

 INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS	Agenda item: 11		IOPC/OCT09/11/1		
	Original: ENGLISH		16 October 2009		
	1992 Fund Administrative Council		92AC6/A14	•	
	1992 Fund Executive Committee		92EC46	•	
	Supplementary Fund Assembly		SA5	•	
1971 Fund Administrative Council		71AC24	•		

RECORD OF DECISIONS OF THE OCTOBER 2009 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 12 to 16 October 2009)

Governing Body (session)		Chairman	Vice-Chairman/Chairmen
1992 Fund	Administrative Council (92AC6/A14)	Mr Jerry Rysanek (Canada)	Professor Tomotaka Fujita (Japan) Mr Mahmoud Zaghoulou (Algeria)
	Executive Committee (92EC46)	Mr Daniel Kjellgren (Sweden)	Mr Patrick Tso Chi-hung (China (Hong Kong Special Administrative Region))
Supplementary Fund	Assembly (SA5)	Rear Admiral Giancarlo Olimbo (Italy)	Mrs Birgit Sølling Olsen (Denmark) Ms Akiko Yoshida (Japan)
1971 Fund	Administrative Council (71AC24)	Captain David J F Bruce (Marshall Islands)	Mr Andrzej Kossowski (Poland)

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*Opening of the sessions***1992 Fund Assembly**

- 0.1 The Chairman of the 1992 Fund Assembly attempted to open the 14th session of the Assembly at 09.30 and 10.00 on Monday 12 October 2009, but the Assembly failed to achieve a quorum on both occasions.
- 0.2 Only the following 44 Member States of the 1992 Fund were present at that time, whereas a quorum required 52 States to be present:
- | | | |
|--|------------------|-------------------|
| Algeria | Germany | Nigeria |
| Angola | Ghana | Norway |
| Argentina | Greece | Panama |
| Australia | Grenada | Philippines |
| Bahamas | India | Poland |
| Belgium | Ireland | Qatar |
| Canada | Israel | Republic of Korea |
| China (Hong Kong Special
Administrative Region) | Italy | Singapore |
| Colombia | Japan | Spain |
| Cyprus | Malaysia | Sweden |
| Denmark | Malta | Trinidad & Tobago |
| Estonia | Marshall Islands | Turkey |
| Finland | Morocco | United Kingdom |
| France | Netherlands | Vanuatu |
| | New Zealand | Venezuela |
- 0.3 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.
- 0.4 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 6th session of the 1992 Fund Administrative Council, acting on behalf of the 14th session of the 1992 Fund Assembly ^{<1>}.
- 0.5 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 Council (document 92FUND/AC.1/A/ES.7/7, paragraph 2).
- 0.6 The 6th session of the 1992 Fund Administrative Council, the 46th session of the 1992 Fund Executive Committee, the 5th session of the Supplementary Fund Assembly and the 24th session of the 1971 Fund Administrative Council were opened by their respective Chairmen. The Chairmen welcomed all delegations and members of the public. In addition, the members of the Audit Body who were present were introduced to the governing bodies.

^{<1>} From this point forward, references to the '6th session of the 1992 Fund Administrative Council' should be taken to read '6th session of the 1992 Fund Administrative Council, acting on behalf of the 14th session of the 1992 Fund Assembly'.

1 Procedural matters

1.1	Adoption of the Agenda Document IOPC/OCT09/1/1	92AC	92EC	SA	71AC
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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/OCT09/1/1.

1.2	Election of Chairmen	92AC		SA	71AC
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1992 Fund Administrative Council Decision

- 1.2.1 The 1992 Fund Administrative Council elected the following delegates to hold office until the next regular session of the Assembly:

Chairman: Mr Jerry Rysanek (Canada)
 First Vice-Chairman: Professor Tomotaka Fujita (Japan)
 Second Vice-Chairman: Mr Mahmoud Zaghoul (Algeria)

- 1.2.2 The Chairman thanked, also on behalf of the two Vice-Chairmen, the 1992 Fund Administrative Council for the confidence shown in them. He also expressed appreciation, on behalf of the Administrative Council, for the work of the outgoing Vice-Chairmen, Mr Edward K Tawiah (Ghana) and Mr Ichiro Shimizu (Japan).

Supplementary Fund Assembly Decision

- 1.2.3 The Supplementary Fund Assembly elected the following delegates to hold office until the next regular session of the Assembly:

Chairman: Rear Admiral Giancarlo Olimbo (Italy)
 First Vice-Chairman: Mrs Birgit Sølling Olsen (Denmark)
 Second Vice-Chairman: Ms Akiko Yoshida (Japan)

- 1.2.4 The Chairman thanked, also on behalf of the two Vice-Chairmen, the Supplementary Fund Assembly for the confidence shown in them. He also expressed appreciation, on behalf of the Assembly, for the work of the outgoing Second Vice-Chairman, Mr Yukio Yamashita (Japan).

1971 Fund Administrative Council Decision

- 1.2.5 The 1971 Fund Administrative Council elected Captain David J F Bruce (Marshall Islands) as its Chairman and Mr Andrzej Kossowski (Poland) as its Vice-Chairman.

- 1.2.6 The Chairman thanked, also on behalf the Vice-Chairman, the 1971 Fund Administrative Council for the confidence shown in them. He also expressed appreciation, on behalf of the Administrative Council, for the work of the outgoing Vice-Chairman, Mr Victor Koyoc Cauich (Mexico).

1.3	Examination of credentials: Establishment of Credentials Committee Document IOPC/OCT09/1/2	92AC	92EC	SA	
	Participation				71AC
	Examination of credentials: Report of the Credentials Committee Document IOPC/OCT09/1/2/1	92AC	92EC	SA	

- 1.3.1 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 States, and that the Credentials Committee established by it 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.

- 1.3.2 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).

1992 Fund Administrative Council Decision

- 1.3.3 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Administrative Council appointed the delegations of Angola, Canada, Finland, Papua New Guinea and Qatar as members of the Credentials Committee.
- 1.3.4 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.
- 1.3.5 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.
- 1.3.6 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, the Credentials Committee reported in document IOPC/OCT09/1/2/1 that all credentials were in order.
- 1.3.7 The governing bodies noted that the Credentials Committee had suggested in its report that the 1992 Fund Assembly might wish to review its current policy on credentials whereby credentials and/or notifications transmitted not only by letter and telefax but also as attachments to e-mails (in pdf format) in respect of participation in sessions of the IOPC Funds' governing bodies could also be accepted as valid for all meetings of the governing bodies. The governing bodies instructed the Director to study the issue of accepting credentials received in the form of attachments to e-mails and to prepare relevant recommendations for consideration by the Assembly at its next regular session. The governing bodies also noted that, in the meantime, the Credentials Committee had reminded delegations that credentials must be submitted in the form of an original signed letter or a telefax thereof.
- 1.3.8 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the October 2009 sessions.

1.4	Organisation of meetings: Explanation of changes to meeting arrangements	92AC	92EC	SA	71AC
	Document IOPC/OCT09/1/3				

- 1.4.1 The governing bodies recalled that in June 2009 the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, had decided to make a number of changes to the arrangements for meetings of the IOPC Funds' governing bodies (cf document 92FUND/AC.5/A/ES.14/9, section 4). It was also recalled that those changes included, *inter alia*, the introduction of a unified document numbering system, a unified agenda (document IOPC/OCT09/1/1) and the holding of simultaneous sessions of the governing bodies.
- 1.4.2 The Director introduced document IOPC/OCT09/1/3 which contained explanations of the new arrangements and which invited the governing bodies to consider whether these changes had improved the running of the meetings. In this context, the Director reported that Ms Catherine Grey,

Head of the External Relations and Conference Department, had recently resigned from her position with the IOPC Funds, but that she had been the driving force behind the preparatory work and thinking which had gone in to the new meeting arrangements. He also reported that an initial calculation had shown that there had been at least a 16% decrease in the number of document pages printed.

- 1.4.3 The governing bodies took note of the information contained in document IOPC/OCT09/1/3 and decided to revert to this agenda item later in the week, in order to allow for the governing bodies to gain some experience of the new meeting arrangements before any decisions regarding a possible continuation of the arrangements was made.
- 1.4.4 After having worked with the new arrangements during the week, all delegations that spoke were of the opinion that the new arrangements had worked very well and had significantly improved the efficiency of the running of the meetings. Those delegations were also of the view that the unified documents, with the simplified numbering system, were clearer and more efficient. Many delegations expressed particular appreciation to the Chairmen, the Director and the Secretariat for their efforts before and during the sessions.
- 1.4.5 In response to concerns expressed by some delegations as to a possible difficulty that might arise if a Chairman who was a member of a small or even one-person delegation needed to take the floor on behalf of his/her delegation, the Director indicated that thought had been given to this possibility and that, if the need arose, the Chairman would have the opportunity to speak from the podium on behalf of his/her delegation.
- 1.4.6 With respect to the simultaneous sessions, one delegation, whilst satisfied with the new system, expressed concern if a possible conflict of interest were to arise between the Supplementary Fund Assembly and the 1992 Fund Executive Committee in respect of incidents. The Director said that there was flexibility in the new system to deal with this very unlikely but possible situation, and that it would be dealt with in much the same way as the Financial Statements for the three different Funds had been dealt with earlier in the week, ie by completely separating the proceedings of the two bodies when and where that was considered necessary.
- 1.4.7 The Chairmen expressed their appreciation to the Director and the Secretariat for their hard work. In the light of the occasional difficulties some delegations experienced more often than others to ensure that their signs were visible from the podium, the Chairmen suggested that the Secretariat reverse the alphabetical order of the seating of delegations for the next meeting, so as to allow delegations who were normally seated at the back of the hall to be at the front and *vice versa*.

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

- 1.4.8 The governing bodies considered that the changes to meeting arrangements had significantly improved the efficiency of the meetings and decided to continue to hold simultaneous sessions of the governing bodies in the future.

2 General review

2.1	Report of the Director Document IOPC/OCT09/2/1	92AC		SA	71AC
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- 2.1.1 The Director introduced his report on the activities of the IOPC Funds since the October 2008 sessions, as contained in document IOPC/OCT09/2/1. The Director pointed out that, in a break with the past, he had only reported in this document on activities of the IOPC Funds which he felt merited specific mention in the context of his general report to the governing bodies, and that some of these activities were also dealt with in detail under individual agenda items.

- 2.1.2 He drew the attention of the governing bodies to the fact that the unprecedented number of claims arising out of the *Hebei Spirit* incident (120 000) and the complexity of the case had continued to present the 1992 Fund with a major challenge to adhere to its priority objective of the quick and adequate compensation of victims of oil pollution incidents. The Director noted that this had obliged the Secretariat to re-think the way in which it processed and assessed claims, in particular the assessment of large numbers of claims for small amounts where the claimant was not able to provide sufficient supporting documentation or other information (cf paragraph 4.3 below).
- 2.1.3 With regard to the international financial crisis, the Director noted that, although yields on investments were down, the Funds' assets themselves had not been affected, demonstrating the effectiveness of the Funds' prudent investment policy. He expressed his gratitude to the members of the Investment Advisory Body (IAB) and the Audit Body for their advice in this area in particular.
- 2.1.4 The Director reported that the Secretariat's Management Team had begun a strategic review of the operations and activities of the Secretariat and had identified the winding up of the 1971 Fund, the long-term objectives for the Organisations and the internal culture of the Secretariat and functioning of the Management Team as areas to be dealt with in the short term, in addition to the treatment of mass/small claims which was itself the subject of a separate document.
- 2.1.5 The governing bodies noted that the 2009 annual review of the Key Risk Register had identified 16 key risks for the Organisations and that these had been set out in the revised Key Risk Register, together with the controls which had been put in place to mitigate them. The governing bodies also noted that a full five-yearly review of the business processes, risk identification, assessment and mitigation strategies would be carried out in 2014.
- 2.1.6 The Director highlighted the subject of reducing greenhouse gases within the shipping industry, which had become an important issue recently within IMO. He referred in particular to the proposed idea of an international fund for greenhouse gas emissions from ships, which used the mechanism of the IOPC Funds as a model. One delegation stressed how valuable it was that the Secretariat followed these developments and suggested that, if the idea of the proposed new fund were to be adopted by IMO, the matter should be on the agenda of the Funds' governing bodies at their October 2010 sessions.
- 2.1.7 With regard to external relations, the Director highlighted the Funds' participation in Interspill 2009 held in Marseille, France, and noted in particular the workshop organised by the Secretariat as well as the Funds' stand at the exhibition.
- 2.1.8 The Director informed the governing bodies that the Secretariat had held three informal regional luncheons in its offices during 2009 for London-based representatives of both Member States and non-Member States alike. He explained that the three gatherings had been very successful and had improved relationships between Member States and the Secretariat, as well as with non-Member States considering joining the 1992 Fund.
- 2.1.9 The governing bodies welcomed the opportunities these luncheons had provided for informal discussions and questions. They were pleased to note that these gatherings were providing the Secretariat with another avenue through which to promote the submission of oil reports and the timely payment of contributions and that this had already led to concrete results. The governing bodies were pleased to note the Director's intention to hold two further gatherings in the coming months, thus covering the entire membership of the IOPC Funds, and to continue to hold these regional gatherings at regular intervals thereafter.
- 2.1.10 The Director observed that, whilst it was comforting to note that the frequency of incidents had reduced over the years, the important role still played by the IOPC Funds had nevertheless been apparent during the past year, particularly as regards the 1992 Fund's involvement in the *Hebei Spirit* incident. He stated that the main priority for the IOPC Funds would continue to be the prompt payment of compensation to victims of oil pollution. He also emphasised the need not to focus exclusively on the major incidents, as the payment of compensation was just as important for a claimant in a small case as in a large one.

- 2.1.11 The Director expressed his gratitude to all those without whom the international compensation regime would not function, mentioning in particular the Member States and their representatives functioning as Chairmen and Vice-Chairmen within the Organisations, the P&I Clubs, the oil industry in Member States, the international shipping community, IMO, the Funds' lawyers and experts, the Audit Body and the Investment Advisory Body, the representatives of the External Auditor and last but not least, all the members of the Secretariat for their dedication to the Funds over the past 12 months.
- 2.1.12 The Indian delegation made a statement in respect of the *Hebei Spirit* incident, supporting the payment of compensation to victims in the Republic of Korea on humanitarian grounds, but at the same time expressing its concern as to the appropriate use of the contribution made to the 1992 Fund by Indian contributors to the 1992 Fund. That delegation also regretted the judgement of the Korean Supreme Court in respect of the Master and Chief Officer of the *Hebei Spirit*, which was at odds with the outcome of the investigation by the flag state, which had completely exonerated the two officers.
- 2.1.13 The Chairman of the 1992 Fund Administrative Council said that the statement by the Indian delegation would be reflected in the Record of Decisions, but that a document would need to be submitted to a future session of the 1992 Fund Executive Committee by that delegation should it wish to make any proposal regarding the *Hebei Spirit* incident.
- 2.1.14 The Director pointed out that the investigation into the cause of the incident had his full attention and that any further steps in the recourse action by the 1992 Fund would be taken on the basis of all relevant information. He added, however, that withholding part of the compensation until the outcome of an eventual investigation, as proposed by the Indian delegation, would in his view be contrary to the 1992 Fund Convention.
- 2.1.15 The 1992 Fund Administrative Council Chairman, on behalf of the governing bodies, thanked the Director for his comprehensive Report.

3 Incidents involving the IOPC Funds

3.1	Incidents involving the IOPC Funds Document IOPC/OCT09/3/1		92EC	SA	71AC
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The 1992 Fund Executive Committee, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of document IOPC/OCT09/3/1, which contained information on documents for the October 2009 meetings relating to incidents involving the IOPC Funds.

3.2	Incidents involving the IOPC Funds – 1971 Fund: <i>Vistabella, Aegean Sea, Iliad, Kriti Sea, Nissos Amorgos, Plate Princess, Evoikos, Alambra and Al Jaziah 1</i> Document IOPC/OCT09/3/2				71AC
	Incidents involving the IOPC Funds – 1971 Fund: <i>Plate Princess</i> Documents IOPC/OCT09/3/2 and IOPC/OCT09/3/2/1				71AC
	Incidents involving the IOPC Funds – 1971 Fund and 1992 Fund: <i>Al Jaziah 1</i> Documents IOPC/OCT09/3/2 and IOPC/OCT09/3/2/2		92EC		71AC

- 3.2.1 The 1971 Fund Administrative Council took note of documents IOPC/OCT09/3/2, IOPC/OCT09/3/2/1 and IOPC/OCT09/3/2/2 which contained information relating to the *Vistabella, Aegean Sea, Iliad, Kriti Sea, Nissos Amorgos, Plate Princess, Evoikos, Alambra and Al Jaziah 1* incidents.

Vistabella

- 3.2.2 The 1971 Fund Administrative Council took note of the information regarding the *Vistabella* incident contained in section 1 of document IOPC/OCT09/3/2.

Aegean Sea

- 3.2.3 The 1971 Fund Administrative Council took note of the information regarding the *Aegean Sea* incident contained in section 2 of document IOPC/OCT09/3/2.

Iliad

- 3.2.4 The 1971 Fund Administrative Council took note of the information regarding the *Iliad* incident contained in section 3 of document IOPC/OCT09/3/2.

Kriti Sea

- 3.2.5 It was noted that the aggregate amount adjudicated to all claimants in respect of this incident fell within the limitation fund established under the 1969 Civil Liability Convention (1969 CLC) and that therefore no liability would be attached to the 1971 Fund in respect of this incident.
- 3.2.6 It was also noted that given that the case was now closed as far as the 1971 Fund was concerned, the 1971 Fund had decided to discontinue monitoring the proceedings prior to formal closure.

Nissos AmorgosCriminal proceedings

- 3.2.7 The 1971 Fund Administrative Council recalled that criminal proceedings had been brought against the Master and that in a judgement rendered in May 2000, the Criminal Court had held him liable for the damage arising as a result of the incident and had sentenced him to one year and four months in prison.
- 3.2.8 It was recalled that the Criminal Court of Appeal had issued a new judgement in February 2008, confirming earlier rulings that the criminal action against the Master was time-barred but preserving the civil action arising from the criminal act. It was also recalled that in the judgement the Court of Appeal decided to send the file to a Criminal Court of First Instance, in which the civil action filed by the Republic of Venezuela would be decided.
- 3.2.9 It was noted that the shipowner and its insurer had pleaded that the Criminal Court of First Instance had no jurisdiction over the case and that the file should be transferred to the Maritime Court. It was also noted that in March 2009 the Criminal Court of First Instance had issued a decision rejecting the plea of lack of jurisdiction and that this decision had been notified to the Master, but not to the shipowner and his insurer or the 1971 Fund. It was noted that in the decision the Court had also fixed the commencement of the presentation of conclusions.
- 3.2.10 The 1971 Fund Administrative Council noted that the 1971 Fund had submitted pleadings arguing that, by not notifying the 1971 Fund of the decision, the Court had denied the Fund a proper defence. It was noted that in its pleadings the Fund had also submitted its conclusions, as follows:
- The claims by the Republic of Venezuela were time-barred in respect of the 1971 Fund;
 - All admissible claims for pollution damage had already been compensated by the Club and the Fund; and
 - The claim by the Republic of Venezuela was not admissible under the 1969 CLC and the 1971 Fund Convention and the alleged damage was not proved.

