9 This contract shall enter into force on the date of its signature by the parties.

Done in London, this date [xxx], in duplicate, one copy for \_\_[XXX]\_\_ and the other to be kept in the archives of the International Oil Pollution Compensation Fund 1992.

For the International Oil  
Pollution Compensation Fund 1992

\_\_\_\_\_  
Chairman of the Assembly