INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

Agenda item: 11	IOPC/OCT10/**11/1**	
Original: ENGLISH	22 October 2010	
1992 Fund Administrative Council	**92AC7/A15**	●
1992 Fund Executive Committee	**92EC49**	●
Supplementary Fund Assembly	**SA6**	●
1971 Fund Administrative Council	**71AC25**	●

RECORD OF DECISIONS OF THE OCTOBER 2010 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 18 to 22 October 2010)

Governing Body (session)		**Chairman**	**Vice Chairmen**
1992 Fund	Administrative Council **(AC7/A15)**	Mr Jerry Rysanek (Canada)	Professor Tomotaka Fujita (Japan) Mr Mohammed Said Oualid (Morocco)
	Executive Committee **(92EC49)**	Mr Daniel Kjellgren (Sweden)	Mr Francisco Noel R Fernandez III (Philippines)
Supplementary Fund	Assembly **(SA6)**	Rear Admiral Giancarlo Olimbo (Italy)	Mrs Birgit Sølling Olsen (Denmark) Mr Isao Yoshikane (Japan)
1971 Fund	Administrative Council **(71AC25)**	Captain David J F Bruce (Marshall Islands)	Mr Andrzej Kossowski (Poland)

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Opening of the sessions

0.1 Prior to the opening of all of the sessions of the IOPC Funds governing bodies' the Chairman of the 1992 Fund Assembly paid tribute to the late Mr John Wren, former Head of the United Kingdom delegation to the sessions of the IOPC Funds' and IMO's governing bodies from 1993-2005 and member of the IOPC Funds' Joint Audit Body, who had sadly passed away on 6 October 2010.

0.2 The Chairman of the 1992 Fund Assembly thanked the Chairmen of the other governing bodies and the Secretariat for reorganising the timetable for the first day of the meetings to enable a number of Mr Wren's good friends among the IOPC Fund delegations, including himself and the Chairmen of the Supplementary Fund Assembly and the 1971 Fund Administrative Council, to attend Mr Wren's funeral. As a final tribute to Mr Wren all Chairmen, Member States, Observer delegations and members of the Secretariat present stood to observe a minute's silence to remember Mr Wren.

0.3 Before continuing, the Chairman of the 1992 Fund Assembly referred to the noticeable absence of the Director and the circular issued in September (Circular 92FUND/Circ.71, SUPPFUND/Circ.18, 71FUND/Circ.93) informing delegations of the unfortunate news that he was in hospital and would be unable to act as Director of the IOPC Funds for the foreseeable future. He pointed out that a document on the current situation would be submitted for consideration during the sessions but that, in the meantime, Mr Maura, Head of Claims, would, in accordance with the Funds' Internal Regulations, act on the Director's behalf. The Chairman updated the governing bodies on Mr Oosterveen's positive and impressive steps towards recovery and passed on the Director's appreciation for the many cards and messages he had received wishing him well.

0.4 Mr Maura, on behalf of the Secretariat, expressed how sorry all staff were that the Director was unable to be with them at these meetings. All of the Secretariat wished him well and hoped that he would recover very soon and be back at the helm of the Secretariat in the very near future.

1992 Fund Executive Committee

0.5 The 1992 Fund Executive Committee Chairman opened the 49th session of the Committee at 09.30 on Monday 18 October 2010.

1992 Fund Assembly

0.6 The Chairman of the 1992 Fund Assembly attempted to open the 15th session of the Assembly at 14.00 and 14.30 on Monday 18 October 2010, but the Assembly failed to achieve a quorum on both occasions.

0.7 Only the following 49 Member States of the 1992 Fund were present at that time, whereas a quorum required 53 States to be present:

Argentina	India	Panama
Australia	Ireland	Philippines
Brunei Darussalam	Israel	Poland
Cameroon	Italy	Qatar
Canada	Iran (Islamic Republic of)	Republic of Korea
China	Japan	Russian Federation
Cyprus	Kenya	Singapore
Denmark	Liberia	Spain
Estonia	Malaysia	Sweden
Ecuador	Malta	Syrian Arab Republic
Finland	Marshall Islands	Tunisia
France	Mexico	Turkey
Gabon	Morocco	United Kingdom
Germany	Netherlands	Uruguay
Ghana	New Zealand	Vanuatu
Greece	Nigeria	
Grenada	Norway	

0.8 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.

0.9 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 7th session of the 1992 Fund Administrative Council, acting on behalf of the 15th session of the 1992 Fund Assembly[<1>].

0.10 It was recalled that, at its 1st session in May 2003, the 1992 Fund Administrative Council had decided that the Chairman of the 1992 Fund Assembly should *ex officio* be the Chairman of the Administrative Council (document 92FUND/AC.1/A/ES.7/7, paragraph 2).

Supplementary Fund Assembly

0.11 The Supplementary Fund Assembly Chairman opened the 6th session of the Assembly.

1971 Fund Administrative Council

0.12 The 1971 Fund Administrative Council Chairman opened the 25th session of the Administrative Council.

1 Procedural matters

1.1

Adoption of the Agenda **Document IOPC/OCT10/1/1**	**92AC**	**92EC**	**SA**	**71AC**

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/OCT10/1/1.

1.2

Election of Chairmen	**92AC**		**SA**	**71AC**

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 Mohammed Said Oualid (Morocco)

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 1992 Fund Administrative Council for the work of the outgoing second Vice-Chairman, Mr Mahmoud Zaghloul (Algeria).

<1> From this point forward, references to the '7th session of the 1992 Fund Administrative Council' should be taken to read '7th session of the 1992 Fund Administrative Council, acting on behalf of the 15th session of the 1992 Fund Assembly'.

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:	Mr Isao Yoshikane (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, Ms Akiko Yoshida (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 of the Vice-Chairman, the 1971 Fund Administrative Council for the confidence shown in them.

1.3

Examination of Credentials – Establishment of Credentials Committee **Document IOPC/OCT10/1/2**	**92AC**	**92EC**	**SA**	
Participation				**71AC**
Examination of Credentials – Report of the Credentials Committee **Document IOPC/OCT10/1/2/1**	**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. It was also recalled that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials in respect of the 1992 Fund Executive Committee, provided the session of the Executive Committee was held in conjunction with a session of the Assembly.

1.3.2 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).

1.3.3 The Member States present at the sessions are listed in Annex I, including an indication of States having at any time been Members of the 1971 Fund, as are the non-Member States, intergovernmental organisations and international non-governmental organisations which were represented as observers.

1992 Fund Administrative Council Decision

1.3.4 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Administrative Council appointed the delegations of Canada, Liberia, Netherlands, Panama and Qatar as members of the Credentials Committee.

1992 Fund Executive Committee and Supplementary Fund Assembly

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

Debate

1.3.6 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/OCT10/1/2/1 that no credentials had yet been received in respect of the Syrian Arab Republic. The Credentials Committee reported that it expected that this would be rectified by the delegation of the Syrian Arab Republic shortly after the session.[<2>]

1.3.7 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the October 2010 sessions.

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

1.3.8 In light of the recommendation made in paragraph 2.6 of document IOPC/OCT10/1/2/1, the Report of the Credentials Committee, the governing bodies instructed the Acting Director to further review the Funds' current policy in respect of credentials, and report on this matter at their next sessions.

1.4

Examination of Credentials – Proposal for change to formal requirements **Document IOPC/OCT10/1/2/2**	**92AC**	**92EC**	**SA**	

1.4.1 The 1992 Fund Administrative Council, the 1992 Fund Executive Committee and the Supplementary Fund Assembly recalled that, at their October 2009 sessions, the Credentials Committee had suggested in its report that the 1992 Fund Assembly might wish to review its current policy on credentials, whereby not only credentials and/or notifications transmitted by letter and telefax but also those sent as attachments to e-mails (ie scanned copies) could be accepted as valid for all meetings of the governing bodies. The governing bodies had 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 1992 Fund Assembly at its next regular session.

1.4.2 The governing bodies took note of the information contained in document IOPC/OCT10/1/2/2. They noted that the Director had considered this issue and had, for comparison purposes, consulted several United Nations specialised agencies as well as various London-based intergovernmental organisations to ascertain their positions with respect to the acceptance of credentials as attachments to e-mail.

1.4.3 The governing bodies further noted that, as all of the intergovernmental organisations which had been consulted accepted credentials presented in the form of an e-mail attachment (ie a scanned copy of the original), the Director had concluded that these organisations considered the risks to be acceptable.

1.4.4 The governing bodies also noted the Director's view that, whilst it was true that the risk of fraud or misuse with an e-mail attachment could not be excluded, that was true as well for telefaxes and indeed even for letters. Furthermore, in the Director's view, in reality this was not likely to happen and, in any event, it was very doubtful that anyone wanting to defraud the Organisations would remain unspotted, for instance because the competent authorities would most probably issue the proper credentials and send the true representative to the meeting.

1.4.5 The governing bodies noted that the Director therefore believed that the risk was acceptable and that accepting credentials in the form of a scanned copy of the original, attached to an e-mail sent from a recognised e-mail address was a pragmatic solution to the transmission problems encountered by some Member States.

[<2>] Note by the Secretariat: This had not been rectified in respect of Syrian Arab Republic when the final version of this Record of Decisions was issued.

1.4.6 The governing bodies further noted that the Director, had, therefore, recommended that the governing bodies adopt a corresponding amendment to the formal requirements as regards credentials and had submitted a proposed text for the consideration of the governing bodies.

1992 Fund Administrative Council Decision

1.4.7 The 1992 Fund Administrative Council decided to amend the formal requirements as regards credentials to allow for the receipt of credentials as set out below:

Form and content of credentials and notifications

Formal requirement as regards credentials

The first two paragraphs remain unchanged.

Paragraph 3 (new text underlined):

The credentials should be addressed to the Director of the IOPC Funds (not, as has sometimes been the case in the past, to the Secretary-General of IMO) in the form of an original signed letter, a telefax thereof or a scanned copy of the original credentials transmitted from a recognised e-mail address. Credentials transmitted by telefax or e-mail will be accepted as valid for all meetings of the governing bodies, irrespective of whether voting is taking place or not. There is no requirement for a telefax or e-mail to be accompanied by an original signed letter or *Note verbale* from the State's Embassy or High Commission in London certifying the authenticity of the telefax or e-mail. Should the Director have any concerns as to the authenticity of any credentials received by telefax or e-mail, he will attempt to corroborate them to the extent possible and bring this to the attention of the Credentials Committee.

The subsequent paragraphs remain unchanged.

1992 Fund Executive Committee and Supplementary Fund Assembly

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

1.5

Grant of observer status **Document IOPC/OCT10/1/3**	**92AC**		**SA**	

1.5.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of document IOPC/OCT10/1/3 regarding a request for observer status which had been received from the Government of Thailand. It was noted that, in accordance with Rule 4 of the Rules of Procedure, the Acting Director had invited the Government of Thailand to send observers to the 15th session of the 1992 Fund Assembly.

1.5.2 The representative of Thailand informed the 1992 Fund Administrative Council and the Supplementary Fund Assembly that Thailand had some years ago prepared the relevant legislation required to accede to the 1969 Civil Liability Convention (1969 CLC) and the 1971 Fund Convention but that, regrettably, it had not progressed further. The representative expressed hope that having observer status to the 1992 Fund would help Thailand to follow the work of the Organisation, facilitate the necessary amendments to be made to the earlier draft legislation and lead to Thailand becoming a 1992 Fund Member State.

1992 Fund Administrative Council Decision

1.5.3 The 1992 Fund Administrative Council welcomed the positive steps taken by Thailand towards acceding to the 1992 Conventions and decided to grant the State observer status to the 1992 Fund.

Supplementary Fund Assembly Decision

1.5.4 It was recalled that, at its first session, held in March 2005, the Supplementary Fund Assembly had decided that States which would be invited to send observers to meetings of the Assembly of the 1992 Fund, should have observer status with the Supplementary Fund. The Supplementary Fund Assembly therefore decided to grant Thailand observer status to the Supplementary Fund.

2 Overview

2.1

Report of the Director **Document IOPC/OCT10/2/1**	**92AC**		**SA**	**71AC**

2.1.1 Mr José Maura, as Acting Director, introduced the Report on the activities of the IOPC Funds since the October 2009 sessions, pointing out to the governing bodies that this was Mr Oosterveen's Report. He said that the Director 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 Mr Maura was pleased to report the recruitment of three new staff members to the Secretariat since the October 2009 sessions of the governing bodies. It was noted that Ms Akiko Yoshida (Japan) had been appointed as Legal Counsel and had taken up her post on 16 August 2010. It was also noted that Mr Thomas Liebert (France) had been appointed as Head, External Relations and Conference Department, and had taken up his post on 1 September 2010 and Mr Mark Homan (United Kingdom) had been appointed as Claims Manager and had taken up his post on 6 September 2010.

2.1.3 Mr Maura reported that, since the publication of this Report, Ms Katharina Stanzel had resigned as Technical Adviser/Claims Manager and would be leaving the Secretariat at the end of October 2010. He further reported that Dr Roy Livermore had also resigned as Senior Information Officer.

2.1.4 The governing bodies noted that the *Hebei Spirit* incident continued to provide one of the biggest challenges yet faced by the 1992 Fund, with more than 125 000 individual claims submitted so far, and with probably more to come. They also noted that problems associated with processing such large numbers of claims, many of them for small sums and not accompanied by sufficient supporting information, had led the 1992 Fund Administrative Council to establish the 6th intersessional Working Group to look at ways of dealing with such problems. They noted that this Working Group had held its first meeting from 29-30 June 2010 and had focused on the main areas of concern in connection with the functioning in practice of the international liability and compensation regime. Its next meeting would be held during the spring 2011 sessions of the governing bodies and would focus *inter alia* on the lack of evidence supporting small claims, the time taken to assess claims, the costs of assessing claims and the role of Member States.

2.1.5 The attention of the governing bodies was drawn to the fact that for the first time in the IOPC Funds' history there had been a competitive tender in 2010 for the appointment of the External Auditor. It was noted that the tender process had been carried out by the Audit Body, in accordance with the procedures approved by the governing bodies at their October 2007 sessions and that only one nomination had been received, that of the Comptroller and Auditor-General of the United Kingdom which had undertaken the external audit role since the Funds had been created. The governing bodies further noted that the Audit Body had prepared a report to the governing bodies setting out its views and recommendations relating to both the outcome of the selection exercise and also to the conduct of future audit tenders.

2.1.6 Mr Maura referred to the formal invitation which had been received from the Prime Minister of the Kingdom of Morocco to host the spring 2011 sessions of the Funds' governing bodies in Marrakech and the governing bodies noted that they would be invited to confirm the provisional decision made in October 2009 to accept this offer.

2.1.7 With respect to the development of the international compensation regime, Mr Maura reported that an International Conference on the revision of the HNS Convention had taken place in April 2010 and had adopted the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996. He further reported that Resolution 1 of the Conference had requested the 1992 Fund Assembly to instruct him to carry out the tasks necessary for the setting up of the HNS Fund and to make preparations for the first session of the HNS Assembly. He had therefore prepared a document for discussion by the 1992 Fund Assembly at its current session in which he had outlined the preparations for the entry into force of the 2010 HNS Convention[<3>] which had been carried out so far as well as the decisions which, in his view, would need to be taken at the first HNS Assembly.

2.1.8 With regard to external relations, Mr Maura referred to the new-look Annual Report 2009 which, although much shorter than in previous years, still contained the core information about the IOPC Funds and their operations. He also referred to a second new publication which provided information on incidents in which the IOPC Funds had been involved since the October 2009 sessions of the governing bodies. He also reported that three further informal lunch meetings had taken place since October 2009 with London-based representatives of Member States and non-Member States from Africa, the Caribbean and Central and Western Europe and North America as well as one with representatives of Intergovernmental and Non-governmental Organisations which had responsibilities or activities in fields related to those of the 1992 Fund. He reported that all four gatherings had been very successful and had provided an opportunity for members of the Secretariat to improve their relationships with Member States and Organisations, for representatives to ask questions and for an informal exchange of views on many subjects of interest, such as the running of Funds' meetings, the oil reporting and contributions system, incidents and claims handling and the status of the HNS Convention. The governing bodies noted that the lunch meetings had now covered the entire membership of the IOPC Funds and that the intention was to continue to hold such gatherings at regular intervals.

2.1.9 The governing bodies also noted that the Director and other members of staff had participated in seminars, conferences and workshops in a number of countries since the October 2009 sessions of the governing bodies and had given lectures on liability and compensation for oil pollution damage and on the operation of the IOPC Funds.

2.1.10 Looking forward, the Director had 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 had stated, in his report, that the main priority for the IOPC Funds would continue to be the prompt payment of compensation to victims of oil pollution and that, with respect to the HNS Convention, the Secretariat would continue to work actively on the preparations for the entry into force of that Convention and on the setting up of the HNS Fund.

2.1.11 Mr Maura 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 Chairman of the 1992 Fund Administrative Council, on behalf of the governing bodies, thanked the Director for his comprehensive Report. Speaking for the governing bodies, he also welcomed the new members of the IOPC Funds' Secretariat and expressed congratulations to Ms Stanzel on her new appointment as Managing Director of INTERTANKO.

[<3>] Once the 2010 HNS Protocol enters into force, the 1996 Convention, as amended by the 2010 Protocol, will be called: 'the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010' (2010 HNS Convention).

3 Incidents involving the IOPC Funds

3.1

Incidents involving the IOPC Funds **Document IOPC/OCT10/3/1**		**92EC**	**SA**	**71AC**

The 1992 Fund Executive Committee, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of document IOPC/OCT10/3/1, which contained information on documents for the October 2010 meetings relating to incidents involving the IOPC Funds.

3.2

Incidents involving the IOPC Funds – 1971 Fund: *Vistabella, Aegean Sea, Iliad, Nissos Amorgos* and *Evoikos* **Document IOPC/OCT10/3/2**				**71AC**

3.2.1 The 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT10/3/2 concerning the following 1971 Fund incidents: *Vistabella*, *Aegean Sea*, *Iliad*, *Nissos Amorgos*, and *Evoikos.*

Vistabella

3.2.2 It was recalled that, in consultation with the 1971 Fund's Trinidad and Tobago lawyers, the 1971 Fund had commenced summary proceedings in Trinidad and Tobago against the insurer of the *Vistabella* to enforce the judgement of the Court of Appeal in Guadeloupe which had held that, on the basis of subrogation, the 1971 Fund had a right of action against the shipowner and a right of direct action against his insurer, and had awarded the 1971 Fund the right to recover the total amount which it had paid for damage caused in the French territories.

3.2.3 It was also recalled that the 1971 Fund had submitted an application for a summary execution of the judgement to the High Court in Trinidad and Tobago but that the insurer had opposed the execution of the judgement. It was further recalled that in March 2008, the Court had delivered a judgement in the 1971 Fund's favour but that the insurer had appealed against this judgement in the Court of Appeal in Trinidad and Tobago.

3.2.4 It was noted that hearings at the Court of Appeal had taken place in January and July 2010. It was also noted that at the hearing in July 2010, the Court had indicated that it wished to hear further submissions from the parties on the issue pleaded by the insurer of whether enforcement of the judgement would be against public policy and that the 1971 Fund, after examining the insurer's submissions, had submitted a reply in September 2010.

Aegean Sea

3.2.5 The 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT10/3/2 concerning the *Aegean Sea* incident.

Iliad

3.2.6 It was noted that in April 2010, the Court of Kalamata had decided that the Court of Nafplion had jurisdiction in respect of the limitation proceedings and that therefore these proceedings should be referred back to that Court.

3.2.7 It was also noted that, taking into account the total claim amount approved by the liquidator (€2 125 755) and applicable interest, it seemed unlikely that the final adjudicated amount would exceed the limitation sum of €4.4 million. It was recalled that all claims, other than a claim from the shipowner and his insurer in respect of reimbursement for any compensation payments in excess of the shipowner's limitation amount and for indemnification under Article 5.1 of the 1971 Fund Convention, and a claim from the owner of a fish farm for €3 million, representing approximately one third of the liquidator-approved amount, might be found to be time-barred by the Court. It was noted, however, that although based on the above facts the likelihood of the Fund having to pay

compensation appeared to be slim, it should be taken into account that 446 claimants had filed appeals against the Liquidator's Report and that the total claim amount had yet to be assessed by the Court. It was noted, therefore, that the Fund would have to continue monitoring the legal proceedings.

Nissos Amorgos

3.2.8 It was noted that in a judgement rendered in February 2010, the Criminal Court of First Instance in Maracaibo had held that the Master, the shipowner and the Assuranceföreningen Gard (Gard Club) had incurred a civil liability derived from criminal action and had ordered them to pay the Venezuelan State the amount claimed, namely US$60 250 396.