Attempts to resolve the outstanding issues

- 3.2.11 It was noted that in December 2008 a meeting had been held in Caracas between representatives of the 1971 Fund and representatives of the Venezuelan Ministry of Foreign Affairs, where the outstanding issues had been the subject of a general review, but that the meeting had not led to any concrete results and that no progress had been made since.

Plate Princess

- 3.2.12 The 1971 Fund Administrative Council took note of documents IOPC/OCT09/3/2 and IOPC/OCT09/3/2/1 containing information on the *Plate Princess* incident.
- 3.2.13 It was recalled that in June 1997 a fishermen's trade union (FETRAPESCA) had brought an action against the Master and the owner of the *Plate Princess* in the Criminal Court in Cabimas on behalf of 1 692 fishing boat owners, claiming a total of US\$17 million and another action against the shipowner and the Master of the *Plate Princess* before the Civil Court of Caracas for an estimated amount of US\$10 million.
- 3.2.14 It was also recalled that in June 1997 a local fishermen's union, the Sindicato Único de Pescadores de Puerto Miranda, had also presented a claim in the Civil Court in Caracas against the shipowner and the Master of the *Plate Princess* for an estimated amount of US\$20 million.
- 3.2.15 It was recalled that at its May 2006 session the 1971 Fund Administrative Council had decided that the claims referred to above were time-barred in respect of the 1971 Fund.

Further developments on the claim by FETRAPESCA

- 3.2.16 It was noted that in a judgement rendered in February 2009, the Maritime Court of Caracas had accepted the claim by FETRAPESCA and had ordered the Master and the shipowner to pay the damages suffered by the claimant, to be quantified by a Court expert. It was also noted that in the judgement it was decided that the 1971 Fund should be formally notified, but that the Fund had not been notified yet.

Claim by the Sindicato Único de Pescadores de Puerto Miranda

- 3.2.17 It was recalled that in April 2008 the Sindicato Único de Pescadores de Puerto Miranda had submitted an amended claim against the shipowner, the Master of the *Plate Princess* and the 1971 Fund, now totalling BsF 53.5 million and that the Maritime Court of Caracas had accepted the amended claim.
- 3.2.18 It was also recalled that in July 2008, the 1971 Fund had submitted pleadings stating that the claim was time-barred *vis-à-vis* the 1971 Fund.
- 3.2.19 It was noted that the 1971 Fund's experts had examined the documentation provided and had issued their report in early October 2008, concluding that the claimants had not demonstrated that any damage allegedly suffered by the fishermen had been caused by the spill from the *Plate Princess* and that the documentation provided in support of the claim was of doubtful accuracy and had in many instances been falsified and produced for the purpose of making the claim.
- 3.2.20 It was noted that the Court had issued its decision in February 2009, accepting the claim by the Sindicato Único de Pescadores de Puerto Miranda and ordering the 1971 Fund to pay the damages suffered by the claimant, to be quantified by a Court expert. It was also noted that in its decision the Court had rejected the allegations of fraud submitted by the Fund. It was also noted that the Master had submitted pleadings alleging lack of due process (desorden judicial). It was further noted that the Master, the shipowner and the 1971 Fund had appealed against the judgement.
- 3.2.21 The 1971 Fund Administrative Council noted that on 24 September 2009 the Maritime Court of Appeal of Caracas had issued its decision, dismissing the appeals by the Master, the shipowner and

the 1971 Fund and ordering the defendants to compensate the claimants in an amount to be determined by Court experts. It was noted that the 1971 Fund had been notified of this decision.

Considerations

- 3.2.22 The 1971 Fund Administrative Council noted that, in the Director's view, it was certain that claims for compensation arising from the *Plate Princess* incident were time-barred under Article 6.1 of the 1971 Fund Convention; since in this case neither had legal action been brought against the 1971 Fund within three years from the date when the damage occurred, nor had a notification been made to the 1971 Fund pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred, nor had legal action been brought against the 1971 Fund within six years from the date of the incident.
- 3.2.23 It was also noted that in the Director's view the 1971 Fund should appeal against the decision by the Maritime Court of Appeal before the Supreme Court but that if a final judgement by the Venezuelan Courts were awarded against the 1971 Fund, the 1971 Fund had, under Article 8 of the 1971 Fund Convention, the obligation to comply with the provisions of the judgement.

Debate

- 3.2.24 The Venezuelan delegation expressed its concern in respect of the conclusion implied by the Director in document IOPC/OCT09/3/2/1 that the documentation provided by the claimants was untrue, which was based on the Fund's experts' view that the documents submitted to support the claim for loss of income had in many instances been falsified and produced for the purpose of making the claim. The delegation stated that the Maritime Court of Appeal of Caracas had accepted the documentation as true and correct and had decided that the claim was not time-barred since it had been submitted in June 1997 and the 1971 Fund had had the opportunity to defend itself.
- 3.2.25 Some delegations which took the floor were of the opinion that since the 1971 Fund had not been notified of the actions within the period required by the 1971 Fund Convention, claims arising from this incident were time-barred *vis-à-vis* the 1971 Fund. These delegations also stated that since the 1971 Fund had not been notified properly and in time and had not been a party to the proceedings, it had not had the opportunity to examine the documentation available in the case and had therefore not had an opportunity to defend its interests, which was a basic principle of law.
- 3.2.26 Some delegations also expressed concern about the apparent failure in some Member States to properly implement the Conventions and about the consequent lack of uniformity in the application of the Conventions in Member States.
- 3.2.27 Some delegations further stated that more information about the facts of the case was needed in order for the 1971 Fund Administrative Council to provide directions to the Secretariat and that a full analysis of the Maritime Court of Appeal's judgement was necessary. Those delegations stated however that, in the meantime, the 1971 Fund should appeal against the judgement in order to protect the interests of the 1971 Fund.
- 3.2.28 In responding to a question raised by one delegation, the Director stated that this judgement highlighted a potential fundamental conflict between the decision of the 1971 Fund Administrative Council that the claims arising from the *Plate Princess* were time-barred against the 1971 Fund and Article 8 of the 1971 Fund Convention which states that final decisions from competent courts in Member States are binding on the 1971 Fund.
- 3.2.29 Answering a question raised by one delegation, the Secretariat explained that, in accordance with Venezuelan law, the 1971 Fund had ten days, from the date when it was notified of the judgement by the Maritime Court of Appeal, to submit its appeal to the Supreme Court.

- 3.2.30 One delegation requested that the Secretariat provide a translation of the relevant parts of the Maritime Court of Appeal judgement. The Secretariat undertook to provide a translation of the relevant parts of the decision for the next session of the 1971 Fund Administrative Council.

1971 Fund Administrative Council Decision

- 3.2.31 The 1971 Fund Administrative Council took note of the information provided by the Secretariat and endorsed the view taken by the Director that the 1971 Fund should appeal against the judgement by the Maritime Court of Appeal before the Supreme Court. It also decided that, once a final decision had been reached in the Venezuelan courts, the Director should, before taking any further action, report the issue to the Administrative Council again with a view to receiving further instructions.

Evoikos

- 3.2.32 It was recalled that all admissible claims for compensation in Malaysia, Singapore and Indonesia had been settled by the shipowner and that the total compensation paid by the shipowner was below the limitation amount applicable to the ship under the 1969 CLC.
- 3.2.33 It was also recalled that the shipowner's insurer had commenced legal actions against the 1971 Fund in London, Indonesia and Malaysia to protect its rights against the 1971 Fund. It was further recalled that whereas the action in Indonesia had been discontinued, the actions in London and in Malaysia had been stayed by mutual consent.
- 3.2.34 The Council noted that the Club had recently given instructions to its lawyers to discontinue the legal action in Malaysia. It was also noted that it was expected that the action in London would be discontinued soon. It was noted that this case could be closed once the pending litigation in London had been finalised.

Alambra

- 3.2.35 It was recalled that in September 2002 the shipowner's insurer (London Club) had filed pleadings in court in respect of the claims presented by the berth-owner in the Port of Muuga and the company contracted by the berth-owner, maintaining that the shipowner had deliberately failed to make the necessary repairs to the *Alambra*, resulting in the ship becoming unseaworthy, and that therefore under the insurance contract as well as under the Merchant Shipping Act, the Club was not liable to pay compensation for the damage resulting from the incident.
- 3.2.36 The 1971 Fund Administrative Council noted that after negotiations between the two claimants mentioned above and the shipowner, a settlement agreement between those two claimants (now merged into one company) and the shipowner, had been signed in June 2009, whereby the claimants undertook to withdraw their claims upon receipt of the sum of US\$ 450 000 from the shipowner, as compensation of their claims. It was also noted that the shipowner's insurer and the 1971 Fund were parties to the agreement.
- 3.2.37 It was noted that the agreed amount had since been received by the claimants and that, in compliance with the agreement, the claims had been withdrawn from the Court. It was also noted that, as part of the agreement, the claimants had released the shipowner's insurer and the 1971 Fund of any obligations arising from the incident and that therefore this case was now closed.

Al Jaziah 1 (Joint incident between the 1971 Fund and the 1992 Fund)

- 3.2.38 The 1992 Fund Executive Committee and the 1971 Fund Administrative Council took note of documents IOPC/OCT09/3/2, IOPC/OCT09/3/2/2 and IOPC/OCT09/3/3 containing information on the *Al Jaziah 1* incident.

- 3.2.39 It was recalled that in a judgement rendered in March 2008 the Court had decided to order the shipowner to pay the Funds an amount of Dhs 6 402 282 (£870 000) and that this amount should be distributed equally between the 1971 Fund and the 1992 Fund.
- 3.2.40 It was further recalled that the Funds' lawyers had been advised by the Court that the shipowner had a heavy burden of debts of some Dhs 63 million, including the judgement awarded in favour of the Funds, that the shipowner had been in prison due to his inability to pay his debts and that he had been released recently from prison after having given an undertaking to pay an amount of Dhs 4 200 (£700) per month from his salary towards the payment of his debts.
- 3.2.41 It was recalled that, at their October 2008 sessions, the governing bodies of the 1971 and 1992 Funds had instructed the Director to approach the shipowner to discuss a settlement, taking into account his financial situation.
- 3.2.42 It was noted that the Funds, through their lawyers in the United Arab Emirates, had approached the shipowner in accordance with the instructions of the Funds' governing bodies.
- 3.2.43 It was noted that in September 2009 the Funds' United Arab Emirates lawyers had informed the Funds that the negotiations with the shipowner had not progressed and that recently the Execution Judge had decided to transfer the file to the United Arab Emirates' nationals department where other debts would be added. It was also noted that the Funds' lawyers had advised that the Funds would have to compete with other creditors and that a certain amount would be set monthly to be distributed *pro rata* between the creditors. It was further noted that, in their view, the best case scenario for the Funds now would be to receive between Dhs 2 000 (£340) and Dhs 3 000 (£500) per month. The governing bodies noted that the Fund's lawyers had also advised the Funds to appeal against the Execution Judge's decision.
- 3.2.44 The governing bodies noted that the Director took the view that, since there was not a matter of principle involved in this case, it was not in the interest of the 1971 Fund, the 1992 Fund or their contributors to continue to incur costs in executing the judgement which might well exceed the amounts which would be recovered. It was further noted that the Director therefore proposed that the Funds should continue to try to recover what they could from the shipowner, but that he should be authorised to discontinue the execution of the judgement once it was clear that the costs would exceed the recoverable amount and that the Funds should then write off the debt.

1992 Fund Executive Committee and 1971 Fund Administrative Council Decision

- 3.2.45 The governing bodies agreed with the Director's proposal and decided that the Funds should continue to try to recover what they could from the shipowner but that he was authorised to discontinue the execution of the judgement once it was clear that the costs would exceed the recoverable amount and that the Funds should then write off the debt.

3.3

Incidents involving the IOPC Funds - 1992 Fund: <i>Al Jaziah 1, N°7 Kwang Min and Shosei Maru</i> Document IOPC/OCT09/3/3		92EC		
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- 3.3.1 The 1992 Fund Executive Committee took note of document IOPC/OCT09/3/3 which contained information relating to the *Al Jaziah 1*^{<2>}, *N°7 Kwang Min* and *Shosei Maru* incidents.

<2>

The Executive Committee noted that the *Al Jaziah 1* was a joint incident between the 1971 Fund and the 1992 Fund, and had been discussed by the 1971 Fund Administrative Council (cf paragraphs 3.2.38 - 3.2.45 above).

N°7 Kwang Min*Claims for compensation*

- 3.3.2 It was recalled that two seaweed culturists who had initially agreed with the assessed amount of KRW 4 591 959 and KRW 5 305 481 respectively, had at a later stage refused to accept the proposed settlement and had commenced legal actions against the owners of the two vessels involved in the incident. It was also recalled that the 1992 Fund had participated in the above legal proceedings as an independent party in order to assist the owner of the *N°7 Kwang Min*, on the premise that, the owner of the *N°7 Kwang Min* being insolvent, the 1992 Fund would ultimately have to pay the compensation.

Legal actions

- 3.3.3 It was recalled that the results of the investigation into the cause of the incident by the Busan Maritime Safety Tribunal had concluded that the liability ratio between the owner of the *N°7 Kwang Min* and the owner of the fishing vessel *N°1 Chil Yang* was 40:60.

Appeal proceedings

- 3.3.4 It was recalled that in July 2008 the Busan District Court had decided to consolidate the legal action of the two seaweed culturists against the owners of the *N°7 Kwang Min* and the *N°1 Chil Yang* and their action against the owner of the *N°1 Chil Yang* and the 1992 Fund to set aside the decision of the Limitation Court.
- 3.3.5 It was also recalled that in August 2008 the Busan District Court had delivered its judgement in relation to both lawsuits, upholding the assessment decision made by the Limitation Court which had confirmed the 1992 Fund's assessment of the claims. It was recalled that the Busan District Court had further ordered the owners of the two vessels to pay the losses of the two seaweed culturists as assessed by the Limitation Court plus interest. The 1992 Fund Executive Committee noted that if the owner of the *N°7 Kwang Min* were unable to pay the losses of the two claimants, the 1992 Fund would still be liable to pay compensation in the amount decided by the Court.
- 3.3.6 It was noted that in June 2009 the two seaweed culturists had appealed to the Supreme Court against the decision of the Busan District Court and that the appeal had been filed against the owners of the vessels and against the 1992 Fund.
- 3.3.7 It was also noted that in September 2009 the Supreme Court had delivered its judgement upholding the decision made by the Busan District Court and that this decision was final. The 1992 Fund Executive Committee noted that the limitation fund of KRW 125 638 796 would therefore be distributed between the claimants in proportion with the assessment made by the Limitation Court and that the 1992 Fund would receive 97.35% of the limitation fund, or KRW 122 million.
- 3.3.8 The 1992 Fund Executive Committee noted with satisfaction that once the limitation fund had been distributed among the claimants, and once the two seaweed culturists had been compensated by the 1992 Fund, the *N°7 Kwang Min* incident could be considered closed.

Shosei Maru

- 3.3.9 It was noted that on 25 August 2009 the owners of the *Shosei Maru*, the 1992 Fund, Sompo Japan Insurance Inc and the bareboat charterer of the *Trust Busan* had reached a settlement agreement, on the basis of which on 17 September 2009 the 1992 Fund had received the amount of ¥74 553 897 from the bareboat charterer of the *Trust Busan*, which corresponded to about 43% of the amount of compensation and survey costs paid by the 1992 Fund for the *Shosei Maru* incident.
- 3.3.10 It was also noted that, according to the agreement, the bareboat charterer of the *Trust Busan* had filed a notice of termination of the proceedings in the Okayama Court, that the Court's order of termination

had been delivered on 5 October 2009 and that it would become definitive and effective one month after being published in the Official Gazette.

- 3.3.11 The 1992 Fund Executive Committee noted with satisfaction that once the limitation proceedings of the *Trust Busan* had been terminated, the incident could be considered closed.

3.4	Incidents involving the IOPC Funds – 1992 Fund: <i>Erika</i>		92EC		
	Document IOPC/OCT09/3/4				

- 3.4.1 The 1992 Fund Executive Committee took note of document IOPC/OCT09/3/4, which contained information relating to the *Erika* incident.

Claims situation

- 3.4.2 It was noted that as at 12 September 2009, 7 131 claims for compensation had been submitted for a total of €388.9 million, that payments of compensation had been made in respect of 5 939 claims for a total of €129.7 million, out of which the shipowner's insurer had paid €12.8 million and the 1992 Fund €116.9 million, and that some 1 016 claims, totalling €31.8 million, had been rejected.

Criminal proceedings

- 3.4.3 It was recalled that the representative of Tevere Shipping, the president of Panship Management and Services, RINA and Total parties had been held criminally liable in a judgement delivered by the Criminal Court of Paris in January 2008 and that a number of civil parties had appealed against this judgement. It was noted that the Court of Appeal in Paris had on 5 October 2009 commenced the appeal hearing which was expected to last eight weeks.

Legal proceedings involving the 1992 Fund

- 3.4.4 It was recalled that legal actions against the shipowner, Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual) and the 1992 Fund had been taken by 796 claimants. It was noted that by 12 September 2009 out-of-court settlements had been reached with a great number of these claimants, that the courts had rendered judgements in respect of most of the other claims, that 19 actions were still pending and that the total amount claimed in the pending actions, excluding the claims by Total, was some €21 million.

Court judgements in respect of claims against the 1992 Fund

- 3.4.5 The Committee took note of three judgements rendered by the Court of Appeal in Rennes.
- 3.4.6 It was noted that the Court of Appeal in February 2009 had confirmed the first instance judgement in respect of a claim by two mussel processors and had decided that there was not a sufficiently close link of causation between the alleged losses and the contamination. It was also noted that, since the claimants had not filed any further appeal, the judgement was now final.
- 3.4.7 It was noted that the Court of Appeal in June 2009 had confirmed the first instance judgement in respect of a claim submitted by the owner of rental apartments which had been rejected on the grounds that the claimant had not proved that there was a sufficiently close link of causation between the alleged losses and the contamination as a result of the *Erika* incident.
- 3.4.8 It was recalled that an estate agent, whose claim for losses suffered in 2000 had been rejected by the Court of First Instance on the grounds that he had not proved to have suffered losses as a result of the contamination caused by the *Erika* incident, had appealed against the judgement and had also presented an additional claim to the Court of Appeal for losses incurred in 2001. It was noted that the Court of Appeal had confirmed the decision by the Court of First Instance and had held that the additional claim for 2001 was time-barred under Article VIII of the 1992 Civil Liability Convention (1992 CLC) and Article 6 of the 1992 Fund Convention.

Legal proceedings by the Commune de Mesquer against Total

- 3.4.9 It was recalled that a legal action had been brought by the Commune de Mesquer against Total before the French Courts, where it had argued that the cargo on board the *Erika* was in fact a waste under European law, and that the Court of Cassation had transferred the case to the Court of Appeal in Bordeaux for a decision on whether or not Total had contributed to the occurrence of the pollution caused by the *Erika* incident.

3.5	Incidents involving the IOPC Funds – 1992 Fund: <i>Prestige</i>		92EC		
	Document IOPC/OCT09/3/5				

- 3.5.1 The 1992 Fund Executive Committee took note of document IOPC/OCT09/3/5, which contained information relating to the *Prestige* incident.