3.2.9 It was also noted that the Master, the shipowner and the Gard Club had appealed against the judgement and that the 1971 Fund, although not notified of the judgement, had also appealed. It was further noted that a hearing at the Court of Appeal in Maracaibo was expected in the near future.

Debate

3.2.10 One delegation requested an explanation of the Fund's position regarding the claims by the Republic of Venezuela.

3.2.11 The Secretariat explained that the 1971 Fund had decided that the claims by the Republic of Venezuela were time-barred. Concerning the merit of the claims, the Secretariat explained that the claims by the Republic of Venezuela either referred to environmental damage that was not admissible under the Conventions, or concerned damage included in individual claims that had already been compensated by the Fund.

3.2.12 Another delegation enquired as to why the 1971 Fund had decided to appeal against the judgement even though the Fund had not been notified. The Secretariat stated that the Fund had decided to appeal in order to defend its rights since it had been considered that not appealing would have prejudiced the Fund's position.

Evoikos

3.2.13 It was recalled that the shipowner's P&I insurer, United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club) had commenced legal actions against the 1971 Fund in London, Indonesia and Malaysia to protect its rights against the Fund. It was also recalled that the action in Indonesia had been discontinued whereas the actions in London and Malaysia had been stayed by mutual consent. It was recalled, however, that in October 2009 the UK Club had given instructions to its lawyers to discontinue the legal action in Malaysia.

3.2.14 It was noted that the UK Club had recently informed the 1971 Fund that the legal action against the Fund in London had now also been discontinued. The 1971 Fund Administrative Council noted that this case was therefore now closed.

3.3

Incidents involving the IOPC Funds – 1971 Fund: ***Plate Princess*** **Document IOPC/OCT10/3/3**				**71AC**

3.3.1 The 1971 Fund Administrative Council took note of document IOPC/OCT10/3/3 containing information on the *Plate Princess* incident.

3.3.2 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, Venezuela 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.

3.3.3 It was also recalled that in June 1997 a local fishermen's union, the Sindicato Único de Pescadores de Puerto Miranda (Puerto Miranda Union), 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.

3.3.4 It was further recalled that in May 2006, 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

3.3.5 It was recalled 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 recalled that in the judgement it was decided that the 1971 Fund should be formally notified, but that the Fund had still not received notification.

Further developments on the claim by Puerto Miranda Union

3.3.6 It was recalled that in September 2009, the Maritime Court of Appeal of Caracas had issued its judgement and ordered the shipowner, the Master of the *Plate Princess*, and the 1971 Fund to compensate the claimants in an amount to be determined by three Court experts to be appointed. It was recalled that the Fund had been notified of this decision.

3.3.7 It was further recalled that in October 2009, the 1971 Fund Administrative Council had instructed the Director to translate the judgement by the Maritime Court of Appeal from Spanish into English and French. It was noted that the translations of the judgement were available to delegates upon request to the Secretariat or to download from the IOPC Funds' website (www.iopcfund.org/ongoing.htm).

3.3.8 It was recalled that the 1971 Fund had appealed the Maritime Court of Appeal judgement to the Supreme Tribunal. It was noted that in October 2010, the Supreme Tribunal had rendered its judgement, rejecting the 1971 Fund's appeal and confirming the judgement of the Maritime Court of Appeal. It was also noted that the Secretariat, together with its lawyers, intended to examine the judgement with a view to investigating whether there was a possibility of appealing the Supreme Tribunal's judgement to the Constitutional Court in Venezuela, and that the Secretariat would report on the issue to the 1971 Fund Administrative Council, with a view to receiving further instructions. It was noted that the Supreme Tribunal judgement confirmed the decision that the losses should be determined by three court experts to be appointed.

Analysis of the judgement of the Maritime Court of Appeal

3.3.9 It was noted that the three most significant issues addressed in the judgement of the Maritime Court of Appeal were: the time bar, the link of causation and the falsified evidence relating to the quantum of the loss of income.

Time bar

3.3.10 It was noted that the Maritime Court of Appeal had rejected the argument that the claim by Puerto Miranda Union was time-barred, and that the judgement had stated that the decision was based on the Court's interpretation of Articles 6 and 7.6 of the 1971 Fund Convention. It was also noted that although the wording of the judgement of the Maritime Court of Appeal was not easy to follow, the Secretariat believed that the Court's interpretation was that, for the time bar to be avoided and a final judgement to be enforceable against the 1971 Fund, an action needed to be taken only against the shipowner within three years, and that the Fund needed only to be notified so that it could make use of due process and the right to a defence. It was noted that the Maritime Court of Appeal reasoned that since the 1971 Fund was notified in time, effectively to intervene in the proceedings, and since an action had been taken against the shipowner within three years, the claim was not time-barred.

3.3.11 It was noted that the Secretariat disagreed with the analysis of the Maritime Court of Appeal, and shared the view of the 1971 Fund Administrative Council that claims for compensation arising from the incident were time-barred as Article 6.1 of the 1971 Fund Convention stated that an action must be brought or notification made pursuant to Article 7.6, within three years from the date when the damage occurred, without stating against whom an action was to be brought or to whom the notification was to be given. It was, however, recalled that Article 7.6 stated that it was the Fund that must be notified, and in the Secretariat's view, this left no doubt that both the notification and the action referred to in Article 6.1 must refer to the 1971 Fund.

3.3.12 It was recalled that the 1971 Fund Administrative Council had decided at its May 2006 session, that the claims by FETRAPESCA and Puerto Miranda Union were time-barred, as the 1971 Fund was neither formally notified in accordance with Venezuelan legal requirements within three years from when the damage occurred, nor was an action taken against the 1971 Fund within six years from the date of the incident.

Link of Causation

3.3.13 It was noted that the Maritime Court of Appeal had held that there was a link of causation between the damage suffered by the fishermen and the spill from the *Plate Princess* on the following grounds:

- There had been a spill from the vessel;
- The fishermen's union had lodged a complaint with the Ministry of Energy and Mines on the day following the incident;
- The local press had reported that the spill had affected the hulls and gear of more than 700 boats;
- An inspection carried out by the Ministry of Energy and Mines and the Ministry of Agriculture together with the claimants concluded that the boats, nets and engines were contaminated;
- The defendants had not provided any evidence to show that the inspection reports were untruthful;
- Although the 1971 Fund had appointed an expert, the expert had ignored the announcement in the press that there were to be inspections;
- The invoices provided by the fishermen as evidence proved they supplied fish in accordance with their fishing permits;
- No evidence had been presented to show that there had been any other spill at the time that could have caused the damage;
- The shipowner had provided a bank guarantee to limit his liability under the 1969 CLC;
- The 1971 Fund had made reference to the spill in its 1997 Annual Report.

3.3.14 It was noted that although the Director took the view that it was for the national courts to ultimately decide whether there was a sufficiently close link of causation between the damage suffered and the contamination, the arguments used in the judgement of the Maritime Court of Appeal were weak and did not serve to prove there was a link of causation in this case.

Evidence of the quantum of loss of income – Falsified documents

3.3.15 It was noted that the Maritime Court of Appeal had accepted sets of invoices which were formally identified by witnesses in the hearing before the Maritime Court of First Instance. It was further noted that the judgement by the Maritime Court of Appeal had stated that, since the witnesses had acknowledged the invoices, answered questions from the other parties and their statements showed no contradictions, this gave the Court sufficient reason to accept the invoices. The judgement by the Maritime Court of Appeal did not give any value to the statements made by the witnesses under cross examination during the First Instance Court hearing, that the invoices although dated prior to the spill, had in fact been drafted after the event.

3.3.16 It was noted that the experts appointed by the 1971 Fund had examined the sets of invoices produced as evidence of normal catch incomes and had concluded that they had been falsified. It was further noted that the invoices had neither been issued on the dates alleged, nor reflected the true expenditure incurred and that this had been accepted by the claimant's witnesses. Notwithstanding this, the

Maritime Court of Appeal had accepted that the information in the invoices was to be used in the calculation of the claimants' losses.

3.3.17 The 1971 Fund Administrative Council noted that in the Secretariat's view, it was of great concern that the judgement by the Maritime Court of Appeal had accepted documentation in support of the claim which was known not to be genuine and to have been falsified for the purposes of obtaining compensation from the shipowner, its insurer and the 1971 Fund. It was also noted that in the Secretariat's view, if other national courts were to follow a similar line, the international compensation regime would not function as intended and would face difficulties surviving.

Recognition and enforceability of a final judgement

3.3.18 It was recalled that Article 8 of the 1971 Fund Convention stated that:

> '..., any judgement given against the Fund by a court having jurisdiction in accordance with Article 7, paragraphs 1 and 3, shall,...be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the [1969 Civil] Liability Convention.'

3.3.19 It was also recalled that Article X.1 of the 1969 CLC stated that:

> 'Any judgement given by a Court with jurisdiction in accordance with Article IX which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any Contracting State, except:
> (a) where the judgement was obtained by fraud; or
> (b) where the defendant was not given reasonable notice and a fair opportunity to present his case.'

3.3.20 It was noted that whilst the Secretariat did not have evidence to prove that the judgements by the Maritime Court of First Instance and by the Maritime Court of Appeal had been obtained by fraud, it was of the opinion that, in the circumstances, the 1971 Fund had not been given reasonable notice and a fair opportunity to present its case.

3.3.21 In this regard, the following facts were noted:

- When the original claim was made against the Master and owner of the *Plate Princess* in July 1997, no details of any losses were provided;
- Shortly after the spill (of 3.2 tonnes of crude oil), the 1971 Fund had appointed an expert who visited the terminal where the incident occurred, but the expert reported to the 1971 Fund that he was unable to establish any losses resulting from the spill;
- The judgement by the Maritime Court of Appeal implied that the 1971 Fund expert should have seen the press articles and should have attended the inspections;
- Although the 1971 Fund experts and Secretariat were present in Venezuela in 1997 and there was a claims office open in Maracaibo in connection with the *Nissos Amorgos* incident, neither the 1971 Fund nor its experts were informed that inspections of damaged fishing boats and gear were to take place. Had the 1971 Fund or its experts been informed of these inspections, the 1971 Fund experts would without doubt, have attended;
- The 1971 Fund had received no indication as to the nature and extent of the alleged damage and loss until April 2008, when an amended claim was submitted to the Maritime Court of First Instance;
- By that time, there was no possibility of the 1971 Fund carrying out any meaningful investigation into the alleged damages detailed in the amended claim;
- When the amended claim was submitted in April 2008, the only way in which the 1971 Fund could have investigated the extent of the loss was by analysing the documentary evidence presented by the claimants. However, this documentary evidence was not provided before the Points of Defence had to be filed at Court.

3.3.22 The 1971 Fund Administrative Council noted that, in the Secretariat's view, the 1971 Fund may not have been given reasonable notice and a fair opportunity to present its case.

3.3.23 It was recalled that in its October 2009 session, the Administrative Council had taken the view that if a final judgement by the Venezuelan courts was entered 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. However, having now reviewed the judgement of the Maritime Court of Appeal, the Secretariat was of the opinion that it was possible that sub-paragraphs (a) and (b) of Article X.1 of the 1969 CLC might apply, in which case, a final judgement may not be enforceable against the 1971 Fund.

3.3.24 The Secretariat stated that, at the October 2009 session of the 1971 Fund Administrative Council, the Director had taken the view that if a final judgement by the Venezuelan Courts was entered against the 1971 Fund, the Fund had, under Article 8 of the 1971 Fund Convention, the obligation to comply with the provisions of the judgement.

Statement by the Venezuelan delegation – Original in Spanish

3.3.25 The Venezuelan delegation made the following statement:

'Thank you, Mr Chairman, for giving me the floor. First of all, I would like to express to the Director of the Fund our delegation's appreciation for the clear explanation presented. However, although I do not want to start a debate, I must respond to what has been presented here since, as well as the situation in a specific case, in my opinion it would seem that all the allegations of the lawyers of one party in this case are presented and thus I must briefly present certain aspects in reply.

As regards the document, not only is the wording strong, but the vehemence with which it was presented seemed to me rather excessive.

That is just a matter of style, but I go back to the Director's own comment that he was not talking about the country but about the individuals. However, the courts which took the decisions are the courts of the country and we here are representing our country. We are the country's representatives. I will try to be brief. Above all, I would like to make it clear that I do not wish to open a debate.

In 1997, an application was presented which interrupted the running of the time bar. This application was presented in the Venezuelan Courts and in that action a request was made to notify the Fund. From that moment, the Fund was informed in the same documents as were presented here in various meetings relating to the *Plate Princess* case. Subsequently, the lawyers sought to withdraw the bank guarantee which limited the liability of the shipowner and an 'avocamiento' was requested. This 'avocamiento' resulted in the Supreme Court of Justice considering whether the bank guarantee should be maintained or not, because the incident was an objective liability. I am touching on points which can be expanded later, but which explain certain delays in the proceedings themselves. The decision on the bank guarantee was finally handed down in 2005. That is why the Fund was formally notified after that date, but the Fund was already informed as I have already indicated in the year 1997.

With regard to the spill and the amount of the spill, the report to which the document refers concerns the spill which was quantified at a given moment around the vessel specifically, but subsequently it was found that other areas were affected around the local fishermen whose nets were contaminated. In November 2005, the Fund appointed its lawyer. In 2006, evidence was submitted relating to the same 1997 claims, in other words, there was no other claim, and the evidence presented was the same as in the claims presented in 1997.

A comment is made that the fishermen claiming in the *Nissos Amorgos* case are the same as those claiming in the *Plate Princess* case. This is not correct, as can be explained later. They are different fishermen.

With regard to the falsified documents, there is a full explanation of these documents, since they went to different instances of the courts, because whether or not the documents were fraudulent is a matter for decision by a court, and already three instances in the Venezuelan courts have decided that the documents are legitimate. The explanation can be given later to anyone who so wishes. The concrete fact is that the Fund appealed and the Supreme Court of Justice pronounced in this matter in favour of the fishermen. For this reason, given that the Supreme Court of Justice published its judgement last week, we are presenting it and we are requesting to deliver it *a posteriori*, just as the Fund was informed last week, at the end of the week. That is why we are asking to reply to this document now, *a posteriori*. We could have done so before, but we were awaiting the judgement.

Indeed, I think there are a great many things that I could mention here but I think it is not worth going on in this regard. I think that any delegation seeking an explanation should request it directly from the Venezuelan delegation or wait for the explanatory document in reply to the document presented by the Director. Thank you for the opportunity to present Venezuela's reasons for appealing this case. As I said, a decision has been taken by the Supreme Court of Justice. Now I imagine that an application for judicial review will be filed because there is no appeal from that instance, but what can happen is a judicial review. However, every time, and this has happened repeatedly, every time there is an appeal to a new instance, the amounts of compensation that must be paid increase. It is right that the reason why the amounts have been increasing should be taken into consideration.

Thank you, Mr Chairman, that was all I wanted to inform you in this respect.'

3.3.26 In response to the question from the Chairman as to whether the Venezuelan delegation wished the statement above to appear as a written document which it would submit to the 1971 Fund Administrative Council, the delegation of Venezuela stated:

'Yes indeed, but I could prepare a draft of exactly what I just said just now and, if you wish, I could also prepare a more detailed document or to include the document with more details in the final report, that's fine with me, just tell me. It would be an explanatory document for delegations in order to avoid any possible doubt, but the statement should say exactly what I have said here.'

3.3.27 In response to the suggestion that the Venezuelan delegation should supply the Secretariat with a written statement to be quoted in the Record of Decisions or submit a formal document to the next session, so that Member States could study it, the delegation replied:

'Mr Chairman, we do not object. Nevertheless, it was at this meeting when the *Plate Princess* document was presented in detail and I think that at this meeting we are in a position to also provide a detailed explanation. In principle I have no problem in submitting my statement to the delegations and that a summary of my statement is included. That's the situation. A more detailed explanation can be provided for the next meeting of the IOPC Fund in the usual manner. Now I am giving a reply, in this meeting, to what was said at this meeting. Later, of course, we may provide additional information if delegations so require.'

3.3.28 Following the debate, the delegation of Venezuela responded to the request by other delegations to submit a detailed document at a future session as follows:

'You are asking this delegation to provide a detailed document, however, I have the impression that many delegations would like a clarification here and now. But certainly we can provide those delegations with a more detailed document at a later stage if you wish.'

'Mr Chairman, I am not arguing that the information you have provided is false, I don't want to use the word false, but here there are a number of opinions, for example, it has been said by the Secretariat that the case of the *Plate Princess* is related to the *Nissos Amorgos* case and this is not correct, I think that this should not be repeated since it increases confusion. I don't want to go into details or enter into discussions because this isn't the right time. But I am wondering if the Fund went to the very highest level, the Supreme Court, and no further appeal is possible. What is requested is a further review of the judgement, but the decision has already been provided at the highest level, which is the Supreme Court. In the same manner as we will clarify things, I would like also to inform my Government what the reasons why, I feel, although I may be mistaken, although from the comments I have heard, I have the impression that the Venezuelan Courts' integrity has been put in doubt. I would then like to know the reasons since a number of delegations have already asked me what is going to happen after the final judgement, which is the case here. I do not want to go into details. I am concerned by this and I would like to have an answer.

Objection by the delegation of Venezuela

3.3.29 The delegation of Venezuela stated that it objected to the text in paragraphs 3.3.25 – 3.3.28 above since, in its view, it did not accurately reflect its intervention.

Interventions by other delegations

3.3.30 A question was raised by one delegation in respect of the time bar provisions. That delegation asked which time-bar provision the 1971 Fund relied upon, prescription or caducity. The Secretariat stated that this was a difficult issue which the Fund had faced in a number of cases in the past. It further stated that, when the 1969 Civil Liability and 1971 Fund Conventions were first drafted, the original languages used were English and French, each text being equally authentic. The term used in English, was 'shall be extinguished' while in French, the term used was 's'éteignent'. The terms in the translation of the original text into Spanish were, in the case of the 1969 CLC, 'prescribiran', whereas in the 1971 Fund Convention, 'caducaran' had been used. It was further stated that 'prescripción', can be interrupted, whereas 'caducidad' cannot. This had led to confusion in a number of incidents and was one of the reasons why the 1971 Fund had always taken the opportunity to notify claimants of the approaching time bar, in order to prevent claimants from losing their rights to compensation.

3.3.31 Several delegations recalled that the Venezuelan delegation had previously been requested to provide a detailed explanatory document in respect of this incident, and that although the Venezuelan delegation had undertaken to do so, nothing had as yet been received. In those delegations' view it was important that the Venezuelan delegation formally stated their position in writing.

3.3.32 One delegation asked whether the 1971 Fund had been named as a defendant in the proceedings. The Secretariat replied that both of the claims by FETRAPESCA and Puerto Miranda Union, had been submitted against the shipowner and Master, and not against the 1971 Fund, so at no time was the 1971 Fund a defendant.

3.3.33 A number of delegations stated that the 1971 Fund Administrative Council would have to decide whether to instruct the Secretariat to pay compensation in accordance with a final judgement of a competent court or to invoke Article 8 of the 1971 Fund Convention and Article X.1 of the 1969 CLC, which would be a difficult decision to take.

3.3.34 Other delegations expressed concern that the 1971 Administrative Council might be setting a dangerous precedent if it were to fail to comply with a final judgement from a national court in accordance with the 1971 Fund Convention.

3.3.35 It was stated by one delegation that the 1971 Fund had seemed to change its view in this regard. However, the Secretariat stated that the analysis of the judgement by the Maritime Court of Appeal had led the Secretariat to conclude that it may be possible that sub-paragraphs (a) and (b) of Article X.1 of the 1969 CLC might apply, and that therefore a final judgement might not be enforceable against the 1971 Fund.

3.3.36 Several delegations also expressed concern that the judgement rendered by the Supreme Tribunal had rejected the 1971 Fund's appeal and had confirmed the Maritime Court of Appeal's judgement.

3.3.37 Several delegations endorsed the Secretariat's decision to investigate whether there was a possibility to appeal to the Constitutional Court.

1971 Fund Administrative Council Decisions

3.3.38 Since the text in paragraphs 3.3.25 – 3.3.28 above had been transcribed from the audio recording of the meetings, the 1971 Fund Administrative Council decided that it was an accurate reflection of the statements made by the delegation of Venezuela during the session.

3.3.39 The 1971 Fund Administrative Council instructed the Secretariat, with the 1971 Fund's lawyers, to examine the Supreme Tribunal Judgement and if appropriate, appeal the Supreme Tribunal Judgement to the Constitutional Court.

3.3.40 The 1971 Fund Administrative Council further instructed the Secretariat to provide the analysis of the Judgement by the Supreme Tribunal at its next session.

3.3.41 It was agreed that the Secretariat would not take any further action without further instruction from the Administrative Council.