CLAIMS FOR COMPENSATION

Spain

- 3.5.2 It was noted that as at 2 September 2009, the Claims Handling Office in La Coruña had received 844 claims totalling €1 020.7 million, including 14 claims from the Spanish Government totalling €968.5 million.
- 3.5.3 It was also noted that as at 2 September 2009, 794 (95.66%) of the claims other than those of the Spanish Government had been assessed for €3.9 million (£3.5 million) and that interim payments totalling €527 327 (£461 991)^{<3>} had been made in respect of 173 of the assessed claims, mainly at 30% of the assessed amount.
- 3.5.4 It was noted that the experts engaged by the London Steamship Owners' Mutual Insurance Association Ltd (London Club) and the 1992 Fund had provisionally assessed the claim by the Spanish Government at €266.5 million and that a letter explaining the assessment had been sent to the Government.

France

- 3.5.5 It was noted that as at 2 September 2009, 482 claims totalling €109.7 million had been received by the Claims Handling Office in Lorient, including the claims by the French Government totalling €67.5 million. It was also noted that, of the 482 claims submitted to the Claims Handling Office, 454 claims (94%) had been assessed for €50 million and that interim payments totalling €5.3 million had been made at 30% of the assessed amounts in respect of 346 claims.
- 3.5.6 It was noted that the claims submitted by the French Government had been assessed at €38.5 million and that a letter had been sent to the Government explaining the assessment.

LEGAL PROCEEDINGS IN SPAIN

Investigations into the cause of the incident

- 3.5.7 It was recalled that shortly after the incident, the Criminal Court in Corcubi3n (Spain) had started an investigation into the cause of the incident to determine whether any criminal liability could arise from the events. It was also recalled that the Court was investigating the role of the Master, Chief Officer and Chief Engineer of the *Prestige* and of a civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain.

^{<3>} Compensation payments made by the Spanish Government to claimants have been deducted when calculating the interim payments.

- 3.5.8 It was recalled that in March 2009 the Criminal Court in Corcubi3n had issued a decision declaring the instruction of the case as concluded. It was also recalled that in the decision the Court had exonerated from liability the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain and had decided to continue the proceedings against the Master, Chief Officer and Chief Engineer of the *Prestige*. It was further recalled that some of the parties to the criminal proceedings had appealed against that decision, pleading that the Appeal Court had declared the nullity of the Corcubi3n Court's decision in respect of the non-liability of the civil servant mentioned above.
- 3.5.9 The Committee noted that in October 2009 the Court of Appeal in La Coru3a (Audiencia Provincial) had overturned the Criminal Court's decision and had decided to reinstate the proceedings against the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain and that this trial was likely to take place in 2010.

Debate

- 3.5.10 One delegation asked whether the Criminal Court would also decide on the civil liabilities arising from the events. The Secretariat answered that this was indeed the situation since there would be a trial where the Criminal Court would decide both the criminal and civil liabilities of the Master, Chief Officer and Chief Engineer of the *Prestige* and of a civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain.

Claims in court

- 3.5.11 It was noted that some 4 010 claims, including claims by the Spanish Government, had been lodged in the legal proceedings before the Criminal Court in Corcubi3n (Spain) and that 612 of those claims involved persons who had submitted claims directly to the 1992 Fund through the Claims Handling Office in La Coru3a. It was also noted that details of the claims made in some of those court actions had been provided by the Court and were being examined by the experts engaged by the 1992 Fund, and that the experts had examined documentation relating to 382 of the claims submitted in court, out of which three had been settled and paid for a total amount of €24 267.
- 3.5.12 It was noted that 1 994 of these claims had been paid by the Spanish Government under the Royal Decrees^{<4>} or by the 1992 Fund through the Claims Handling Office in La Coru3a, that a number of claimants who had been paid by the Spanish Government under the Royal Decrees had withdrawn their claims from the court proceedings and that it was expected that more claimants would withdraw their court actions for the same reason.

LEGAL PROCEEDINGS IN FRANCE

- 3.5.13 It was recalled that 232 claimants, including the French Government, had brought legal actions against the shipowner, the London Club and the 1992 Fund in 16 courts in France, requesting compensation totalling some €111 million, including €67.7 million claimed by the Government. It was also recalled that since 39 of these claimants had withdrawn their actions, 193 actions remained pending in court for a total of €92.6 million.

LEGAL PROCEEDINGS IN USA

- 3.5.14 It was recalled that the Spanish State had taken legal action against the American Bureau of Shipping (ABS) before the Federal Court of First Instance in New York requesting compensation for all damage caused by the incident, estimated to exceed US\$1 billion, maintaining, *inter alia*, that ABS had been negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel and had been negligent in granting classification.

<4> Some 397 claims under the Royal Decrees have been rejected by the Spanish Government.

- 3.5.15 It was also recalled that ABS had denied the allegation made by the Spanish State and had in its turn taken action against the State, arguing that if the State had suffered damage this was caused in whole or in part by its own negligence, and had requested that the State be ordered to indemnify ABS for any amount that ABS might be obliged to pay pursuant to any judgement against it in relation to the *Prestige* incident.
- 3.5.16 It was recalled that in January 2008 the New York Court had accepted ABS's argument that ABS fell into the category of 'any other person who performs services for the ship' under Article III.4(b) of the 1992 CLC. It was also recalled that the Court had further ruled that, under Article IX.1 of the 1992 CLC, Spain could only make claims against ABS in its own courts and that it had therefore granted ABS's motion for summary judgement, dismissing the Spanish State's claim.
- 3.5.17 The Committee noted that the Court of Appeal had rendered a decision in June 2009, reversing both the dismissal of Spain's case and the dismissal of ABS's counterclaims, which the District Court had held did not fall under an exception to the Foreign Sovereign Immunities Act (FSIA).
- 3.5.18 With respect to Spain's claim, it was noted that the Court of Appeal had held that the 1992 CLC could not divest a US federal court of subject matter jurisdiction but that in sending the case to the District Court, the Court of Appeal had stated that the District Court might still exercise its discretion to decline jurisdiction based on *forum non conveniens* or principles of international comity.
- 3.5.19 With respect to ABS' original counterclaim that had been dismissed based on the US FSIA, it was noted that the Court of Appeal had held that ABS's counterclaims did arise out of issues of duty and causation which were 'similar, if not identical' to the issues raised by Spain's claim and had therefore reinstated the original counterclaims by ABS.
- 3.5.20 It was noted that the case had now been sent to the District Court Judge for further consideration.

3.6

Incidents involving the IOPC Funds – 1992 Fund: <i>Solar 1</i>			
Document IOPC/OCT09/3/6		92EC	

- 3.6.1 The 1992 Fund Executive Committee took note of document IOPC/OCT09/3/6, which contained information relating to the *Solar 1* incident.

CLAIMS FOR COMPENSATION

- 3.6.2 The 1992 Fund Executive Committee took note of the claims situation as reported in section 5 of the document IOPC/OCT09/3/6. It was noted that some 32 465 claims had been received and that payments totalling PHP 983 million (£10.7 million) had been made in respect of 27 002 claims, mainly in the fisheries sector.
- 3.6.3 It was also noted that some 17 claims remained to be assessed pending receipt of further information from claimants and/or experts and that, to the extent that these claims were not time-barred, they would be settled as soon as possible.

Economic losses in the capture fisheries sector

- 3.6.4 It was noted that, of the 27 812 claims received from fisherfolk, some 26 041 had been settled for PHP 190.6 million (£2.04 million) and 598 had been rejected. It was also noted that the remaining 1 173 claims were part of a batch submitted by a law firm in Manila on behalf of the claimants, to which an offer of settlement had been made, which had been contested. It was noted, however, that since claims office staff in Iloilo had ensured that claimants were aware of the approaching time bar, a number of individuals had chosen to remove their claims from the group action and had since been compensated individually.

Economic losses in the mariculture sector

- 3.6.5 It was noted that the Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club) and the 1992 Fund had received 771 claims from seaweed farmers and fishpond operators for damage to their crop as a result of the contamination, that some 199 of these claims had been paid for a total of PHP 3.34 million (£41 514) and that a further 462 claims had been rejected. It was also noted that two additional claims had been received recently and remained to be assessed.
- 3.6.6 It was noted that all other remaining claims in this category, relating to seaweed farming, had been assessed and offers had been made, but these had been rejected by the claimants.

Miscellaneous claims

- 3.6.7 It was noted some 169 claims for economic losses had been received mainly from convenience stores and livestock farmers, of which all except two had now been assessed, with the majority being rejected. It was also noted that a small number of claims under this heading related to costs incurred by several municipal authorities and provincial government agencies in connection with the spill, of which three had been paid for a total of PHP 3.59 million (£40 637), one had been withdrawn and a further five would be approved shortly. It was further noted that the remaining two unassessed claims, from the Bureau of Fisheries (BFAR) and the University of the Philippines in Visayas (UPV) so far lacked the necessary supporting information for the claims to be assessed.

Property damage

- 3.6.8 It was noted that a total of 3 260 claims had been received for damage to fishing gear, fishing boats and beach front properties of which 670 had been paid for a total of PHP 4.96 million (£59 127) and some 2 465 claims had been rejected. It was also noted that one claim remained to be assessed in principle, should the claimant provide further information as requested or bring court action before the time bar.

Tourism

- 3.6.9 It was noted that the Shipowners' Club and the 1992 Fund had received some 425 claims in the tourism sector of which 75 had been settled and paid for a total of PHP 5.38 million (£63 904), while 329 had been rejected because of insufficient proof that the claimants had suffered losses as a result of the pollution. It was also noted that the 16 most recently received claims related to alleged continued losses throughout 2008/2009 of which six had been rejected and ten were being examined.

Clean up and preventive measures

- 3.6.10 It was noted that 28 claims had been submitted in relation to clean-up and preventive measures by individuals, clean-up contractors, Petron Corporation and government agencies. It was also noted that 14 claims had been settled for a total of PHP 775.55 million, which included a final payment to Petron for activities relating to shoreline clean-up and a number of small individual claims for additional clean-up measures taken. It was noted that 11 claims had been rejected.
- 3.6.11 It was noted that one claim, relating to costs incurred by the Philippine Coastguard (PCG) in respect of response measures, remained to be assessed as and when supporting information was received. It was also noted that the PCG had taken court action to allow more time to provide the necessary supporting information requested previously. It was further noted that the claim for PCG's involvement in the oil removal operation, which had provisionally been assessed at PHP 14.1 million (£177 509), would be paid as soon as the PCG signed the appropriate receipt and release document.

Time bar and court actions

- 3.6.12 It was noted that, since the three year time bar period for most claims in this incident had been reached in August 2009, the 1992 Fund, together with the Philippine authorities and the claims office staff in Iloilo, had taken steps to ensure claimants were aware of the potential risk of losing their right to

compensation. It was noted, however, that, other than the Philippine Coastguard, claimants had not reacted or had continued to reject existing offers of settlement despite the risk of losing their compensation rights.

3.7	Incidents involving the IOPC Funds – 1992 Fund: <i>Volgoneft 139</i> Document IOPC/OCT09/3/7		92EC		
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- 3.7.1 The 1992 Fund Executive Committee took note of document IOPC/OCT09/3/7, which contained information relating to the *Volgoneft 139* incident.

Limitation proceedings and the 'insurance gap'

- 3.7.2 It was recalled that in February 2008 the Arbitration Court of Saint Petersburg and Leningrad Region had issued a ruling declaring that the shipowner's limitation fund had been constituted by means of an Ingosstrakh letter of guarantee for RUB 116 636 700 equivalent to 3 million SDR.
- 3.7.3 It was also recalled that the 1992 Fund had presented pleadings arguing that the current limit of the shipowner's liability under the 1992 CLC was 4.51 million SDR and that, under the Russian Constitution, international conventions to which the Russian Federation was a party took precedence over Russian internal law and that therefore the Court's ruling establishing the shipowner's limitation fund at only 3 million SDR should be amended. It was also noted that the Court of Appeal and the Court of Cassation had dismissed the 1992 Fund's appeals and had confirmed the ruling by the Arbitration Court of Saint Petersburg and Leningrad Region.
- 3.7.4 It was noted that at a hearing in September 2009 the 1992 Fund had informed the Court of the developments regarding the assessment of claims and had submitted all the letters sent to the claimants. It was also noted that at that hearing the Court had stated that in its opinion, even though the amendments to the limitation amounts under the 1992 CLC and the 1992 Fund Convention, which had entered into force on 1 November 2003, had now been officially published in the Russian Federation and were therefore officially part of Russian national law, it would not be appropriate to alter the established limit of the shipowner's liability. It was further noted that the next hearing was scheduled to take place on 8 December 2009.

Cause of the incident

- 3.7.5 It was recalled that Ingosstrakh had submitted a defence in the Arbitration Court of Saint Petersburg and Leningrad Region arguing that the incident was wholly caused by a natural phenomenon of an exceptional, inevitable and irresistible character and that therefore no liability should be attached to the owner of the *Volgoneft 139* (Article III.2(a) of the 1992 CLC). It was recalled that if this argument were to be accepted by the Court, the 1992 Fund would have to pay compensation to the victims of the spill from the outset (Article 4.1(a) of the 1992 Fund Convention).
- 3.7.6 It was noted that shortly after the incident the Russian authorities had imposed an administrative sanction on the shipowner for having caused pollution damage in breach of Russian law and that the shipowner had appealed against the fine before the Arbitration Court of Krasnodar.
- 3.7.7 It was noted that in February 2008 the Arbitration Court of Krasnodar had decided to reject the appeal and had confirmed the sanction. It was also noted that in its reasoning the Court had stated that no evidence had been provided to the Court that the storm of 11 November 2007 had a special or abnormal character. It was further noted that the Court had also stated that the incident was not unavoidable and that the Master had not taken all possible measures to avoid the breaking of the vessel and the pollution. The 1992 Fund Executive Committee noted that it could be inferred from this decision that the Court in Krasnodar considered that this was not a case of *force majeure*.

- 3.7.8 It was also noted that at the hearing in September 2009 the Arbitration Court of Saint Petersburg and Leningrad Region had noted that the majority of the claimants represented in the proceedings did not agree with Ingosstrakh's position in respect of the storm. It was further noted that the Court had also stated that its preliminary view was that the storm did not seem to be something exceptional or unavoidable and that it was a normal maritime risk which shipowners should always take into account.

Claims for compensation

- 3.7.9 The 1992 Fund Executive Committee took note of the claims situation as at 9 September 2009 as summarised in section 9 of document IOPC/OCT09/3/7.
- 3.7.10 It was noted that the Regional Government had submitted claims for costs incurred in clean-up operations (RUB 121.6 million) and environmental reinstatement (RUB 1 819.6 million) and that some of these claims for clean-up operations had been provisionally assessed in the amount of RUB 22.7 million.
- 3.7.11 It was recalled that the Kerch Merchant Port (Ukraine) had submitted a claim before the Arbitration Court in Saint Petersburg and Leningrad Region, totalling RUB 15 341 177, in respect of damage to property and costs incurred in clean-up operations. It was noted that under Article II(b) of the 1992 CLC, pollution damage included the costs of preventive measures, wherever taken, to prevent or minimise pollution damage and that although Ukraine was not Party to the 1992 Civil Liability and Fund Conventions at the time of the incident, preventive measures carried out in Ukraine to prevent or minimise pollution damage in the Russian Federation would be admissible under the Conventions. It was noted that since costs incurred in clean-up operations were 'preventive measures' under the Conventions, the Fund's experts were examining this part of the claim.
- 3.7.12 It was noted that a Russian clean-up contractor had submitted a claim for the amount of RUB 63.9 million for the cost of clean-up and preventive measures, which had been assessed in the amount of RUB 50.8 million and the claimant had communicated to the Court its agreement with the assessment.

Metodika claim

- 3.7.13 It was recalled that the Federal service on the supervision in the sphere of the use of the nature (Rosprirodnadzor) had submitted a claim for environmental damage for some RUB 6 048.1 million, based on the quantity of oil spilled, multiplied by an amount of Roubles per ton ('Metodika'). It was also recalled that a claim based on an abstract quantification of damages calculated in accordance with a theoretical model was in contravention of Article I.6 of the 1992 CLC and therefore not admissible for compensation.

Recent developments

- 3.7.14 It was noted that representatives of the 1992 Fund and their experts had visited Moscow and Krasnodar in August 2009, where they had held meetings with the Ministry of Transport, Rosprirodnadzor, several local authorities in the Krasnodar area that had submitted claims for costs incurred during the response to the pollution and a representative of the owner and the charterer of the *Volgoneft 139*. It was noted that the Russian authorities had offered their help to allow the Fund's experts to visit the Vessel Traffic System (VTS) in Kavkaz and to speak to those responsible for it, in order to study further the issue of the cause of the incident.
- 3.7.15 It was noted that, at the meeting with the Ministry of Transport, the representative of that Ministry had explained that the Minister of Transport had sent a formal request to the Deputy Prime Minister of the Russian Federation requesting him to instruct the Ministry of Natural Resources to review the claim by Rosprirodnadzor against the 1992 Fund so that this claim would meet the requirements of the 1992 Conventions and to make amendments to Russian legislation so as to bring it in line with those Conventions, and that a copy of the letter had been provided to the 1992 Fund's delegation.

- 3.7.16 It was also noted that the Ministry of Transport's representative had recalled that the Russian Government, through the Federal Fund of the Ministry of Emergencies, had paid some RUB 48 million towards costs of clean-up operations and that local authorities had requested additional funds from the Federal Government. It was further noted that the suggestion had been made for the Russian Government to submit a claim for the amounts paid from the Federal Fund and put it as a guarantee to cover the insurance gap. It was noted that the Ministry of Transport's representative had stated that the Russian Government would provide documents to support these payments so that the Fund's experts could assess those costs in accordance with the Fund's criteria.
- 3.7.17 It was noted that at the meeting with Rosprirodnadzor in Moscow, a Rosprirodnadzor representative had stated that the Deputy Prime Minister had contacted the Minister of Natural Resources on the Metodika issue, that Rosprirodnadzor had submitted the 'Metodika' claim only to comply with national legislation and that it could not withdraw the claim without prior authorisation from the Ministry of Natural Resources.
- 3.7.18 It was also noted that the 1992 Fund with its experts was planning a new visit to the Russian Federation and Ukraine to meet with claimants and to visit the Vessel Traffic Control system in Kavkaz (Russian Federation) and Kerch (Ukraine), probably in November 2009.

Debate

- 3.7.19 Several delegations expressed their appreciation for the progress which was being made in this case with, *inter alia*, the inventive attempt to resolve the 'insurance gap' issue, the decision by the Arbitration Court of Krasnodar regarding the shipowner's defence of *force majeure* and the high level discussions in the Government of the Russian Federation. The delegations thanked the Secretariat and the Russian delegation for this co-operation and looked forward to a successful resolution of the outstanding issues.

3.8	Incidents involving the IOPC Funds – 1992 Fund: <i>Hebei Spirit</i> Documents IOPC/OCT09/3/8, IOPC/OCT09/3/8/1 and IOPC/OCT09/3/8/2		92EC	
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- 3.8.1 The 1992 Fund Executive Committee took note of documents IOPC/OCT09/3/8 and IOPC/OCT09/3/8/1 submitted by the Director and of document IOPC/OCT09/3/8/2, a video and a PowerPoint presentation submitted by the Korean delegation, which outlined the progress of the clean-up operations, the opening of the limitation proceedings by the shipowners, the changes in the fishing ground environment, the measures relating to the compensation of claims and the special measures taken by the Korean Government.

Claims for compensation

- 3.8.2 The 1992 Fund Executive Committee noted that, as at 12 October 2009, 7 870 claims, totalling KRW 1 053 billion, had been registered in the *Hebei Spirit* Centre on behalf of 51 145 claimants, and that a further 30 980 claims, totalling about KRW 465 billion, were being registered. It was noted that 1 907 claims had been assessed, of which 978 claims had been rejected. It was also noted that the shipowner's insurer, Assuranceforeningen Skuld (Gjensidig) (Skuld Club), had made payments totalling KRW 65 926 million to 740 claimants, including payments made to the Korean Government totalling KRW 25 105 million in respect of 260 claims paid under the Special Law (cf document IOPC/OCT09/3/8, paragraph 8.3).
- 3.8.3 It was noted that most of the claims received were from small-scale fishermen affected by the oil spill. It was also noted that these claimants were represented by fishery co-operatives or committees and would in the past have been registered and assessed by group rather than individually. It was further noted that in accordance with the Special Law all claimants who had submitted a claim for compensation and had not received an offer of compensation within six months of the submission of their claim were entitled to receive a loan from the Korean Government, provided that they pledged

their rights under the 1992 Conventions to the Korean Government. It was also noted that, in order to comply with Korean law, the 1992 Fund had therefore had to register the name and details of each fisherman member of the co-operative or committee individually. It was further noted that the 1992 Fund had therefore had to redesign the Web-based Claims Management System (WCMS) in order to be able to register each claim individually and at the same time to continue assessing the collective loss of co-operatives or committees.

Recourse action against Samsung C&T Corporation and Samsung Heavy Industries

- 3.8.4 It was recalled that at its session in March 2009 the 1992 Fund Executive Committee had endorsed the decision taken by the Director in January 2009 to commence recourse action against Samsung C&T Corporation and Samsung Heavy Industries (SHI) in the Ningbo Maritime Court in China at the same time as the owner and the insurer of the *Hebei Spirit*, in order to protect the interests of the 1992 Fund.

Fisheries restrictions

- 3.8.5 The 1992 Fund Executive Committee noted that, since early 2009, a number of meetings had taken place between representatives of the Korean Government, the Club and the Fund and their experts, to understand the decision-making process followed by the Korean Government in deciding the dates for the lifting of the fishing restrictions.
- 3.8.6 It was noted that on the basis of the information supplied by the Korean Government to date, the Club's and the Fund's experts had determined the dates when the fisheries restrictions could have been safely lifted and that those dates were based on the results of the chemical analyses conducted by Korean organisations to address seafood safety, as well as on the duration of shoreline clean-up operations, in particular for those types of fisheries conducted near shore and in the intertidal areas. It was also noted that when determining the dates for re-opening the fisheries, allowance was made for the time required for preparation and analysis of samples, as well as the collation, interpretation and dissemination of results, subsequent decision-making and the communication and implementation thereof.
- 3.8.7 The 1992 Fund Executive Committee noted that the Director had taken the view that, based on the information available to date, most of which had been provided by the Korean authorities, it was clear that the fishing restrictions in most cases had been extended beyond the period which could have been considered reasonable on technical and scientific grounds and that therefore, in the Director's view, any losses suffered by fishermen after a point in time where the Korean Government could reasonably have had the opportunity to lift the restrictions on the basis of conclusive scientific information indicating that the contamination was back to below the applicable safety criteria, should not be considered due to the contamination caused by the incident and should not in principle be considered to be admissible for compensation.

Debate

- 3.8.8 The Korean delegation stated that although it understood the position taken by the 1992 Fund in respect of the dates for the lifting of the fisheries restrictions, the results of the scientific analysis were only made available to the Korean Government in late February 2008, and that the Government had waited to have trend data rather than a single sample for each area, before deciding on the re-opening of each fishery. The delegation further stated that the Government had tried to lift the restrictions in early March 2008, but that a number of stakeholders had requested further sampling to be taken. It was stated that it was only after these samples had been collated and analysed that the Government announced the lifting of the restrictions. In view of the Korean delegation the dates when the fishing restrictions were lifted were reasonable. The delegation stated that it would like to continue its informal discussions with the Secretariat in order to resolve this issue.
- 3.8.9 One delegation asked the Secretariat whether it had taken into account grounds other than technical and scientific, such as possible losses caused by a market reaction to the incident, to determine the dates when the fisheries restriction could have been safely lifted.

- 3.8.10 The Secretariat answered that the dates indicated in Table 1 of document IOPC/OCT09/3/8/1, section 2, only referred to the dates when the fisheries restrictions could have been safely lifted from a scientific point of view. It was further explained that possible losses caused by a market reaction to the incident was a separate matter which would have to be considered when assessing claims.

Assessment of small-scale non-fishery claims

- 3.8.11 The 1992 Fund Executive Committee noted that, on the basis of the advice from the Club's and Fund's experts, the Secretariat believed that many small-scale businesses located in the areas affected by the contamination caused by the incident had suffered losses as a result of the pollution but were unable to prove them.
- 3.8.12 It was noted that, in the Republic of Korea, small businesses generating less than KRW 24 million per annum were not required to file any returns for VAT purposes or to keep accounts and that, as a result, most kept either very limited or no records of revenues and/or costs. It was also noted that the Club's and the Fund's experts had been considering various ways to assess claims for losses allegedly suffered by such businesses where information was very poor or non-existent, but that their efforts had been slowed significantly by the extremely limited number of claimants who had so far submitted sufficient supporting information.
- 3.8.13 The 1992 Fund Executive Committee noted that the review of the claims in the tourism sector had allowed the experts to create a pool of claims with reliable information and that they had developed the methodology described in document IOPC/OCT09/3/8/1, section 4.
- 3.8.14 The 1992 Fund Executive Committee noted that, in the Director's view, this methodology had the potential in principle to assist the Fund to assess small-scale accommodation claims submitted with little or no supporting information where the Fund believed there was a loss. It was noted, however, that the Director considered that, because of the underlying uncertainties still inherent in the methodology, in particular in relation to the dimension of the data pool used as reference, such an approach could only be used on a case-by-case basis and only after direct contact with the claimant and a survey of the business, to ensure that genuine claims were compensated in a fair and equitable manner. It was also noted that the Director intended to apply this methodology on a trial basis, in order to gain experience with it and further develop the pool of reliable data and that, after that, he would determine whether it could be considered a sufficiently reliable method for assessing losses suffered by similar small-scale businesses where little or no supporting information was available.

Debate

- 3.8.15 Most delegations who took the floor welcomed the Director's intention to assess claims from small-scale accommodation businesses based on the proposed methodology. All these delegations but one stated that the methodology, although representing a divergence from traditional assessment methods, would still be based on the Fund's basic principle that a claimant would only be compensated provided that he or she had suffered a quantifiable loss and that the amount was proven.
- 3.8.16 One delegation stated that, in order to avoid a lengthy assessment process, a possible way forward to assess the large number of small-scale non fishery claims was for the Korean Government to suggest to claimants to group themselves into associations so as to facilitate the assessment of their claims.
- 3.8.17 A number of delegations stated that although they agreed in principle with the proposal by the Director, caution should be applied to avoid the risk of paying compensation to claimants who might not have suffered losses as a result of the pollution. It was also pointed out that the proposed method should be endorsed as a case-specific solution based on the unique situation of the *Hebei Spirit* incident and that a general solution to the issue of mass claims should be discussed in the 6th Intersessional Working Group (cf paragraphs 4.3.7 - 4.3.9).

- 3.8.18 The Director pointed out that the assessment of the small-scale non-fishery claims would be carried out on a trial basis and since the methodology which would be applied was new, it would necessarily be time-consuming.
- 3.8.19 Several delegations stated that, in view of the importance of this new method to assess claims, it was necessary to give the Secretariat sufficient time to conduct the trial assessment of claims.

1992 Fund Executive Committee Decision

- 3.8.20 The 1992 Fund Executive Committee endorsed the Director's intention to assess claims from small-scale businesses based on the proposed methodology and to apply this methodology on a trial basis. The Committee also decided to give the Secretariat sufficient time to conduct the trial assessment of claims and instructed the Director to report its outcome to the Committee.

Level of payment

- 3.8.21 The 1992 Fund Executive Committee noted that the most recent estimate of the total amount of the losses caused by the spill was between KRW 542 000 million and KRW 577 000 million and that the Director proposed to maintain the level of the 1992 Fund's payments at 35%, to be reviewed at the next session of the 1992 Fund Executive Committee. One delegation strongly suggested that since it was not known what decision would be taken by the Korean Courts with regard to unlicensed aquaculture farmers, the total estimated losses of between KRW 580 000 million to KRW 615 000 million considered by the 1992 Fund Executive Committee at its June 2009 session should be retained.
- 3.8.22 The Committee also noted that in this incident, the level of payment had so far been determined on the basis of the best estimates of the Club's and Fund's experts in respect of the various categories of claims. It was also noted that this had been done for practical reasons, since it had been clear from a very early stage that the total amount of the admissible losses was going to exceed the amount available for compensation under the 1992 Conventions but the number of claims submitted (or known to be submitted) had, until now, been insufficient to determine an appropriate level of payment.
- 3.8.23 It was noted that claims totalling KRW 1 053 billion (£517 million) had been registered and that further claims totalling some KRW 435 billion (£228.6 million) were being registered. It was also noted that if the 1992 Fund Executive Committee were to use these figures, with the usual safety margin for the 1992 Fund, the level of payment would be about 15%.
- 3.8.24 It was further noted that if the 1992 Fund were to calculate the level of payment on the basis of the claims likely to be submitted in the future, and if it were to use the total amount claimed in the limitation proceedings for this purpose, ie KRW 3 597 billion (£1 742 million), with the usual safety margin for the Fund, the level of payment would be about 5-6%.
- 3.8.25 The 1992 Fund Executive Committee noted that, on the basis of the information available, many claims submitted in the limitation proceedings appeared to be for losses which were not admissible under the 1992 Conventions, that in past incidents in the Republic of Korea claims were generally settled for significantly lower amounts than those originally claimed and that the Korean courts had tended to uphold the assessment of losses based on the Fund's criteria for admissibility of claims.
- 3.8.26 It was noted that, on the basis of the information available, and the remaining uncertainties, as set out in document IOPC/OCT09/3/8/1, and taking into account that the advice from the Club's and Fund's experts was still the most reliable and realistic estimate of the total exposure of the 1992 Fund in this case, the Director had taken the view that maintaining the level of payment at 35% would continue to provide the 1992 Fund with sufficient protection against a possible overpayment situation, even though determining the level of payment on claims submitted (and expected to be submitted), as the Fund had done in previous cases, would lead to a significantly lower percentage.

1992 Fund Executive Committee Decision

- 3.8.27 The 1992 Fund Executive Committee, in view of the remaining uncertainties as to the total amount of admissible claims, decided to maintain the level of payments at 35% of the amount of the loss or damage as assessed by the 1992 Fund's experts, and that this level of payments should be reviewed at its next session.

3.9	Incidents involving the IOPC Funds – 1992 Fund: Incident in Argentina Document IOPC/OCT09/3/9		92EC		
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- 3.9.1 The 1992 Fund Executive Committee took note of document IOPC/OCT09/3/9, which contained information relating to an incident in Argentina.

Legal proceedings

- 3.9.2 It was 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)*. It was also recalled that the shipowner and the insurer of the *Presidente Illia* contested liability and that the shipowner had appealed against the decision, arguing that the oil which impacted the coast must have come from another source.

Claims for compensation in Court

- 3.9.3 It was recalled that a claim for compensation, which had not been quantified, 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 recalled that the claim related to damage caused by the incident including damage to the environment. It was also recalled that the shipowner had submitted points of defence denying his liability for the spill and requesting that the Court bring the 1992 Fund into the proceedings.
- 3.9.4 It was noted that some 30 inhabitants of the area had been admitted by the Court in Comodoro Rivadavia as claimants and that it was expected that they would quantify their claims at a later stage.

Claims situation

- 3.9.5 It was noted that as at 8 October 2009, 81 claims, for a total of AR\$10 million, had been submitted to the expert acting as the focal point for the West of England Ship Owner's Mutual Insurance Association (Luxembourg) (West of England Club) and the 1992 Fund in Argentina by fishermen and tourism related businesses, and that the claims were being examined by the Club's and Fund's experts.

4 Compensation matters

4.1	Reports of the 1992 Fund Executive Committee on its 43rd - 45th sessions	92AC			
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- 4.1.1 The Chairman of the 1992 Fund Executive Committee, Mr Daniel Kjellgren (Sweden), informed the 1992 Fund Administrative Council of the work of the Committee during its 43rd - 45th sessions (cf documents 92FUND/EXC.43/2, 92FUND/EXC.44/10 and 92FUND/EXC.45/8).

1992 Fund Administrative Council

- 4.1.2 The 1992 Fund Administrative Council endorsed the report of the 1992 Fund Executive Committee and expressed its gratitude to the Committee's Chairman, its Vice-Chairman and its members for their work.

4.2	Election of members of the Executive Committee Document IOPC/OCT09/4/1	92AC			
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1992 Fund Administrative Council Decision

In accordance with 1992 Fund Resolution N°5, the 1992 Fund Administrative Council elected the following States as members of the 1992 Fund Executive Committee to hold office until the end of the next regular session of the Assembly:

Eligible under paragraph (a)	Eligible under paragraph (b)
Canada	Cameroon
France	China (Hong Kong Special Administrative Region)
Germany	Cyprus
Japan	Liberia
Netherlands	Philippines
Singapore	Sweden
Spain	Trinidad and Tobago
	Uruguay

4.3	Procedures for the assessment of large numbers of claims for relatively small amounts, in particular where claimants cannot prove their losses Document IOPC/OCT09/4/2/Rev.1	92AC		SA	
	Any other business: Funding of interim payments – submitted by the International Group of P&I Clubs Document IOPC/OCT09/10/1	92AC		SA	

4.3.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly noted that, as instructed by the 1992 Fund Executive Committee at its June 2009 session, the Director had investigated the possibility of developing alternative procedures for the assessment of large numbers of claims for relatively small amounts, in particular where claimants could not prove their losses.

4.3.2 The governing bodies took note of document IOPC/OCT09/4/2/Rev.1 in which the Director had identified four main issues facing the 1992 Fund:

- (a) the fact that large numbers of individual claims put a very heavy burden on the experts and other persons involved in the claims handling process;
- (b) the fact that many claimants could not prove their losses to the extent and with the degree of detail that the Funds normally required from claimants;
- (c) the fact that efforts by the Club and the Funds to help those claimants establish their losses were very time-consuming and could therefore lead to undesirable delays in the assessment (and payment) of claims; and
- (d) the fact that efforts by the Club and the Funds to help those claimants establish their losses were very resource-intensive and time-consuming and could therefore lead to a major increase in the costs incurred to assess such claims.

4.3.3 The governing bodies recalled the extent to which these or similar problems had occurred in the past and how they had been dealt with in previous incidents. They also noted the Director's preliminary suggestions as to how these problems could be dealt with under the 1992 Conventions.

- 4.3.4 A representative of the International Group of P&I Clubs introduced document IOPC/OCT09/10/1 which the Group had submitted on the subject of the funding of interim payments to claimants. The representative explained that a number of incidents handled by the IOPC Funds had demonstrated that interim payments could give rise to difficult issues, particularly when there was a risk of admissible claims exceeding the maximum available compensation, and that, as interim payments were normally funded in the first instance by the Clubs, it had been the Clubs who had had the primary need to address these issues.
- 4.3.5 All delegations that took the floor stated that the documents submitted by both the Director and the International Group of P&I Clubs covered complex subjects which were very important for the functioning of the international compensation regime and that, although the issues covered in the documents were of a different nature, they could be joined together into a common intersessional Working Group where Member States could express their views on the various matters raised.
- 4.3.6 All delegations in their interventions pointed out that the Working Group should have an open mandate which would allow it to have an open and free exchange of views in its consideration of the issues raised in the documents. Two delegations suggested that the Working Group should be prepared to consider all possible ways to improve the international compensation regime, which could even involve a possible revision of the terms agreed in the 1992 Civil Liability and Fund Conventions.

1992 Fund Administrative Council Decision

- 4.3.7 In view of the importance and complexities of the issues raised in documents IOPC/OCT09/4/2/Rev.1 and IOPC/OCT09/10/1, the 1992 Fund Administrative Council decided to establish an intersessional Working Group to consider the procedures for the assessment of large numbers of claims for relatively small amounts, in particular where claimants could not prove their losses, and also the question of the funding of interim payments to claimants.
- 4.3.8 The 1992 Fund Administrative Council instructed the Director, in consultation with the International Group of P&I Clubs, to draft terms of reference for the intersessional Working Group and to submit them to the Administrative Council later in the week for its consideration and approval.
- 4.3.9 The terms of reference for the intersessional Working Group as approved by the 1992 Fund Administrative Council are in Annex II to this document.

4.4	Consideration of the definition of 'ship' Document IOPC/OCT09/4/3	92AC		SA	
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- 4.4.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly recalled that, in October 2008, the 1992 Fund Executive Committee had considered the definition of 'ship' in connection with the *Slops* incident and, after discussion, had instructed the Director to further examine the 1992 Fund's policy regarding that definition and to present a document for consideration by the 1992 Fund Assembly at its October 2009 session.
- 4.4.2 The governing bodies noted that the Director had further examined the 1992 Fund's policy on the definition of 'ship', in particular in relation to floating storage units (FSUs) such as the *Slops*, with a view to determining whether there was a serious risk of unequal treatment as a result of courts in some, but not all, Member States applying the definition of 'ship' in accordance with the 1992 Fund's policy. They noted that he had also examined whether, if that were the case, the choice of another, wider policy on the definition of 'ship' would diminish that risk. They also noted that, to provide the Assembly with a complete overview, the Director had reviewed the relevant policy considerations and decisions taken within the Organisation over the years.
- 4.4.3 The governing bodies noted that the *Slops* incident had made it clear that incidents with FSUs could occur and might cause serious pollution damage, and also that there was room for an interpretation regarding the applicability of the 1992 Conventions to FSUs which was different from the restrictive interpretation which had been chosen by the 1992 Fund Assembly.