3.4

Incidents involving the IOPC Funds – 1971 Fund and 1992 Fund: *Al Jaziah 1* Document IOPC/OCT10/3/4		**92EC**		**71AC**

3.4.1 The 1971 Fund Administrative Council and the 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT10/3/4 concerning the *Al Jaziah 1* incident.

3.4.2 It was recalled that in 2003, after settlement and payment of all claims arising out of this incident by the 1971 and 1992 Funds, the Funds had commenced a recourse action against the shipowner and that in a judgement rendered in March 2008, the Abu Dhabi Court of First Instance had ordered the registered owner of the *Al Jaziah 1* to pay the 1971 Fund and the 1992 Fund Dhs 6 402 282, to be distributed equally between both Funds.

3.4.3 It was recalled that during 2008, the Funds had been informed that the shipowner had debts of some Dhs 63 million, including the judgement awarded in favour of the Funds and that the Funds, through their lawyers in the United Arab Emirates (UAE), had approached the shipowner to discuss a settlement, taking into account his financial situation. It was also recalled that in 2009, the Execution Judge decided to transfer the file to the UAE national's department where other debts would be added, 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 recalled that, in the view of the Fund's UAE lawyers, the best case scenario for the Funds would be to receive between Dhs 2 000 and Dhs 3 000 per month.

3.4.4 It was further recalled that at their October 2009 sessions, the 1971 Fund Administrative Council and the 1992 Fund Executive Committee had decided that the Funds should continue to try to recover what they could from the shipowner, but authorised the Director 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.

3.4.5 It was noted that in November 2009 the Funds had instructed their lawyers to appeal against the Execution Judge's decision but that the Funds' appeal had been rejected and therefore the Funds could only try to recover any amount owed through the UAE national's department, like other creditors.

3.4.6 The 1971 Fund Administrative Council and the 1992 Fund Executive Committee noted that the Director considered that it would take many years for the Funds to recover a meaningful amount and that it was clear that the costs incurred by the Funds in doing so would exceed the amount recovered. It was noted that the Director had therefore decided to discontinue the execution of the judgement and to write off the debt.

3.4.7 The 1971 Fund Administrative Council and the 1992 Fund Executive Committee noted that this case was now closed.

3.5

Incidents involving the IOPC Funds – 1992 Fund: ***N°7 Kwang Min*** **Document IOPC/OCT10/3/5**		**92EC**		

3.5.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT10/3/5.

Claims for compensation

3.5.2 It was recalled that all claims for compensation arising out of this incident have been paid by the Fund for a total of KRW 1.9 billion (£1.1 million), except for those of two seaweed culturists. The two claimants commenced legal action against the owners of the two vessels involved in the incident, the *N°7 Kwang Min* and the *N°1 Chil Yang*.

Legal actions

3.5.3 It was recalled that two seaweed culturists who had initially agreed with the assessed amounts 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.

3.5.4 It was also recalled that the owner of the *N°1 Chil Yang* had established a limitation fund in accordance with Korean law and that in August 2007 the Limitation Court had assessed the claims against him. It was further recalled, however, that in September 2007, the two seaweed culturists had appealed against the decision of the Limitation Court.

Appeal proceedings

3.5.5 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.

3.5.6 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. 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.

3.5.7 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, but that in September 2009 the Supreme Court had delivered its judgement, upholding the decision made by the Busan District Court. 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.

3.5.8 The 1992 Fund Executive Committee noted that in December 2009, the Administrator of the limitation fund had distributed the money amongst the claimants. It was also noted that the owner of the *N°7 Kwang Min* had deposited in the Limitation Court the amount awarded by the Court to the two claimants and that therefore the 1992 Fund would not have to pay further compensation for this incident. It was also noted that the 1992 Fund had received the total amount of KRW 127 929 338 (£70 610.75), ie the amount of KRW 122 555 497 awarded by the Limitation Court plus the accrued interests.

3.5.9 It was noted that in October 2009 the two claimants had filed a motion for a re-trial of the case to the Busan High Court but that in May 2010, the Busan High Court had dismissed the application.

3.5.10 The 1992 Fund Executive Committee noted with satisfaction that the decision of the Court was final and that therefore the *N°7 Kwang Min* incident could now be closed.

Debate

3.5.11 The delegation of the Republic of Korea thanked the Secretariat for its efforts to compensate the claimants in this case.

3.5.12 The Chairman, on behalf of the 1992 Fund Executive Committee, expressed the Committee's satisfaction that the incident was now closed.

3.6

Incidents involving the IOPC Funds – 1992 Fund: *Erika* Document IOPC/OCT10/3/6		**92EC**		

The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT10/3/6 dealing with the *Erika* incident.

3.7

Incidents involving the IOPC Funds – 1992 Fund: *Prestige* Document IOPC/OCT10/3/7		**92EC**		

3.7.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT10/3/7 concerning the *Prestige* incident.

CLAIMS FOR COMPENSATION

Spain

3.7.2 It was noted that as at 10 September 2010, 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. It was also noted that 752 (90.66%) of the claims other than those of the Spanish Government had been assessed for €3.9 million and that interim payments totalling €527 327 had been made in respect of 173 of the assessed claims, mainly at 30% of the assessed amount and taking into account compensation payments made by the Spanish Government to claimants. It was also noted that 425 claims (totalling €38 million) had been rejected and 19 had been withdrawn by the claimants. It was further noted that the remaining claims were awaiting a response from the claimant, were in progress or could not be assessed as the documentation submitted so far was insufficient to carry out an assessment. It was recalled that the claims by the Spanish Government had been provisionally assessed at €287.7 million.

France

3.7.3 It was noted that as at 10 September 2010, 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 noted that 94% of the claims had been assessed for €58 million and that interim payments totalling €5.6 million had been made at 30% of the assessed amounts in respect of 361 claims. It was noted that 58 claims totalling €3.8 million had been rejected because the claimants had not demonstrated that a loss had been suffered due to the incident and that the remaining claims awaited a response from the claimants or were being re-examined following the claimants' disagreement with the assessed amount.

3.7.4 It was recalled that the 1992 Fund and the shipowner's P&I insurer, London Steamship Owners' Mutual Insurance Ltd (London Club) had assessed the claim submitted by the French Government at €38.5 million.

LEGAL PROCEEDINGS IN SPAIN

Criminal investigation

3.7.5 It was recalled that the Criminal Court in Corcubión (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 in May 2010, the Criminal Court in Corcubión had declared the instruction of the case concluded.

3.7.6 It was noted that in July 2010 the Court had decided that four persons should stand trial for criminal and civil liability as a result of the *Prestige* oil spill, namely, the Master, the Chief Officer and the Chief Engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain. It was also noted that in the decision, the Court had stated that the London Club and the 1992 Fund were directly liable for the damages arising from the incident and that their liability was joint and several, and that the shipowner, the management company and the Spanish State were vicariously liable. It was further noted that in the decision, the Court had requested the parties with civil liability to provide security to cover their liabilities up to their respective legal limits.

3.7.7 The 1992 Fund Executive Committee noted that the 1992 Fund had requested the Court to reconsider the above decision on the grounds of public policy, since a request to the 1992 Fund to deposit a guarantee in Court was in contravention with the 1992 Fund Convention and the treaty obligations incurred by Spain. It was noted that in its pleadings the 1992 Fund had argued that the Fund's mission was to compensate the persons that had suffered pollution damage in accordance with the 1992 Fund Convention, that the Fund had already paid a great part of the claims arising from the *Prestige* incident and that there were still outstanding claims in France and Portugal that the Fund would have to compensate. It was noted that the 1992 Fund had also argued that a request for the Fund to provide a security would impede the Fund to compensate the victims that were not party to the criminal proceedings and therefore it would prevent the Fund from complying with its mission.

Debate

3.7.8 One delegation expressed concern with respect to the Criminal Court's decision to request the 1992 Fund to provide security. That delegation stated that it was important that the Spanish Court applied the Conventions and expressed its agreement with the arguments submitted by the Fund asking the Court to reconsider the decision.

3.7.9 The Secretariat explained that the Court had, as a matter of routine, applied Spanish national civil law and had treated the Fund as if it were an insurance company, in which case it was normal procedure to request security. The Secretariat clarified that the matter would be reconsidered by the Court that would deal with the oral hearing. It was recalled that the same issue had arisen in the context of the *Aegean Sea* incident, where the Court dealing with that case had initially requested the 1971 Fund to provide security but, in the event, the Court had not enforced the security request.

Civil claims

3.7.10 It was noted that as at 10 September 2010, some 2 122 claims, including claims by the Spanish Government, had been lodged in the legal proceedings before the Criminal Court in Corcubión (Spain). It was noted that these claims also included 31 claims by French claimants, including the French Government. It was also noted that, excluding the claims by the Spanish Government and the French claimants, 119 of those claims had been assessed for €796 721 and that interim payments totalling €218 294 had been made at 30% of the assessed amount, taking into account the aid received if applicable. It was further noted that the remaining claimants had received payments from the Spanish Government and that the assessment of these claims was included in the subrogated claim submitted by the Spanish Government.

LEGAL PROCEEDINGS IN FRANCE

3.7.11 It was noted 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 noted that 103 of these claimants had since withdrawn their actions and that actions by 129 claimants remained pending in court with claims amounting to a total of €85.6 million. It was also noted that the courts had granted a stay of proceedings in 19 legal actions, either in order to give the parties time to discuss their claims out of court, or until the outcome of the criminal proceedings in Corcubión was known.

COURT ACTION IN THE UNITED STATES

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

3.7.13 It was noted that the District Court had issued its second judgement in August 2010, granting ABS' Motion for Summary Judgment and again dismissing Spain's claims against ABS. It was noted that the Court had decided that United States law governed in this case, primarily based on Spain's allegations that the critical wrongful act had occurred in ABS' headquarters in the United States and based on the fact that ABS headquarters did set central standards for the certification of vessels and that at least one of the operative certificates in place at the time of the *Prestige* incident had been issued from those headquarters. It was noted that the Court had considered that there was no United States legal precedent where a classification society had been held liable to a third party for damages caused by the failure of a vessel and that Spain had submitted no evidence that it had specifically relied upon the class certificate issued to the *Prestige*.

3.7.14 It was also noted that the Court had stated that it was unwilling to accept Spain's proposed rule 'that a classification society owes a duty to refrain from reckless behaviour to all coastal states that could foreseeably be harmed by failures of classified ships', finding that would amount to an 'unwarranted expansion of the existing scope of tort liability' and that such an expansion would be inconsistent with a shipowner's non-delegable duty to provide a seaworthy vessel.

3.7.15 The 1992 Fund Executive Committee noted that the Spanish State had appealed against the judgement.

3.8

Incidents involving the IOPC Funds – 1992 Fund: *Solar 1* Document IOPC/OCT10/3/8		**92EC**		

3.8.1 The 1992 Fund Executive Committee took note of document IOPC/OCT10/3/8, which contained information relating to the *Solar 1* incident.

Claims for Compensation

3.8.2 It was noted that as at 21 September 2010, some 32 466 claims had been received and that payments totalling PHP 987 million (£10.8 million) had been made in respect of 26 870 claims, mainly in the fisheries sector. The Committee noted that, with one exception, all claims had now been assessed and that the local claims office had been closed.

Claims in Court

3.8.3 It was recalled that a civil action had been filed in August 2009 by a law firm in Manila representing claims by 967 fisherfolk, totalling PHP 286.4 million (£4.1 million) for property damage as well as economic losses.

3.8.4 It was also recalled that the Philippine Coastguard (PCG) had brought legal proceedings to safeguard its rights in relation to two claims for costs incurred during clean-up and pumping operations. It was noted that, since an offer of settlement for PHP 104.8 million (£1.6 million) had been made for both claims, the shipowner's insurer, the Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club) and the Fund were awaiting a decision from the PCG.

3.8.5 It was noted that 97 individuals, employed by a municipality on Guimaras during the response to the incident, had commenced proceedings in court against the Mayor, the ship's Master, various agents, ship and cargo owners and the Fund, on the grounds of not having been paid for their services. It was also noted that a claim by the municipality for overtime payments, including those rendered by the claimants, had been assessed and had been paid to the municipality. It was further noted, that after a review of the legal documents received, the Fund had filed statements of defence in court, pertaining to the fact that the majority of the claimants were not engaged in activities admissible in principle and that the claim by the municipality had been paid as assessed and that the claimants had not submitted individual claims outside those presented by the municipality.

3.9

Incidents involving the IOPC Funds – 1992 Fund: *Volgoneft 139* Document IOPC/OCT10/3/9		**92EC**		

3.9.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT10/3/9 concerning the *Volgoneft 139* incident.

'Metodika' claim

3.9.2 It was recalled that the Federal Service for the Supervision in the Sphere of the Use of Nature (Rosprirodnadzor) had submitted a claim for environmental damage for some RUB 6 048.6 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 Civil Liability Convention (1992 CLC) and therefore not admissible for compensation.

3.9.3 It was noted that in a judgement rendered in September 2010, the Arbitration Court of Saint Petersburg and Leningrad Region had decided to reject the 'Metodika' claim. It was noted that in its judgement the Court had considered that, under Article I.6 of the 1992 CLC, compensation for

damage to the environment, other than loss of profits caused by such damage, should be limited to the expenses for reasonable reinstatement measures, as well as the expenses for preventive measures and subsequent damage caused by such measures. It was also noted that the Court had also considered that the expenses included in other claims arising from the incident covered any preventive and reinstatement measures actually taken as a result of the incident.

3.9.4 The 1992 Fund Executive Committee expressed satisfaction that the 'Metodika' claim had been rejected by the Court.

Cause of the incident

3.9.5 It was recalled that the insurer had pleaded before the Arbitration Court of Saint Petersburg and Leningrad Region the defence that the spill had resulted from a natural phenomenon of an exceptional, inevitable and irresistible character and that the shipowner and his insurer were therefore not liable for the pollution damage caused by the spill. It was noted that if this defence were to be successful, the 1992 Fund would be liable to pay compensation to victims of the spill from the outset.

3.9.6 It was noted that at a hearing in September 2010 the Arbitration Court had decided that the shipowner and his insurer had not provided evidence that the oil spill resulted from an act of God, exceptional and unavoidable. It was noted that the Court had concluded that the Master, having had all the necessary storm warnings, had not taken all necessary measures to avoid the incident and that therefore the incident was not unavoidable for the vessel. It was noted that the Court had also concluded that the storm was not exceptional since there was data of comparable storms in the area. The 1992 Fund Executive Committee noted that in its judgement the Court had decided that the spill did not result from a natural phenomenon of an exceptional nor inevitable character and that the shipowner and his insurer were therefore liable for the pollution damage caused by the spill.

The 'insurance gap'

3.9.7 It was recalled that in February 2008, the Arbitration Court of Saint Petersburg and Leningrad Region had issued a ruling declaring that the limitation fund had been constituted by means of a letter of guarantee for 3 million SDR (RUB 116.6 million) and that the Court of Cassation and the Supreme Court had confirmed that decision, maintaining that the Russian Courts should apply the limits as published in the Russian Official Gazette. It was also recalled that the 1992 Fund had submitted pleadings asking the Arbitration Court to reconsider its earlier decision on the shipowner's limitation fund, on the basis that the amendments to the 1992 CLC on the increase of the shipowner's liability limit had now been officially published in the Russian Federation.

3.9.8 It was noted that in a judgement rendered in September 2010, the Arbitration Court had decided to maintain the shipowner's limitation fund at only 3 million SDR (RUB 116.6 million) on the grounds that the amendments to the limits available under the 1992 CLC and 1992 Fund Convention had not been published in the Russian Official Gazette at the time of the incident. It was noted, however, that the Fund had appealed against that decision.

Debate

3.9.9 The Secretariat clarified that, although the Fund had appealed against the Arbitration Court's decision, it recognised that the likelihood of the Fund being successful in this appeal was very slim.

3.9.10 One delegation agreed that the Fund would most likely not be successful in its appeal on the issue of the insurance gap. That delegation also stated that it would like the Fund and the Russian Government to reach an agreement on how to resolve the insurance gap, but that in no case should the burden of covering that gap fall on the Fund.

3.9.11 Another delegation enquired whether there had been any progress in the discussions between the Fund and the Russian Government on the solution of the insurance gap.

3.9.12 The Secretariat stated that no developments had taken place regarding the discussions between the Fund and the Russian Government on this issue, but that now that the other matters arising from the incident seemed to have been resolved, efforts should be concentrated in trying to resolve the insurance gap problem.

Claims for compensation

3.9.13 It was noted that claims totalling RUB 8 529.8 million had been submitted as a result of the incident and that a substantial number of claims had been assessed for a total of RUB 117.4 million. It was also noted that the Fund's experts continued the examination of the documentation provided in support of the various claims.

Debate

3.9.14 One delegation referred to the Fund's expert's opinion on the cause of the incident that seemed to indicate that the Master and the shipowner were in part responsible for the incident. That delegation referred to Article 4.3 of the 1992 Fund Convention which provided that if the Fund proved that the pollution damage resulted wholly or partially from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. That delegation stated that according to that provision neither the shipowner nor the charterer could claim compensation from the 1992 Fund.

3.9.15 The Secretariat clarified that the claims submitted by the shipowner and the charterer were related to costs incurred for preventive measures and that, according to Article 4.3 of the 1992 Fund Convention, the Fund was not exonerated from its obligation to pay compensation for costs relating to preventive measures. The Secretariat also stated that although the Fund had initially considered whether it could recover costs from the shipowner, it was necessary to take into account that the shipowner was bankrupt and that therefore this was not a practical option.

3.9.16 One observer delegation requested clarification with respect to who acted as the charterer and who was the owner of the *Volgoneft 139*. That delegation also requested information on whether the value of the oil recovered from the *Volgoneft 139* directly and of the oil-water mixture recovered at sea had been taken into account in assessing the shipowner's and charterer's claims.

3.9.17 The Secretariat clarified that the shipowner was Volgotanker, whereas the charterer was Bash Volgotanker, which was wholly owned by Volgotanker. The Secretariat also explained that the value of the oil had been taken into account when assessing the claims by the shipowner and the charterer.

Time bar

3.9.18 It was noted that, since the three-year anniversary of the incident was approaching, letters had been sent in July 2010 to the claimants which had not submitted their claims in court and with whom settlements had not been reached by that time, bringing the time-bar issue to their attention.

Statement by the Russian delegation

3.9.19 The Russian delegation stated that the Court had decided to deal with the legal issues in this case separately and that consideration of the quantum of different claims would be dealt with at a future hearing. That delegation also stated that it was expected that the Court would, by the end of 2010, render a judgement regarding the quantum of the claims. The delegation requested that the Fund provide an assessment of the quantum of all the claims to the Court at its next hearing.

3.9.20 The Russian delegation also stated that, in its view, there were no new arguments for the Court to reconsider the insurance gap.

3.9.21 In mentioning the Court's decision to reject the 'Metodika' claim, that delegation stated that Rosprirodnadzor had not appealed against the decision and that any appeal would now be time-barred.

Debate

3.9.22 When summarising the discussion, the Chairman stated that the 1992 Fund Executive Committee had welcomed the latest developments in this case, mainly the Court's rejection of the 'Metodika' claim and the shipowner's insurer's defence of *'force majeure'*, although the difficult problem of the 'insurance gap' was not yet solved. The Chairman also drew the Committee's attention to the fact that it had not authorised the Director to make any payments in respect of this incident yet.

3.10

Incidents involving the IOPC Funds – 1992 Fund: ***Hebei Spirit*** **Documents IOPC/OCT10/3/10 and IOPC/OCT10/3/10/1**		**92EC**		

3.10.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT10/3/10, submitted by the Director and document IOPC/OCT10/3/10/1, submitted by the Republic of Korea.

DOCUMENT IOPC/OCT10/3/10, SUBMITTED BY THE DIRECTOR

Claims situation

3.10.2 The 1992 Fund Executive Committee noted that as at 18 October 2010, 27 366 claims totalling KRW 2 194 billion had been registered, including 242 group claims, together representing 126 331 claimants. It further noted that 2 062 claims on behalf of 10 290 claimants had been assessed at a total of KRW 128 300 million and that 5 816 claims on behalf of 5 990 claimants had been rejected. It was further noted that the shipowner's insurer, Assuranceföreningen Skuld (Gjensidig) (Skuld Club) had made payments to 1 926 claimants totalling KRW 112 342 million, and that the remaining claims were being assessed or additional information was being requested from the claimants. The Executive Committee noted that further claims were expected.

Assessment of small-scale non-fishery claims

3.10.3 It was recalled that the experts engaged by the Skuld Club and the 1992 Fund had developed a methodology for the assessment of claims in the non-fishery sector in cases where very little or no supporting evidence had been provided. It was also recalled that in October 2009, the 1992 Fund Executive Committee had endorsed the Director's decision to assess small claims in the non-fishery sector according to this methodology on a trial basis, and that the Skuld Club and the 1992 Fund had been assessing these claims based on the methodology developed (cf document IOPC/OCT09/11/1, paragraph 3.8.20).

3.10.4 The Executive Committee noted that, as at 9 September 2010, about 60% of the small-scale business claims submitted had been assessed using the methodology described above, that the others were being assessed and that further claims from small-scale businesses were expected. It was also noted that the Director intended to present the results of the application of this methodology once all small-scale claims, for which the methodology was suitable, had been assessed.

Fisheries restrictions

3.10.5 It was recalled that the Korean Government had established a number of fisheries restrictions in the weeks following the incident which were lifted between April and September 2008.

3.10.6 It was also recalled that in June 2009, the 1992 Fund Executive Committee had decided that the assessment of claims in the fisheries sector should be based on conclusive scientific information available and had instructed the Director to continue to have bilateral consultations with the Republic of Korea.

3.10.7 The 1992 Fund Executive Committee recalled that by June 2010, the Secretariat and the Republic of Korea had reached a mutual understanding on reasonable dates for lifting the fisheries restrictions within the 1992 Fund's policy on admissibility, as laid down in the Claims Manual, and on the basis of the instructions given by the Committee in June 2009.

3.10.8 The Executive Committee noted that this understanding had been obtained after the 1992 Fund and its experts had conducted another thorough review of information provided and the circumstances and conditions following the incident. It was also noted that the 1992 Fund's experts had proposed two adjustments to the dates when fisheries restrictions could have been safely lifted without departing from existing Fund policy.

3.10.9 The 1992 Fund Executive Committee noted that these changes represented a minor correction to the position initially taken by the Secretariat and that it was within the 1992 Fund's policy on admissibility.

3.10.10 The Executive Committee noted that since the June 2010 meeting, the periods for the reasonable resumption of fisheries activities had been extended in some locations, in line with the assessment of reasonable clean-up operations.

Investigation into the cause of the incident

3.10.11 It was noted that an investigation into the incident had been initiated by the Incheon District Maritime Safety Tribunal in the Republic of Korea. It was noted that the owners of the two tugs and the owners of the *Hebei Spirit* had appealed to the Supreme Court against the decision of the Central Maritime Court and that the decision of the Supreme Court was still pending.

3.10.12 It was also noted that the appropriate authority in the ship's flag State administration in China (Hong Kong Special Administrative Region) (China (HKSAR)) had concluded its investigation into the cause of the incident and that the report on the investigation had been published in 2009. It was noted that the result of the investigation indicated that the main factor contributing to the cause of the incident was the decision by the operator of the Marine Spread to commence the towing voyage when adverse weather had been forecast. It was also noted that the investigation indicated that the delay by the Marine Spread in notifying the Vessel Traffic Information Station (VTIS) and other ships in the vicinity had resulted in insufficient time being given to the *Hebei Spirit* to take necessary actions to avoid the collision.

Limitation proceedings by the owner of the Hebei Spirit

3.10.13 It was recalled that in February 2009, the Limitation Court had rendered an order for the commencement of the limitation proceedings by the owner of the *Hebei Spirit*. It was noted that 126 316 claims totalling KRW 3 597 billion had been submitted to the limitation proceedings and that the Limitation Court had appointed a court administrator to deal with the claims.

3.10.14 It was noted that a number of claimants had appealed to the Supreme Court of Korea against the decision for the commencement of the limitation proceedings by the owner of the *Hebei Spirit*, that this appeal had been dismissed on 26 November 2009 and that consequently the Limitation Court's decision for the commencement of the proceedings had become final.

Recourse action

3.10.15 It was recalled that in January 2009, the owner and insurers of the *Hebei Spirit* and the 1992 Fund had commenced recourse action against Samsung C&T and Samsung Heavy Industries (SHI), the owner and operator/bareboat charterer of the two towing tugs, the anchor boat and the crane barge, in the Court of Ningbo in the People's Republic of China, combined with an attachment of SHI's shares in two shipyards in China as security.

3.10.16 It was noted that both Samsung C&T and SHI had filed applications objecting to the jurisdiction of the Court of Ningbo and, in the case of SHI, objecting to the attachment, that submissions in response to the applications had been lodged on behalf of the 1992 Fund.

3.10.17 The Committee took note that in September 2010 the Ningbo Maritime Court had rejected Samsung C&T and SHI objections to its jurisdiction in both recourse actions.

Level of payments

3.10.18 It was recalled that in June 2008, the 1992 Fund Executive Committee, in view of the uncertainty as to the total amount of the admissible claims, had decided that the level of payments should, for the time being, be limited to 35% of the amount of the damage actually suffered by the respective claimants as assessed by the 1992 Fund's experts. It was also recalled that in October 2008, March, June and October 2009 and June 2010 the Executive Committee had decided to maintain the level of the Fund's payments at 35% of the established claims (cf document IOPC/OCT10/3/10, paragraph 13.1).

3.10.19 The 1992 Fund Executive Committee noted that the most recent estimate by the Skuld Club's and the 1992 Fund's experts of the total amount of the admissible losses caused by the spill was around KRW 438.5 billion. It was noted, however, that although, on the basis of the analysis by the Club's and the Fund's experts, it could be argued that there was room to revise the level of payments, the Director had also considered the circumstances set out in document IOPC/OCT10/3/10, section 13,which had led him to the conclusion that, given the remaining uncertainties and taking into account that the advice of the Club's and 1992 Fund's experts was still the most reliable and realistic estimate of the total exposure of the 1992 Fund in this case, maintaining the level of payment at 35% would continue to provide the Fund with reasonable protection against a possible overpayment situation.

Debate

3.10.20 Most of the delegations that took the floor stated that, although they hoped that the level of payment could be raised soon, they agreed with the Director that, taking into account the existing uncertainties with regard to number of claims and amounts claimed, maintaining the level of payment at 35% would continue to provide the Fund with reasonable protection against a possible overpayment situation.

1992 Fund Executive Committee Decision

3.10.21 The 1992 Fund Executive Committee decided to maintain the level of payments at 35% of the amount of the loss or damage as assessed by the Club's and 1992 Fund's experts but also to review this percentage at the 1992 Fund Executive Committee's next session.

DOCUMENT IOPC/OCT10/3/10/1, SUBMITTED BY THE REPUBLIC OF KOREA

3.10.22 The 1992 Fund Executive Committee took note of document IOPC/OCT10/3/10/1, submitted by the Republic of Korea which gave a general introduction of the measures taken by the Korean Government in the response to the spill and management of the incident.

3.10.23 In presenting the document, the Korean delegation praised the Secretariat for the work carried out since the beginning of the incident to ensure compensation was paid to the victims of the incident. The Korean delegation noted, however, that there was still a high proportion of claimants waiting for compensation. The Korean delegation therefore requested the Executive Committee to instruct the Director to facilitate the prompt and fair compensation of these victims.

3.10.24 The Korean delegation also referred to a recent informal discussion with the Secretariat on the matter of claims submitted by oyster aquaculture claimants and expressed the view that the discussion had contributed to a better understanding of the issue. The Korean delegation further stated that, since discussions on the matter were continuing, it did not wish to raise the issue for discussion at the present meeting of the Executive Committee.

3.10.25 The Korean delegation also stated that, with regard to the matter of the level of payment, the Korean Government was working in close cooperation with the Secretariat on ways to enable the 1992 Fund Executive Committee to raise the level of payment to 100% of the assessed amount. The Korean delegation stated that the Korean Government intended to present a document detailing its proposal at the next session of the Executive Committee.

Debate

3.10.26 Several delegations offered their sympathy to those who had suffered losses as a result of the incident and reiterated that they should be compensated as quickly as possible. They also agreed with the Acting Director that this was the biggest incident in the history of the Funds, both in terms of number of claims and of the complexity in assessing them. The same delegations also stated that they were confident that the Secretariat was doing its utmost to conduct the assessments as quickly as possible.

3.10.27 One delegation also stated that it was not necessary to instruct the Director to provide prompt and fair compensation to victims since he was already doing so, but that it was important that the Korean Government and the Director maintained a good level of cooperation with a view to facilitating the assessment of claims.

3.10.28 A number of delegations remarked that, although the Fund's policy was to reject claims from fishermen who carried out their activities in breach of licensing requirements under national legislation, some flexibility could be exercised in respect of such claims, depending on the circumstances. Those delegations also stated that the scope for such flexibility would have to be considered further and welcomed the proposal of the Korean delegation to provide a more detailed document on the subject at the next session of the 1992 Fund Executive Committee.

3.10.29 The Korean delegation thanked the previous speakers for their statements of support for the victims of the *Hebei Spirit* incident and the Secretariat for its cooperation with the Korean Government in the handling of this case.

1992 Fund Executive Committee Decisions

3.10.30 The 1992 Fund Executive Committee welcomed the continued discussions between the Republic of Korea and the Secretariat on the issue of unlicensed claims, particularly with regard to oyster aquaculture facilities, and endorsed the proposal by the Korean delegation to submit a document on the result of such discussions at the next session of the Executive Committee, if necessary.

3.10.31 The 1992 Fund Executive Committee also decided to endorse the proposal by the Korean delegation to continue exploring, together with the Director, the possibility of increasing the level of payments to 100% and to submit a proposal to the Executive Committee at its next session.

3.11

Incidents involving the IOPC Funds – 1992 Fund: Incident in Argentina Document IOPC/OCT10/3/11		**92EC**		

3.11.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT10/3/11 regarding an incident in Argentina.

Criminal proceedings

3.11.2 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 recalled, however, that the shipowner had appealed against the decision contesting liability and arguing that the oil which impacted the coast must have come from another source.

Civil proceedings

3.11.3 It was recalled that a claim for compensation in relation to environmental damage had been submitted to the Court in Comodoro Rivadavia by the Chubut Province against the Master and the owner of the *Presidente Illia*. It was also recalled that the shipowner had submitted points of defence denying his liability for the spill and requesting the Court to bring the 1992 Fund into the proceedings. It was recalled that the Court had agreed to this request and that the Fund had been formally notified in October 2009. It was also recalled that the Fund had submitted defence pleadings arguing that the most likely source of the spill was the *Presidente Illia*.

Claims situation

3.11.4 It was noted that as at 2 September 2010, 170 claims for compensation for a total of AR$41.5 million and one claim for US$126 617 had been submitted by fishermen, tourism-related businesses and animal welfare organisations. It was also noted that 68 claims had been approved at AR$1.9 million and that the remaining claims were being assessed.

3.11.5 The Committee noted that on the basis of interim assessments, the shipowner's insurer, the West of England Ship Owners Mutual Insurance Association (Luxembourg) (West of England Club) had made interim payments totalling AR$484 000 in respect of 66 claims in the fisheries sector and two claims in the tourism sector.

3.12

Incidents involving the IOPC Funds – 1992 Fund: ***King Darwin*** **Document IOPC/OCT10/3/12**		**92EC**		

3.12.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/OCT10/3/12. It was noted that on 27 September 2008, the Marshall Islands oil tanker *King Darwin* (42 010 GT) had released approximately 64 tonnes of bunker C fuel oil into the waters of the Restigouche River during discharge operations in the Port of Dalhousie, New Brunswick, Canada.

Claims for compensation

3.12.2 It was noted that four claims had been submitted as a result of the incident, two of which had been settled at US$ 1 332 488.

Legal actions

3.12.3 It was noted that in September 2009, a dredging company had filed an action in the Federal Court in Halifax, Nova Scotia, against the owners of the *King Darwin*, Steamship Mutual, the Canadian Ship Source Oil Pollution Fund and the 1992 Fund, claiming property damage due to fouling of the equipment caused by the spilled oil and consequential losses totalling Can$143 417.

3.12.4 It was noted that, from the information available to the 1992 Fund, this appeared to be a small operational spill, well contained within the Port of Dalhousie, that the damage caused appeared to be well within the 1992 CLC limit and that it was therefore unlikely that the 1992 Fund would be called upon to pay compensation.

3.12.5 It was noted that there had been no developments since the June 2010 meeting.

4 Compensation matters

4.1

Reports of the 1992 Fund Executive Committee on its 47th-48th sessions	**92AC**			

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 47th-48th sessions (cf documents IOPC/OCT09/12/2 and IOPC/JUN10/6/1).

4.1.2 The 1992 Fund Administrative Council noted the reports 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 1992 Fund Executive Committee **Document IOPC/OCT10/4/1**	**92AC**			

4.2.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT10/4/1.

1992 Fund Administrative Council Decision

4.2.2 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 1992 Fund Assembly:

Eligible under paragraph (a)	Eligible under paragraph (b)
Germany	Bahamas
Italy	Cameroon
Japan	Greece
Malaysia	Mexico
Netherlands	Morocco
Republic of Korea	Nigeria
Singapore	Norway
	Turkey

4.3

Report on the first meeting of the 6th intersessional Working Group **Document IOPC/OCT10/4/2**	**92AC**			

4.3.1 It was recalled that in October 2009, the 1992 Fund Administrative Council had established 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.

4.3.2 The 1992 Fund Administrative Council noted that the Working Group had held its first meeting on 29 and 30 June 2010. The Chairman of the Working Group, Mr Volker Schöfisch (Germany), introduced the Report of that first meeting, set out in document IOPC/OCT10/4/2.

4.3.3 He informed the 1992 Fund Administrative Council that the discussions at the meetings had been based on documents submitted by the Director, the Republic of Korea, the International Group of P&I Clubs and ITOPF. He expressed gratitude to all those who had submitted documents, without which it would have been impossible to address any of the questions in the Working Group's mandate.

4.3.4 He pointed out that the Working Group had focused in June on the main areas of concern in connection with the functioning in practice of the international liability and compensation regime, including:

(i) The general submission of large numbers of small claims;
(ii) The lack of evidence supporting such claims;
(iii) The time it takes to assess claims;
(iv) The costs of assessing claims;
(v) The possible role of Member States; and
(vi) Problems associated with interim payments.

4.3.5 He referred the 1992 Fund Administrative Council to the Working Group Report for details (document IOPC/OCT10/4/2), but explained that, following broad discussions of these topics, the Working Group had decided which specific topics it should focus on in future, as set out in the Annex to the Report, and that those future discussions would also include the issue of the problems associated with interim payments, as raised by the International Group of P&I Clubs.

4.3.6 The Chairman informed the 1992 Fund Administrative Council that the Working Group had agreed to hold its next meeting during the spring 2011 sessions of the governing bodies. He took the opportunity to remind Member States that the Working Group had proposed that States should look into their national jurisdictions to discover which solutions had been found when handling mass claims situations or catastrophic losses in other fields. He urged Member States to do so and encouraged members of the Working Group to submit documents for consideration at the next meeting, emphasising that the Working Group required input from its participants if it was to find solutions to the problems raised under its mandate.

Debate

4.3.7 The 1992 Fund Administrative Council Chairman thanked the Working Group Chairman for presenting the Report and reiterated Mr Schöfisch's point that Member States should provide the Working Group with their input. He encouraged, in particular, those States who had had experience in dealing with mass claims in connection with Fund incidents over the years to come forward with information on the handling of those claims to enable the Group to make comparisons during their discussions.

4.3.8 A number of delegations expressed their gratitude to the Working Group for the work carried out so far, for the Report and the proposal for future work. Several delegations commented on the importance of the issue of the handling of mass claims, and the possibility of encouraging States to facilitate the grouping of claims in the future work programme.

4.3.9 The delegation of the Philippines suggested that the Working Group could look into the methods used for handling the mass claims submitted in connection with the Gulf War, whereby claimants were given a set amount, regardless of the size of their actual claim, which enabled each claimant to receive at least some compensation. That delegation emphasised that whilst it was prompt, it may not necessarily be fair, nor within the Conventions, if the Working Group were to suggest a similar system.

4.3.10 Another delegation suggested that the Working Group should also look into encouraging States affected by an incident to assist the assessment process by consolidating the relevant information and data submitted to the Fund Secretariat.

1992 Fund Administrative Council Decision

4.3.11 The 1992 Fund Administrative Council agreed that it was worth looking into the methods used for handling the mass claims submitted in connection with the Gulf War, and invited the delegation of the Philippines to do so and to submit a document on this matter to the next meeting of the Working Group.

4.4

Consideration of the definition of 'ship' Document IOPC/OCT10/4/3	**92AC**		**SA**	
Application of the 1992 Conventions to ship-to-ship oil transfer operations and floating storage – Submitted by Denmark Document IOPC/OCT10/4/3/1	**92AC**		**SA**	

DOCUMENT IOPC/OCT10/4/3, SUBMITTED BY THE DIRECTOR

4.4.1 It was recalled that in October 2009 the 1992 Fund Administrative Council and the Supplementary Fund Assembly had instructed the Director to further examine the 1992 Fund's policy regarding the definition of 'ship' under Article 1.1 of the 1992 CLC, in connection with the question of whether pollution damage caused by floating storage units (FSUs), such as the *Slops*, should be covered under the 1992 Fund Convention.

4.4.2 It was noted that, in accordance with the governing bodies' instructions, the Director had commissioned Douglas Westwood as external consultants to provide an overview of the numbers, types and use of vessels used for the storage of persistent oils, as well as information relating to the geographical shift in oil production from onshore to offshore regions and the associated operational changes in oil storage.

4.4.3 The 1992 Fund Administrative Council and Supplementary Fund Assembly took note of the information contained in document IOPC/OCT10/4/3 and of the presentation made by Mr Thom Payne of Douglas Westwood. It was noted that hard copies of the presentation were available to delegates upon request to the Secretariat.

Debate – General response to presentation

4.4.4 Most delegations expressed their appreciation for the document submitted by the Secretariat, and for the presentation made by Mr Payne. Many of those delegations stated that, while the information submitted and presented to date was informative and useful, there remained a need for additional analysis of the jurisprudence and interpretation of Convention provisions. Some delegations stated that the study by Douglas Westwood had shown that activities of FSUs were increasing rapidly. Those delegations also stated that those activities should be covered by the CLC and Fund regime.

4.4.5 Many delegations requested that the Secretariat continue its work by further exploring the possibility of a broader interpretation of the definition of 'ship' under the 1992 CLC. Some delegations stated that they also required further in-depth analysis of the legal issues and potential consequences surrounding a possible policy change in respect of that definition, in particular in connection with the application of strict liability, compulsory insurance and certification. One delegation emphasised that the purpose and the scope of such work should be strictly confined to providing information with regard to the consequences that a possible change in the interpretation of the definition of 'ship' could have and should not invite any recommendations or suggestions on this issue.

4.4.6 Several delegations stated that, in their opinion, and in order to avoid unequal treatment by the courts of different Member States, it would be preferable if a broader interpretation of the definition of 'ship' was adopted instead of the current restrictive interpretation as adopted by the 1992 Fund Assembly in its October 1999 session. Those delegations did, however, also state that it was, in their opinion, not necessary to amend the existing text of the 1992 Conventions.

4.4.7 In this context, a number of other delegations stated that adopting a broader interpretation of the definition of 'ship', may not be sufficient, and that it might instead be necessary to amend the Conventions.

Debate – Potential Amendments to the 1992 CLC and Fund Convention

4.4.8 One delegation emphasised the need for the objective analysis of the effects that any change of interpretation may have on the compensation regime as a whole, since the definition of 'ship' was closely related to the very substance of the compensation regime. Another delegation added that the governing bodies should look for legal analysis without the notion of a potential change in policy. That delegation further stated that a change to the definition of 'ship' would in any case require a diplomatic conference.

4.4.9 One delegation stated that it recognised the merits of including FSUs within the definition of 'ship' in order to cover associated pollution risks, but that, if the interpretation of the policy of the definition of 'ship' was to be amended, it would be essential that reference be made to the word 'voyage' contained within Article 1.1 of the 1992 CLC. That delegation further stated that, if reference was indeed made to 'voyage', there would be some difficulty in trying to include some of the types of FSUs identified by the consultants within the current interpretation of the definition of 'ship', as several of the units could not be considered to be on a 'voyage' if moored permanently.

4.4.10 Another delegation stated that, in its opinion, 'voyage' referred only to the proviso on combination carriers included in the definition of 'ship' when carrying persistent oil in bulk as cargo, and that therefore only the wording of Article 1.1 of the 1992 CLC, which preceded this proviso should be subject to legal analysis.

4.4.11 Another delegation referred to the necessity of also considering potential contribution aspects which could result from any inclusion of offshore FSUs within the interpretation of the definition of 'ship' under the 1992 CLC.

Debate – Consideration of interpretation of definition of 'ship' by reference to other international conventions

4.4.12 Some delegations questioned whether other international conventions should be considered in the interpretation of the definition of 'ship'. Another delegation suggested that, the issue of offshore storage and production being of growing importance, discussions should also take into account work currently underway in the Legal Committee of IMO.

4.4.13 In this regard, the observer delegation of IMO stated that IMO had never conducted a comprehensive analysis of the interpretation of the definition of 'ship', but that the IMO Legal Committee would consider the definition of 'ship' under certain, specific treaties and conventions.