- 4.4.4 The governing bodies noted the Director's view that, while there were a number of similarities between a ship and an FSU, there were nevertheless quite distinct differences in the way FSUs were operated compared to tankers, and these differences needed to be taken into account when deciding whether and to what extent their activities should be covered by the 1992 Conventions. They also noted that the Director considered it incumbent upon the States Parties to the international compensation regime to reconcile the two perceptions and make sure that the boundaries of the applicability of the international regime were clear, sensible and defensible.
- 4.4.5 The governing bodies noted that the Director was of the view that it would probably be difficult to get sufficient agreement between Member States on a policy which would secure the applicability of the 1992 Conventions to FSUs such as the *Slops* by moving away from the notion that coverage of FSUs under the international regime could only exist when they were transporting oil to or from a port or terminal in the territory or territorial sea of States Parties to the 1992 Conventions. The governing bodies recognised that such a policy change in respect of FSUs would give rise to the question as to where the line would have to be drawn next, since there were a variety of offshore craft other than FSUs engaged in operations during which, at some point, they contained significant quantities of persistent oil. The governing bodies also accepted that such a policy change would have consequences for the application of the 1992 CLC as well, in that FSUs such as the *Slops* would become subject to strict liability and, in many cases, compulsory insurance, which would have an impact on the shipowner in view of the insurance arrangements for such craft, as well as on Member States in connection with the certification of such craft. It was also noted that if an FSU were to be considered a 'ship' for the purposes of liability, it could be questioned whether it could at the same time be considered equal to a 'port or terminal installation' for the purposes of receipts of contributing oil (as had been decided by the 1992 Fund Assembly in October 2006).
- 4.4.6 Most delegations agreed with the Director's view that making a policy change so that pollution damage caused by FSUs such as the *Slops* would be covered under the international regime, would necessitate in-depth research, both into the way the operations of such craft were carried out and as regards the consequences of such change in practice. Thus they suggested that further work was needed to explore the possibility of such a policy change because of the importance of the issue. Upon the proposal of one delegation, the majority of delegations supported the use of outside consultants to carry out the analysis and fact-finding, so as not to overburden the Secretariat.
- 4.4.7 Some delegations were opposed to further work to explore the possibility of changing the policy because, in their view, a decision in one particular court case in a Member State was not sufficient to justify changing the policy. One delegation stated that such a far-reaching policy change should be carefully considered, keeping in mind the feasibility of the collection of levies and the maintenance of financial security of responsible parties, and in its view, could only be achieved by revising the 1992 Conventions.
- 4.4.8 The observer delegation of CMI stated that in the past CMI had undertaken work to unify the definition of 'ship' in various conventions, but that it had proved impossible to satisfy all parties concerned. That delegation added, however, that CMI would be happy to assist with the consideration of the definition of 'ship'.

1992 Fund Administrative Council and Supplementary Fund Assembly Decision

- 4.4.9 The governing bodies decided that the 1992 Fund and the Supplementary Fund should further explore the possibility of a change in the interpretation of the definition of 'ship', in particular in connection with the question as to whether pollution damage caused by FSUs such as the *Slops* should be covered under the 1992 Fund Convention.
- 4.4.10 The governing bodies instructed the Director to undertake this work, engaging outside consultants, and to submit the result to the governing bodies at their next regular session.

4.5	STOPIA 2006 and TOPIA 2006 Document IOPC/OCT09/4/4	92AC		SA	
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4.5.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT09/4/4 regarding the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.

4.5.2 The governing bodies noted that in September 2009 the International Group of P&I Clubs (International Group) had provided the 1992 Fund with a list of ships entered in STOPIA 2006 in the second half of 2009, which had contained 6 537 tankers. It was also noted that since 2008, 1 078 more small tankers had been entered in STOPIA 2006.

4.5.3 It was noted that the situation with regard to the Japanese coastal (Naiko) tankers was as follows:

Year	Number of Japanese Coastal Tankers entered in Japan P&I Club	Entered in STOPIA 2006	% entered in STOPIA 2006
2008/2009	589	341	57.9
2009/2010	580	343	59.1

Year	Number of Japanese Coastal Tankers > than 200 GT entered in Japan P&I Club	Entered in STOPIA 2006	% entered in STOPIA 2006
2008/2009	176	163	92.6
2009/2010	173	162	93.6

4.5.4 The governing bodies noted that the total number of vessels entered in STOPIA 2006 as at September 2009, and that of vessels presently entered in International Group Clubs but not entered in STOPIA 2006, as well as those reported in October 2008, was as follows:

Year	Number of tankers entered in STOPIA 2006	Number of tankers not entered in STOPIA 2006	Total	% of total entered in STOPIA 2006
2008/2009	5 459	248	5 707	95.7
2009/2010	6 537	237	6 774	96.5

4.5.5 It was noted that in September 2008 the International Group of P&I Clubs had reported to the Funds that the number of 'Relevant Ships' entered in a P&I Club and not entered in TOPIA 2006 had been nil, and that the number of 'Relevant Ships' which had ceased to be entered in TOPIA 2006 whilst still insured by a P&I Club had also been nil.

4.5.6 The governing bodies noted that the International Group had also reported to the Funds that it had been informed by the Japan P&I Club that the coastal tankers entered in the Japan P&I Club which had been entered in STOPIA 2006 by written agreement were not also entered in TOPIA 2006 because the size of those coastal tankers was generally so small that it was considered most unlikely that the costs of claims for pollution damage arising from an incident with such a tanker would exceed the 1992 Fund limit, ie 203 million SDR. It was also noted that the number of those tankers not entered in TOPIA 2006 because they were not participating in the pooling arrangements of the International Group was 580.

5 **Financial reporting**

5.1	Report on submission of oil reports Document IOPC/OCT09/5/1	92AC		SA	71AC
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5.1.1 The governing bodies considered the situation in respect of the non-submission of oil reports, as set out in document IOPC/OCT09/5/1. It was noted that, since the document had been issued, one further State, Cameroon, had submitted its outstanding oil report. It was also noted that 35 States had

outstanding reports for the 1992 Fund (one of which was also a Supplementary Fund Member State), and that four States had outstanding reports for the 1971 Fund.

- 5.1.2 The governing bodies noted that those States which had submitted reports for 2008 represented some 99.25% of the expected total contributing oil within the 1992 Fund (cf document IOPC/OCT09/4/1, Annex I), and therefore the impact on the functioning of the Fund was minimal.
- 5.1.3 The governing bodies were encouraged by contacts the Secretariat had had with the authorities of South Africa (which had reports outstanding for five years for the 1992 Fund) and Indonesia (which had one outstanding report for the 1971 Fund). They expressed their hope that the reports which the Secretariat had seen would soon be submitted by the authorities of South Africa and Indonesia with their requisite counter-signature.
- 5.1.4 The governing bodies were particularly concerned that ten States (one of which was a Supplementary Fund Member) had not submitted any reports since becoming Members of the 1992 Fund, and that two States had never submitted any reports to the 1971 Fund.
- 5.1.5 The governing bodies expressed their serious concern as regards the number of Member States which had not fulfilled their obligations to submit oil reports, since the submission of these reports was crucial to the functioning of the IOPC Funds.

5.2	Report on contributions Document IOPC/OCT09/5/2	92AC		SA	71AC
	Report on contributions: 1992 Fund Document IOPC/OCT09/5/2/1	92AC			
	Report on contributions: Supplementary Fund Document IOPC/OCT09/5/2/2			SA	
	Report on contributions: 1971 Fund Document IOPC/OCT09/5/2/3				71AC

- 5.2.1 The governing bodies took note of the information contained in documents IOPC/OCT09/5/2, IOPC/OCT09/5/2/1, IOPC/OCT09/5/2/2 and IOPC/OCT09/5/2/3.
- 5.2.2 The Director drew the attention of the governing bodies to the amounts of outstanding contributions due from 1992 Fund Member States and 1971 Fund Member States, as summarised in the documents.
- 5.2.3 It was noted that Member States had a legal obligation to ensure contributions were paid and that governments of Member States should take all the necessary steps possible under national law to ensure prompt payment of contributions.
- 5.2.4 The governing bodies noted that, with regard to the 1971 Fund, a large percentage of outstanding contributions related to contributors in the former Union of Soviet Socialist Republics and the Socialist Federal Republic of Yugoslavia.

5.3	Report on investments Document IOPC/OCT09/5/3	92AC		SA	71AC
	Report on investments: 1992 Fund Document IOPC/OCT09/5/3/1	92AC			
	Report on investments: Supplementary Fund Document IOPC/OCT09/5/3/2			SA	
	Report on investments: 1971 Fund Document IOPC/OCT09/5/3/3				71AC

- 5.3.1 The governing bodies took note of the information contained in document IOPC/OCT09/5/3.

- 5.3.2 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the Director's report on the Funds' investments during the period 1 July 2008 to 30 June 2009 contained in documents IOPC/OCT09/5/3/1, IOPC/OCT09/5/3/2 and IOPC/OCT09/5/3/3, respectively. The governing bodies noted the number of investments made during the twelve-month period, the number of institutions used by the Funds for investment purposes, and the amounts invested by each Fund.
- 5.3.3 It was noted that the London clearing bank base rates (UK Base rate) and the European Central Bank Refi rates (ECB Refi rate) had fallen sharply during the period 1 January 2008 – 30 June 2009 from 5.5% to 0.5% and from 4.0% to 1.0%, respectively. It was recognised that this had had a considerable impact on the yields achieved by the Funds on their investments.
- 5.3.4 The governing bodies stated that they would continue to follow the investment activities of the Funds closely.

5.4

Report of the joint Investment Advisory Body Document IOPC/OCT09/5/4	92AC		SA	71AC
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- 5.4.1 The governing bodies took note of the report of the joint Investment Advisory Body (IAB) of the 1992 Fund, the 1971 Fund, and the Supplementary Fund, contained in Annex I to document IOPC/OCT09/5/4.
- 5.4.2 The governing bodies noted that the joint IAB, as in previous years, had held meetings with representatives of the External Auditor and with the Audit Body.
- 5.4.3 It was noted that the joint IAB had recommended to the Director that a more structured but flexible approach to hedging should be introduced, which would ensure that, in principle, 50% of the assessed currency exposure of any incident should be hedged within a six month period from the date that the governing bodies approved a levy in respect of that incident. The governing bodies noted that hedging guidelines had been incorporated and detailed in the revised Internal Investment Guidelines (document IOPC/OCT09/5/4, Annex I, Attachment).
- 5.4.4 The governing bodies took note of the oral report by the IAB with regard to the financial markets. It noted in particular that, given the recent banking crisis, the number of financial institutions with whom the Funds placed investments had declined. The governing bodies noted the joint IAB's recommendation that the maximum investment with each of its house banks should be increased from £15 million to £20 million, and that Financial Regulation 10.4(d) of the three Funds should be amended accordingly.
- 5.4.5 In reply to one delegation's concern as to the appropriate level of hedging the foreign exchange risk, given the current weakness of Pounds sterling, the IAB reiterated that the 50% level was a guideline, and that the Director had the flexibility to hedge more or less than the 50% of the known liability if circumstances so required.

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

- 5.4.6 The governing bodies decided to amend Regulation 10.4 of their respective Financial Regulations to read, *mutatis mutandis*, as follows:

Regulation 10*Investment of Assets*

10.1-10.3 [Unchanged]

- 10.4 The assets of the 1992 Fund shall be held and invested by the Director in accordance with Financial Regulation 10.1 and the following principles:

(a)-(c) [Unchanged]

- (d) the maximum investment in any bank or building society by the 1992 Fund, the 1971 Fund, and the Supplementary Fund, shall not together normally exceed £15 million or £20 million in respect to the Funds' house bank(s) or not normally exceed £25 million when the three Funds' combined assets exceed £300 million;

(e) [Unchanged]

These principles shall be reviewed from time to time.

5.5	2008 Financial Statements and Auditor's Reports and Opinions Document IOPC/OCT09/5/5	92AC		SA	71AC
	2008 Financial Statements and Auditor's Report and Opinion: 1992 Fund Document IOPC/OCT09/5/5/1	92AC			
	2008 Financial Statements and Auditor's Opinion: Supplementary Fund Document IOPC/OCT09/5/5/2			SA	
	2008 Financial Statements and Auditor's Report and Opinion: 1971 Fund Document IOPC/OCT09/5/5/3				71AC

- 5.5.1 The governing bodies took note of the information contained in document IOPC/OCT09/5/5. The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council dealt separately with their Organisation's respective Financial Statements for the financial year 2008. These Statements, together with the External Auditor's Reports and Opinions thereon, were contained in documents IOPC/OCT09/5/5/1, IOPC/OCT09/5/5/2 and IOPC/OCT09/5/5/3 respectively.
- 5.5.2 After the Director's introduction of each document, a representative of the External Auditor, Mr Graham Miller, Director International, introduced the External Auditor's Report and Opinion for each Organisation.
- 5.5.3 The governing bodies each noted with appreciation the Financial Statements of their respective Organisation, as well as the External Auditor's Reports and Opinions contained in Annexes III and IV to document IOPC/OCT09/5/5/1 (1992 Fund), Annex III to document IOPC/OCT09/5/5/2 (Supplementary Fund) and Annexes III and IV to document IOPC/OCT09/5/5/3 (1971 Fund). They also noted that the External Auditor had provided an unqualified audit opinion on the 2008 Financial Statements for each Organisation, following a rigorous examination of the financial operations and

accounts in conformity with applicable audit standards and best practice. The governing bodies noted that the unqualified audit opinions were confirmation that the Organisations' internal financial controls had operated effectively. The governing bodies also expressed their appreciation to the External Auditor for the depth and detail of his Reports.

- 5.5.4 The governing bodies noted the recommendation set out in the External Auditor's report on the 2008 Financial Statements of the 1992 Fund and the 1971 Fund that the IOPC Funds consider shortening the period between the end of the reporting period and the certification of the financial statements, as well as the Director's response to that recommendation. They noted that the recommendation would be raised with the Audit Body at its December 2009 meeting.
- 5.5.5 With regard to this recommendation, one delegation questioned whether the requisite change in the governing bodies' calendar to receive the financial statements at an earlier date would be productive.
- 5.5.6 With regard to the recommendations made for previous years, the governing bodies noted that good progress had been made by the Secretariat and in particular that the credit balances due to a contributor which was a dissolved joint venture between two oil companies had been repaid in December 2008.
- 5.5.7 The governing bodies noted that the Secretariat had worked closely with the External Auditor to resolve two significant issues relating to the adoption of International Public Sector Accounting Standards (IPSAS), namely accounting provisions for compensation claims which had been assessed but not paid, and adjustments to accounting disclosures in respect of post balance sheet events between the end of the accounting period and the certification of the financial statements.
- 5.5.8 One delegation sought the view of the External Auditor with respect to the holding of the Funds' assets in Pounds sterling and enquired as to whether the External Auditor was comfortable with the Funds' hedging position. The External Auditor reassured the governing bodies that in his view this particular risk was being actively managed by the Secretariat, with the assistance of the IAB, within the realms of the Funds' risk management process.
- 5.5.9 The governing bodies noted the recommendation by the joint Audit Body that they approve the Financial Statements of the 1992 Fund, the Supplementary Fund and the 1971 Fund (document IOPC/OCT09/5/6, paragraph 3.1(e)).

1992 Fund Administrative Council Decision

- 5.5.10 The 1992 Fund Administrative Council approved the Financial Statements of the 1992 Fund for the financial year 2008.

Supplementary Fund Assembly Decision

- 5.5.11 The Supplementary Fund Assembly approved the Financial Statements of the Supplementary Fund for the financial year 2008.

1971 Fund Administrative Council Decision

- 5.5.12 The 1971 Fund Administrative Council approved the Financial Statements of the 1971 Fund for the financial year 2008.

5.6	Report of the joint Audit Body – submitted by the Audit Body Document IOPC/OCT09/5/6	92AC		SA	71AC
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- 5.6.1 The Chairman of the Audit Body, Mr Wayne Stuart, introduced document IOPC/OCT09/5/6, containing the joint Audit Body's Report. He explained that, starting this year, the Report would follow a slightly different format from that adopted in the first six years to assist the governing bodies gain a better understanding of the nature of the Audit Body's work. The key change was that the

Audit Body would report on work carried out in response to each item of its mandate and he invited the governing bodies to comment on this approach so that further changes in the reporting format could be considered to ensure that effective communication was maintained with the governing bodies.

- 5.6.2 The governing bodies noted that the Audit Body had planned its outline programme for the three years of its mandate and that it comprised a recurring annual work programme, rotational activities and one-off/occasional activities.
- 5.6.3 The governing bodies further noted that with respect to item (a) of its mandate, the Audit Body approached its work by focusing on financial and operations risks. The governing bodies noted with satisfaction that the Audit Body had continued to monitor the risk management process of the Secretariat in 2009. The governing bodies also noted that the Audit Body had drawn comfort from its understanding of the scope of the audit testing work, to be undertaken by the External Auditor and that there had been constructive dialogue as well as thorough discussion with the External Auditor regarding his findings.
- 5.6.4 The governing bodies further noted that the Audit Body had continued to have regular exchanges with the Investment Advisory Body with an additional meeting in 2009 in respect of the effect that the global financial crisis was having on currencies and investments with particular regard to the Pound sterling.
- 5.6.5 With respect to item (b) of the Audit Body's mandate, the governing bodies took note of the fact that the Audit Body proposed to undertake a review of its own responsibilities and the audit function more generally and that it would report on its findings at the October 2011 sessions. The governing bodies noted that the Audit Body had renewed its efforts to improve communication with the governing bodies by formally inviting the Chairpersons of the governing bodies to attend any session of the Audit Body of interest to them. With respect to the adoption, in principle, of the International Public Sector Accounting Standards (IPSAS), the governing bodies noted with satisfaction that the Audit Body had completed its assessment of the implications for the Funds of adopting IPSAS from the financial year 2010 and had agreed with the Secretariat that it was now appropriate to recommend these new accounting standards, having confidence that doing so would not cause the Funds significant cost or inconvenience.
- 5.6.6 With respect to item (c) of its mandate, the governing bodies noted that a constructive and useful working relationship had been developed with the External Auditor which had enabled the Audit Body to be aware of the planned scope and focus of work before the audit cycle began, to monitor progress as work was undertaken and to be fully informed of the outcome of the audit of the Financial Statements of the three Funds.
- 5.6.7 In respect of item (d) of the mandate, the governing bodies noted that Audit Body had carried out a review of the Financial Statements and planned to carry out a more detailed review in 2009/2010.
- 5.6.8 With respect to item (e) of the Audit Body's mandate, the governing bodies noted with satisfaction that the Audit Body had reported that it was confident that the external audit had been conducted effectively, that the findings were sound and reliable and that it had recommended that the governing bodies approve the Financial Statements of the 1971 Fund, the 1992 Fund and the Supplementary Fund for the financial year ending 31 December 2008.
- 5.6.9 In respect of item (f) of the Audit Body's mandate, the governing bodies noted that the Audit Body had reviewed its proposals for the management of the process for the appointment of the External Auditor which had been approved by the governing bodies at their October 2007 sessions. This issue was the subject of a separate document (document IOPC/OCT09/6/5).
- 5.6.10 The governing bodies noted that the Audit Body had, under item (g) of its mandate, considered, as invited by the governing bodies in October 2008, the problem of unpaid contributions with a view to suggesting any possible solutions to the problem. This issue was the subject of a separate document (document IOPC/OCT09/6/4).

- 5.6.11 The governing bodies noted that the Audit Body had considered whether there were issues arising from the exceptional global financial instability in 2008-2009 which might affect the risk profile of the Funds. In this context, the Audit Body had noted the IAB's recommendation to the Director, having weighed the advantages and disadvantages of receiving contributions and holding the Funds' assets in a currency or currencies other than Pounds sterling, that Pounds sterling remained the correct currency for the Funds. The Audit Body had also noted the IAB's further recommendation that a policy of hedging, in principle, 50% of the Funds' currency exposure for major incidents be adopted.
- 5.6.12 The Chairman of the Audit Body, Mr Stuart, noted that the effectiveness of the system of internal control exercised by the Secretariat was critical to the long term viability and success of the organisation. The Audit Body was satisfied that the Director took a similar view and that any recommendations made by the External Auditor in the management letter and other reports were considered and addressed by an appropriate plan of action developed and implemented by the Secretariat. The Audit Body was also satisfied that all recommendations made by the External Auditor on prior years' Financial Statements had been addressed.
- 5.6.13 In response to a question from one delegation, Mr Stuart said that in using the word 'review' in paragraph 2.2 of its Report, the Audit Body had not wanted to give the impression that the Audit Body was challenging the work of the External Auditor in carrying out the external audit and that the wording in future reports would reflect this. He expressed the view, however, that it was the obligation of the Audit Body to raise any issues it saw fit with the External Auditor within the framework of its mandate.
- 5.6.14 The governing bodies expressed their gratitude to the members of the joint Audit Body for their work.

6 Financial policies and procedures

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| 6.1 | Adoption of new accounting standards
Document IOPC/OCT09/6/1 | 92AC | | SA | 71AC |
|-----|---|-------------|--|-----------|-------------|
- 6.1.1 The governing bodies recalled that, at their October 2008 sessions, the governing bodies had approved the adoption, in principle, of the International Public Sector Accounting Standards (IPSAS) from the financial year 2010.
- 6.1.2 It was noted that, at its June 2009 meeting, the Audit Body had completed its assessment of the implications for the Funds of adopting IPSAS and had agreed with the Secretariat that it was now appropriate to recommend implementation of those new accounting standards from the financial year 2010.
- 6.1.3 The governing bodies noted that the adoption of IPSAS would not necessitate any changes to the IOPC Funds' Internal Regulations, but would require changes to the Funds' Financial Regulations and accounting policies. It was recalled that the accounting policies did not require approval from the governing bodies as they were governed by the Funds' Financial Regulations and by IPSAS.
- 6.1.4 The governing bodies thanked both the External Auditor and the Audit Body for their advice and agreement on the proposed amendments. They also expressed their gratitude to the International Maritime Organization (IMO) Secretariat for sharing its experience as IMO too moved towards adopting IPSAS from the financial year 2010.
- 6.1.5 With regard to the retraining of staff, the governing bodies thanked IMO for agreeing in principle to extend their topic-specific training to staff of the IOPC Funds.

- 6.1.6 It was noted that the move to IPSAS had an impact on the format and content of the financial statements, and that the main areas of change were in respect of income, Secretariat expenditure, and claims and claims-related expenditure. It was noted that a major impact of the move to IPSAS would be the change to accrual based accounting, which was a method of accounting that recognised expenses when they were incurred and income when it was earned, rather than when payment was made or income was received.
- 6.1.7 The governing bodies noted the amendments to the Funds' Significant Accounting Policies, as set out, *mutatis mutandis*, in Annex II to document IOPC/OCT09/6/1.
- 6.1.8 The governing bodies were pleased to note that an accounts manual would be produced to provide guidance on the appropriate accounting treatment of income, expenditure, assets and liabilities (in addition to procedures and controls already in place). They also noted that the financial statements for 2009 would initially be prepared as in previous years, and would then be redrafted in IPSAS format for comparative purposes. It was noted that, although not obligatory under IPSAS, the Director nevertheless intended to present in the 2010 financial statements comparative 2009 figures in order to provide a better understanding of the financial statements and of the consequences of the move to IPSAS.

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

- 6.1.9 The governing bodies approved the adoption of the International Public Sector Accounting Standards (IPSAS) from the financial year 2010.
- 6.1.10 The governing bodies decided to amend their respective Financial Regulations *mutatis mutandis* as follows: substantive amendments to Regulations 6.4, 11.4 (not applicable to the Supplementary Fund), 12.1 and 14.12, and terminology amendments to Regulations 4.1, 4.2, 4.3, 6.1, 11.1, 11.2, 12.3 and 12.4.
- 6.1.11 The amended Financial Regulations for the 1992 Fund in respect of the adoption of IPSAS, effective 1 January 2010, are set out in Annex III to this document.

6.2	Remuneration payable to the joint Audit Body and the joint Investment Advisory Body members	92AC		SA	71AC
	Document IOPC/OCT09/6/2				

- 6.2.1 The governing bodies recalled that the Director had been instructed to analyse the roles and responsibilities of the members of the joint Audit Body and of the joint Investment Advisory Body and to propose a systematic approach to the fees paid to the members of those Bodies. The governing bodies noted that, in order to adequately take into account market conditions, the Director had engaged Mr Gerald Russell FCA, Deputy President of the Institute of Chartered Accountants in England and Wales, to interview a representative cross-section of the members of both the Audit Body and the IAB and any other persons he saw fit, with a view to providing a report to the Director containing an objective analysis of the roles of the members of both bodies, taking into account the differences in positions and linking them to normal market conditions.
- 6.2.2 The governing bodies noted Mr Russell's clear distinction between the role of the Audit Body, which concentrated on issues of oversight and risk, and that of the IAB, which provided expert financial advice to the Director regarding the secure management of the Funds' assets. It was noted that this difference had led him to recommend a greater increase for the IAB than for the Audit Body. It was also noted that Mr Russell's proposals had mostly indicated a range rather than a fixed amount, since even in normal market conditions a single appropriate figure could not be identified, and that they were considerably higher than the figures proposed by the Director. It was further noted that Mr Russell had recommended that the amounts be indexed annually.

- 6.2.3 The governing bodies noted the Director's analysis that one approach would be to pay only subsistence and travel costs, but no honorarium to members of such bodies, emphasising the nature and public responsibility of the IOPC Funds as an intergovernmental organisation; another would be to pay a remuneration fully in line with market conditions, emphasising the business-like way of operating of the IOPC Funds (ie following normal business practice). It was recognised that the Funds had followed the pragmatic in-between approach of paying an honorarium/fee, but limiting it to a relatively modest amount which was not necessarily a reflection of the 'value' of the work put in at that level in market conditions.
- 6.2.4 The governing bodies noted the Director's recommendation that the present approach continued to be broadly justified although Mr Russell's report had highlighted some room for a possible improvement in the extent to which the differences between, and the relative weight of, the various roles were reflected in the respective honoraria/fees. They further noted that the Director had proposed a package of honoraria/fees in respect of the members of the Investment Advisory Body and the Audit Body and had recommended that all honoraria/fees be indexed annually at the time of the preparation of the relevant budget. They also noted that the Director had proposed that the respective tasks and responsibilities of the various roles be reviewed every five years to make sure the rationale for setting the honoraria/fees still applied.
- 6.2.5 All delegations that spoke agreed with the Director's rationale for setting the honoraria/fees and shared his view that, given the nature of the IOPC Funds, a balance needed to be struck between their public interest mission and the business-like way in which they operated. These delegations also agreed that his proposal in respect of the package of honoraria/fees was a sensible one. Several delegations expressed their concerns regarding the adoption of an indexing clause while another delegation expressed its opposition to the insertion of such a clause. One delegation stated that, in its view, for Audit Body members other than the external expert, it should be an honour to serve on the Audit Body and that therefore the honoraria/fees could have been slightly lower for those members than the ones proposed by the Director.
- 6.2.6 One delegation suggested that rather than reviewing the respective tasks and responsibilities of the various roles every five years, this could be done when appropriate.
- 6.2.7 Delegations that spoke on this particular issue shared the Director's view that the recently-agreed fee of £30 000 payable to the 'external expert' of the Audit Body was reasonable, but that this amount should be specifically linked to the present incumbent, Mr Nigel Macdonald, and would not necessarily apply to his successor.

1992 Fund Administrative Council Decision

- 6.2.8 The 1992 Fund Administrative Council decided to set the level of annual honoraria/fees for the members of the Audit Body and of the Investment Advisory Body as follows:

Audit Body:	Members	£4 000
	Chairman	£6 000
	External expert	£30 000
Investment Advisory Body:	Members	£20 000

- 6.2.9 The 1992 Fund Administrative Council decided that all honoraria/fees should be indexed annually, using the UK Retail Price Index at the time of the preparation of the relevant budget.
- 6.2.10 The 1992 Fund Administrative Council also decided that the respective tasks and responsibilities of the various roles should be reviewed every five years or when appropriate, to make sure that the rationale for setting the honoraria/fees still applied.
- 6.2.11 The Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the decisions taken by the 1992 Fund Administrative Council.

6.3	Measures encouraging the submission of oil reports: Development of an online reporting system Document IOPC/OCT09/6/3	92AC		SA	71AC
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- 6.3.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly noted the situation with regard to the development of the online oil reporting system. Member States interested in participating in the trial of the prototype system in 2010 were invited to make their interest known to the Secretariat.
- 6.3.2 The following eight States volunteered to submit oil reports for 2009 using the new online system: Bahamas, Canada, China (HKSAR), Italy, Malaysia, Marshall Islands, New Zealand and Turkey.
- 6.3.3 Germany and Panama expressed their interest in joining the trial, but needed to confirm their participation at a later date.
- 6.3.4 The governing bodies were pleased to note that the series of regional luncheons arranged by the Secretariat for London-based State representatives had resulted in a number of outstanding oil reports being submitted. They also noted the Secretariat's intention to prepare a guide for contributors, for completion in 2010.
- 6.3.5 The 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT09/6/3.

6.4	Non-payment of contributions – submitted by the Audit Body Document IOPC/OCT09/6/4	92AC		SA	71AC
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- 6.4.1 The governing bodies recalled that in October 2008 the joint Audit Body had been instructed by the 1992 Fund Assembly to examine the problem of unpaid contributions with a view to suggesting any possible solutions for the problem.
- 6.4.2 Mr Emile Di Sanza, a member of the Audit Body, introduced document IOPC/OCT09/6/4 and explained that the Audit Body had examined the nature and scope of the issue and had reviewed the procedural measures employed by the Secretariat to pursue outstanding contributions. It was noted that the Audit Body had considered the obligations of the receivers of oil and of Contracting States as laid down in the 1992 Fund Convention, the Supplementary Fund Protocol and international treaty law. It was further noted that the Audit Body had examined the policy measure adopted by the 1992 Fund Assembly in October 2008 in respect of the non-submission of oil reports.
- 6.4.3 Mr Di Sanza stressed that the Audit Body's study had been based on the need to address the inequity to most contributors arising from the non-payment of contributions by others and to consider the duty of care placed on the Assembly and the Director to uphold the Conventions and apply them in a fair and equitable manner. He also stated that the Audit Body was of the view that possible amendments of the text of the 1992 Fund Convention would be a difficult and undesirable route for the IOPC Funds to take and that, similarly, remedies that might be available under treaty law could not be practically applied nor were indeed necessary.
- 6.4.4 The governing bodies noted that, in the view of the Audit Body, there was a clear connection between a Contracting State and oil receivers who were under an obligation to pay contributions, and that this was established in Article 13, paragraph 2 of the 1992 Fund Convention which called upon Member States to take appropriate measures under their respective laws to ensure obligations were met. They also noted the view of the Audit Body that, by ratifying or acceding to the Convention, a Member State accepted an obligation to take the necessary action to ensure that those contributions were paid (and not just to legislate that they should be paid).

- 6.4.5 The governing bodies welcomed the Audit Body's proposal of a two-stage approach, the first stage comprising measures to deal with outstanding contributions, stressing the obligations of industry (oil receivers) and Member States, and the second stage providing for the Audit Body to monitor the effectiveness of the policy measures in respect of outstanding contributions. The governing bodies noted that the first stage of the Audit Body's proposal would entail the adoption by the governing bodies of a Resolution.
- 6.4.6 With regard to the various elements that should be addressed in the Resolution, a number of delegations had reservations about the Audit Body's proposal to 'call upon Member States to make use of Article 14.1 of the 1992 Fund Convention and Article 12.2 of the Supplementary Fund Protocol' under which a State could assume the obligations incumbent on contributors in respect of oil received in its territory. They stressed that it should be clear that this course of action was optional for States, not obligatory. Some delegations also stressed the need to make a clear differentiation between the obligations of receivers and those of Member States, as set out in the 1992 Fund Convention and the Supplementary Fund Protocol.
- 6.4.7 In respect of the Audit Body's proposal that the Director should issue a questionnaire on what measures Member States had taken to implement Article 13.2 of the 1992 Fund Convention and Article 12.1 of the Supplementary Fund Protocol, a number of delegations considered that a questionnaire should be addressed only to those Member States whose contributors had outstanding contributions. Some delegations were of the view that Member States should be invited to inform the Director of measures they adopted, without the requirement to complete a questionnaire which many delegations considered burdensome. Mr Di Sanza stressed that the purpose of this proposal was to allow the Secretariat to formulate a set of best practices.
- 6.4.8 Regarding the Audit Body's proposal that the Director should publish lists of non-contributing 'persons' (entities), some delegations expressed their concern as there could in some cases be quite legitimate reasons for non-payment and it would therefore be inappropriate to affect the credibility of a contributor in this way. One delegation also stated that it was contrary to their national law to disclose information on contributors without their permission.
- 6.4.9 Following informal discussions between the Audit Body and interested delegations, a draft Resolution (IOPC/OCT09/WP.2) was submitted by the Chairman of the 1992 Fund Administrative Council. All delegations that spoke expressed their satisfaction with the draft and supported it. One delegation suggested that the Supplementary Fund Assembly should be included in paragraph 8(c) of the Resolution.
- 6.4.10 The governing bodies adopted the text of the draft of Resolution on Measures in respect of Contributions as contained in Annex IV of this document and instructed the Secretariat to make editorial changes where needed.

6.5

Appointment of External Auditor – submitted by the Audit Body Document IOPC/OCT09/6/5	92AC		SA	71AC
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- 6.5.1 Mr Nigel Macdonald, the external expert on the Audit Body, introduced document IOPC/OCT09/6/5 regarding the procedures for appointing the IOPC Funds' External Auditor and the Audit Body's responsibility for managing the process for the selection of the External Auditor on behalf of the governing bodies.
- 6.5.2 The governing bodies noted that, at its meetings in 2009, the Audit Body had reviewed the procedures which had been approved by the governing bodies at their October 2007 sessions and that the Audit Body was now of the view that the deadline for the submission of tenders by candidates for the position of External Auditor should be extended, so as to allow candidates more time to familiarise themselves with the IOPC Funds and the underlying issues and to meet with the Secretariat if so desired. The governing bodies took note of the Audit Body's proposal that the revised deadlines for the submission of nominations by Member States to the IOPC Funds' Secretariat should be set for

31 January 2010, that resulting tenders should be submitted by 16 March 2010 and that meetings between potential candidates and the Secretariat for the purpose of familiarisation should take place between the beginning of January 2010 and the end of February 2010.

1992 Fund Administrative Council, Supplementary Fund Assembly, 1971 Fund Administrative Council Decision

- 6.5.3 The governing bodies endorsed the Audit Body's proposal regarding the timetable for the procedure to be used for selecting and appointing the IOPC Funds' External Auditor in future years as set out in the Annex to document IOPC/OCT09/6/5.

7 Secretariat and administrative matters

7.1	Secretariat matters Document IOPC/OCT09/7/1	92AC		SA	71AC
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- 7.1.1 The governing bodies took note of the information contained in document IOPC/OCT09/7/1 regarding matters relating to the operation of the Secretariat.
- 7.1.2 The governing bodies noted that the posts of Technical Adviser/Claims Manager, Senior Information Officer and Information Officer had all been filled in January 2009.
- 7.1.3 The Director informed the governing bodies that the Head of the External Relations and Conference Department had resigned since document IOPC/OCT09/7/1 had been issued.
- 7.1.4 The governing bodies noted the amendments to the Staff Rules which had been issued by the Director under Staff Regulation 17, as reported to the governing bodies in paragraphs 2.1-2.5 of document IOPC/OCT09/7/1.
- 7.1.5 The governing bodies agreed with the Director's proposal to allow for additional voluntary staff contributions to the Staff Provident Fund of up to 5% of pensionable remuneration, to be deducted on a monthly basis from the staff member's salary.
- 7.1.6 Some delegations suggested that in order to assist with the heavy workload in the Claims Department, the Director should consider filling the vacant Claims Manager post. The Director informed the governing bodies that he had been considering this option, but had been mindful of discussions in previous sessions of the 1992 Fund Assembly regarding the decreasing number of incidents involving the IOPC Funds. The Director welcomed the Administrative Council's view that this post should be filled.

1992 Fund Administrative Council Decision

7.1.7 The 1992 Fund Administrative Council decided to amend Staff Rule VIII.5 to read as follows:

RULE VIII.5

Provident Fund

- (a) *[Unchanged]*
- (b) All staff members as defined in sub-clause VIII.5(h) shall participate in the 1992 Fund Provident Fund which shall consist of:
- (i)-(iii) *[Unchanged]*
- (iv) the additional voluntary contributions of up to 5% of the pensionable remuneration of staff members from the commencement of their services with the 1992 Fund or at a future agreed date. The Organisation's contribution would be retained at 15.8% of pensionable remuneration;
- (v) the interest accrued from the investment of amounts referred to in (i) - (iv).
- (c)-(h) *[Unchanged]*
- (i) The share of a staff member in the Provident Fund shall be the contributions referred to in paragraphs (b)(i), (ii) and (iv) of this Rule and any amount transferred pursuant to paragraph (b) (iii) together with interest thereon less a proportion of any administrative expenses or banking charges incurred in respect of the Provident Fund.
- (j) *[Unchanged]*

7.1.8 The 1992 Fund Administrative Council noted the intention of the Director to issue an Administrative Instruction to ensure the smooth operation of this scheme.

7.1.9 The Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the decision taken by the 1992 Fund Administrative Council.

7.2

Secretariat matters: Review of translation function	92AC		SA	71AC
Document IOPC/OCT09/7/1/1				

7.2.1 The governing bodies took note of the information contained in document IOPC/OCT09/7/1/1 regarding a review of the translation function within the Secretariat.

7.2.2 The governing bodies noted the Director's view that the best solution would not be to employ professional translators within the Secretariat, since this would not speed up translation significantly in the busiest parts of the year, and they would be largely unoccupied during other parts of the year. The Director also indicated that the best way of providing delegations with timely and cost-effective translations was to continue to employ freelance translators and to take advantage of opportunities to improve the translation service whenever they arose, for example, by increasing the use of translation agencies and making maximum use of IT.

7.2.3 The governing bodies noted that the Director did not intend to fill the two professional posts for translators since this would not, in his view, bring about an improvement compared to the current practice of outsourcing translation work, but would lead to significantly higher costs for the Organisation.

- 7.2.4 Some delegations called upon the Secretariat to find ways to improve the timeliness of documents in French and Spanish, and indicated that documents in all official languages should be available at least one week before a meeting. These delegations suggested that document submission deadlines could be reviewed in order to enable such improvement.
- 7.2.5 The Director explained that, for this session of the governing bodies, all documents had been available in all three official languages at the start of the meeting, which was the first time that this had been achieved for some time. He reiterated the Secretariat's commitment to providing the governing bodies with up-to-date information on which to hold discussions and assured the governing bodies that he would do his utmost to have documents available in good time before meetings. In particular with respect to Executive Committee documents, he indicated that, in practice, the Secretariat could only provide the governing bodies with documents in all languages in a timely manner if it were to observe strict deadlines, but in that case the latest information would need to be provided orally at the meetings. This would also mean that late submissions from Member States could not be accepted.
- 7.2.6 The governing bodies took note of the Director's comments on the timely provision of documents and suggested that the Executive Committee might wish at a future session to consider the issue with regard to incident documents.