4.4.14 The observer delegation of IMO further stated that consideration of the interpretation of the definition of 'ship' under the 1992 CLC was currently not on the IMO Legal Committee's Agenda, nor was there time available to consider it at the upcoming session. However, that delegation stated that, should the 1992 Fund Administrative Council and Supplementary Fund Assembly wish the IMO Legal Committee to consider this, it could be incorporated into the IMO Legal Committee's Agenda at a later date.

4.4.15 The IMO observer delegation also stated that there was currently a proposal by one IMO Member State to consider the establishment of a compensation regime for offshore drilling units, and that this might be of interest to Member States.

4.4.16 The observer delegation of the Comité Maritime International (CMI) stated that in the past, CMI had undertaken work to consider the definition of 'ship' in various conventions, but that it had proved a very arduous task which was still unresolved, and the issue was not currently on the CMI Agenda. That delegation added however, that CMI might be happy to assist with the consideration of the interpretation of the definition of 'ship', if requested by the 1992 Fund Administrative Council and Supplementary Fund Assembly.

1992 Fund Administrative Council Decisions

4.4.17 The 1992 Fund Administrative Council decided that the decision of the 1992 Fund Administrative Council and Supplementary Fund Assembly made in October 2009 was still valid (cf document IOPC/OCT09/11/1, paragraph 4.4.9), in particular in connection with the question of whether pollution damage caused by FSUs such as the *Slops* should be covered under the 1992 Fund Convention.

4.4.18 It also decided that the Secretariat should, at the next session of the 1992 Fund Assembly, provide a legal analysis of the extent to which the interpretation of the definition of 'ship' within Article 1.1 of the 1992 CLC might include FSUs.

4.4.19 In this regard, the 1992 Fund Administrative Council instructed the Secretariat to consider the interpretation of the definition of 'ship' by reference only to the 1992 CLC and 1992 Fund Convention, and not to consider other international conventions in its analysis at this stage.

Supplementary Fund Assembly

4.4.20 The Supplementary Fund Assembly took note of the decisions taken by the 1992 Fund Administrative Council.

DOCUMENT IOPC/OCT10/4/3/1, SUBMITTED BY DENMARK

4.4.21 The 1992 Fund Administrative Council and Supplementary Fund Assembly took note of document IOPC/OCT10/4/3/1, submitted and presented by the delegation of Denmark.

Presentation by the delegation of Denmark – Definition of 'ship'

4.4.22 The delegation of Denmark stated that their national authorities had received applications from several operators wanting to perform extended ship-to-ship (STS) or floating storage operations in Danish waters. This had given rise to questions regarding the coverage under the 1992 CLC and the 1992 Fund Convention, in particular regarding how long a vessel, including one involved in STS oil transfer operations, could remain at the same position at anchor before continuing its voyage and still be considered a ship for the purpose of the Conventions.

4.4.23 That delegation requested the 1992 Fund Administrative Council to decide whether vessels involved in a number of scenarios described in the document, fell within the definition of 'ship' under the 1992 Civil Liability and Fund Conventions as interpreted by the 1992 Fund Assembly, and to consider the implications of such an interpretation regarding contributions.

4.4.24 The Danish delegation stated that, in their opinion, the 'mother' vessels described in the scenarios detailed in paragraphs 3.2-3.5 of document IOPC/OCT10/4/3/1, fell within the definition of 'ship' in Article 1.1 of the 1992 CLC, since;

- They were constructed and operating as regular oil tankers engaged in the carriage of oil at sea and no processing or modification of oil took place on board the vessels;
- They were registered as tankers for the carriage of crude oil and products; and
- They were fully manned and certified and ready to sail at any time and were insured for pollution liabilities and carrying CLC certificates.

Presentation by the delegation of Denmark – Voyage concept

4.4.25 The Danish delegation stated that, in its opinion, it should have been sufficient to prove the above-mentioned elements fell within the definition of 'ship'. However, in respect of the earlier discussions on this issue, it had also analysed the 'voyage' concept.

4.4.26 In relation to the question whether the vessels in question could be considered on a 'voyage carrying oil in bulk as cargo', the Danish delegation recalled the decision of the 1992 Fund Assembly in October 2006, when it had decided that permanently and semi-permanently anchored vessels engaged in STS oil transfer operations should be regarded as 'ships' only when they carried oil as cargo on a voyage to or from a port or terminal outside the location in which they normally operated, but that in any event, the decision as to whether such a vessel fell within the definition should be decided in the light of the particular circumstances of the case (document 92FUND/A.11/35, paragraph 32.12).

4.4.27 The Danish delegation stated that the definition of 'ship' contained in Article 1.1 of the 1992 CLC, did not specify how long a 'voyage' could take for a vessel to continue to be considered a 'ship' under the Conventions, nor whether the final destination of the 'ship' needed to be known from the outset. That delegation added that, notwithstanding the absence of such specifics in the definition of 'ship', it was not reasonable to consider that a vessel could be on a 'voyage' indefinitely. That delegation stated that according to some industry sources, it was not unusual for a vessel to remain at anchor, waiting for a more profitable set of market conditions, or for details of its final destination, for periods of six to twelve months. The Danish delegation added however, that in its opinion, a vessel which remained at anchor for more than one year could not be considered as being on a 'voyage'.

Presentation by the delegation of Denmark – Contributing oil

4.4.28 The Danish delegation emphasised that the matter of contributions for oil handled in the scenarios described in the document depended on whether the 'mother' vessel was considered to be permanently or semi-permanently anchored or not, and that, in the assessment of the Danish Government, such vessels would not be considered semi-permanently anchored. That delegation stated that as a consequence, the oil carried onboard those vessels should not be taken into account for the levying of contributions.

4.4.29 That delegation further stated that if the 1992 Fund Administrative Council and Supplementary Fund Assembly did not agree with this assessment, the consequences in relation to contributions would have to be considered closely.

4.4.30 By way of explanation, the Danish delegation stated that in the majority of STS operations which took place within Danish territorial waters, the vessels were not flying the Danish flag, nor was the oil cargo owned by Danish entities or destined for receipt in Denmark. If the governing bodies were to decide that the oil described in the scenarios in the document would be considered as 'received' for the purpose of Article 10.1(a) of the 1992 Fund Convention, and therefore to be taken into account for the levying of contributions, the Danish authorities would have to invoice the owners of the oil in the various countries where the oil was eventually received. The Danish delegation emphasised that the Conventions did not contain any legal provisions allowing a Member State's authorities to make demands on contributors in another jurisdiction in order to fulfil their treaty obligations.

4.4.31 On this basis, and considering that the problems set out were not specific to Denmark alone but presented a general issue requiring legal clarity, ideally before an incident occurred, the Danish delegation requested the 1992 Fund Administrative Council and Supplementary Fund Assembly to decide that:

(1) the vessels in the scenarios described in paragraphs 3.2-3.5 of document IOPC/OCT10/4/3/1 fell within the definition of 'ship' under the 1992 CLC and 1992 Fund Convention, and that consequently, oil spills from such tankers would be covered by the 1992 Conventions (document IOPC/OCT10/4/3/1, paragraph 6.1); and

(2) the oil carried onboard those vessels should not be considered 'received' at the 'mother' vessel for the purposes of Article 10.1(a) of the 1992 Fund Convention, and should therefore not be taken into account for the levying of contributions (document IOPC/OCT10/4/3/1, paragraph 6.2).

Debate

4.4.32 A large number of delegations expressed their support for the first request made by the Danish delegation, noting that they too had vessels conducting extended STS operations within their territorial waters, whereby the vessels involved were fully manned and crewed, as well as insured for pollution liabilities and carrying CLC certificates. Several delegations agreed that the questions raised by the Danish delegation also affected them, and therefore a common understanding and resolution of the issues would assist all the Member States.

4.4.33 One delegation stated that whether any vessel fell within the definition of 'ship' was to be determined from the text of the relevant Article, and that the issue of the applicability of Article 10.1(a) of the 1992 Fund Convention should be considered separately. Nevertheless that delegation agreed that the vessels and activities described in the Danish document were clearly within the definition of 'ship'.

4.4.34 Another delegation emphasised that this was not the time to discuss the definition of 'ship' in isolation, but instead the focus should be on the specific scenarios in the Danish submission. That delegation reminded Member States of the decision of the 1992 Fund Assembly in October 2006 (document 92FUND/A.11/35, paragraph 32.12) with regards to STS operations, but stated that it also understood that the Danish delegation did not seek to challenge this decision, but merely to gain clarification as to how to apply the 1992 Conventions to the particular scenarios given.

4.4.35 In respect of oil receipts for the purpose of contributions, several delegations stated that it was too early to make the conclusions sought by the Danish delegation, and that the question of whether the oil carried onboard the 'mother' vessels described in paragraphs 3.3-3.5 of document IOPC/OCT10/4/3/1 should be considered received for the purposes of Article 10.1(a) of the 1992 Fund Convention, needed to be considered in conjunction with the ongoing study and legal analysis being undertaken by the Secretariat (document IOPC/OCT10/4/3).

4.4.36 One delegation stated that oil arriving at the 'mother' vessel should be considered as 'received' for the purpose of contributions, while a number of delegations clearly stated that, in their opinion, this oil should not be taken into account for the levying of contributions under Article 10.1(a) of the 1992 Fund Convention. Some of those delegations stated that the oil should only be considered as 'received' when it reached its final destination at a port or terminal, in order to avoid double counting. In their analysis, some of those delegations also stated that they considered that even if a ship remained in one position for 12 months, it could be considered on a 'voyage' until it reached its final destination.

4.4.37 One delegation stated that, in its opinion, particular risks and contributions for STS operations were not covered by the 1992 Conventions since there were new types of operations that had not been considered at the time the Conventions had been drafted. Particular mention was made of the 'mother ship', permanently or semi-permanently anchored, which involved a new activity, namely trade of oil at sea, rather than transportation of oil by sea, on which the liability and compensation regime was based.

4.4.38 That delegation stated that rather than amending the Conventions, due to related procedural difficulties, efforts should be made taking into consideration the 'mothers' ship-owners and cargo owners, so as to find a form of insurance arrangement in addition to the existing Fund cover (ie similar to the STOPIA agreement), which could relieve the potential burden from the risk of such specific commercial activities on the Funds.

1992 Fund Administrative Council Decisions

4.4.39 The 1992 Fund Administrative Council decided that the scenarios described in paragraphs 3.2-3.5 of document IOPC/OCT10/4/3/1 fell within the current interpretation of the definition of 'ship' under Article 1.1 of the 1992 CLC, and that consequently, oil spills from such ships would be covered under the 1992 CLC and 1992 Fund Convention.

4.4.40 The 1992 Fund Administrative Council further decided, following an inconclusive debate in respect of whether to levy contributions for oil carried by 'mother' vessels as described in paragraphs 5.1-5.3 of document IOPC/OCT10/4/3/1, to instruct the Acting Director to add this issue to the legal study on the definition of 'ship' and to report back to the 1992 Fund Assembly at its next session.

Supplementary Fund Assembly

4.4.41 The Supplementary Fund Assembly took note of, and endorsed the decision of the 1992 Fund Administrative Council.

4.5

STOPIA 2006 and TOPIA 2006 **Document IOPC/OCT10/4/4**	**92AC**		**SA**	

4.5.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT10/4/4 regarding the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.

4.5.2 It was noted that in September 2010 the International Group of P&I Clubs (International Group) had provided the Secretariat with a list of ships entered in STOPIA 2006, which contained 6 173 tankers. It was also noted that since 2009, the number of small tankers reported by the International Group as entered in STOPIA 2006 had decreased by 364 and that the International Group had informed the Secretariat that the reason for this decrease was likely to be anomalies in reporting.

4.5.3 It was noted that the International Group had reported to the Secretariat that in September 2010 all of the tankers which were insured by one of the members of the International Group and reinsured through its pooling arrangements, were entered in TOPIA 2006. It was also noted that the number of tankers not entered in TOPIA 2006 at that time, because they were not participating in the pooling arrangements of the International Group, was 535.

Debate

4.5.4 A representative of the International Group of P&I Clubs apologised for any anomalies in the data provided to the Fund Secretariat and informed the governing bodies that the International Group Secretariat was in the process of improving its data collecting systems and hoped to be able to provide the IOPC Funds' Secretariat with the most accurate data possible in future. The representative of the International Group stated that it was particularly pleased to report the increase in the percentage of Japanese coastal tankers entered into STOPIA 2006 and explained that that increase was due to the efforts of the Japan P&I Club.

5 Financial reporting

5.1

Report on submission of oil reports **Document IOPC/OCT10/5/1**	**92AC**		**SA**	**71AC**

5.1.1 The 1992 Fund Administrative Council, Supplementary Fund Assembly and 1971 Fund Administrative Council considered the situation in respect of the submission of oil reports, as set out in document IOPC/OCT10/5/1.

5.1.2 The governing bodies noted that, in letters dated 15 January 2010, 1992 Fund Member States, Supplementary Fund Member States and former 1971 Fund Member States were invited to submit to the Secretariat their reports on contributing oil received in 2009 and/or any outstanding reports, as appropriate. It was also noted that reminder letters dated 28 July 2010 were sent to the competent authorities of States with outstanding reports.

5.1.3 It was noted that since the October 2009 sessions of the governing bodies, 13 States had submitted most or all of their outstanding reports. It was noted with satisfaction that two States, South Africa and Nigeria, which had reports outstanding to the 1992 Fund for five years and three years respectively, had submitted all of their outstanding reports, and that Indonesia and Panama had submitted outstanding reports to the 1971 Fund for the year 1998.

5.1.4 It was further noted that, since the document had been issued, one further State, Portugal, had submitted its outstanding oil reports. It was therefore noted that, 37 States had outstanding reports for the 1992 Fund (of which one was also a Member of the Supplementary Fund), and that three States had outstanding reports for the 1971 Fund. The Secretariat expressed its 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.

5.1.5 The governing bodies noted that those States which had submitted reports for 2009 represented some 87.17% of the expected total contributing oil within the 1992 Fund (cf document IOPC/OCT10/4/1, Annex I[<4>]), and therefore the impact on the functioning of the Fund was limited. It was noted with interest that a further nine States represented the remaining 12.83%, with one State representing 8.98% of that total. However, it was noted that the Secretariat was working closely with the Authorities in that State to obtain the outstanding reports.

5.1.6 The governing bodies noted the Director's concern that oil reports were outstanding in respect of a number of 1992 Fund Member States for more than one year, and in respect of three of the former 1971 Fund Member States. The governing bodies were particularly concerned that 12 States (one of which was a Supplementary Fund Member) had not submitted any reports since becoming Members of the 1992 Fund, and no reports had been submitted by two States since they became Members of the 1971 Fund.

Debate

5.1.7 The Secretariat informed the governing bodies that they would continue their efforts to obtain the outstanding reports, and requested the support of all 1992 Fund Member States and former 1971 Fund Member States to support the Secretariat in its endeavours to improve the situation.

5.1.8 The Chairman of the 1992 Fund Administrative Council drew the attention of the Administrative Council to the list of States with outstanding oil reports, and reminded them of the circular the Director had prepared, in consultation with the Chairman of the 1992 Fund Assembly, containing the adopted policy decision by the Audit Body on the deferment of compensation payments in States which have outstanding oil reports (cf Circular 92FUND/Circ.63, 'Outstanding Oil Reports and Deferment of Compensation Payments: New 1992 Fund Policy'). The Chairman reminded the Administrative Council that, where a State was two or more oil reports in arrears, any claim submitted by the Administration of that State or a public authority working directly on the response or recovery from the pollution incident on behalf of that State would be assessed for admissibility but payment would be deferred until the reporting deficiency was rectified.

5.1.9 One delegation with a large number of outstanding oil reports, noted that it was mindful of its treaty obligations in respect of the submission of oil reports and invited the Secretariat to make a presentation to its Government highlighting the issue of their outstanding oil reports and the potential consequences of the non-submission of oil reports in that State.

5.1.10 Another delegation recalled that the non-submission of oil reports had been an issue for many years and stated that it was a breach of the international obligations by Member States even if only one report were outstanding. That delegation further suggested that the Secretariat should concentrate its efforts to pursue outstanding oil reports, in particular from the larger contributing States.

[<4>] Since document IOPC/OCT10/4/1 was issued, one further State, Portugal, has submitted its outstanding oil reports for the calendar year 2009. Therefore, the percentage of the expected total contributing oil received in the calendar year 2009 within the 1992 Fund has been amended accordingly.

5.2

Report on contributions **Document IOPC/OCT10/5/2**	**92AC**		**SA**	**71AC**

5.2.1 The governing bodies took note of the information on contributions to the Funds contained in document IOPC/OCT10/5/2, in its new consolidated format reporting for all three Funds.

5.2.2 The Secretariat drew the attention of the governing bodies to the amounts of outstanding contributions due and to the measures undertaken to recover them from contributors in the 1992 Fund Member States and the former 1971 Fund Member States, as summarised in the document.

5.2.3 In particular, the governing bodies noted the steps being taken by the Secretariat to recover the outstanding contributions in the Russian Federation and that the Secretariat had engaged the Funds' Russian lawyer to assist in the recovery of the outstanding amounts.

5.2.4 The governing bodies also 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/OCT10/5/3**	**92AC**		**SA**	**71AC**

5.3.1 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 2009 to 30 June 2010 contained, in a new consolidated format, in document IOPC/OCT10/5/3. The governing bodies noted the number of institutions used by the Funds for investment purposes, and the amounts invested by each Fund.

5.3.2 It was recognised that the fact that the London Clearing Bank base rate and European Central Bank Refi rate were low, had had a considerable impact on the yields achieved by the Funds on their investments.

5.3.3 It was noted that the 1992 Fund had continued to successfully use Dual Currency Deposits between Pounds Sterling and the Euro, without any costs and with the added benefit of a higher return on deposits.

5.3.4 The governing bodies took note of the hedging between Pounds Sterling and Korean Won by means of Non Deliverable Forward contracts entered into by the 1992 Fund for the *Hebei Spirit* incident.

Debate

5.3.5 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/OCT10/5/4**	**92AC**		**SA**	**71AC**

5.4.1 The governing bodies took note of the report of the joint Investment Advisory Body (IAB) of the 1992 Fund, the Supplementary Fund and the 1971 Fund, contained in Annex I to document IOPC/OCT10/5/4.

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 The 1992 Fund Administrative Council noted that there were no banks in the Republic of Korea that met the 1992 Fund's investment criteria and that were capable of making large numbers of payments in that country. It further noted that the P&I Club involved in the *Hebei Spirit* incident

(Assuranceföreningen Skuld (Gjensidig) (Skuld Club)) was using Korea Exchange Bank (KEB) to effect payments to claimants. Given the constraints, the IAB considered KEB to be adequately rated for the short-term nature of the 1992 Fund's transaction, although KEB did not meet the 1992 Fund's investment criteria. The 1992 Fund Administrative Council noted that the proposal by KEB to effect payments to claimants required a minimum balance to be held in deposits with KEB by the 1992 Fund and for some of the Korean Won requirement to be also purchased through KEB.

5.4.4 It was noted that the joint IAB had recommended to the Director that an additional clause be added to the Hedging Guidelines to cover exceptional circumstances where amounts held with a financial institution may exceed the investment limits set out in the IOPC Funds' Financial Regulations for substantial periods of time in cases where there are incidents in a Member State whose currency is not freely convertible.

5.4.5 The governing bodies noted the recommendation of the IAB to use a combination of spot purchases and Non Deliverable Forward contracts to hedge against movement in the Korean Won *vis-à-vis* Pound Sterling in respect of the *Hebei Spirit* incident.

5.4.6 Finally, the governing bodies took comfort from the fact that all the 29 banks that currently met the Funds' investment criteria maintained a level of capital above the minimum standards recently set by the European financial regulators and also from the IAB's update on the improving financial markets.

5.5

Report of the joint Audit Body **Document IOPC/OCT10/5/5**	**92AC**		**SA**	**71AC**

5.5.1 The Chairman of the Audit Body, Mr Wayne Stuart, introduced the Joint Audit Body's report to the governing bodies and highlighted the main activities in what he said had been a busy and important year for the Audit Body. He said that, since the report had been published, the Audit Body had been greatly saddened to learn of the death of Mr John Wren, one of its members. Mr Stuart expressed the Audit Body's sincere condolences to Mr Wren's family. Mr Stuart also expressed the Audit Body's best wishes to the Director, Mr Oosterveen, for a speedy recovery.

5.5.2 Mr Stuart made particular reference to the approach taken by the Audit Body in reviewing the adequacy and effectiveness of the Organisations' management and financial systems, financial reporting, internal controls, operational procedures and risk management. He pointed out that, in the related interactions with the Secretariat, the External Auditor and the Investment Advisory Body (IAB), the Audit Body always enjoyed real assistance, openness, frank and helpful discussion and cooperation with all parties.

5.5.3 With respect to the promotion of the understanding and effectiveness of the audit function within the Organisations, the governing bodies noted that the Audit Body had undertaken a detailed review of its own responsibilities and the audit function more generally. The governing bodies further noted that the Audit Body hoped that the information provided in the related document IOPC/OCT10/6/2 would enhance the understanding of the audit function and would lead to a renewed interest from Member States in nominating candidates to serve as members of the Audit Body when the election of new members took place at the next regular session of the governing bodies in October 2011.

5.5.4 The governing bodies also noted that the Audit Body had been fortunate in having all Chairmen of the governing bodies attend at least one meeting of the Audit Body during the past year and that the Audit Body had found their attendance most worthwhile and useful in its deliberations.

5.5.5 The governing bodies' attention was drawn to the Audit Body's close interest in the ongoing implementation of the new accounting standards (International Public Sector Accounting Standards (IPSAS)) and in particular to the involvement of the Audit Body's external expert in helping to resolve some of the specific implementation issues that 'one size fits all' accounting standards can pose to an organisation having unique characteristics such as the IOPC Funds.

5.5.6 The governing bodies noted that, based on its own work, the Audit Body was confident that the external audit had been conducted effectively and that the findings were sound and reliable, and that the Audit Body was also pleased to congratulate the Secretariat on its professional and open approach to the external audit. The governing bodies noted with satisfaction that, in the light of the information provided by the External Auditor and the assurances given by the audit, the Audit Body recommended that the governing bodies approve the accounts of the 1992 Fund, the Supplementary Fund and the 1971 Fund for the financial year ending 31 December 2009.

5.5.7 The governing bodies noted that the management of the process for the selection of the External Auditor had dominated the work of the Audit Body over the last year and that much time and effort had been directed at the development of a robust, transparent and effective process in which all members of the Audit Body had been personally involved. The governing bodies noted with satisfaction the Audit Body's belief that the process developed by the Audit Body and approved by the governing bodies had been professionally conducted, and that the outcome was sound and should provide the governing bodies with confidence in the quality and excellence of external audit capacity for the future.

5.5.8 The governing bodies took note of the fact that the Audit Body intended to review the efficacy of 1992 Fund Resolution N°11, relating to measures in respect of contributions, during 2011 with a view to reporting any findings to the governing bodies at their October sessions in that year.

5.5.9 With reference to other issues considered by the Audit Body during the year, the governing bodies noted with satisfaction the valuable and pro-active exchanges which the Audit Body had had with the Investment Advisory Body (IAB) over the last year and in particular the reassurance given by the IAB that sovereign debt risk was not a major threat to the IOPC Funds as the Funds' investment risk profile was very conservative and actively monitored.

5.5.10 The governing bodies noted that the Audit Body continued to regard the effectiveness of the system of internal control exercised by the Secretariat as being critical to the long term viability and success of the Organisations and that the Audit Body was satisfied that the Director took a similar view. It was further noted that the Audit Body was satisfied that any recommendations made by the External Auditor were considered and addressed by an appropriate plan of action developed and implemented by the Secretariat and that it was satisfied that all recommendations made by the External Auditor on prior years' Financial Statements had been addressed.

Debate

5.5.11 One delegation noted that the Audit Body had drawn the attention of the governing bodies to its work in the area of risk management and asked what work, if any, the Audit Body had undertaken in respect of Reputation Risk. In response, the Chairman of the Audit Body said that the role of the Audit Body was to review the risk management process carried out by the Secretariat and to ensure that it was meaningful and substantial and that it delivered a reliable and positive outcome. It was not, in the Audit Body's view, for the Audit Body to test the process itself. The Acting Director said that risks were analysed by the Secretariat and that Reputation Risk, being a key area of risk, was kept under review. It was not, however, considered to be an issue for the IOPC Funds at this time.

5.5.12 The governing bodies noted the information contained in the Audit Body's report and expressed their gratitude to the members of the joint Audit Body for their work.

5.6

2009 Financial Statements and Auditor's Report and Opinion Document IOPC/OCT10/5/6	**92AC**		**SA**	**71AC**
Financial Statements and Auditor's Report and Opinion – 1992 Fund Document IOPC/OCT10/5/6/1	**92AC**			
Financial Statements and Auditor's Report – Supplementary Fund Document IOPC/OCT10/5/6/2			**SA**	
Financial Statements and Auditor's Report and Opinion – 1971 Fund Document IOPC/OCT10/5/6/3				**71AC**

5.6.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT10/5/6. The governing bodies dealt separately with their Organisation's respective Financial Statements for the financial year 2009. These Statements, together with the External Auditor's Reports and Opinions thereon, were contained in documents IOPC/OCT10/5/6/1, IOPC/OCT10/5/6/2 and IOPC/OCT10/5/6/3 respectively.

5.6.2 After the Secretariat's introduction of each document, a representative of the External Auditor, Mr Martin Sinclair, Assistant Auditor General, UK National Audit Office, introduced the External Auditor's Report and Opinion for each Organisation.

Debate

5.6.3 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/OCT10/5/6/1 (1992 Fund), Annex III to document IOPC/OCT10/5/6/2 (Supplementary Fund) and Annexes III and IV to document IOPC/OCT10/5/6/3 (1971 Fund). They also noted that the External Auditor had provided an unqualified audit opinion on the 2009 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 External Auditor stated that following examination of the operation of the Funds' hedging strategy overseen by the joint Investment Advisory Body, there existed an effective mechanism for treasury and exchange rate risk management within the Funds.

5.6.4 The governing bodies noted the response by the Director and the Audit Body to 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 should consider shortening the period between the end of the reporting period and the certification of the Financial Statements. They noted that the Audit Body had, at its December 2009 meeting, agreed with the Director that there was no perceived benefit in shortening the period between the end of the reporting system and the certification of the Financial Statements.

5.6.5 The 1992 Fund Administrative Council noted the recommendations set out in the External Auditor's report on the 2009 Financial Statements of the 1992 Fund and the Director's responses to them. With regard to the External Auditor's Recommendation 3, the 1992 Fund Administrative Council noted the Director's response to the recommendation that it was not the Funds' role to audit/validate the methodology and controls that Member States have in place to validate oil receipt data. The Council concluded, however, that there may be some merit in studying procedures in the various Member States with a view to identifying best practice for collating and validating information for inclusion in oil reports. The Council requested the Audit Body to look into this matter. The Chairman of the Audit Body agreed to undertake the task. He pointed out that services from independent bodies in the oil industry and assistance of Member States would be sought, and that the Audit Body would report back on its progress at the next regular session of the governing bodies.

5.6.6 In response to concerns expressed by one delegation with respect to the move to International Public Sector Accounting Standards (IPSAS), the External Auditor clarified that, although there were risks in migration from one set of accounting standards to another, the External Auditor was working closely with the Secretariat within a clear project framework. It was noted that the External Auditor would soon conduct an audit of the restated 2009 Financial Statements and an interim audit of the 2010 Financial Statements to ensure a smooth and effective transition.

5.6.7 The governing bodies expressed their appreciation to the External Auditor for the depth and detail of his Reports.

5.6.8 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/OCT10/5/5, paragraph 3.1(e)).

1992 Fund Administrative Council Decision

5.6.9 The 1992 Fund Administrative Council approved the Financial Statements of the 1992 Fund for the financial year 2009.

Supplementary Fund Assembly Decision

5.6.10 The Supplementary Fund Assembly approved the Financial Statements of the Supplementary Fund for the financial year 2009.

1971 Fund Administrative Council Decision

5.6.11 The 1971 Fund Administrative Council approved the Financial Statements of the 1971 Fund for the financial year 2009.

6 Financial policies and procedures

6.1

Measures encouraging the submission of oil reports **Document IOPC/OCT10/6/1**	**92AC**		**SA**	**71AC**

6.1.1 The 1992 Fund Administrative Council, Supplementary Fund Assembly and 1971 Fund Administrative Council took note of the information provided in document IOPC/OCT10/6/1 on measures to encourage prompt and accurate submission of oil reports by Member States and the preliminary results of a trial of a prototype online reporting system for contributing oil.

Trial of an online oil reporting system

6.1.2 It was recalled that in October 2009, the following nine Member States volunteered to submit oil reports for 2009 using the new prototype online reporting system for contributing oil and that the trial had commenced in March 2010:

Bahamas
Canada
China (HKSAR)
Germany
Italy
Malaysia
Marshall Islands
New Zealand
Turkey

6.1.3 It was noted that an industry-standard, two-phase security system had been adopted for the trial but that this procedure had caused a number of difficulties for contributors and States, and that because of these difficulties, extensive assistance from the Secretariat had been necessary before some users were able to access the trial system.

6.1.4 It was further noted that online reports had been received from three of the nine States, that two further States had received online reports from contributors but had been unable to submit them, and that the four remaining States had been unable to complete the trial to date.

6.1.5 The governing bodies noted that the feedback from those States and contributors that had accessed the trial system successfully was positive, with the consensus being that the procedure for entering and submitting reports had been found to be simple and easy to use. It was also noted however, that owing to company policy on downloading software, certain contributors were unable to participate in the trial and a number of other minor problems were also reported.

6.1.6 It was further noted that the Director had proposed that, in light of the incomplete data received, the trial should be continued until sufficient feedback had been received from all participating States, and that following the completion of the trial, a detailed analysis of the feedback and a proposal for future development of the system would be prepared for consideration by the governing bodies at a future session.

Other measures encouraging the submission of oil reports

6.1.7 The governing bodies were pleased to note that a series of regional lunch meetings arranged by the Secretariat for London-based representatives of both Member States and non-Member States and hosted by the Secretariat at the IOPC Funds' London office, had resulted in a number of outstanding oil reports being submitted, and that these meetings would be continued in 2011.

6.1.8 They also noted the Secretariat's intention to prepare a document aimed at assisting contributors rather than governments, to establish procedures for the submission of oil reports, and further noted that it was to be made available in 2011.

6.1.9 It was recalled that, following instruction from the governing bodies at their October 2008 session, the Director had prepared, in consultation with the Chairman of the 1992 Fund Assembly, a circular containing the policy decision on the deferment of compensation payments in States which have outstanding oil reports (Circular 92FUND/Circ.63), and that this circular had been issued to all Member States in January 2009 and had been added to the IOPC Funds' website (www.iopcfund.org) (see paragraph 5.1.8).

Debate

6.1.10 Several Member States who participated in the trial of the online reporting system made interventions, as set out in paragraphs 6.1.11-6.1.14 below.

6.1.11 The delegation of Turkey stated that, although Turkey had faced a number of difficulties in the early stages of the online reporting system trial, with the assistance of the Secretariat it had found that the submission of oil reports via the online system was a faster method than the paper-based system and was self explanatory. Based on this positive experience, that delegation supported the recommendation from the Director to continue with the trial until sufficient feedback had been received from all participating States.

6.1.12 The delegation of Italy reported that it had completed the trial and, although it had experienced difficulties in the early stages, it expressed its satisfaction with the prototype system which it felt represented an improvement on the paper-based system. It further supported the recommendation to continue the trial with the other volunteer States. That delegation also welcomed the development of a guidance document for contributors in 2011 as a positive initiative, adding that it would be useful if the Secretariat made itself available to provide related technical assistance to contributors.

6.1.13 The delegation of India commended the Director on his efforts to improve the submission of oil reports, however it noted that it could be some time before the system became fully operational. That delegation suggested that the IOPC Funds could follow the example set by IMO in respect of the IMDG Code with regard to the selection of focal points for reporting, with a view to ensuring that the

appropriate competent national authorities be contacted for the submission of oil reports in each Member State. That delegation also suggested that London-based representatives of Member States be kept informed of all communications between the IOPC Funds and the competent national authorities.

6.1.14 The delegation of Malaysia stated that, although there were operational issues to resolve, the proposed online reporting system would aid the timely and accurate submission of oil reports.

6.1.15 One delegation further suggested that the submission of oil reports could somehow be linked to credentials and form part of the requirements to be examined prior to the meetings of the governing bodies, thus ensuring that Member States kept their oil reports up to date.

6.1.16 The Secretariat took note of the positive comments expressed by delegations with regard to the online reporting trial. It also took the opportunity to remind Member States that they were responsible for nominating the competent national authorities for the submission of oil reports

1992 Fund Administrative Council Decision

6.1.17 The 1992 Fund Administrative Council endorsed the Director's proposal to continue the online oil reporting system trial and to prepare a detailed analysis of the feedback and a proposal for future development of the system for consideration by the governing bodies at a future session.

Supplementary Fund Assembly and 1971 Fund Administrative Council

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

6.2

Maintaining the effectiveness of the joint Audit Body **Document IOPC/OCT10/6/2**	**92AC**		**SA**	**71AC**

6.2.1 Mr Emile Di Sanza, a member of the Joint Audit Body, introduced document IOPC/OCT10/6/2.

6.2.2 The governing bodies noted that the basis for the document lay first and foremost in the Audit Body's mandate which called for it to promote the effectiveness of the audit function and to facilitate discussion of the adequacy of the Funds' management and financial systems, operational procedures, and risk management. The governing bodies also noted that, in carrying out its mandate, the Audit Body considered it important not only to ensure that it operated in a rigorous and effective way but also to demonstrate that it had done so.

6.2.3 The governing bodies noted that, in order to ensure that all delegates were familiar with the role of the Audit Body, the document provided some comparative information on the functions of audit bodies in other environments, citing some sources which aptly described the role of audit committees.

6.2.4 The governing bodies also noted that in October 2011 a new Audit Body would need to be elected to serve for three years and only three current members would be available for re-election. With a view to the nomination of candidates for the Audit Body, the governing bodies took note of what the Audit Body considered to be the desirable skills and experience of future members.

6.2.5 With respect to the position of the independent external expert, nominated by the Chairman of the 1992 Fund Assembly and which would also need to be filled in October 2011, the governing bodies noted that in its document, the Audit Body had also outlined the skills, experience and attributes that the Audit Body had identified as being necessary for this role. The governing bodies further noted that, in the interest of attracting the nomination of sufficiently-qualified persons to the Audit Body, candidates could be nominated jointly by Member States and that this would demonstrate, as it had in the past, that the Audit Body had members who were known to and supported by more than one Member State.

6.2.6 The governing bodies noted that, as provided for in the Audit Body's mandate, the Chairman of the Audit Body covering the three-year term of the current Audit Body, would prepare an evaluation report on the basis of which the governing bodies could review the functioning and mandate of the Audit Body. The Audit Body would carry out this evaluation as part of a review of its own operations in 2010/2011. The governing bodies further noted that a summary of the findings of this review would be included in the Audit Body's annual report for 2011.

6.2.7 The governing bodies' attention was drawn to the fact that the Audit Body recognised that the process of constructive challenge was one that also applied to itself and not just to the operations of the Secretariat and that, whilst it was healthy for its mandate to be kept under periodic review, the Audit Body believed that the focus of the reporting obligations should in future be directed towards a rigorous self-evaluation of the effectiveness of its way of working. The governing bodies noted furthermore that changes in the mandate could emerge from such a review and that, taken together with the annual reports, this three-year evaluation would assist the governing bodies in evaluating the Audit Body's performance and mandate.

Debate

6.2.8 With respect to a concern raised by one delegation in respect of Principle 2 (paragraph 3.3), the governing bodies noted that the text related to the principles set out for another Organisation and the main essence to be taken from this principle was that members of the Audit Body, although nominated by Member States, would fulfil their role objectively and independently.

6.2.9 Another delegation expressed its view that this document was timely given the departure of some members and the external expert. That delegation thanked the Audit Body for having identified the skills and experience required of Audit Body members, which it felt was in keeping with good governance and due diligence and supported the skills outlined in paragraphs 4.4 and 4.5 of the Audit Body's document.

6.2.10 The Chairman of the 1992 Fund Administrative Council expressed the hope that there would be a better response to the call for nominations of candidates in 2011 than in the past.

6.2.11 The governing bodies noted the information contained in the Audit Body's document and expressed their gratitude to the members of the joint Audit Body for their work on this matter.

6.3

Appointment of the External Auditor **Document IOPC/OCT10/6/3**	**92AC**		**SA**	**71AC**

6.3.1 Mr Nigel Macdonald, the external expert on the Audit Body, introduced document IOPC/OCT10/6/3, containing the outcome and analysis by the Audit Body of the External Auditor appointment process, as well as recommendations based on the experience gained in this process.

6.3.2 Mr Macdonald highlighted the Audit Body's view that the importance of a rigorous and effective external audit was well recognised by the IOPC Funds and by Member States and that that was why, once it had been agreed that the external audit appointment for the next period should be subject to a competitive tender, so much effort had been put into developing and implementing a rigorous process.

6.3.3 He reminded the governing bodies that the background to the tender process was not dissatisfaction with the services received from the Comptroller and Auditor-General of the United Kingdom (Head of the National Audit Office of the United Kingdom), who had been the Funds' External Auditor since their inception, but rather the wish to ensure that the Funds were served by the best possible candidate in this important role.

6.3.4 The governing bodies noted that, under its mandate, it had fallen to the Audit Body to oversee the external audit tender process and that, although only one candidate had responded to the invitation to tender, the Audit Body had approached the remainder of the process with all the thoroughness that would have applied if there had been several candidatures.

6.3.5 The governing bodies noted that the Audit Body had reviewed the written application very thoroughly and its assessment of the application had directly influenced the way in which the Audit Body had carried out the subsequent detailed interview and had prepared the questions that were asked in order to probe how the National Audit Office planned to deliver its services in future. They further noted the gratitude of the Audit Body to the Chairmen of both the 1992 Fund Assembly and the 1971 Fund Administrative Council who had attended the relevant Audit Body meetings and interview, as observers.

6.3.6 The governing bodies were pleased to note that the outcome of the interview and questioning process had satisfied the Audit Body that a unanimous recommendation should be brought to the governing bodies at their October 2010 sessions, that the Comptroller and Auditor-General of the United Kingdom should be reappointed as the IOPC Funds' External Auditor for a further period of four years.

6.3.7 The governing bodies noted the other recommendations of the Audit Body which had been formed as a result of the knowledge gained from the whole audit tender process and that, despite the fact that there had only been one candidate, the Audit Body did not recommend widening the criteria for eligibility.

6.3.8 The governing bodies noted the two principles that were the basis for further recommendations in the Audit Body's document. The first principle was the Audit Body's recommendation that Member States should rely on the review and monitoring function carried out by the Audit Body as the primary independent source of comfort that the external audit relationship was effective. It suggested that this should provide Member States with ongoing assurance as to whether the External Auditor was likely to remain the most suitable choice. The second principle reflected the lessons which had been learnt from accepting the assumption, incorrectly in the Audit Body's view, that at any time there would be many eligible contenders for the position of External Auditor of the IOPC Funds. The governing bodies noted the Audit Body's recommendation that there should be no automatic periodic competitive tenders for the external audit appointment for the Funds unless there was a breakdown in the audit relationship. The governing bodies further noted that these two principles were the foundation of five more detailed recommendations which were laid out in the Audit Body's document.

Debate

6.3.9 The governing bodies thanked the Audit Body for having carried out the tender process and for the resulting document.

6.3.10 All the delegations that took the floor agreed with the Audit Body's recommendation that the Comptroller and Auditor-General of the United Kingdom should be re-appointed as the IOPC Funds' External Auditor for a further period of four years (ie for the financial years 2011-2014).

6.3.11 However, these delegations were of the view that it would be premature to assume that because there had been only one nomination in 2010, that the tender process had failed and that this was not a reason not to try a competitive tender again in the future. The governing bodies did not, therefore, agree with the recommendation made in paragraph 4.4 of the Audit Body's document that there should be no automatic periodic competitive tender for the external audit appointment for the IOPC Funds unless there was a breakdown in the audit relationship. Consequently, the governing bodies did not agree with the recommendations made in paragraph 4.5 (c)-(e) of the Audit Body's document.

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

6.3.12 The governing bodies decided to re-appoint the Comptroller and Auditor-General of the United Kingdom as the IOPC Funds' External Auditor for a further period of four years (ie to audit the Financial Statements for the financial years 2011-2014).

6.3.13 The governing bodies decided not to endorse the Audit Body's recommendation that there should be no automatic periodic competitive tenders for the external audit appointment for the Funds unless there was a breakdown in the audit relationship.

6.3.14 The governing bodies decided that the approach of changing the eligibility criteria should not be considered further at this time.

6.3.15 The governing bodies decided that the primary independent factor which Member States should take comfort from in order to be satisfied that the external audit relationship was effective, was the review and monitoring function carried out by the Audit Body.