7.3	Secretariat matters: Internships within the Secretariat Document IOPC/OCT09/7/1/2	92AC			
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- 7.3.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT09/7/1/2 on the question of whether it was possible and desirable for the Secretariat to accommodate requests for internships and/or to use the United Nations Associate Professional Officers' (APO) Programme or Associate Expert Programme within the Secretariat.
- 7.3.2 The 1992 Fund Administrative Council noted the Director's proposal to develop and introduce a suitable internship programme, including the exploration of possibilities of co-operating with organisations with which the Fund was closely associated and had regular contacts, so that interns would have the opportunity to get acquainted with all aspects of the functioning of the international regime for liability and compensation for oil pollution damage.
- 7.3.3 The 1992 Fund Administrative Council noted that, in the Director's view, the APO scheme would not be suitable for the Funds' Secretariat for three reasons. Firstly, the core tasks of the Organisation involved many sensitive and confidential issues, as well as major financial interests, and therefore staff members dealing with such issues should be completely independent which would not be the case if they were financed by a particular Member State. Secondly, APO staff would, in order to be fully functional in the Secretariat, require intensive in-house training and supervision, whilst being part of the Secretariat for only relatively short periods of time. This had the potential to jeopardise the integrity of the work of the Organisation and would be detrimental to the time that could be spent by regular staff on the core tasks of the Funds. Thirdly, the Secretariat was relatively small and only a small minority within it was engaged in the Funds' core activities of claims handling and assessment, the area in which Member States would most likely be interested in an APO being involved.
- 7.3.4 Some delegations, while supporting the Director's proposal of developing an internship programme, expressed their view that at some future point consideration should be given to the development of an APO scheme within the Fund.

1992 Fund Administrative Council Decision

- 7.3.5 The 1992 Fund Administrative Council decided to endorse the proposal by the Director to develop an internship programme for the 1992 Fund, as outlined in paragraph 7.3.2 above, and to report the details of such a programme to the next session of the 1992 Fund Assembly.

7.4	Development of a database of decisions made by the governing bodies Document IOPC/OCT09/7/2	92AC		SA	71AC
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The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT09/7/2 on the development of a database of all the decisions made by the governing bodies of the IOPC Funds.

7.5	Appointment of members and substitute members of the Appeals Board Document IOPC/OCT09/7/3	92AC			
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1992 Fund Administrative Council Decision

The 1992 Fund Administrative Council appointed the following members and substitute members of the Appeals Board to hold office until the 16th session of the Assembly:

Members	Mr Eric Berder	(France)
	Mr Ichiro Shimizu	(Japan)
	Sir Michael Wood	(United Kingdom)
Substitute Members	Mr Adonis Pavlides	(Cyprus)
	Ms Anne-Marie Sciberras	(Malta)
	Dr Youngsun Park	(Republic of Korea)

8 Treaty matters

8.1	Status of the 1992 Fund Convention and the Supplementary Fund Protocol Document IOPC/OCT09/8/1	92AC		SA	
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8.1.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information in document IOPC/OCT09/8/1 concerning the status of the 1992 Fund Convention and the Supplementary Fund Protocol.

8.1.2 The governing bodies noted that at present there were 102 Member States of the 1992 Fund and that by 24 April 2010 two further States (Islamic Republic of Iran and Syrian Arab Republic) would have become Members, bringing the number of 1992 Fund Member States to 104.

8.1.3 It was also noted that the Supplementary Fund Protocol had entered into force for Australia on 13 October 2009, bringing the number of Supplementary Fund Members to 24. It was further noted that since document IOPC/OCT09/8/1 had been issued, Canada had acceded to the Supplementary Fund Protocol. The Protocol would enter into force for Canada on 2 January 2010, bringing the total number of Member States to 25.

8.1.4 The governing bodies noted that since the governing bodies' October 2008 sessions the Director had continued to draw the attention of States which ratified the 1992 Fund Convention to the importance of the implementation of the 1992 Conventions into national law, and to offer assistance preparing the necessary legislation. It was noted that the Director had not received in the past year any further responses to the enquiries that were made in October 2006 as to whether Member States had fully implemented the Conventions, nor had he been informed that any new Member State had not fully implemented the Conventions into national law.

8.2	Application of the 1992 Fund Convention to the EEZ or an area designated under Article 3(a)(ii) of the 1992 Fund Convention Document IOPC/OCT09/8/2	92AC		SA	
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The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information in document IOPC/OCT09/8/2 as regards Member States which had provided information on the establishment of an EEZ or designated area under Article 3(a)(ii) of the 1992 Fund Convention.

8.3	Review of international non-governmental organisations having observer status Document IOPC/OCT09/8/3	92AC		SA	71AC
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- 8.3.1 The governing bodies recalled that in October 2002 the 1992 Fund Assembly and 1971 Fund Administrative Council had decided to review every three years the list of international non-governmental organisations which had observer status, in order to determine whether the continuance of observer status for any particular organisation was of mutual benefit (document 92FUND/A.7/29, paragraph 16.4).
- 8.3.2 It was also recalled that in March 2005 the Supplementary Fund Assembly had decided that organisations which had observer status with the 1992 Fund should also have observer status with the Supplementary Fund, unless the Supplementary Fund Assembly decided otherwise (document SUPPFUND/A.1/39, paragraph 4.2).
- 8.3.3 The governing bodies noted the information set out in document IOPC/OCT09/8/3 and its Annexes, regarding the attendance since the previous review in October 2006 of international non-governmental organisations at the meetings of the IOPC Funds' governing bodies. In addition, they noted the contacts maintained between the organisations and the Secretariat, as well as which organisations had submitted documents during that period.
- 8.3.4 It was noted that in August 2009, the Director had written to all international non-governmental organisations which had been granted observer status, inviting them to submit their comments on whether, in their view, the continuance of observer status would be of mutual benefit. The governing bodies took note of the information contained in Annex III to document IOPC/OCT09/8/3, which set out the responses received from the organisations concerned.
- 8.3.5 In accordance with previous practice, the governing bodies decided to set up a committee of five Member States to establish whether the continuance of observer status for each international non-governmental organisation would be of mutual benefit, and to report its findings to the governing bodies. It was decided that the composition of the committee should be as follows: Australia (Chairman), Japan, Morocco, Norway and Turkey.
- 8.3.6 The committee, chaired by Australia, held three meetings, and made the following recommendations to the Administrative Council:
- (a) The committee noted that the Advisory Committee on Protection of the Sea (ACOPS) had not provided a statement regarding the mutual benefit of continued observer status, nor had it attended any of the governing bodies' sessions since the last review. The committee therefore recommended that ACOPS' observer status should be discontinued.
 - (b) With regard to the Federation of European Tank Storage Associations (FETSA), Friends of the Earth International (FOEI), and the International Union for the Conservation of Nature (IUCN), which had not attended any sessions of the governing bodies since the last review, the committee recommended that their observer status should be discontinued.
 - (c) The committee recommended that the governing bodies should confirm the continuance of observer status of the other non-governmental organisations included in the review.

1992 Fund Administrative Council and 1971 Fund Administrative Council Decisions

- 8.3.7 The governing bodies endorsed the committee's recommendations and decided that the observer status of the following organisations should be continued:

Baltic and International Maritime Council (BIMCO)
 Comité Maritime International (CMI)
 Conference of Peripheral Maritime Regions (CPMR) (not 1971 Fund)
 European Chemical Industry Council (CEFIC) (not 1971 Fund)
 International Association of Classification Societies Ltd (IACS) (not 1971 Fund)
 International Association of Independent Tanker Owners (INTERTANKO)
 International Chamber of Shipping (ICS)
 International Group of Liquefied Natural Gas Importers (GIIGNL)
 International Group of P&I Clubs
 International Salvage Union (ISU)
 International Tanker Owners Pollution Federation Ltd (ITOPF)
 International Union of Marine Insurance (IUMI) (not 1971 Fund)
 Oil Companies International Marine Forum (OCIMF)
 World LP Gas Association (WLPGA)

- 8.3.8 The governing bodies also decided that the observer status of the following organisations should be withdrawn:

Advisory Committee on Protection of the Sea (ACOPS)
 Federation of European Tank Storage Associations (FETSA)
 Friends of the Earth International (FOEI)
 International Union for the Conservation of Nature and Natural Resources (IUCN)

Supplementary Fund Assembly Decision

- 8.3.9 The Supplementary Fund Assembly noted the 1992 Fund Administrative Council's decisions as set out in paragraphs 8.3.7 and 8.3.8 and decided that it did not wish to deviate from those decisions in respect of any organisation.

8.4	Grant of observer status Document IOPC/OCT09/8/3/1	92AC		SA	
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- 8.4.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT09/8/3/1 in respect of a request for observer status from the Maritime Organisation of West and Central Africa (MOWCA).

- 8.4.2 The representative of MOWCA thanked the Director for his invitation to attend the session and the 1992 Fund Administrative Council for considering MOWCA's request for observer status. She pointed out that MOWCA had been involved in the maritime industry for over 30 years and that its main objective was to promote the sub-regional and international co-operation and solidarity of its member states in matters affecting the maritime sector, as well as specific issues affecting its landlocked members. She stressed that the Organisation had been working closely with other international partners, including the International Maritime Organization (IMO), to ensure that its members implemented mandatory international and regional Conventions and regulations relating to oil pollution by ships. She stated that MOWCA had 25 member states, ten of which were Members of the 1992 Fund and that the headquarters of their organisation was located in Abidjan (Côte d'Ivoire) and that they also maintained an office in London. She was of the view that granting MOWCA observer status with the IOPC Funds would contribute to better relations between those ten States and the IOPC Funds, and would also aid in the establishment of future relationships between the IOPC Funds and MOWCA members which were not yet Party to the 1992 Fund Convention.

1992 Fund Administrative Council Decision

- 8.4.3 The 1992 Fund Administrative Council decided to grant observer status to MOWCA.

Supplementary Fund Decision

- 8.4.4 The Supplementary Fund Assembly noted the 1992 Fund Administrative Council's decision with regard to MOWCA and decided to grant observer status to that Organisation.

8.5	Winding up of the 1971 Fund Document IOPC/OCT09/8/4				71AC
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- 8.5.1 The 1971 Fund Administrative Council recalled that the 1971 Fund Convention had ceased to be in force on 24 May 2002 and did not apply to incidents occurring after that date. The Administrative Council further recalled that, before the 1971 Fund could be wound up, all pending claims would have to be settled and any remaining assets distributed in an equitable manner between contributors.

- 8.5.2 The 1971 Fund Administrative Council took note of the developments towards the winding up of the 1971 Fund set out in document IOPC/OCT09/8/4, in particular as regards the outstanding incidents and the financial situation in respect of these incidents. The Administrative Council noted that the *Evoikos* case could be closed once the pending litigation in London had been finalised, and that the *Al Jaziah 1* case could be closed once it had been decided to discontinue the execution of the judgement because the costs would exceed the recoverable amount.

- 8.5.3 The 1971 Fund Administrative Council noted the Director's review of the problem caused by a number of States not having fulfilled their treaty obligations under the 1971 Fund Convention to submit reports on contributing oil receipts and his consideration of what further action should be taken in respect of contributors in arrears.

- 8.5.4 The 1971 Fund Administrative Council noted the Director's efforts to make those contributors who were in arrears pay the amounts due. The Administrative Council was encouraged by the steps being taken by the Director, and looked forward to his report on developments in October 2010.

- 8.5.5 The 1971 Fund Administrative Council noted with satisfaction that the efforts of the Secretariat had led to a number of pending incidents having been finalised since the last session of the Administrative Council in October 2008, which was an important step towards the winding up of the 1971 Fund.

8.6	HNS Convention Document IOPC/OCT09/8/5	92AC			
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- 8.6.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT09/8/5 on recent developments in respect of preparations for the entry into force of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention). It was noted that the Convention had been ratified by 14 States.

- 8.6.2 The 1992 Fund Administrative Council noted that a diplomatic conference to consider a draft Protocol to the HNS Convention would be held during the week of 26-30 April 2010.

- 8.6.3 The Council recalled its earlier decision, in June 2009, that further development of the HNS Convention Contributing Cargo Calculator (HNS CCCC) should not commence until immediately after the adoption of the draft Protocol, with the aim of having the updated HNS CCCC available as soon as possible.

9 Budgetary matters

9.1	Sharing of joint administrative costs between the 1992 Fund, the 1971 Fund and the Supplementary Fund Document IOPC/OCT09/9/1	92AC		SA	71AC
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9.1.1 The governing bodies recalled that in March 2005 the governing bodies of the IOPC Funds had decided that the distribution of the costs of running the joint Secretariat should be made on the basis of the 1971 Fund and the Supplementary Fund paying a flat management fee to the 1992 Fund and that this approach had been followed for subsequent years.

9.1.2 It was also recalled that it had been decided that the management fees payable by the 1971 Fund and the Supplementary Fund should be reviewed annually in view of changes of the total figure of the costs of running the joint Secretariat and the amount of work required by the Secretariat in the operation of these Funds.

9.1.3 The governing bodies noted the Director's proposal on the apportionment of joint administrative costs between the three Organisations, as set out in document IOPC/OCT09/9/1.

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

9.1.4 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council approved the Director's proposal that the 1971 Fund and the Supplementary Fund should pay flat management fees of £225 000 and £52 500, respectively, to the 1992 Fund for the financial year 2010.

9.2	Budgets for 2010 and assessments of contributions to the General Fund Document IOPC/OCT09/9/2	92AC		SA	71AC
	Budget for 2010 and assessment of contributions to the General Fund: 1992 Fund Document IOPC/OCT09/9/2/1	92AC			
	Budget for 2010 and assessment of contributions to the General Fund: Supplementary Fund Document IOPC/OCT09/9/2/2			SA	
	Budget for 2010: 1971 Fund Document IOPC/OCT09/9/2/3				71AC

9.2.1 The governing bodies took note of the information contained in document IOPC/OCT09/9/2 and considered the draft 2010 budget for the administrative expenses of the IOPC Funds joint Secretariat and the assessment of contributions to the 1992 Fund and Supplementary Fund General Funds as proposed by the Director in documents IOPC/OCT09/9/2/1 and IOPC/OCT09/9/2/2 and took note of document IOPC/OCT09/9/2/3 in respect of the 1971 Fund General Fund.

9.2.2 The three governing bodies recalled that the Director had in recent years been authorised to create positions in the General Service category as required, provided that the resulting cost did not exceed 10% of the figure for salaries in the budget. The governing bodies recognised that this was valuable and granted him a certain amount of flexibility in the management of the Secretariat.

9.2.3 The 1992 Fund Administrative Council noted the Director's estimate of the expenses to be incurred in respect of the preparation for the entry into force of the HNS Convention, and recalled that all costs incurred by the 1992 Fund for the setting up of the HNS Fund would be reimbursed by the HNS Fund with interest.

- 9.2.4 The 1971 Fund Administrative Council noted the Director's view that the surplus on the 1971 Fund's General Fund as at 31 December 2010 should be sufficient to cover any payments of compensation, indemnification or other incident-related expenses payable by the General Fund, to be made after 31 December 2010, as well as the 1971 Fund's share of the administrative expenditure until the 1971 Fund was wound up.

1992 Fund Administrative Council Decisions

- 9.2.5 The 1992 Fund Administrative Council adopted the budget for 2010 for the administrative expenses of the 1992 Fund for a total of £4 019 450 (including the cost of the external audit for the three Funds), as set out in Annex V, page 1, to this document.
- 9.2.6 The 1992 Fund Administrative Council decided to maintain the working capital of the 1992 Fund at £22 million.
- 9.2.7 The 1992 Fund Administrative Council decided that there should be no levy of 2009 contributions to the General Fund.
- 9.2.8 The 1992 Fund Administrative Council renewed the authorisation given to the Director to create additional posts in the General Service category, as required, provided that the resulting cost did not exceed 10% of the figure for salaries in the budget (ie up to £174 000, based on the 2010 budget as adopted).

Supplementary Fund Decisions

- 9.2.9 The Supplementary Fund Assembly adopted the budget for 2010 for the administrative expenses of the Supplementary Fund for a total of £66 100 (including the cost of the external audit), as set out in Annex V, page 2, to this document.
- 9.2.10 The Supplementary Fund Assembly decided to maintain the working capital of the Supplementary Fund at £1 million.
- 9.2.11 The Supplementary Fund Assembly decided that there should be no levy of 2009 contributions to the General Fund.

1971 Fund Administrative Council Decisions

- 9.2.12 The 1971 Fund Administrative Council adopted the budget for 2010 for the administrative expenses of the 1971 Fund for a total of £490 300 (including the cost of the external audit), as set out in Annex V, page 3, to this document.
- 9.2.13 The 1971 Fund Administrative Council authorised the Director to use the balance of the 1971 Fund's General Fund to pay for the administrative expenditure and minor claims expenses in respect of that Organisation.

9.3	Assessment of contributions to Major Claims Funds and Claims Funds Document IOPC/OCT09/9/3	92AC		SA	71AC
	Assessment of contributions to Major Claims Funds: 1992 Fund Document IOPC/OCT09/9/3/1	92AC			
	Assessment of contributions to Claims Funds: Supplementary Fund Document IOPC/OCT09/9/3/2			SA	
	Assessment of contributions to Major Claims Funds: 1971 Fund Document IOPC/OCT09/9/3/3				71AC

9.3.1 The governing bodies noted the Director's proposal for contributions to Major Claims Funds and Claims Funds for the three Organisations.

9.3.2 The Supplementary Fund Assembly noted that there had been no incidents which would or might require the Supplementary Fund to pay compensation or claims-related expenses, and that there was therefore no need to make contributions to any Supplementary Fund Claims Fund.

1992 Fund Administrative Council Decisions

9.3.3 The 1992 Fund Administrative Council decided that there should be no levy of 2009 contributions in respect of the *Erika* Major Claims Fund.

9.3.4 The 1992 Fund Administrative Council decided to levy £3 million in respect of the *Prestige* Major Claims Fund, the entire levy to be deferred. The Director was authorised to invoice all or part of the deferred levy for payment during the second half of 2010, if and to the extent required.

9.3.5 The 1992 Fund Administrative Council decided to levy £40 million in respect of the *Volgoneft 139* Major Claims Fund, the entire levy to be deferred. The Director was authorised to invoice all or part of the deferred levy for payment during the second half of 2010, if and to the extent required, but subject to a decision authorising him to make payments in respect of this incident having been made by the 1992 Fund Executive Committee.

9.3.6 The 1992 Fund Administrative Council decided to levy £52 million in respect of the *Hebei Spirit* Major Claims Fund, the entire levy to be deferred. The Director was authorised to invoice all or part of the deferred levy for payment during the second half of 2010, if and to the extent required.

1971 Fund Administrative Council Decision

9.3.7 The 1971 Fund Administrative Council decided that there should be no levy of 2009 contributions in respect of either the *Vistabella* or the *Nissos Amorgos* Major Claims Funds.

10 Other matters

10.1	Future sessions	92AC	92EC	SA	71AC
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2010 Sessions:

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

10.1.1 It was recalled that the 1992 Fund Assembly had decided in October 2008 to establish, first of all, a date for the regular session, ie the October session, and then to consider possible sessions in the spring or summer, as required.

- 10.1.2 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council decided to hold their next regular session during the week of 18 - 22 October 2010.
- 10.1.3 Dates were also agreed for possible sessions of the governing bodies, or meetings of their subsidiary bodies, during the weeks of 19 - 23 April 2010 and 28 June - 2 July 2010.

1992 Fund Executive Committee Decision

- 10.1.4 The 1992 Fund Executive Committee decided to hold its 47th session on 16 October 2009, at which it would consider the date for its 48th session.