6.3.16 The governing bodies also decided that the external audit relationship should continue to be kept under regular ongoing review by the Director and the Audit Body (and by the Chairmen of the IOPC Funds' governing bodies if they chose to attend Audit Body meetings as occasional observers).

6.3.17 The governing bodies further decided that the Director and the Audit Body should both report to the governing bodies from time to time on this matter and that Member States should use those reports as the means of monitoring the nature of the ongoing relationship.

7 Secretariat and administrative matters

7.1

Secretariat matters **Document IOPC/OCT10/7/1**	**92AC**		**SA**	**71AC**

7.1.1 The governing bodies took note of the information contained in document IOPC/OCT10/7/1 regarding matters relating to the operation of the Secretariat.

7.1.2 The governing bodies noted the following appointments: Ms Akiko Yoshida to the post of Legal Counsel in August 2010, Mr Thomas Liebert to the post of Head, External Relations and Conference Department in September 2010, and Mr Mark Homan to the post of Claims Manager, also in September 2010. The governing bodies also noted the promotion of Ms Chiara Della Mea, Claims Manager, to the grade of P.4.

7.1.3 The Acting Director informed the governing bodies that Ms Katharina Stanzel, Technical Adviser/Claims Manager had resigned since document IOPC/OCT10/7/1 had been issued. He informed the governing bodies that Ms Stanzel would be leaving the Secretariat on 25 October 2010. The Acting Director also informed the governing bodies that Dr Roy Livermore, Senior Information Officer, had also recently resigned from the Secretariat.

7.1.4 The Acting Director commented on the vacant posts of Translator and reiterated that these vacant positions would remain so for the forseeable future. He indicated that the decision not to fill these posts was in no way a negation of the importance of translations into the two languages, but that a management decision had been taken that it was more useful to use external freelance translators due to the cyclical nature of the translation work at the Organisation.

7.1.5 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 section 2 of document IOPC/OCT10/7/1. The governing bodies noted, in particular, the amendments to Annexes A and C to the 1992 Fund Staff Rules. The governing bodies further noted the amendments to Staff Rule IV.9, as set out in Annex IV to document IOPC/OCT10/7/1.

7.2

Arrangements for the appointment on an interim basis of an Acting Director of the IOPC Funds Document IOPC/OCT10/7/1/1	**92AC**		**SA**	**71AC**

7.2.1 The governing bodies held a meeting in private pursuant to Rule 12 of the governing bodies' Rules of Procedure to consider this item. During the private meeting, covered by paragraphs 7.2.2 to 7.2.13 below, only representatives of Member States of the 1992 Fund, the Supplementary Fund, former Member States of the 1971 Fund and the Audit Body were present.

7.2.2 The governing bodies noted the information contained in document IOPC/OCT/10/7/1/1, submitted by the Chairman of the 1992 Fund Assembly. The governing bodies recalled, as already discussed at the opening of the sessions (see paragraphs 0.3 to 0.4) and communicated to delegations prior to the meetings in Circular 92FUND/Circ.71, SUPPFUND/Circ.18, 71FUND/Circ.93, that Mr Willem Oosterveen, Director of the IOPC Funds, was in hospital and unfortunately unable to act as Director for the time being. It was noted that he could not therefore fulfil the functions set out in Article 29 of the 1971 Fund Convention and of the 1992 Fund Convention and Article 16.2 of the Supplementary Fund Protocol.

7.2.3 It was recalled that, in March 2005, the 1992 Fund Assembly, the 1971 Fund Administrative Council and the Supplementary Fund Assembly had decided that the Director should continue *ex officio* to be Director of the 1971 Fund and should also *ex officio* be Director of the Supplementary Fund.

7.2.4 The governing bodies extended their best wishes to the Director, Mr Willem Oosterveen, for a speedy recovery and looked forward to his early return.

7.2.5 It was noted that, pursuant to Internal Regulation 12 in respect of the 1992 Fund and the Supplementary Fund and to Internal Regulation 12*bis* in respect of the 1971 Fund, Mr José Maura, Head, Claims Department, is authorised to act on behalf of Mr Oosterveen in the fulfilment of the functions of Director set out in the above-mentioned Articles and to be the legal representative of the respective Funds. It was noted that Mr Maura had agreed to undertake these responsibilities from 21 September 2010 until the October 2010 sessions of the governing bodies.

7.2.6 Taking into account the exceptional circumstances and the possibility that Mr Maura may need to fulfil the functions of the Director for some period of time, the governing bodies considered the 1992 Fund Assembly Chairman's proposal, as set out in document IOPC/OCT/10/7/1/1, to put in place, on an interim basis, a formal delegation of authority to Mr Maura to facilitate the administration of the IOPC Funds until such time as the Director resumes his duties or the 1992 Fund Assembly decides otherwise.

1992 Fund Administrative Council Decisions

7.2.7 The 1992 Fund Administrative Council agreed that the current situation had highlighted the need for succession planning within the Secretariat and instructed the Audit Body to consider this matter and formulate recommendations for consideration by the 1992 Fund Assembly at a future regular session. It was highlighted nevertheless that the ultimate responsibility for staff matters within the Secretariat lay with the Director.

7.2.8 The 1992 Fund Administrative Council requested the Chairman of the 1992 Fund Assembly to monitor the situation at the Secretariat over the coming months and decided that the issue of the interim arrangements put in place for the duration of the Director's absence would be reviewed at an extraordinary session of the 1992 Fund Assembly to be held in spring 2011.

7.2.9 The 1992 Fund Administrative Council gave its overwhelming support to the 1992 Fund Chairman's proposal and decided to appoint Mr José Maura as Acting Director with full responsibilities and powers as set out in Article 29 of the 1992 Fund Convention and of the 1971 Fund Convention and Article 16.2 of the Supplementary Fund Protocol until:

(a) the Director returns to perform his duties; or
(b) the extraordinary session of the 1992 Fund Assembly to be held from 28 March to 1 April 2011,

whichever occurs first.

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

7.2.11 As regards the impact on the Claims Department of Mr Maura's appointment, whilst recognising that the Acting Director would retain responsibility for overseeing the Claims Department, making all possible efforts to ensure that it performed effectively, the 1992 Fund Administrative Council instructed the Acting Director to explore opportunities for interim appointments in the Claims Department, preferably using existing resources where possible. It also instructed the Acting Director to ensure that the recruitment for the replacement of the Technical Adviser/Claims Manager is made as soon as possible.

7.2.12 The 1992 Fund Administrative Council also requested the Head of Finance and Administration Department to form a small consultation group consisting of the Chairmen of the governing bodies, the Chairman of the Audit Body and its External Expert and a representative of IMO, which would review current practices in intergovernmental organisations and to ensure that any future contract with the Director of the IOPC Funds is consistent with contemporary business and management practices.

Supplementary Fund Assembly and 1971 Fund Administrative Council

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

Statement by the Acting Director

7.2.14 Mr Maura thanked the governing bodies for the trust they had shown in him and promised to discharge his duties to the best of his ability. He expressed his wish for the speedy return of the Director and stated how sorry the members of the Secretariat were that the Director was not present today. He expressed on behalf of the Secretariat, their hope that Mr Oosterveen would be back very soon. Mr Maura also commended the Secretariat for their dedication during the period of the Director's absence. He stated that the 1992 Fund had a Secretariat formed by first class professionals who were highly dedicated and who did very hard work. He informed the governing bodies that, despite the difficult circumstances faced since the Director had fallen ill, the Secretariat had done their utmost to make sure that the governing bodies continued to be served and that the current meetings would take place with the full agenda as originally planned. He also thanked Mr Efthimios Mitropoulos, the Secretary-General of IMO and Dr Rosalie Balkin, Director, Legal Division for their support and assistance afforded to him since the Director's absence.

CONTRACT OF THE ACTING DIRECTOR

7.2.15 The governing bodies held a further meeting in private to consider the contract of the Acting Director.

1992 Fund Administrative Council Decisions

7.2.16 The 1992 Fund Administrative Council decided that Mr Maura's contract should contain the following main elements:

- That it should take effect as of 21 September 2010 until:

  (a) the Director returns to perform his duties; or
  (b) the extraordinary session of the 1992 Fund Assembly to be held from 28 March to 1 April 2011,

  whichever occurs first.

- Salary at the level of Under Secretary-General (USG) in the United Nations Common System +10%, subject to usual post adjustment.

- Other benefits and allowances applicable to staff under the 1992 Fund's Staff Regulations and Rules.

- Normal provisions as regards contributions to the Provident Fund to apply.

- Hospitality allowance of £11 000 per annum payable *pro rata*, monthly.

- In the event that the 1992 Fund Assembly decided, at the request of the International Hazardous and Noxious Substances Fund (HNS Fund), that the Secretariat of the 1992 Fund were to act also as Secretariat of the HNS Fund and that the Director of the 1992 Fund were to be also Director of the HNS Fund, this would not result in any amendment in respect of the Acting Director's remuneration and other benefits.

7.2.17 The Chairman was authorised to sign, on behalf of the 1992 Fund, the contract with the Acting Director containing the main elements set out in paragraph 7.2.16 above.

Supplementary Fund Assembly and 1971 Fund Administrative Council

7.2.18 The Supplementary Fund Assembly and the 1971 Fund Administrative Council noted the decisions of the 1992 Fund Administrative Council in respect of the Acting Director's contract.

7.3

Secretariat matters – Internships within the Secretariat Document IOPC/OCT10/7/1/2	**92AC**			

7.3.1 The governing bodies took note of the information contained in document IOPC/OCT10/7/1/2 regarding the Director's proposal for an internship programme within the Secretariat.

7.3.2 The governing bodies recalled that, following previous discussions and requests for internships within the Secretariat, the Director had been asked to develop a suitable programme for the 1992 Fund, also exploring possibilities of cooperating with organisations with which the Fund is closely associated, 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 It was noted that in light of the potential diversity of Member States' desired content and features of internships within the Secretariat, a modular, structured programme outline satisfying the majority of demands had been presented, in which the variability of incident-related activities was also considered.

7.3.4 Suggestions as to the time frame, type and number of interns as well as potential selection processes and funding arrangements were also noted.

7.3.5 The governing bodies further noted the Director's suggestion to offer a one-week pilot programme in the second half of 2011, giving ten candidates nominated from within Member States the opportunity to assess the proposed internship modules and explore further cooperation possibilities with other organisations, after which participation in the programme could be opened to a wider audience.

Debate

7.3.6 Considering the Director's suggestions regarding the form and content of an internship programme for the Fund, one delegation expressed its interest in the proposed programme and supported the idea of a pilot event.

7.3.7 Another delegation, whilst also supporting the programme in principle, stated that there was potential for two different target groups, ie Member States' officials and interested individuals with other affiliations. That delegation emphasised that any internship programme for the Fund should not engage Member States in lengthy processes for the selection of interns.

7.3.8 One delegation, drawing on experience with other international organisations, stated that internships in those organisations had generally been of one to six months duration and funded either through the candidates' government or supporting programmes at national and international level. While that delegation had some doubt whether a one-week internship in the Fund would be beneficial, it nevertheless supported the proposal of a pilot programme.

7.3.9 Adding to the discussion, the observer delegation of IMO explained that interns at IMO were totally self-funded and consisted mainly of young individuals with specific study projects, studying for higher degrees. It was noted that IMO interns were nominated by Member States and research institutions.

1992 Fund Administrative Council Decision

7.3.10 The 1992 Fund Administrative Council decided to endorse the Director's suggestion regarding the content and format of a pilot programme. The Administrative Council decided that nominations for a maximum of ten candidates were to be submitted through Member States and that participants were to be self-funded. It instructed the Secretariat to report the results of the pilot scheme to the 1992 Fund Assembly at a future session, in order to assess its success and discuss the potential of opening the programme to other participants.

7.4

Appointment of members and substitute members of the Appeals Board **Document IOPC/OCT10/7/2**	**92AC**			

7.4.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT10/7/2. It noted that since the October 2009 sessions of the governing bodies, two members of the Appeals Board, Mr Eric Berder (France) and Mr Ichiro Shimizu (Japan), had notified the Director of their resignation.

1992 Fund Administrative Council Decision

7.4.2 The 1992 Fund Administrative Council appointed Ms Odile Roussel (France) and Mr Tetsuto Igarashi (Japan) as members of the Appeals Board to hold office until the 16th session of the 1992 Fund Assembly.

7.5

Development of a database of decisions **Document IOPC/OCT10/7/3**	**92AC**		**SA**	**71AC**

7.5.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT10/7/3 on the development of a database of decisions made by the governing bodies of the IOPC Funds.

7.5.2 It was noted in particular that a fully functional web version of the database had been developed and that a user guide was currently being prepared. A presentation of the web-based version was given by Mr Robert Owen, IT Manager, which was well received by the governing bodies.

7.5.3 It was noted that the Secretariat intended to make the database available via the Funds' website in January 2011, so that it could be used not only by the Secretariat, but also by experts and lawyers working for the Funds, delegates and the general public.

Debate

7.5.4 One delegation queried if the database would be available in French and Spanish. The Acting Director confirmed that the database would be made available in all three official working languages of the Organisation, but stated that he could not confirm when this would be.

7.5.5 The governing bodies thanked Mr Owen for his detailed presentation and the Secretariat for developing such a useful system.

8 Treaty matters

8.1

Status of the 1992 Fund Convention and the Supplementary Fund Protocol **Document IOPC/OCT10/8/1**	**92AC**		**SA**	

8.1.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information contained in document IOPC/OCT10/8/1 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 104 Member States of the 1992 Fund and that by 5 February 2011 a further State (Benin) will have become a Member, bringing the number of 1992 Fund Member States to 105.

8.1.3 It was also noted that since the governing bodies' October 2009 sessions, the Supplementary Fund Protocol had entered into force for Canada, Morocco and the Republic of Korea, bringing the number of Supplementary Fund Members to 27.

8.1.4 The governing bodies noted that since their October 2009 sessions, the Director had continued to draw the attention of States, which ratified or acceded to 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 in the past year, the Director had not received any further responses to the enquiries that were made in October 2006 as to whether Member States had fully implemented the Conventions. The governing bodies also noted that since their October 2009 sessions, the Director had been made aware of three further States that had not fully implemented the Conventions into national law. It was further noted that the Secretariat was in the process of contacting those three Member States, as well as those States who had informed the Director in October 2006 that they had not fully implemented the Conventions, in order to determine whether this was still the case and, if so, what further could be done by the Secretariat to facilitate the implementation process.

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/OCT10/8/2**	**92AC**		**SA**	

8.2.1 The 1992 Fund Administrative Council and the Supplementary Fund Assembly took note of the information in document IOPC/OCT10/8/2 as regards Member States which had provided information on the establishment of an exclusive economic zone (EEZ) or designated area under Article 3(a)(ii) of the 1992 Fund Convention.

8.2.2 It was noted that information on the EEZ or designated areas had so far been submitted by 32 of the 104 States for which the 1992 Fund Convention was in force at the time of the 7th session of the 1992 Fund Administrative Council:

Algeria	Estonia	Jamaica	Portugal
Australia	Fiji	Latvia	Spain
Bahamas	Finland	Marshall Islands	Sweden
Belgium	France	Mauritius	Tunisia
Brunei Darussalam	Germany	Mexico	United Kingdom
Canada	Grenada	Netherlands	Uruguay
Croatia	Ireland	New Zealand	Vanuatu
Denmark	Italy	Norway	Venezuela

8.2.3 It was further noted that, since the last circular containing information on the EEZ submitted by Member States was issued by the Director in June 2009, the Director had been notified by France of the establishment in 2004 of an Ecological Protection Zone (zone de protection écologique, ZPE) in the Mediterranean Sea, which is a designated area under Article 3(a)(ii) of the 1992 Fund Convention.

8.3

Winding up of the 1971 Fund **Document IOPC/OCT10/8/3**				**71AC**

8.3.1 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.

8.3.2 The Administrative Council took note of the developments towards the winding up of the 1971 Fund set out in document IOPC/OCT10/8/3, in particular as regards the outstanding incidents and the financial situation in respect of these incidents. The Administrative Council noted that with regards to the *Plate Princess* incident, should any payments need to be made in excess of £851 165 (1 million SDR), a Major Claims Fund would need to be established. The Administrative Council also noted that the *Evoikos* and *Al Jaziah 1* cases were now closed.

8.3.3 The 1971 Fund Administrative Council noted the situation on the non-submission of oil reports and that oil reports were outstanding from three former Member States.

8.3.4 The Administrative Council noted the Director's efforts to make those contributors who were in arrears pay the amounts due. The Administrative Council noted the steps being taken by the Director, and looked forward to his report on developments in October 2011.

8.3.5 The 1971 Fund Administrative Council noted with satisfaction the efforts being made by the Secretariat towards the winding up of the 1971 Fund.

8.4	**HNS Convention and HNS Protocol** **Documents IOPC/OCT10/8/4 and IOPC/OCT10/8/4/1**	**92AC**			

8.4.1 The 1992 Fund Administrative Council noted the information contained in documents IOPC/OCT10/8/4, submitted by the Director, and IOPC/OCT10/8/4/1, submitted by IMO.

8.4.2 It was noted that an International Conference on the revision of the HNS Convention was held in April 2010 and that the Conference had adopted the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (2010 HNS Protocol). It was further noted that the Protocol would be open for signature at the Headquarters of the IMO from 1 November 2010 and would remain open for signature until 31 October 2011 and, thereafter, for accession.

8.4.3 It was noted that the International Conference had also adopted four Resolutions, and that Resolution 1 requested that the 1992 Fund Assembly instruct the Director of the IOPC Funds to carry out tasks necessary for the setting up of the HNS Fund and to make preparations for the first session of the HNS Fund Assembly.

8.4.4 The 1992 Fund Administrative Council noted the preparations carried out so far by the 1992 Fund Secretariat in respect of the entry into force of the HNS Convention, in particular as regards to the dedicated HNS website and the HNS Convention Contributing Cargo Calculator. It also noted the items that would, in the Director's view, need to be considered at the first session of the HNS Fund Assembly as well as the documents, setting out the framework for the operation of the HNS Fund, which would need to be adopted at that session.

8.4.5 The 1992 Fund Administrative Council noted that in Resolution 2, the International Conference urged States Parties to the 2010 HNS Protocol, Member States of the IMO, other appropriate organisations and the maritime industry to provide assistance, either directly or through IMO, to those States which required support in the consideration of adoption and in the implementation of the 2010 HNS Protocol. It also noted that States Parties to the 2010 HNS Protocol, Member States of IMO, other appropriate organisations and the maritime industry were invited, under that Resolution, to provide financial and in-kind support to IMO for technical assistance activities related to the adoption and effective implementation of the 2010 HNS Protocol.

8.4.6 The 1992 Fund Administrative Council also noted the invitation, set out in Resolution 4, to the Legal Committee of IMO to, *inter alia*, review the overview of the 1996 HNS Convention in light of the adoption of the 2010 HNS Protocol and revise and expand it, as appropriate, to encourage early entry into force of the Protocol and to ensure global, uniform and effective implementation and enforcement of the relevant requirements of the Protocol.

8.4.7 It was noted that meetings had been held in June 2010 and August 2010 between the Secretariats of the IMO and IOPC Funds to discuss the coordination of work required following the adoption of the 2010 HNS Protocol. It was also noted that the lists of substances that fell within the definition of contributing cargoes under the HNS Convention had been put forward to the IMO Legal Committee at its 97th session for approval and that this would be circulated via IMO as well as the HNS website (www.hnsconvention.org) in due course.

8.4.8 It was further noted that the information brochure on the HNS Convention produced by the IOPC Funds' Secretariat had been updated to reflect the latest developments and had been circulated to all delegates. The brochure is also available to download from the HNS Fund website or in hard copy upon request to the Secretariat.

Debate

8.4.9 A number of delegations expressed their satisfaction with the work carried out so far by the Director in preparation for the setting up of the HNS Fund and supported the proposed recommendation to continue with this task until the first session of the Assembly of the HNS Fund could be convened.

8.4.10 On request from the 1992 Fund Administrative Council Chairman a number of delegations reported on the steps taken at national level towards the accession or ratification of the HNS Protocol. The delegations from Denmark, Italy, Netherlands, Nigeria, Norway and Spain indicated that the Protocol was at varying stages in the parliamentary approval process but that they hoped to be able to either sign or ratify the Protocol in the near future.

8.4.11 A number of delegations raised the question of the availability of the list of HNS substances since, in their view, it was essential for the preparations of the relevant national legislation and to facilitate the identification of potential contributors. Another delegation highlighted the fact that the work done in previous years with regard to the HNS Convention was still relevant and should be used as much as possible, particularly taking into account the costs already incurred.

8.4.12 With regards to the adoption of a final list of HNS substances to be covered under the HNS Protocol, the representative from IMO confirmed that the Legal Committee was due to adopt the list at its 97th session in November 2010 but reminded the delegates that, as decided by the International Conference in April 2010, it was an indicative list, referring to relevant IMO Codes and likely to be updated from time to time.

8.4.13 Finally, a number of delegations recognised the value and the logic of ensuring that, whilst a separate organisation in its own right, the future HNS Fund should have a joint Secretariat with that of the IOPC Funds in order to save on costs and to benefit from the experience and long-established processes in terms of financial management and the handling of claims.

8.4.14 In summing up the debate, the 1992 Fund Administrative Council Chairman indicated that although a new resolution on the setting up of the HNS Fund was adopted as part of the 2010 HNS Protocol, a consensus had been reached previously on the fact that the 1992 Fund and the HNS Fund should share the same Secretariat and that there was no reason to question it further; instead the focus should be on the practical measures necessary for the setting up of the HNS Fund.

1992 Fund Administrative Council Decision

8.4.15 In accordance with Resolution 1 of the International Conference, the 1992 Fund Administrative Council instructed the Director:

(a) to carry out, in addition to the tasks under the 1992 Fund Convention, the administrative tasks necessary for setting up the HNS Fund, in accordance with the provisions of the 2010 HNS Convention, on condition that this does not unduly prejudice the interests of the Parties to the 1992 Fund Convention;

(b) to give all necessary assistance for setting up the HNS Fund; and

(c) to make the necessary preparations for the first session of the Assembly of the HNS Fund, which is to be convened by the Secretary-General of the International Maritime Organization, in accordance with Article 43 of the 2010 HNS Convention.

9 Budgetary matters

9.1

Sharing of joint administrative costs between the 1992 Fund, the 1971 Fund and the Supplementary Fund Document IOPC/OCT10/9/1	**92AC**		**SA**	**71AC**

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/OCT10/9/1.

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 £240 000 and £56 000, respectively, to the 1992 Fund for the financial year 2011.

9.2

Budgets for 2011 and assessments of contributions to the General Fund Document IOPC/OCT10/9/2	**92AC**		**SA**	**71AC**
Budget for 2011 and assessment of contributions to the General Fund – 1992 Fund Document IOPC/OCT10/9/2/1	**92AC**			
Budget for 2011 and assessment of contributions to the General Fund – Supplementary Fund Document IOPC/OCT10/9/2/2			**SA**	
Budget for 2011 – 1971 Fund Document IOPC/OCT10/9/2/3				**71AC**

9.2.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council took note of the information contained in document IOPC/OCT10/9/2 and considered the draft 2011 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/OCT10/9/2/1 and IOPC/OCT10/9/2/2 and took note of document IOPC/OCT10/9/2/3 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 the above granted the Director a certain amount of flexibility in the management of the Secretariat.

9.2.3 The governing bodies noted that all the budgeted posts in the Professional category had been filled which resulted in no budgetary room left in the Professional category and recognised the need for one unspecified position in the Professional category.

9.2.4 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.

9.2.5 The 1971 Fund Administrative Council noted the Director's view that the surplus on the 1971 Fund's General Fund as at 31 December 2011 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 2011, as well as the 1971 Fund's share of the administrative expenditure until the 1971 Fund was wound up.

1992 Fund Administrative Council Decisions

9.2.6 The 1992 Fund Administrative Council adopted the budget for 2011 for the administrative expenses of the 1992 Fund for a total of £4 225 520 (including the cost of the external audit for the three Funds), as set out in Annex II, page 1, to this document. The adopted budget includes one additional unspecified post in the Professional category at P.3 level (ie £74 500).

9.2.7 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 £185 000, based on the 2011 budget as adopted).

9.2.8 The 1992 Fund Administrative Council decided to maintain the working capital of the 1992 Fund at £22 million.

9.2.9 The 1992 Fund Administrative Council decided to levy 2010 contributions to the General Fund of £3.8 million, payable by 1 March 2011.

Supplementary Fund Assembly Decisions

9.2.10 The Supplementary Fund Assembly adopted the budget for 2011 for the administrative expenses of the Supplementary Fund for a total of £69 600 (including the cost of the external audit), as set out in Annex II, page 2, to this document.

9.2.11 The Supplementary Fund Assembly decided to maintain the working capital of the Supplementary Fund at £1 million.

9.2.12 The Supplementary Fund Assembly decided that there should be no levy of 2010 contributions to the General Fund.

1971 Fund Administrative Council Decisions

9.2.13 The 1971 Fund Administrative Council adopted the budget for 2011 for the administrative expenses of the 1971 Fund for a total of £505 400 (including the cost of the external audit), as set out in Annex II, page 3, to this document.

9.2.14 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 Fund Document IOPC/OCT10/9/3	**92AC**		**SA**	**71AC**
Assessment of contributions to Major Claims Funds – 1992 Fund Documents IOPC/OCT10/9/3/1 and IOPC/OCT10/9/3/1/Corr.1	**92AC**			
Assessment of contributions to Claims Funds – Supplementary Fund Document IOPC/OCT10/9/3/2			**SA**	
Assessment of contributions to Major Claims Funds – 1971 Fund Document IOPC/OCT10/9/3/3				**71AC**

9.3.1 The 1992 Fund Administrative Council, the Supplementary Fund Assembly and the 1971 Fund Administrative Council noted the Director's proposal for contributions to Major Claims Funds and Claims Funds for the three Organisations as outlined in documents IOPC/OCT10/9/3, IOPC/OCT10/9/3/1, IOPC/OCT10/9/3/1/Corr.1, IOPC/OCT10/9/3/2 and IOPC/OCT10/9/3/3.

1992 Fund Administrative Council Decisions

9.3.2 The 1992 Fund Administrative Council decided that there should be no levy of 2010 contributions in respect of the *Erika* Major Claims Fund.

9.3.3 The 1992 Fund Administrative Council decided to levy £5 million in respect of the *Prestige* Major Claims Fund, the entire levy to be deferred.

9.3.4 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, but subject to a decision by the 1992 Fund Executive Committee authorising the Director to make payments in respect of this incident.

9.3.5 The 1992 Fund Administrative Council decided to levy £70 million in respect of the *Hebei Spirit* Major Claims Fund, with £50 million payable by 1 March 2011 and £20 million to be deferred.

9.3.6 The Director was authorised to invoice all or part of the deferred levies set out above for payment during the second half of 2011, if and to the extent required.

9.3.7 It was noted that the 1992 Fund Administrative Council's decisions in respect of levies for 2010 contributions would be calculated as follows:

Fund	Oil year	Estimated total oil receipts (million tonnes)	Total levy £	Payment by 1 March 2011		Maximum deferred levy	
				Levy £	Estimated levy per tonne £	Levy £	Estimated levy per tonne £
General Fund	2009	1 461 577 403	3 800 000	3 800 000	0.0025999		
Prestige	2001	1 357 484 002	5 000 000			5 000 000	0.0036833
Volgoneft 139	2006	1 534 611 838	40 000 000			40 000 000	0.0260652
Hebei Spirit	2006	1 534 611 838	70 000 000	50 000 000	0.0325815	20 000 000	0.0130326
Total				53 800 000		65 000 000	

Supplementary Fund Assembly

9.3.8 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 Claims Fund.

1971 Fund Administrative Council Decision

9.3.9 The 1971 Fund Administrative Council decided that there should be no levy of 2010 contributions in respect of either the *Vistabella* or the *Nissos Amorgos* Major Claims Funds.

9.4

Transfer within the 2010 budget **Document IOPC/OCT10/9/4**	**92AC**			

9.4.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/OCT10/9/4.

1992 Fund Administrative Council Decision

9.4.2 The 1992 Fund Administrative Council authorised the Director to make the necessary transfer to cover the costs of the Audit Body (under Chapter V), within the 2010 budget, from Chapter VI (Unforeseen expenditure), to cover costs that may exceed the amount that can be transferred under Financial Regulation 6.3.

10 Other matters

10.1

Any other business – Future sessions **Document IOPC/OCT10/10/1**	**92AC**	**92EC**	**SA**	**71AC**

10.1.1 The 1992 Fund Administrative Council, the 1992 Fund Executive Committee, the Supplementary Fund Assembly and the 1971 Fund Administrative Council noted the information contained in document IOPC/OCT10/10/1 regarding possible dates for sessions of the IOPC Funds' governing bodies during 2011.

10.1.2 It was recalled that at its first meeting in June 2010, the 1992 Fund 6th intersessional Working Group had agreed that it should hold its second meeting in spring 2011 (cf document IOPC/OCT10/4/2, paragraph 7.3). The governing bodies noted the Director's proposal that the 51st session of the 1992 Fund Executive Committee should take place in conjunction with that meeting, during the week of 28 March 2011.

10.1.3 It was recalled that, during the October 2009 sessions of the IOPC Funds' governing bodies, the delegation of Morocco had proposed that the 2011 spring meetings of the governing bodies be held in the Kingdom of Morocco, in the city of Marrakech, on a budget-neutral basis for the Organisations. It was further recalled that the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, had provisionally accepted the kind offer and requested that a document containing full details of the offer be submitted to the October 2010 meetings of the governing bodies for further consideration, and to enable all delegations to consider their attendance.

10.1.4 The governing bodies noted that a formal invitation from the Prime Minister of the Kingdom of Morocco, offering to cover various costs involved in the running of the Funds' meetings, had been received by the Director and circulated to delegates in April 2010 (Circular 92FUND/Circ.69, SUPPFUND/Circ.16, 71FUND/Circ.91). The governing bodies thanked the Government of Morocco for their kind invitation and also noted the additional information provided relating to travel and visa requirements.

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

10.1.5 The governing bodies decided to hold the next regular sessions of the 1992 Fund Assembly and the Supplementary Fund Assembly and the autumn session of the 1971 Fund Administrative Council during the week of 24 October 2011.

10.1.6 Dates were also agreed for possible sessions of the governing bodies, or meetings of their subsidiary bodies during the weeks of 28 March and 4 July 2011.

10.1.7 The governing bodies confirmed the decision made in October 2009 and accepted the offer by the Government of Morocco to host the spring 2011 sessions of the IOPC Funds' governing bodies, during the week of 28 March, in Marrakech, Morocco.

1992 Fund Executive Committee Decision

10.1.8 The 1992 Fund Executive Committee decided to hold its 50th session on 22 October 2010, at which it would consider the date for its 51st session.

Debate

10.1.9 The representative of the delegation of Morocco, whilst expressing great happiness and gratitude for the decision taken by the governing bodies to hold the next meetings of the IOPC Funds' governing bodies in Marrakech, first, on behalf of the Government of Morocco, took the opportunity to commend the Director for his support and direction since the original offer by the Government of Morocco to host the spring 2011 sessions of the IOPC Funds.

10.1.10 The Moroccan delegation wished Mr Oosterveen a prompt recovery and expressed its hope that he would be present in Marrakech in March.

10.1.11 That delegation gave assurance that the Government of Morocco would make every effort to ensure that delegates enjoyed a safe and pleasurable stay and fruitful meetings in Marrakech. It offered to provide, in addition to the general conference facilities as set out in the circular referenced above, lunch during the sessions and a gala dinner. It also informed the governing bodies that a dedicated website would be set up to provide a variety of information to assist delegations in making their travel arrangements, including visa requirements and general planning.

10.1.12 That delegation expressed thanks to the Secretariat for their professionalism, cooperation and assistance over the past few months and stated that it looked forward to continuing this cooperation during the preparations for the meetings.

10.1.13 The governing bodies expressed their appreciation for the invitation by the Government of Morocco and looked forward to their meetings in Marrakech.

10.2

Any other business	**92AC**	**92EC**	**SA**	**71AC**

The delegations of Venezuela and Panama made statements under this agenda item, as set out in Annex III. No further items were raised under this agenda item.

11 Adoption of the Record of Decisions

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

11.1 The draft Record of Decisions of the October 2010 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/OCT10/11/WP.1 and IOPC/OCT10/11/WP.1/1, was adopted, subject to certain amendments.

11.2 Upon stepping down as Chairman of the 1992 Fund Executive Committee, Mr Daniel Kjellgren informed the governing bodies that he had enjoyed his time as Chairman and explained that it had given him an insight into the work of the Secretariat. He expressed, in particular, his appreciation for the support that the Secretariat had given him during his two years in office.

* * *

ANNEX I

1.1 Member States

	1992 Fund Assembly	1992 Fund Exec. Committee	Supp. Fund Assembly	1971 Fund Admin. Council
Algeria	●			●
Angola	●			
Argentina	●			
Australia	●		●	●
Bahamas	●			●
Brunei Darussalam	●			●
Bulgaria	●			
Cameroon	●	●		●
Canada	●	●	●	●
China (Hong Kong Special Administrative Region)	●	●		●
Colombia	●			●
Croatia	●		●	●
Cyprus	●	●		●
Denmark	●		●	●
Ecuador	●			
Estonia	●		●	●
Fiji	●			●
Finland	●		●	●
France	●	●	●	●
Gabon	●			●
Georgia	●			
Germany	●	●	●	●
Ghana	●			●
Greece	●		●	●
Grenada	●			
India	●			●
Ireland	●		●	●
Islamic Republic of Iran	●			
Israel	●			
Italy	●		●	●
Japan	●	●	●	
Kenya	●			●
Latvia	●		●	
Liberia	●	●		●
Malaysia	●			●
Malta	●			●
Marshall Islands	●			●
Mexico	●			●
Morocco	●		●	●
Netherlands	●	●	●	●
New Zealand	●			●

Nigeria	●			●
Norway	●		●	●
Panama	●			●
Papua New Guinea	●			●
Philippines	●	●		
Poland	●		●	●
Qatar	●			●
Republic of Korea	●		●	●
Russian Federation	●			●
Singapore	●	●		
Spain	●	●	●	●
Sweden	●	●	●	●
Syrian Arab Republic	●			●
Trinidad and Tobago	●	●		
Tunisia	●			●
Turkey	●			
United Kingdom	●		●	●
Uruguay	●	●		
Vanuatu	●			●
Venezuela	●			●

1.2 Non-Member States represented as observers

	1992 Fund	**Supplementary Fund**	**1971 Fund**
Bolivia	●	●	
Indonesia	●	●	●
Saudi Arabia	●	●	●
Thailand	●	●	
Ukraine	●	●	

1.3 Intergovernmental organisations

	1992 Fund	**Supplementary Fund**	**1971 Fund**
International Maritime Organization (IMO)	●	●	●
Maritime Organisation of West and Central Africa (MOWCA)	●	●	

1.4 International non-governmental organisations

	1992 Fund	**Supplementary Fund**	**1971 Fund**
BIMCO	●	●	●
Comité Maritime International (CMI)	●	●	●

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

* * *

ANNEX II

2011 Administrative Budget for 1992 Fund

	STATEMENT OF EXPENDITURE	Actual 2009 expenditure for 1992 Fund		2009 budget appropriations for 1992 Fund		2010 budget appropriations for 1992 Fund	2011 budget appropriations for 1992 Fund
	SECRETARIAT	£		£		£	£
I	**Personnel**						
(a)	Salaries	*1 555 204*		*1 548 995*		1 742 200	1 851 810
(b)	Separation and recruitment	*43 007*		*35 000*		35 000	35 000
(c)	Staff benefits, allowances and training	*535 136*		*613 930*		726 950	652 910
	Sub-total		***2 133 347***		***2 197 925***	**2 504 150**	**2 539 720**
II	**General Services**						
(a)	Rent of office accommodation (including service charges and rates)	*299 330*		*319 300*		320 800	327 800
(b)	Office machines (IT hardware/software) / maintenance	*79 482*		*71 500*		72 300	154 000
(c)	Furniture and other office equipment	*9 935*		*25 000*		25 000	25 000
(d)	Office stationery and supplies	*10 196*		*22 000*		22 000	22 000
(e)	Communications (courier,telephone, postage, e-mail/internet)	*41 780*		*68 000*		69 800	76 000
(f)	Other supplies and services	*29 648*		*32 500*		35 000	35 000
(g)	Representation (hospitality)	*17 846*		*25 000*		25 000	25 000
(h)	Public Information	*128 531*		*200 000*		175 000	275 000
	Sub-total		***616 748***		***763 300***	**744 900**	**939 800**
III	**Meetings**						
	Sessions of the 1992, Supplementary and 1971 Funds' governing bodies and Intersessional Working Groups		***182 246***		***175 000***	**150 000**	**150 000**
IV	**Travel**						
	Conferences, seminars and missions		***60 015***		***150 000***	**150 000**	**150 000**
V	**Miscellaneous expenditure**						
(a)	External audit fees for IOPC Funds	*62 400*		*62 400*		62 400	63 000
(b)	Consultants' fees	*135 147*		*150 000*		150 000	100 000
(c)	Audit Body	*150 120*		*120 000*		138 000	160 000
(d)	Investment Advisory Body	*45 000*		*45 000*		60 000	63 000
	Sub-total		***392 667***		***377 400***	**410 400**	**386 000**
VI	Unforeseen expenditure (such as consultants' and lawyers' fees, cost of extra staff and cost of equipment)		***31 925***		***60 000***	**60 000**	**60 000**
Total Expenditure I-VI			***3 416 948***		***3 723 625***	**4 019 450**	**4 225 520**
	Total Expenditure I-VI excluding External Audit fees for IOPC Funds					**3 957 050**	**4 162 520**
VII	**Due from 71Fund**						
	Management fee payable to 1992 Fund by 1971 Fund		***210 000***		***210 000***	**(225 000)**	**(240 000)**
VIII	**Due from Supplementary Fund**						
	Management fee payable to 1992 Fund by Supplementary Fund		***50 000***		***50 000***	**(52 500)**	**(56 000)**
	1992 Fund Budget Appropriation excluding External audit fee for IOPC Funds					**3 679 550**	**3 866 520**
	1992 Fund Budget Appropriation including External audit fee for 1992 Fund only					**3 728 050**	**3 915 520**

2011 Administrative Budget for the Supplementary Fund

(Figures in Pounds Sterling)

	STATEMENT OF EXPENDITURE	ACTUAL 2009 EXPENDITURE	2009 BUDGET APPROPRIATIONS	2010 BUDGET APPROPRIATIONS	2011 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund	50 000	50 000	52 500	56 000
II	Administrative expenses (including external audit fees)	3 600	13 600	13 600	13 600
Supplementary Fund Budget Appropriation		**53 600**	**63 600**	**66 100**	**69 600**

2011 Administrative Budget for 1971 Fund

(Figures in Pounds Sterling)

	STATEMENT OF EXPENDITURE	ACTUAL 2009 EXPENDITURE	2009 BUDGET APPROPRIATIONS	2010 BUDGET APPROPRIATIONS	2011 BUDGET APPROPRIATIONS
I	Management fee payable to 1992 Fund by 1971 Fund	210 000	210 000	225 000	240 000
II	Costs for Winding up of the 1971 Fund	-	250 000	250 000	250 000
III	Administrative costs including External Audit fees	10 300	15 300	15 300	15 400
1971 Fund Budget Appropriation		**220 300**	**475 300**	**490 300**	**505 400**

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ANNEX III

Original: SPANISH

Interventions by the delegations of Venezuela and Panama

Agenda item: 10 - Other business

Incident: *Plate Princess*

Intervention by the delegation of Venezuela

'Taking advantage of the fact that we are now at the point of other business, not specifically considered in the Agenda, the delegation of the Bolivarian Republic of Venezuela wishes to express its concern in respect of the general feeling of legal uncertainty with which we were left by the discussion of agenda item 3/3 relating to the report on the *Plate Princess* as a pending case of the 1971 Fund, which was presented on Monday 18 October.

First of all, we do not understand why the document was presented without being amended, even if only at the last minute, given that the Secretariat was already aware that a decision had been taken in the Supreme Court, as the Director himself commented during the discussion following the presentation.

This delegation felt as if it were in a special court which is above the courts of each country and which openly discusses and calls into question the judicial decisions of our own country. Clearly this situation leaves us with deep concern with regard to the legal certainty which should be the hallmark of a Convention such as that of the IOPC Funds.

Furthermore, we were disturbed as representatives of our Nation by the fact that a document was presented to this plenary which questions the seriousness, credibility and integrity of the country's institutions, in this case our courts of justice, which have already delivered their judgements in this respect. This in itself is evidence that by its content, the document has falsified the truth.

Consequently, this delegation cannot help but feel itself under attack by the way in which the document was presented. We are therefore concerned, as members of this Fund, that this situation might be repeated. We consider it unacceptable that the Acting Director should seek to attribute judicial functions to this body when the Convention expressly states that the power to settle disputes is given solely to the court of the Contracting country in which the incident occurred.'

Intervention by the delegation of Panama

The delegation of Panama would like to echo what has been said by the Venezuelan delegation since we share the same concern. We would not want this case to set a precedent for future cases. We believe that the accusations made in the document are of concern and should be clarified. We look forward to the document to be submitted by Venezuela at the next session to allow the case to be looked at again in more detail.