2011 Sessions:

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

- 10.1.5 During the session, the delegation of Morocco proposed that the 2011 spring meeting of the IOPC Funds' governing bodies be held in the Kingdom of Morocco in the city of Marrakech. That delegation stated that the Moroccan Government was prepared to extend a formal invitation to the IOPC Funds if this proposal were to be accepted in principle. The delegation of Morocco stated that this proposal would be budget neutral for the IOPC Funds.
- 10.1.6 Many delegates expressed their gratitude for the generous offer from the Kingdom of Morocco, noting the previous successful meetings held in Canada and Monaco, and welcoming the opportunity for the first meeting to be held by the IOPC Funds on the continent of Africa.
- 10.1.7 It was, however, noted by some delegations that they might experience difficulty in attending a meeting in Morocco because of the additional travel costs. On the other hand, it was also noted that delegates who were not normally able to attend meetings in London might find it more convenient to attend the meeting in Morocco.
- 10.1.8 The 1992 Fund Administrative Council noted wide and strong support for the proposal, and provisionally accepted the offer.
- 10.1.9 The Moroccan delegation was invited to submit a document containing full details of the offer to the next meeting of the governing bodies in October 2010, for further consideration, and to enable all delegations to consider their attendance.

10.2	Any Other Business	92AC		SA	71AC
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The Italian delegation advised the governing bodies that Italy would soon ratify the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as the relevant process was in its final stage.

11 Adoption of the Record of Decisions

1992 Fund Administrative Council, 1992 Fund Executive Committee, Supplementary Fund Assembly and 1971 Fund Administrative Council Decision

The draft Record of Decisions of the October 2009 sessions of the IOPC Funds' governing bodies 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	X			X
Angola	X			
Argentina	X			
Australia	X		X<1>	X
Bahamas	X			X
Belgium	X		X	X
Bulgaria	X			
Cameroon	X			X
Canada	X	X		X
China (Hong Kong Special Administrative Region)	X	X		X
Colombia	X			X
Cook Islands	X			
Côte d'Ivoire				X
Cyprus	X	X		X
Denmark	X		X	X
Estonia	X		X	X
Finland	X		X	X
France	X	X	X	X
Gabon	X			X
Germany	X		X	X
Ghana	X			X
Greece	X		X	X
Grenada	X			
India	X	X		X
Ireland	X		X	X
Israel	X			
Italy	X	X	X	X
Japan	X		X	X
Liberia	X	X		X
Malaysia	X			X
Malta	X			X
Marshall Islands	X			X
Mexico	X			X
Monaco	X			X
Morocco	X			X
Netherlands	X		X	X
New Zealand	X			X
Nigeria	X			X
Norway	X		X	X

<1> As of 13 October 2009.

	1992 Fund Assembly	1992 Fund Exec. Committee	Supp. Fund Assembly	1971 Fund Admin. Council
Oman	X			X
Panama	X			X
Papua New Guinea	X			X
Philippines	X	X		
Poland	X		X	X
Qatar	X	X		X
Republic of Korea	X	X		X
Russian Federation	X	X ^{<2>}		X
Singapore	X			
Spain	X	X	X	X
Sweden	X	X	X	X
Trinidad and Tobago	X	X		
Turkey	X			
United Kingdom	X	X	X	X
Vanuatu	X			X
Venezuela	X			X

1.2 Non-Member States represented as observers

	1992 Fund	Supplementary Fund	1971 Fund
Islamic Republic of Iran	X	X	
Saudi Arabia	X	X	X
Ukraine	X	X	

1.3 Intergovernmental organisations

	1992 Fund	Supplementary Fund	1971 Fund
Maritime Organisation of West and Central Africa (MOWCA).	X	X	

1.4 International non-governmental organisations

	1992 Fund	Supplementary Fund	1971 Fund
BIMCO	X	X	X
Comité Maritime International (CMI)	X	X	X
International Association of Classification Societies Ltd (IACS)	X	X	
International Association of Independent Tanker Owners (INTERTANKO)	X	X	X

^{<2>} Notification of participation submitted in respect of 1992 Fund Executive Committee only.

International Chamber of Shipping (ICS)	X	X	X
International Group of P&I Clubs	X	X	X
International Tanker Owners Pollution Federation Ltd (ITOPF)	X	X	X
International Union of Marine Insurance (IUMI)	X	X	
Oil Companies International Marine Forum (OCIMF)	X	X	X
World Liquid Petroleum Gas Association (WLPGA)	X	X	

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ANNEX II

Mandate

The 6th session of the Administrative Council, acting on behalf of the 14th session of the 1992 Fund Assembly,

Taking into account the problems of major incidents giving rise to large numbers of claims for relatively small amounts where claimants cannot prove their losses.

Conscious of the need for the international regime for liability and compensation for oil pollution damage based on the 1992 Civil Liability and Fund Conventions to continue to meet the expectations of the international community, in particular in respect of the protection it offers to claimants;

Recognising the importance in this respect of upholding the basic principles of the international regime, whilst at the same time enabling a claims handling and assessment process which is sufficiently flexible and expeditious to address the needs of claimants, in particular those who are claiming for relatively small amounts and who are not able to prove their losses to the extent and with a degree of detail that the international regime would normally require from claimants;

Recognising also the importance in this respect of interim payments being made by the P&I Clubs directly to claimants, as well as the potential policy and legal complications of such interim payments in cases where a limitation fund has also been established in a competent court;

Decides to set up the 6th intersessional Working Group of the 1992 Fund with the following mandate:

1. Taking into account the considerations set out above, the Working Group shall explore and develop possible measures to enhance the functioning in practice of the international liability and compensation regime.
2. In doing so, the Working Group shall in any event:
 - a. examine issues in connection with the need to uphold the basic principles of the international regime, whilst at the same time enabling a claims handling and assessment process which is sufficiently flexible to address the needs of claimants, in particular those who are claiming for relatively small amounts and who are not able to prove their losses; in particular issues such as:
 - the fact that the large numbers of individual claims put a very heavy burden on the experts and other persons involved in the claims handling process;
 - the fact that many claimants cannot prove their losses to the extent and with the degree of detail that the Funds would normally require from claimants;
 - the fact that efforts by the Clubs and the Funds to help those claimants establish their losses are very time-consuming and can therefore lead to undesirable delays in the assessment (and payment) of claims;
 - the fact that efforts by the Clubs and the Funds to help those claimants establish their losses are very resource-intensive and time-consuming and can therefore lead to a major increase in the costs incurred to assess such claims; and
 - the fact that in some cases the active involvement of the State concerned is beneficial, or indeed necessary, for example to provide statistical or other information relevant to the assessment of claims, to facilitate grouping of claimants or to provide emergency aid to the most vulnerable of claimants.

b. examine issues in connection with the desirability of P&I Clubs being able to make interim payments, also in cases where a limitation fund has been established in a competent court, without running the risk of having to pay over and above the limit applicable to the ship under the 1992 Civil Liability Convention, such as:

- the underlying causes which have in the past inhibited the P&I Clubs to make interim payments in some cases;
- the experience gained in oil pollution incidents in which the 1992 Fund is or has been involved and whether model co-operation agreements, summaries of principles or similar documents could be developed which could assist Member States in quickly making adequate arrangements in response to incidents within their jurisdiction; and
- whether alternative solutions could overcome the identified risk, including what role, if any, the 1992 Fund could have in relation to such alternative solutions regarding interim payments and whether the Memorandum of Understanding between the 1992 Fund and the International Group of P&I Clubs should be amended to include provisions designed to overcome the risk of overpayment by the shipowner.

3. The Working Group shall report its (initial) findings and/or recommendations to each regular session of the 1992 Fund Assembly, with a view to determining whether continuation of the Working Group is justified.

4. The Working Group shall have as its Chairman Mr Volker Schöfisch (Germany).

* * *

ANNEX III

FINANCIAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 ESTABLISHED UNDER THE 1992 FUND CONVENTION

(as amended by the Administrative Council, acting on behalf of the 14th session of the Assembly held from 12 - 16 October 2009, in respect of the adoption of the International Public Sector Accounting Standards (IPSAS), effective 1 January 2010)

Regulations 1- 3

[Unchanged]

Regulation 4

Financial Statements and Budget

4.1 The financial statements of the 1992 Fund and its annual budget shall be established in Pounds Sterling.

4.2 Subject to Financial Regulation 4.3, the books of accounts of the 1992 Fund shall be completed and closed at the end of each calendar year. Any surplus funds including interest from operations in a given year shall be carried forward to the next calendar year.

4.3 Annual contributions paid to the 1992 Fund under Article 12.2(b) of the 1992 Fund Convention, including any interest thereon, shall be used exclusively for the satisfaction of the payments for which they were levied. If such contributions are not used during the year when they were due, they shall be reserved in the financial statements of the 1992 Fund from year to year for this purpose.

4.4 - 4.6 *[Unchanged]*

Regulation 5

The Budget

[Unchanged]

Regulation 6

Appropriations

6.1 The appropriations adopted by the Assembly shall constitute an authorisation to the Director to enter into commitments and make payments for the purposes for which the appropriations were adopted and up to the amounts so voted.

6.2 - 6.3 *[Unchanged]*

6.4 Appropriations shall remain available for twelve months following the end of the year to which they relate to the extent that they are required to discharge commitments in respect of goods delivered and services rendered in the financial year and to discharge any other outstanding legal commitments of the financial year.

6.5 *[Unchanged]*

Regulations 7 - 10

[Unchanged]

Regulation 11

Internal Control

11.1 The Director shall:

- (a) give such detailed directions as are necessary to ensure effective financial administration and the exercise of economy;
- (b) cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods have been received except where normal commercial practice requires payment to be made in advance;
- (c) designate the officers who may receive monies, enter into commitments, purchase goods and make payments on behalf of the 1992 Fund;
- (d) maintain an internal financial control which shall provide for an effective current examination and/or review of financial transactions in order to ensure:
 - (i) the regularity of the receipt, custody and disposal of all monies and other financial resources of the 1992 Fund;
 - (ii) the conformity of commitments and expenditures with the appropriations or other financial provisions voted by the Assembly;
 - (iii) the economic use of the resources of the 1992 Fund;
 - (iv) conformity with the 1992 Fund Convention, the Financial Regulations and the Internal Regulations.

11.2 Except to the extent provided for in Financial Regulation 11.1(c), no commitments shall be entered into without the prior authorisation of the Director.

11.3 *[Unchanged]*

11.4 The cost of all property acquired not exceeding an agreed value threshold, currently £500 per item, will be immediately charged as an expense. Purchased assets which exceed that threshold will be capitalised at cost and depreciated to their residual value over their useful economic life. A fixed assets register will be established to record all tangible fixed assets which exceed the agreed value threshold and have been capitalised. Such a fixed assets register will be integral part of the financial accounting system and will record the asset value, useful economic life, depreciation and net book value for each asset. The fixed assets register will be made available to the External Auditor as a part of the accounting records presented for audit.

11.5 - 11.7 *[Unchanged]*

Regulation 12

The Financial Statements

12.1 The 1992 Fund shall maintain such books of accounts and prepare such financial statements as are necessary for each financial period in accordance with the 1992 Fund's Financial Regulations and stated accounting policies and in compliance with International Public Sector Accounting Standards, where appropriate.

12.2 *[Unchanged]*

12.3 The financial statements to be prepared and submitted to the Assembly by the Director in accordance with Article 29.2(f) of the 1992 Fund Convention, and on which the External Auditor will report in accordance with Financial Regulation 14.16, shall comprise:

- (a) (i) a statement of appropriations and budget out-turn;
- (ii) a statement of financial performance for all funds;
- (iii) a statement of financial position;
- (iv) a Cash Flow Statement;
- (b) such notes as may be necessary for a better understanding of the financial statements, including a statement of significant accounting policies and details of contingent liabilities, ie of all known or likely claims against the 1992 Fund and of claims related expenditures estimated for the next financial year.

12.4 The books of accounts of the 1992 Fund shall be kept in Pounds Sterling. Foreign currency bought for Pounds Sterling and invested in accordance with Financial Regulation 10.4(a) shall be translated into Pounds Sterling at the financial year end at the rate of exchange at the last banking day of the year as published in the London Financial Times.

12.5 *[Unchanged]*

Regulation 13

Audit Body

[Unchanged]

Regulation 14

External Audit

14.1 - 14.11 *[Unchanged]*

14.12 The External Auditor shall perform such audit of the accounts of the 1992 Fund as he or she deems necessary in order to be satisfied:

- (a) that the financial statements are in accordance with the books and records of the 1992 Fund;
- (b) that the financial transactions reflected in the statements have been in accordance with the rules and regulations, the budgetary provisions and other applicable directives;
- (c) that the securities and monies on deposit and on hand have been verified by certificates received direct from the 1992 Fund's depositaries or by actual count;
- (d) that all material weaknesses in the accounting and internal control systems identified during the audit have been reported;
- (e) that procedures satisfactory to the External Auditor have been applied to the recording of all assets, liabilities, surpluses and deficits in accordance with the Financial Regulations, stated accounting policies and International Public Sector Accounting Standards where appropriate.

14.13 - 14.21 *[Unchanged]*

Regulations 15 - 17

[Unchanged]

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ANNEX IV

Resolution N°11 on Measures in respect of Contributions
adopted on 16 October 2009
by the Administrative Council acting on behalf of the Assembly of the International Oil Pollution
Compensation Fund, 1992 and the
Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003

THE ADMINISTRATIVE COUNCIL ACTING ON BEHALF OF THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992 (1992 Fund), and

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

NOTING that the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 and the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 were established to pay adequate compensation and to this end contributions are required to fund payment of claims,

RECOGNISING that States Parties in accepting the Conventions have agreed to ensure that contributors fulfil their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol,

RECOGNISING ALSO that the Funds cannot operate effectively and equitably unless oil reports and contributions are received in a timely manner,

- 1 **ENDORSE** current measures employed by the Director and Secretariat for following up arrears of contributions,
- 2 **CALL ON** all receivers of contributing oil to comply with their obligations under the Conventions,
- 3 **URGE** associations representing receivers of contributing oil to engage proactively in ensuring that obligations by industry members are met and to report to the Director/Secretariat on the measures taken,
- 4 **FURTHER URGE** States Parties to ensure that they have taken all necessary measures to implement effectively their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol, whilst reminding them of the option to make use of Article 14, paragraph 1 of the 1992 Fund Convention and Article 12, paragraph 2 of the 2003 Supplementary Fund Protocol,
- 5 **REQUEST** States Parties to report to the Director the means by which they have implemented their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol, so that, based on the information submitted, the Secretariat, with the assistance of the Audit Body, may summarise such means and report such information to the 1992 Fund Assembly and Supplementary Fund Assembly,
- 6 **CALL SPECIFICALLY ON** States Parties with contributors who are in arrears to report to the Director the means by which they have implemented their obligations under Article 13, paragraph 2 of the 1992 Fund Convention and Article 12, paragraph 1 of the 2003 Supplementary Fund Protocol and on any steps they have taken to ensure payment of the outstanding contributions,
- 7 **ALSO REQUEST** that the Director, in consultation with the State(s) Parties concerned, should consider options for providing, as part of regular reports on outstanding contributions, a list of non-contributing 'persons' (entities) and that such a list be made prominent in reports of the operations of the Funds, subject to any applicable laws,
- 8 **DIRECT** the Audit Body to:
 - (a) monitor the effectiveness of the above actions in respect of outstanding contributions;

- (b) monitor the effectiveness of the new 1992 Fund Policy on Outstanding Oil Reports and Deferment of Compensation Payments, adopted by the 1992 Fund Assembly at its October 2008 session; and
- (c) report to the 1992 Fund Assembly and Supplementary Fund Assembly on its findings, including recommendations for further measures as may be warranted.

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ANNEX V
2010 ADMINISTRATIVE BUDGET FOR 1992 FUND

STATEMENT OF EXPENDITURE		Actual 2008 expenditure for 1992 Fund		2008 budget appropriations for 1992 Fund		2009 budget appropriations for 1992 Fund		2010 budget appropriations for 1992 Fund	
		£		£		£		£	
	SECRETARIAT								
I	Personnel								
(a)	Salaries	1 223 456		1 485 034		1 548 995		1 742 200	
(b)	Separation and recruitment	39 944		35 000		35 000		35 000	
(c)	Staff benefits, allowances and training	460 122		632 666		613 930		726 950	
	Sub-total		1 723 522		2 152 700		2 197 925		2 504 150
II	General Services								
(a)	Rent of office accommodation (including service charges and rates)	291 954		316 300		319 300		320 800	
(b)	Office machines (IT hardware/software) / maintenance	76 214		80 000		71 500		72 300	
(c)	Furniture and other office equipment	10 378		15 000		25 000		25 000	
(d)	Office stationery and supplies	11 324		22 000		22 000		22 000	
(e)	Communications (courier, telephone, postage, e-mail/internet)	61 380		73 000		68 000		69 800	
(f)	Other supplies and services	27 871		37 500		32 500		35 000	
(g)	Representation (hospitality)	22 669		25 000		25 000		25 000	
(h)	Public Information	68 117		180 000		200 000		175 000	
	Sub-total		569 907		748 800		763 300		744 900
III	Meetings								
	Sessions of the 1992, Supplementary and 1971 Fund governing bodies and Intersessional Working Groups		129 134		175 000		175 000		150 000
IV	Travel								
	Conferences, seminars and missions		14 845		150 000		150 000		150 000
V	Miscellaneous expenditure								
(a)	External audit fees for IOPC Funds	60 500		62 000		62 400		62 400	
(b)	Consultants' fees	192 040		150 000		150 000		150 000	
(c)	Audit Body	121 594		110 000		120 000		138 000	
(d)	Investment Advisory Bodies	37 500		37 500		45 000		60 000	
	Sub-total		411 634		359 500		377 400		410 400
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		-		60 000		60 000		60 000
Total Expenditure I-VI			2 849 042		3 646 000		3 723 625		4 019 450
Total Expenditure I-VI excluding External Audit fees for IOPC Funds							3 661 225		3 957 050
VII	Due from 71Fund								
	Management fee payable to 1992 Fund by 1971 Fund		210 000		210 000		(210 000)		(225 000)
VIII	Due from Supplementary Fund								
	Management fee payable to 1992 Fund by Supplementary Fund		50 000		50 000		(50 000)		(52 500)
1992 Fund Budget Appropriation excluding External audit fee for IOPC Funds							3 401 225		3 679 550
1992 Fund Budget Appropriation including External audit fee for 1992 Fund only							3 449 725		3 728 050

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2010 ADMINISTRATIVE BUDGET FOR THE SUPPLEMENTARY FUND

(Figures in Pounds Sterling)

STATEMENT OF EXPENDITURE		ACTUAL 2008 EXPENDITURE	2008 BUDGET APPROPRIATIONS	2009 BUDGET APPROPRIATIONS	2010 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund	50 000	50 000	50 000	52 500
II	Administrative expenses (including external audit fees)	3 500	13 500	13 500	13 600
Supplementary Fund Budget Appropriation		53 500	63 500	63 500	66 100

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2010 ADMINISTRATIVE BUDGET FOR 1971 FUND

(Figures in Pounds Sterling)

STATEMENT OF EXPENDITURE		ACTUAL 2008 EXPENDITURE	2008 BUDGET APPROPRIATIONS	2009 BUDGET APPROPRIATIONS	2010 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund by 1971 Fund	210 000	210 000	210 000	225 000
II	Costs for Winding up of the 1971 Fund	-	250 000	250 000	250 000
III	Administrative costs including External Audit fees	10 000	15 000	15 300	15 300
1971 Fund Budget Appropriation		220 000	475 000	475 300	490 300